

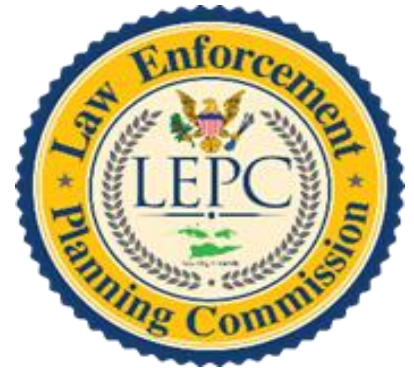


U.S Virgin Islands Law Enforcement Planning Commission

Testimony Before 35th Legislature of the Virgin Islands,
Committee on Homeland Security, Justice and Public
Safety Bill No. 35-0031, “An Act amending Title 5,
V.I.C., Subtitle 3, Part I, by adding a new chapter 301A,
creating the Child Victims’ and Child Witnesses’ Rights
Act and repealing chapter 301, subchapter IV, section
3510.

Testifier - Moleto A. Smith Jr., Director

Earle B. Ottley Senate Chambers, Capitol Building
St. Thomas, U. S. Virgin Islands
10:00 AM, Tuesday, September 10, 2024



Testimony

Greetings Senator Kenneth L. Gittens, Chairman, 35th Legislature Committee on Homeland Security, Justice and Public Safety, other members of this Committee on Budget, other members of the 35th Legislature, and members of the listening and viewing public.

I am Moleto A. Smith Jr., Director, U.S. Virgin Islands Law Enforcement Planning Commission, better referred to as LEPC. I appear today to provide testimony on Bill No. 35-0031, “an Act amending Title 5, Virgin Islands Code, Subtitle 3, Part I, by adding a new Chapter 301A, creating the Child Victims’ and Child Witnesses’ Rights Act and repealing Chapter 301, subchapter IV, section 3510. This measure is proposed by Senator Angel Bolques.

As a matter of reference, pursuant to Virgin Islands Code Title 3, Chapter 15, Section 261 (2019), LEPC serves as chief advisory entity to the Governor and the state planning agency for the Virgin Islands for key criminal justice activities such as:

- developing policies, plans, programs and budgets for improving coordination, administration and effectiveness of the criminal justice system in the Virgin Islands

- preparing criminal justice plans, on behalf of the Governor, based on an analysis of the Virgin Islands' criminal justice needs and problems
- establishing goals, priorities and standards for the reduction of crime and delinquency and the improvement of the administration of justice in the Virgin Islands
- recommending legislation, to the Governor and Legislature, in the criminal justice field
- monitoring and evaluating programs and projects, funded in whole or in part by the United States Virgin Islands Government, aimed at reducing crime and delinquency and improving the administration of justice
- collecting from any government entity information, data, reports, statistics, or such material which is necessary to carry out the Commission's functions.

Additionally, as the State Administering Agency (SAA) for the administration of federal United States Department of Justice grant funds awarded to the Territory from the Bureau of Justice Assistance, Office for Victims of Crime, Office of Juvenile Justice and Delinquency Prevention and National Criminal History and Improvement Program, LEPC is keenly aware of the needs and nuances within the Territory's criminal justice system - including those related to ensuring that the rights of each person, regardless of age, race, religion, sexual orientation, gender, political affiliation are protected - and those related to ensuring that each person is afforded due process under the law.

Therefore, my testimony is provided in this context.

Bill No. 35-0031, as presented, substantially aligns the Virgin Islands Code with federal law - 18 U.S. Code Section 3509, Child victims' and child witness' rights - both in language and intent. Overarchingly, it aims to reduce the trauma to both the victim and nonvictim child witness in criminal proceedings throughout the judicial process by affording the child as much protection as is consistent with the constitutional rights of the accused.

Key carry over provisions in Bill No. 35-0031, which align with the 18 U.S. Code Section 3509 are the include the following:

- Alternatives to live in-court testimony, using closed-circuit television, videotape and other acceptable forms of recordation, under circumstances determined by the court
- Closing of the courtroom to parties that do not have a direct interest in the case
- Requirements associated with competency examinations and privacy protections
- The use of multidisciplinary child abuse teams to assist child victims and child witnesses, the court and the attorney for the Government, in preparing and presenting reports, such as victim impact statement, using forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability
- Court appointment of guardian ad litem to protect the best interests of a child who was a victim of, or witness to a crime involving abuse or exploitation
- The right for a child to be accompanied by an adult attendant
- Stay on civil action, and any allusion to civil action until final adjudication of all phases of a criminal action, in which the child is a victim
- Permission of use of testimonial aids deemed appropriate by the court to assist a child in testifying
- Provisions for speedy or expedited proceedings
- Prohibition on the reproduction of child pornography subject to appropriate and allowable determination of the court

According to the National Crime Victim Law Institute (NCVLI), it is empirically well settled that requiring a child-victim to testify in the presence of the accused in matters related to physical or sexual abuse or as a witness of violent acts can be traumatic for some child-victims. This trauma and secondary trauma are exacerbated in instances where the accused is a member of the child-victim's family.

According to data provided by the National Child Abuse and Neglect Data System for 2012, of the 3.4 million child protective service referrals, 686,000 substantiated unique instances of abuse, and 146,000 removals from the home, in 44 states. Correspondingly, in 2009, it was reported 25% of

children nationally had witnessed violence and approximately 10% had witnessed intrafamilial violence.

Therefore, Bill No. 35-0031, seeks to shield child-victims from confrontational trauma by allowing for appropriate alternate means of testimony, as well as by providing assistance through the court proceeding that do not infringe on the constitution rights of the accused.

Further to this point, the NCVLI 2016 Survey of Select State and Federal Laws Providing Victims' Rights and Protections That Are Specific to Children reveals the following findings:

- 14 States, as well as the federal government, have general child victims' provisions
- 49 States, as well as the federal government, have provisions for closed circuit television (CCTV) testimony or similar alternative accommodations
- 12 States, as well as the federal government, have provisions for expedited proceedings
- 15 States, as well as the federal government, have provisions for a support person or facility dog

It must be noted, that the NCVLI 2016 Survey does not include data from the U.S. Territories.

In summary, I generally support the intent and purpose of Bill No. 35-0031. It substantially aligns with federal law - 18 U.S. Code Section 3509 (2019), Child victims' and child witness' rights. It aims to shield child victims and child witnesses from adverse psychological and physiologic consequences of witnessing and experiencing violence and abuse, including sexual abuse, as well as appearing in court to provide testimony against an accused.

It is noteworthy, nonetheless, that the constitutional rights of the accused are protected throughout the court proceedings.

I thank the Committee on Homeland Security, Justice and Public Safety for providing this opportunity to testify on this important matter.

This concludes my written testimony, and I await any questions that may arise from the Committee.

- END OF TESTIMONY--
