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**OFFICE OF THE
TERRITORIAL PUBLIC DEFENDER**
Government of the U.S. Virgin Islands



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April 3, 2025

Honorable Angel L. Bolques, Jr.
Senator At-Large
Legislature of the Virgin Islands
Capitol Building
P. O. Box 1690
St. Thomas, VI 00804

Via Email: senatorbolques@legvi.org

Re: Bill No. 36-0005: Mandating Minimum Cash Bail Provisions for Domestic Violence Cases

Dear Honorable Senator Bolques:

On behalf of the Office of the Territorial Public Defender (OTPD), I write to strongly oppose Bill No. 36-0005, which seeks to amend the Territory's minimum bail provisions for domestic violence cases by requiring full cash bail. The individuals we represent will bear the brunt of this policy, facing prolonged pretrial incarceration, job loss, severe family disruption, and financial hardship. These consequences are disproportionate and unjust.

Bill No. 36-0005 **makes 100% bail mandatory** and modifies minimum bail by inserting the phrase 'not less than' before the specified bail amounts mentioned in 16 V.I.C § 99 subsection (b) (1), (b)(2) and (b)(3). This means the Court cannot exercise discretion and is forced to require the full 100% cash bail without the ability to take any other percentage into consideration.

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For example, a person need only allege that a defendant *merely threatened to hit someone* in order to force the judge to demand **\$5,000 in cash bail** under 16 V.I.C § 99(b)(2). This applies to a person that has no prior convictions, based on the mere allegations and the police cannot exercise discretion to weed out nonsense complaints-- even those where an alibi exists.

The textual changes to subsection (b) are as follows and highlighted in red:

(b) A person arrested for or charged with a crime that constitutes domestic violence shall be admitted to bail as follows:

(1) **["not less than"] one thousand dollars with no 10% provision**, if the defendant has no prior conviction for domestic violence, and the use or threatened use of a weapon was not involved and there is no reason to believe that the crime for which the person was arrested resulted in substantial bodily harm; or

(2) **["not less than"] five thousand dollars and no 10% provision**, if the person has:

(A) no previous conviction for domestic violence and the use or threatened use of a weapon was not involved, but there is reason to believe that the crime for which the person was arrested resulted in substantial bodily harm; or

(B) one previous conviction for domestic violence, and the use or threatened use of a weapon was not involved, and there is no reason to believe that the crime for which the person was arrested resulted in substantial bodily harm; or

(3) **["not less than"] fifteen thousand dollars with no 10% provision**, if the person has:

(A) no previous convictions for domestic violence, but the use or threatened use of a weapon was involved; or

(B) one previous conviction for domestic violence and there is reason to believe that the crime for which the defendant was arrested resulted in substantial bodily harm; or

(C) one previous conviction for domestic violence and the use or threatened use of a weapon was involved; or

(D) the defendant has two or more convictions for domestic violence.

16 V.I.C. § 99 (hereinafter referred to as "Section 99")

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The law as it presently stands **gives the Court the discretion** to reduce the bail, increase the bail, or leave the bail as is based on consideration of the provisions of Rule 5-1 of the Virgin Islands Rules of Criminal Procedure, which provide as follows:

(a) Generally.

Subject to any specific statutory provisions, before conviction all persons shall be bailable on conditions approved by the court.

(b) Forms of Bail or Release Conditions.

Excessive bail shall not be required. The court shall impose the least restrictive of the following non-exhaustive range of conditions of release that will reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process; or, if no single condition gives that assurance, shall impose any combination of the following conditions:

(1) Personal Recognizance.

Pre-trial release based upon the promise that the person will appear for trial or any proceeding in connection therewith as ordered by the court. This type of bail is used in place of a bail bond when the judge is satisfied that the defendant will appear without the need for a surety bond or other form of security.

(2) Unsecured Bail Bond.

