

**PRESENTATION OF ATTORNEY GENERAL OF THE VIRGIN ISLANDS
ARIEL M. SMITH
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HOMELAND SECURITY, JUSTICE
AND PUBLIC SAFETY
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Good morning, Chairman Gittens, members of the Committee on Homeland Security, Justice and Public Safety, legislative staff, and to those of you in the listening audience. My name is Ariel M. Smith, and I am the Attorney General of the Virgin Islands. I am pleased to be invited to provide a few remarks regarding proposed Bill No. 35-0127. The purpose behind Bill No. 35-0127 is to restrict the use of any photographic, filming, recording, videotaping, or other reproductions of images at a crime scene by a first responder.

Bill No. 35-0127 addresses an increasingly common issue that has plagued many jurisdictions; that is, the reproduction of crime scene images and subsequent posting of these materials on social media outlets. In response, many jurisdictions have passed laws addressing disclosure of images from a crime scene investigation.¹ For example, the State of California recently passed a law in response to a helicopter crash that tragically took the lives of nine people, including former Los Angeles Lakers basketball star, Kobe Bryant and his 13-year-old daughter. In that case, first

¹ A September 2013 OLR Report, based on a fifty (50) state survey, found at least nine (9) states have directly addressed the disclosure of autopsy reports, twenty-six (26) states have laws directly addressing the disclosure of autopsy reports, and six-teen (16) states have laws directly addressing the disclosure of 911 tapes, seven of which directly address the disclosure of 911 transcripts. OLR Research Report 2013-R-0364, *STATES' LAWS ON DISCLOSING CRIME SCENE PHOTOGRAPHS, AUTOPSY REPORTS, AND 911 TAPES AND TRANSCRIPTS*, dated September 18, 2013.

responders took pictures of the accident scene and improperly released those photos. Although in this instance the photos were released mainly to co-workers, the conduct and resulting outrage was enough to trigger a new law and a lawsuit by the Bryant family. The new California law makes it a misdemeanor for a “first responder, operating under color of authority, who responds to the scene of an accident or crime and captures the photographic image of a deceased person by any means, including, but not limited to, by use of a personal electronic device or a device belonging to their employing agency, for any purpose other than an official law enforcement purpose or a genuine public interest is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) per violation.”

Proposed Bill No. 35-0127 is similar in context to the California law finding that a violation for disseminating images from a crime scene would be a misdemeanor and punishable up to a \$1000 fine. Similarly, in 2022 New York passed a law making it a misdemeanor for the unlawful dissemination of personal images. The law also creates a private right of action for such offenses. This law is known as "Caroline's Law," named after Caroline Wimmer, age 27, who was found strangled in her home in 2009. In that case, photos of her body were posted on Facebook by an EMT who responded to the crime scene.

Laws like these are important to protect the privacy of those who may be the victim of a crime or involved in an accident or other emergency situations.

Importantly, such laws also aim to protect surviving family members from being re-victimized, emotionally, by the improper disclosure of photographs reflecting their loved ones in their most vulnerable state. Proposed Bill No. 35-0127 would go a long way to deter such conduct of those who seek to capitalize on the tragedy of others, by providing both criminal and civil causes of action.

With that said, the following changes would strengthen and clarify proposed Bill No. 35-0127. First, I recommend broadening the definition of "first responder" to include *"or any other employee of the Government of the Virgin Islands on a crime or emergency scene... or acting as part of a criminal investigation or emergency response"* (or similar language). This broadened definition will deter dissemination of other sensitive images, including autopsy photos, images collected during the investigation of sex crimes, minor child victims, and images produced during other ongoing sensitive criminal investigations not covered by the current definition of "first responder" set forth in the proposed bill.

Second, because the proposed bill criminalizes the unlawful dissemination of personal crime scene images, it is appropriate to provide guidance to the relevant agencies on how to best promulgate internal professional standards, training, and prominent posting of the relevant law. This can be achieved by adding the following section to the proposed bill to include Title 14 V.I.C. § 1785(f):

(f) Additional responsibilities of law enforcement agencies and agencies responsible for first responders:

- (1) Such law enforcement agencies and agencies responsible for first responders shall promulgate rules and regulations consistent with this section, to include, but not limited to: policy on use of personal and government issued cameras and/or recording devices at emergency and crime scenes, and policy on confidentiality of images from emergency and crime scenes and images related to criminal investigation.
- (2) Such agencies shall notify law enforcement officers and other first responders in writing of policies and procedures related to the above.
- (3) Such agencies shall cause to be prominently posted a copy of this section within said agencies.
- (4) Training in this section shall be included in the curriculum of the Virgin Islands Police Academy and all government approved first responder training.
- (5) Any failure of law enforcement agencies and agencies responsible for first responders to fulfill requirements under section (1) – (4) above shall not constitute a defense to a charge under this section.

Third, specific to the civil remedies (see lines 15-20) as set forth in paragraph (e)(1) (lines 19-20), there is reference to liquidated damages. Importantly, liquidated damages are normally applicable in contract cases and are not appropriate here without additional clarification. Thus, the phrase “but not less than liquidated damages computed at the rate of \$1,000 for each violation of this act;” should be deleted or clarified.

With that I want to thank the Committee for the invitation to testify on Bill No. 35-0127. This concludes my formal remarks.