

**PRESENTATION OF ATTORNEY GENERAL
GORDON C. RHEA
DEPARTMENT OF JUSTICE'S TESTIMONY
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS
IN RE: BILL NO. 36-0024
COMMITTEE ON HOMELAND SECURITY,
JUSTICE AND PUBLIC SAFETY
JUNE 5, 2025**

Good afternoon, Chairman Clifford Joseph, Sr., Committee on Homeland Security, Justice and Public Safety members, Senators, legislative staff, and the listening and viewing audiences. I am Attorney General Gordon Rhea. It is an honor and privilege to appear before you this afternoon.

The Department of Justice appreciates the opportunity to comment on Bill No. 36-0024. The Department of Justice has completed a preliminary review of Bill No. 36-0024 and offers the following comments.

Bill No. 36-0024 seeks to amend Title 14 of the Virgin islands Code, chapter 85, by adding a new section 1710. If enacted, this proposed new section would make a person incapable of consenting to sexual relations while they are in police custody.

Police officers are entrusted with the power to enforce laws, and have the authority to detain, search and arrest people while doing so. Unfortunately, this power can also be used to restrict the freedoms of and violate the rights of citizens. Because of the inherent power imbalance between law enforcement officers and the

civilians they come into contact with during the course of their work, many jurisdictions recognize any sexual interaction between the two as inherently coercive and nonconsensual. Others do not.

In 2022, Title 18 of the United States Code, section 2243, was amended to add a new subsection (c), making it illegal for anyone “acting in the capacity as a Federal law enforcement officer” to knowingly engage “in a sexual act with an individual who is under arrest, under supervision, in detention, or in Federal custody.”¹ This section also establishes the possible penalties for violation of the statute, which include a fine, imprisonment up to 15 years, or both. It should be noted, however, that the penalties for a violation of 18 U.S. Code § 2244(a)(6), in violation of 18 U.S. Code § 2243(c), are a fine, imprisonment up to 2 years, or both.² Consent is not a defense to a violation of either of these federal statutes.

Additionally, many states have enacted laws making sexual conduct by police officers a crime. Because states and territories have the autonomy to govern themselves, the scope and application of these laws vary greatly. Some jurisdictions prohibit sexual contact between a law enforcement officer and someone they have encountered during any and all stages of police interaction; others only prohibit sexual contact while a person is in custody. Yet, other states do not have any laws

¹ See 18 U.S.C. § 2243(c)

² See 18 U.S.C. § 2244(a)(6)

expressly prohibiting, or criminalizing, sexual contact between a police officer and someone they come in contact with while performing their law enforcement duties.

The strongest laws provide protection against sexual conduct from police officers during any interaction while the officer is in the line of duty and are not limited to when a person is in custody. They also address consent and prevent an officer from using consent as a defense to a claim of sexual misconduct.

For example, in Vermont, a law enforcement officer may not engage in a sexual act or sexual conduct, as defined by state statute, “with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer,” including during traffic stops and “questioning pursuant to an investigation of a crime.”³ A violation of Vermont’s law can result in imprisonment up to five (5) years, a fine not more than \$10,000, or both.⁴

Similarly, in Colorado, a peace officer commits unlawful sexual conduct “by knowingly engaging in sexual contact, sexual intrusion, or sexual penetration” when the officer contacts the victim for purposes of law enforcement, or the peace officer knows the victim is, or causes the victim to believe they are, the subject of an active investigation, and uses that knowledge to further the sexual contact, or the officer

³ See 13 V.S.A. § 3259(a)

⁴ See 13 V.S.A. § 3259(c)

makes any show of real or apparent authority in furtherance of sexual contact.⁵ Colorado classifies unlawful sexual conduct by a police officer as a class 4 or 3 felony depending on the severity of the conduct.⁶ Colorado law also prevents consent from being a defense to unlawful sexual conduct by a peace officer.⁷

In contrast, in Alaska it is sexual assault in the third degree, a class C felony, for a peace officer to engage “in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency” while employed in the state by a law enforcement agency.⁸ However, custody is not defined by the statute and is, therefore, open to interpretation. Any ambiguity in the statute could be used in an attempt to create a legal excuse or justification for the alleged crime.

Laws regarding sexual conduct and violence by police officers during the course of their official duties vary by state, resulting in differing levels of protection for victims. The strongest statutes explicitly apply to all forms of law enforcement activity during any point in the line of duty, including the initial encounter, and should clearly state that any sexual contact between an officer and an individual

⁵ See Colorado R.S.A. §§ 18-3-405.7(1)(a)-(c)

⁶ See Colorado R.S.A. §§ 18-3-405.7(2)(a) and (b)

⁷ See Colorado R.S.A. §§ 18-3-405.7(4)

⁸ See Alaska Stat. §§ 11.41.425(a)(4) and (c)

encountered in the line of duty is, by definition, nonconsensual. The proposed statute does both.

The Department of Justice supports Bill No. 36-0024, in principle. With that said, the following should be considered as you review Bill No. 36-0024:

First, Bill No. 36-0024 does not create a crime that can be violated; rather, it focuses on consent. Specifically, Bill No. 36-0024 centers on when a person is incapable of consenting to sexual relations and does not include any penalties; instead, an officer in violation of the proposed new section 1710 would be subject to the penalties for rape and related offenses codified in Title 14, chapter 85, of the Virgin Islands Code.

Second, Bill No. 36-0024 does not include any reporting requirements. By establishing a system that requires mandatory reporting of police sexual violence, the Virgin Islands Police Department and other agencies that employ peace officers can track complaints made against officers and investigate allegations to determine whether there is a recurring or widespread problem.

I thank the Committee for allowing the Department of Justice to testify on Bill No. 36-0024. This concludes my formal remarks. I respectfully welcome any questions this body may have.