Where the court finds unsecured personal recognizance inadequate, a bail bond in an amount for which the defendant is fully and personally liable upon failure to appear in court when ordered to do so or upon breach of a material condition of release, but which is not secured by any deposit of or lien upon property.

(3) Travel and/or Residence Restrictions.

Where appropriate, placement of restrictions on the travel, association, or place of abode of the defendant during the period of release;

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(4) Custody of Designated Person or Organization.

Where appropriate, placement of the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(5) Surety Bond.

Where personal recognizance, an unsecured bond and other conditions listed in (3) and (4) above are found inadequate, an undertaking by the defendant and sureties, jointly or severally, that the defendant shall appear for trial or any related proceeding as ordered and upon failure to do so defendant and the sureties shall pay the Virgin Islands Government the amount set by the court as bail, or the property used to secure the defendant's release may be forfeited to the extent of the bail. Every surety, except a corporate surety, shall justify by affidavit and shall be required to describe in the affidavit the property by which the surety proposes to be justified and the encumbrances thereon, the number and amount of other recognizances and undertakings for bail entered into by the surety and remaining undischarged, and all of the surety's other liabilities. No recognizance shall be approved unless the surety thereon shall be qualified.

(6) Cash Bail Bond.

Where none of the foregoing forms of bail is found adequate by the court to assure the presence of the defendant for trial, protect the community from risk of physical harm to persons, or assure the integrity of the judicial process, a sum of money designated in an order fixing bail and posted with the court by a defendant or by another person on defendant's behalf upon condition that such money will be forfeited if the defendant:

(1) does not comply with the directions of the court requiring appearance at the criminal trial or related proceedings and (2) does not otherwise render the defendant amenable to the orders and processes of the court.

(7) Additional Bail.

As provided in 5 V.I.C. § 3506, when proof is made to the judge that a person previously admitted to bail on a criminal charge is about to abscond, and that bail is insufficient, the judge shall require such person to give better security, or, for default thereof, cause the person to be committed; and an order for the person's arrest may be indorsed on the former commitment, or a bench warrant therefor may be issued, setting forth the cause thereof. The bench warrant shall be issued by the clerk, upon direction of the judge.

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(c) Form and Place of Deposit.

Unless otherwise ordered by the court, a person admitted to bail shall, together with any sureties, except a corporate surety, shall sign and execute before the person authorized to admit to bail a recognizance conditioned upon the person's appearance at all stages of the proceedings until final determination of the cause. One or more sureties may be required. Cash may be accepted, and in proper cases, no security need be required. A corporate surety must be one registered with the Lieutenant Governor and acceptable to the court after review of its financial ability to satisfy all pending surety obligations.

(d) Third Party Custodian.

In addition to the foregoing, the court may require a third-party custodian to further ensure compliance with the terms of the release and the appearance of the defendant in each of the foregoing instances. Each custodian must fully execute under oath the Third-Party Custodian Consent Form before a defendant may be released.

(e) Authority to Admit to Bail.

(1) In the absence of the judge, a person arrested and charged with a criminal offense which may be tried by the Superior Court, may, before appearance before the judge, be admitted to bail by the clerk of the Court; and in the absence of the judge and the clerk, may be admitted to bail by the chief of police or a public official, other than the arresting officer, designated for such purposes by the judge.

(2) In any case in which the judge may admit to bail, the judge may authorize the taking of the bail by the clerk or deputy clerk of the court or the chief of police or a public official, other than the arresting officer, in the amount fixed by the judge.

[V.I. R. CRIM. P Rule 5-1](#)

Bill No. 36-0005 unjustly penalizes the poor. This is because by definition, only people with less than \$15,000 in the bank will ever be affected by this legislation. By setting a non-discretionary minimum floor on these bail amounts, Bill No. 36-0005 removes crucial judicial discretion from the Territory's Judges as to the unique facts of each case.

