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**35TH LEGISLATURE'S COMMITTEE ON
RULES AND JUDICIARY**

TESTIMONY

ON

BILL NO. 35-0174

Good Day, my name is Attorney Julie S. Todman and I am the Chief Territorial Public Defender for the U.S. Virgin Islands.

First, I extend thanks and gratitude to each of you, the members and staff of the Committee on Rules and Judiciary of the 35th Legislature, especially to Senator Diane T. Capehart for inviting me to testify today. I also thank Senator Novelle E. Francis, Jr. for sponsoring this bill and requesting OTPD's feedback.

I am testifying on behalf of the Office of the Territorial Public Defender (OTPD) on proposed Bill Number 35-0174, which is: **[a]n Act repealing and reenacting title 15, Virgin Islands Code, article V parts 1, 2, 3, 4, enacting part 5 and renumbering part 4A as part 6, to repeal the Uniform Guardianship and Protective Proceedings Act and *enact the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act with amendments and for other related purposes.***

The Office of the Territorial Public Defender (OTPD) has insight into the area where guardianships, conservatorships and criminality intersect and interact. This is true because “[w]hile most guardians do the right things for the right reasons, when guardians commit acts of abuse and exploitation the impact can be tragic and unimaginable.”, and often leads to criminal charges. American Bar Association, *“Challenges in Guardianship and Guardianship Abuse”* (Mar. 11, 2021).

My office is not involved directly in guardianship proceedings. As the agency tasked with representing indigent persons accused with crimes, our interaction with the Courts regarding Bill 174 would be where the process breaks down and someone is arrested. Bill 174 does not directly provide for those situations. Any criminal actions would be under Title 14 – the Criminal Code.

If implemented, Bill 174 should reduce expenses, increase accountability, reduce crime, clarify rights, and reduce court backlogs. Bill 174 provides a comprehensive framework for the uniform processing and handling of guardianships, conservatorships, and other protective arrangements. These “protective arrangements” are utilized to reduce victimhood and prevent tragedy.

Bill 174 should eliminate confusion and unnecessary conflict by detailing safeguards and mechanisms for intervention by non-parties. Disputes are common between those accepted by the Court – which we refer to as “parties” – and all other – “non-parties.” Providing availability to the system by non-parties is critical because parties and non-parties fighting amongst themselves is exactly the type of dispute which might ultimately lead to trouble, and possibly OTPD involvement. Bill 174 should improve this by streamlining the involvement of the Court and providing clear rules and laws for non-lawyers to follow and understand.

Sometimes, the lack of clarity in cases involving a protected person sparks resentment, outrage among family members and friends and can even lead to criminal acts. This could conceivably lead to violence, often domestic violence in this context, and usually occurs when a family needs most to rally together, rather than be torn apart.

By clarifying the process, and identifying the rights of parties, family members and interested non-parties, Bill 174 seeks to prevent hostile and combative interactions amongst interested people as it provides a framework for obtaining notice about proceedings, a process for filing a grievance, identifies and provides a basis for the court to handle repetitive grievances. Indeed, notable bill components include:

- Bill 174 (5-105) provides for transfer of the proceeding upon the Court's determination that "transfer is in the best interest of the individual subject to guardianship."
- Bill 174 (5-125) provides a process for uniform registration of guardianships issued in other jurisdictions and allows for the registering of the foreign guardianship by filing the order granting guardianship as a foreign judgment here in the Virgin Islands.
- Bill 174 provides that non-parties can file a "request for notice" (5-116). This allows interested people to be part of the process and to receive direct notice, hopefully reducing interactions which might become hostile.
- Bill 174 provides for Letters of Office (5-108), which can identify and limit powers.
- Bill 174 provides clarification that co-guardians and conservators "shall make decisions jointly" (5-110).
- Bill 174 provides a mechanism for filing of grievances (5-127). We believe that this provides clarification and a method for involvement and review by the court that eliminates possible conflict.

- Section 5-127(c) also provides limits on grievances that prevent additional “similar” grievances within 6 months.
- Section 5-203(c) requires that notice of hearing for appointment of guardian for minor must be served on **all adult siblings, grandparents** and those having primary care or custody of the minor for at least 60 days within last 2 years or at least 730 days during immediate prior 5 years.

Taken together, these provisions could hopefully eliminate disputes and, along with that, the need for OTPD involvement.

Impact Statement on Vulnerable Populations

OTPD believes this Act will have the following impacts:

- **Protection:** The bill aims to protect vulnerable individuals, such as minors and adults who require guardianship or conservatorship. It encourages courts to use the least restrictive orders necessary to adequately protect these individuals.
- **Adaptability:** The bill allows for continuous adaptation to an individual’s changing capabilities and needs. This means that as the situation of the vulnerable individual changes, the protective arrangements can be adjusted accordingly.
- **Accountability:** The bill imposes clear duties on guardians and conservators, who are charged with protecting others. Regular monitoring is required to ensure these individuals are fulfilling their responsibilities appropriately.

- **Rights Preservation:** The bill allows courts to address specific problems with limited orders, preserving individual rights when possible. This means that the rights of the vulnerable individual are considered and protected to the greatest extent possible.
- **Conflict Reduction:** By detailing safeguards and mechanisms for intervention by non-parties, the bill aims to reduce conflict and confusion. This can be particularly beneficial in situations where family members or other interested parties may have differing opinions on the care of the vulnerable individual.
- **Expense Reduction:** The bill aims to reduce expenses associated with guardianship and conservatorship cases. This could potentially make it more accessible for vulnerable individuals to receive the protection they need.

Conclusion

Overall, Bill 174 will modernize the law and provide a comprehensive framework for the uniform processing and handling of guardianships, conservatorships, and other protective arrangements. This ultimately benefits vulnerable individuals by ensuring they receive the protection and care they need in a manner that respects their rights and individual circumstances.