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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

Senate Bill No. 2316

ENTITLED, AN ACT RELATING TO CRIMINAL OFFENSES—ASSAULTS

Chairman LaMountain and Members of the Senate Judiciary Committee:

The Office of the Public Defender opposes Senate Bill 2316, which would make an otherwise-misdemeanor assault upon a sports official a felony if it occurs during their official duties. We appreciate that sports officials are often subject to unfair treatment by fans and that sometimes this behavior can even escalate into the criminal. But we believe that the existing statutory scheme adequately penalizes assaultive behavior and allows the courts to appropriately increase the penalties when aggravating circumstances exist—all while maintaining the necessary level of judicial discretion that is required such fact-driven scenarios.

Currently, *any* assault resulting in serious bodily injury is punishable by up to twenty years in prison. Under the proposed § 11-5-18(b)(2), this penalty will remain the same even for sports officials who incur serious bodily injury; thus, although redundant, subsection (b)(2) does not present the same problem that subsection (b)(1) does. This subsection proposes that *every* assault upon a sports official—including ones that result in no injury and ones where no contact is ever made¹—become a three-year felony.

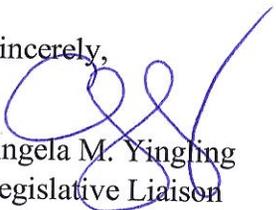
This would likely lead to the over-prosecution of some very minor offenses. There is a saying often heard at the courthouse: “There are assault and there are *assaults*.” In other words, the general assault statutes (§ 11-5-2 (felony assault) and § 11-5-3 (misdemeanor assault)) cover a *wide* variety of criminal conduct. Section 11-5-2 already increases the penalties for the most serious assaults, *i.e.*, those involving a weapon or resulting in serious bodily injury. But the current statutory scheme recognizes that lesser assaultive behaviors such as batting a person’s hand away—although still criminal—does not warrant the same penalties that the much more serious acts do. The same is true in the sporting context; although fan behavior can be rude, obnoxious, and downright criminal, turning every assault—even something as small as a finger flick on an

¹ Under Rhode Island law, a simple assault does not require that the perpetrator make physical contact with the victim. *See, e.g., State v. Jeremiah*, 546 A.2d 183 (R.I. 1988). Under the case law, a person can commit a misdemeanor assault merely attempting or offering “to do a corporal hurt to another, whether from malice or wantonness. The offence may consist, also, in putting another in fear of violence.” *Id.* (internal citations omitted). Such an expansive definition means we should be even more cautious about expanding the definition of felony assault.

official's shirt—into a three-year felony would be overcorrecting the problem. After all, even a simple assault can subject the perpetrator to *an entire year in prison* if the trial justice believes it is warranted. That is an unusual sentence to be sure, but that rarity with which it is applied means that the current statutes adequately cover the range of conduct seen by the courts. The same is true for the proposed special conditions included in the bill. While certain defendants would benefit greatly from conditions such as counseling or community service, the courts already have the discretion to impose them in every assault case where they see fit.

While remaining sensitive to the abuse that sports officials often incur, the Public Defender's Office is concerned about the over-prosecution that would result from S2316 and therefore opposes the passing of this bill.

Sincerely,



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