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It must be emphasized that these are men and women are accused of crimes – not convicted of them. The Virgin Islands Code already treats domestic violence allegations differently. Law Enforcement is given broader powers, and alleged offenders are given less. The additional burden of Bill No. 36-0005 unjustly falls upon the members of our community least able to afford it. This bill disproportionately harms the indigent accused, a group who are already vulnerable and often lack the resources or advocacy to voice their concerns. As such, the OTPD asks that the bill be reconsidered.

As a prefatory matter, there is an on-going Virgin Island Code update, which involves reviewing and updating the Virgin Islands Code in an organized and logical way. It is manifestly more appropriate to address complicated and pivotal matters involving incarceration in a programmatic instead of a piece-meal way. This is because utilizing piece-meal legislation when comprehensive legislation is on the horizon is ill advised and problematic.

The OTPD opposes the bill primarily because **it removes judicial discretion** in determining bail amounts and imposes a one-size-fits-all approach that fails to consider the unique circumstances of each case. This is particularly troubling for those who have been accused but not convicted of a crime. While the Virgin Islands Code already treats domestic violence cases with special consideration, Bill No. 36-0005 goes further in burdening those least able to afford it.

Several already-existing aspects of local domestic violence laws are amplified by the proposed amendments in Bill 36-00005, including:

- A. **Broad Definitions:** The current domestic violence statute (Section 91) has already created a situation where the definitions of "domestic violence" and "victim" are so broad that they can apply to individuals with only tenuous connections to the accused. The wide net cast by these definitions results in the law being applied in ways that may not always be fair or just.
- B. **Mandatory Arrests:** Domestic violence arrests under this law are mandatory, removing discretion from law enforcement officers. This mandates arrest whenever probable cause exists, even when the evidence may be weak or the situation less clear. Such a rigid approach undermines the fairness of the justice process, particularly for those who may not be guilty or whose involvement in the situation is unclear.

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C. **Lower Probable Cause Standards:** The current law allows for arrests based on minimal evidence, such as an uncorroborated written statement, which would likely not suffice in other criminal cases. This sets a lower standard for domestic violence cases and leads to arrests that may not be warranted.

In addition to these concerns – which already exist in domestic violence cases – the Section 99, as it would be revised by this bill, raises significant issues:

1. **Mandatory Pretrial Incarceration:** The bill's provisions would increase the likelihood that poor defendants, who cannot afford bail, will remain incarcerated before their trial. This would exacerbate the already severe consequences of pretrial detention, including the loss of employment, housing, and family stability. It also disproportionately impacts those who lack financial resources.
2. **Constitutional Concerns:** Section 99 has been ruled unconstitutional in the past. In 2009, the VI Superior Court in *People of the V.I. v. Phillips*, 52 V.I. 130 (V.I. Super. Ct. 2009), found that mandatory minimum bail provisions violated the principles of due process and equal protection. The U.S. Supreme Court has long held that wealth should not determine an individual's freedom, and this bill, by setting bail amounts based on an inability to pay, poses a constitutional risk.

The V.I. Supreme Court did not review the *Phillips* decision. Further, other Superior Court judges are not bound by its reasoning -- correct or not -- because “the decision of a single Superior Court judge ... is not binding precedent on other Superior Court judges.”¹ *Phillips* stands alone then in Virgin Islands law, absolving only Mr. Phillips as to the disparate impact of Section 99 on the indigent.

3. **Ambiguous Legal Definitions:** The term “substantial bodily harm” is not clearly defined in the statute, which could lead to inconsistent application of the law. For instance, minor injuries such as a scratch or contusion could be interpreted as “substantial bodily harm,” triggering mandatory bail even in cases where the injury is trivial.

¹ *In re Q.G.*, 60 V.I. 654, 661 n.8 (V.I. 2014). See *Threadgill v. Armstrong World Indus.*, 928 F.2d 1366, 1371 & n.7 (3d Cir. 1991) (“The doctrine of *stare decisis* does not compel one [trial] court judge to follow the decision of another.”)

