

**PRESENTATION OF ATTORNEY GENERAL OF THE VIRGIN ISLANDS  
ARIEL M. SMITH  
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS  
COMMITTEE ON GOVERNMENT OPERATIONS, VETERANS AFFAIRS  
AND CONSUMER PROTECTION  
FEBRUARY 27, 2024**

Good afternoon, Madam Chair Joseph, Committee on Government Operations, Veterans Affairs, and Consumer Protection members, legislative staff, and the viewing and listening audience.

My name is Ian Clement. I am the Deputy Attorney General for the District of St. Thomas, St. John and Water Island. On behalf of Attorney General Ariel Smith, the Virgin Islands Department of Justice is pleased to provide a few remarks regarding proposed Bill No. 35-0226. Here with me today is Kathryn Jensen-de Lugo, the IV-D Program Director, Paternity and Child Support Division of the Virgin Islands Department of Justice who will be providing testimony.

Bill No. 35-0226, as amended and proposed by Senator Carla J. Joseph, seeks to amend Title 16 of the Virgin Islands Code, chapter 13, section 345 to add subsection (f), which would establish a minimum default monthly child support amount for parents who fail to provide the financial information necessary to compute the child support obligation provided for in 16 V.I.C. § 345(c). The Department of Justice has done a preliminary review and offers the following comments.

As an agency relegated to only administrative remedies, the IV-D Program must be fully supported by legislation that strengthens program efforts to ensure the children of this territory receive the full benefit of support to which they are entitled. Bill No. 35-0226 is the most meaningful proposed child support legislation I can recall from recent years.

Because child support is based on the ability to pay, there can be no minimum child support where the non-custodial parent has received reasonable notice of a hearing and has appeared for a hearing. The Office of Child Support Services set this standard based on guidance outlined in *Turner v. Rogers*.<sup>1</sup> Parties must demonstrate their ability to pay based on the collection of financial data relative to income, earnings, and expenditures to help ensure fair and reasonable child support obligations. Administrative Hearing Officers gather information from employers, testimony, and the parties to determine fair child support.

Over the last fifteen years, we have seen an increase in failures to appear for hearings and failures to present requested financial information, despite proper and timely service of process, and an increase in parents with substantial income derived from cash-based operations. Often, this is done to subvert the required calculation process and, in doing so, receive a default order that includes a support amount that

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<sup>1</sup> *Turner v. Rogers*, et al., 564 U.S. 431 (2011)

is more favorable than they would have received based on actual income information.

The Virgin Islands Child Support Guidelines currently state, *“In cases where the Respondent has been duly served, and fails or refuses to appear or otherwise answer, and in the event the Paternity and Child Support Division, Court of the Administrative Hearing Officer, cannot obtain independent evidence of income, via testimony, affidavit or subpoena, a Temporary Default Child Support Order shall be entered against him/her for a minimal sum of \$250.00 for the first child and \$60.00 for each additional child.”*

If approved, the proposed legislation would increase the default minimum sum of child support from \$250 to \$350 per month for the first child and from \$60 to \$75 per month for each additional child. The amounts proposed in Bill No. 35-0226 would be controlling and override the current minimums listed in the Child Support Guidelines. It is important to note these statutory minimums are to be used only when a parent fails to provide the financial information necessary to compute the child support amount provided for in the Virgin Islands Code.

Once awarded, a default order becomes permanent after two (2) years without satisfactory evidence of income. Individuals who make a living on the underground economy - those who receive cash payments in exchange for services - reap the

benefit of this minimal amount. At the same time, custodial parents struggle to feed, house, and clothe their children as the cost of living continues to rise.

This situation is not exclusive to the Virgin Islands. During the Region 2 IV-D Directors meeting held in Boston, Massachusetts, on September 13 and 14, 2023, other states and territories expressed concerns about obtaining sufficient income information from self-employed non-custodial parents. In speaking with my colleague from Puerto Rico, it is clear that they face the same challenge with the underground economy. When income is unreported, it is extremely difficult to obtain accurate financial information, upon which child support orders are based.

With that being said, I would consider also noting in the language in the Child Support Guidelines language from Bill No. 35-0226 to emphasize a minimum default monthly child support amount should only be used when a “duly served” parent “fails or refuses to appear” or otherwise produce requested financial information. In cases where financial information, including income, earnings, and expenditures, has been provided, the rules and formulas in the Child Support Guidelines should be used.

As amended, the Paternity and Child Support Division supports Bill No. 35-0226. I look forward to new and updated legislation to provide more support to the IV-D program and the children of the Virgin Islands.

With that, I want to thank the Committee for allowing the Department of Justice to testify on Bill No. 35-0226. This concludes our formal remarks. We stand ready to respond to any questions this body may have.