

**PRESENTATION OF ATTORNEY GENERAL GORDON C. RHEA
REGARDING BILL NO. 35-0399, AMENDING TITLE 16
VIRGIN ISLANDS CODE, CHAPTER 2, SECTION 99
BEFORE THE THIRTY-FIFTH LEGISLATURE OF THE
VIRGIN ISLANDS, COMMITTEE ON RULES AND JUDICIARY
DECEMBER 12, 2024**

Good afternoon, Chairperson Diane T. Capehart, Committee on Rules and Judiciary, other Senators, legislative staff, and the listening and viewing audience. I am Attorney General Gordon Rhea. It is a pleasure to appear before you to testify concerning an Act amending Title 16 Virgin Islands Code, Chapter 2, Section 99, establishing a mandatory minimum bail amount in domestic violence cases, proposed by Senator Angel L. Bolques, Jr.

At present, bail in domestic violence cases is guided by 16 V.I.C. §99(b), which states as follows: “**A person arrested for or charged with a crime that constitutes domestic violence shall be admitted to bail as follows...**”

(1) \$1,000; no 10%	<i>IF</i> no prior DV conviction + no use/threatened use of weapon+ no harm
(2) \$5,000; no 10%	<i>IF</i> no prior DV conviction + no use/threatened use of weapon + harm <i>OR</i> 1 prior DV conviction + no use/threatened use of weapon + no harm
(3) \$15,000; no 10%	<i>IF</i> no prior DV conviction + use or threatened use of weapon involved <i>OR</i> 1 prior DV conviction + harm (“ <i>substantial bodily harm</i> ”) <i>OR</i> 1 prior DV conviction + use or threatened use of weapon involved <i>OR</i> 2 prior DV convictions

Typically, in a domestic violence case, bail is set the morning after arrest by the Magistrate Judge. Unfortunately, the bail statute is ambiguous. In some instances, judges deviate from the intent of the current law by assigning bail to DV defendants upon lesser financial conditions than the law provides. In other instances,

judges interpret current law as limiting the Court's authority to set bail in DV cases. This has led to dangerous defendants being assigned artificially low bail due to the DV designation. For example, in an Attempted Murder case (no DV designation), bail is generally set by the Court at *\$100,000*. If the same attempted murder was charged with the "DV" designation, the current law, 16 V.I.C. §§99(b)(1-3), would apply, and the Court may set the defendant's bail at *\$15,000*.

The Virgin Islands legislature has clarified its intent to take domestic violence seriously by enacting Chapter 2 of Title 16 of the Virgin Islands code. Indeed, 16 V.I.C Sec 90, entitled "Declaration of Purpose", states that the legislature's intent is to set bond provisions that protect victims. According to Sec. 90, "the general purposes of this chapter are to:

- (1) Assure victims of domestic violence the maximum protection from abuse that the law can provide;
- (2) Create a flexible and speedy remedy to discourage violence and harassment against family members or others with whom the perpetrator has continuing contact;
- (3) Expand the ability of the Virgin Islands Police Department and law enforcement officers to assist victims, to enforce the law effectively in cases of domestic violence, and to prevent further incidents of abuse;
- (4) Develop a greater understanding within the Virgin Islands community of the incidences and causes of domestic violence through data collection;
- (5) Facilitate equal enforcement of the criminal laws of the Territory by deterring and punishing violence against family members and others who are personally involved with the offenders; and

- (6) Recognize that battering is a serious crime which will no longer be excused or tolerated.”

It is clear from a plain reading of Section 99(b) that the legislature wished to establish a minimum bail for crimes of domestic violence. Unfortunately, that purpose has been circumvented by defendants who realized that they could avoid the bail provisions of Section 99(b) by requesting to post 10% of the required bail plus one dollar. As a result, defendants charged with Burglary with a domestic violence component could post \$101.00, while those without a domestic violence component might have a fifty-thousand-dollar bail. Based on its stated intent, the legislature surely did not mean for perpetrators of domestic violence to be subjected to lower bail than other offenders -- yet that is currently how the current statute is sometimes applied. As one abuser was overheard telling his victim: “Don’t worry – DV bail is only \$101.00.”

In the last twelve months, St. Croix has seen at least two domestic violence-related shootings, with roughly the same number for St. Thomas. Assault Second arrests (intimate partner strangulation) happen approximately once a week. It is vital that both victims and abusers know that we as a community understand the dangers of domestic violence. The amendment proposed by Senator Bolques makes clear the Legislature’s intent to set a *minimum* bail and provides ample authority for judges to tailor the full bail amount to the facts and circumstances of the case. The proposed amendment provides that bail must be set at “no less than” the stated amount and eliminates the 10% provision, requiring that amount be “fully secured.” In addition, the amendment requires that “[i]f the defendant has any contact with the victim after release, and the People can prove the defendant contacted the victim by a preponderance of the evidence, the defendant shall be immediately remanded to

custody, and his bail revoked.” Furthermore, “[t]o be released, the defendant must demonstrate to the court that he is not a danger to the victim.”

In sum, the bail conditions clarified in the proposed amendment help protect victims by ensuring a significant cooling off period and impress on those charged with domestic violence that “battering is a serious crime which will no longer be excused or tolerated.” As with any bail provision, judges continue to have final discretion in determining the final bail for an offender. They are free to set bail as high as they consider appropriate so long as they make clear findings on the record. Indeed Title 16 Section 99(a) outlines the factors judges should consider when making bail decisions in domestic violence cases.

The language proposed by Senator Bolques has the full support of the Department of Justice. It ensures fair and consistent rulings on bail in domestic violence cases that fairly protect the rights of all parties.

Thank you for including the Department of Justice in this important discussion.