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Application of Bail Schedule: The proposed legislation would add a new paragraph 4, which would state: “If the underlying crime has a higher bail amount than the amount in subsection (b) of this section, the higher bail amount shall apply.” This is a confusing section. Bail amounts are set by case – not by offense. If a person is charged with multiple offenses, only one bail is given by the magistrate for that case – for the entire group of offenses charged against the defendant. As such, it is confusing what the Legislature means by referring to the “higher bail amount.”

Should it be the case that the Legislature is referring to the bail schedule which has been propounded by the Superior Court, OTPD strenuously opposes this suggestion. As the wording of the bail schedule already makes clear, “[w]hen a person is charged with multiple offenses, the person shall post bail at the highest amount.” Further, that bail schedule is literally constructed to cover the worst case scenario. It allows ANYONE to bail out of jail before seeing a judge if they have that amount of money. The same bail schedule applies to a first time offender as a hardened murderer. To bind judicial officers by this schedule is the absolute opposite of what the Virgin Islands Supreme Court has indicated by propounding Rule 5-1 of the VI Rules of Criminal Procedure. Further, bail schedules meant to be used by judges have been invalidated as unconstitutional unless “it [gives] indigent defendants who could not satisfy the mater bond schedule a constitutionally permissible secondary option; a bail hearing at which the judge could consider ‘all relevant factors’ when deciding conditions of release.” *Walker vs. City of Calhoun*, 901 F.3d 1245, 1261 (11th Cir. Aug. 22, 2018), *cert denied*, 2019 U.S. Lexis 2446 (U.S. Apr. 1, 2019).

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4. **Victim Contact Overreach:** The current bill also seeks to add a provision where the Defendant's bail is **revoked** and the Defendant immediately remanded to custody if the Defendant has "any contact" with the victim after his release from custody. Further, to be released, "the defendant must demonstrate to the Court that he is not a danger to the victim." As an initial matter, not all cases have a requirement that the Defendant not contact the victim. Many times, the Defendant is going right back to living in the same house with the same people. In these cases, all the Court is typically requiring is that the Defendant have 'no unlawful contact' by the Defendant toward the victim. Further, revoking the posted seems an extreme measure that could be a great hardship not on the Defendant but on the Defendant's family – who may have posted bail on his behalf. It is not unusual for a victim to post bail for a Defendant. This measure hurts the victim for no good reason.

Beyond these specific provisions, increasing bail amounts will likely worsen the broader issue of pretrial detention. Research shows that pretrial detention can lead to job loss, housing instability, and disrupted family lives. It also increases the likelihood of recidivism and has been linked to higher conviction rates, despite not necessarily improving public safety. In contrast, jurisdictions such as Washington, D.C. have moved away from money bail systems, achieving high rates of court appearances and a reduction in pretrial detention, demonstrating that alternatives to money bail can be both effective and just.

Because the OTPD is committed to advocating for reforms that prioritize fairness and due process, we strongly oppose Bill No. 36-0005 and advocate for reforms that prioritize fairness and due process. Bill No. 36-0005 unjustly penalizes the indigent, who are already vulnerable and lack the resources to navigate the system. We strongly advocate for reforms that ensure fairness and protect the rights of all individuals.

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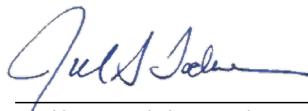
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In conclusion, we urge you to reconsider Bill No. 36-0005, as expanding the use of 100% cash bail will not solve crime or promote public safety. Instead, it will place additional burdens on those least able to bear them. The OTPD stands firm in advocating for reforms that prioritize fairness and due process. We oppose Bill No. 36-0005 because it unjustly penalizes the indigent, who are already vulnerable and lack the resources to navigate the system.

OTPD appreciates your attention to these important questions and looks forward to possibly providing additional information on these issues.

Thank you kindly.

A handwritten signature in blue ink, appearing to read "Julie S. Todman", is positioned above a horizontal line.

Julie Smith Todman, Esq.

Chief Territorial Public Defender