

**TESTIMONY OF CHIEF DEPUTY ATTORNEY GENERAL
IAN S.A. CLEMENT
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HOMELAND SECURITY, JUSTICE,
AND PUBLIC SAFETY
BILL NO. 36-0301
JULY 16, 2026**

Good morning, Chairman Joseph, Vice-Chairman Fonseca, members of the Committee on Homeland Security, Justice and Public Safety, legislative staff, and everyone joining us in person and online. My name is Ian S.A. Clement, and I serve as the Chief Deputy Attorney General of the Virgin Islands Department of Justice. I am here on behalf of Attorney General Gordon C. Rhea to present the Department's testimony on Bill No. 36-0301.

The Department of Justice endorses Bill No. 36-0301. The Department supports its purpose, favors the creation of a criminal penalty for contraband electronic devices, and appreciates Senator Gittens and the seven co-sponsors for introducing the measure. Attached to this testimony and submitted for the record is a set of ten recommended amendments linked to the bill's subsections. To save the Committee's time, I will not read the appendix aloud. I request that it be entered into the record in its entirety, and I will use my remarks today to explain why the

Department supports the bill and to present four of those amendments directly to the Committee.

A contraband cellular phone inside a correctional facility is not just a nuisance; it is a tool. It is used to coordinate drug sales on the street from within a cell. It helps locate, contact, and threaten witnesses who are scheduled to testify against the person with the phone. It connects to victims and their families. It facilitates the introduction of more contraband and plans for escapes. It is used to film assaults inside the facility and broadcast them—humiliating the victim, showing the power of the person who ordered it, and recruiting outside.

Each of these uses constitutes an attack on the administration of justice. When a witness in a homicide case receives a message sent from within a Bureau facility, the Department loses the case, and the People of the Virgin Islands lose the conviction. The Department's interest in this bill is immediate and tangible.

Let me also clarify what this bill is not, and should not be interpreted as. Lawful, monitored, affordable communication between an incarcerated person and their family is not contraband. It is good correctional practice, and the Department supports it. Nothing in Bill No. 36-0301 targets this, and the Department would not support a measure that does. The solution for families who cannot afford to stay in contact is a better lawful channel, not a makeshift phone under a mattress.

The Department supports this bill and urges the Committee to strengthen it. I present four points that the office must prove beyond a reasonable doubt in these cases.

First, and most important: the bill must reach the people who bring in the phones. As drafted, subsection (c)(1) only addresses “any individual in the custody of the Virgin Islands Bureau of Corrections.” It does not establish any offense related to the introduction, delivery, or conveyance of contraband devices. However, such devices do not appear inside a secure facility by themselves. They are brought through doors, passed during visitation, thrown or flown over the perimeter, or concealed in deliveries. The Department urges the Committee to add an offense that makes it illegal for any person to introduce, deliver, provide, attempt, or conspire to provide a prohibited device—or any component of one—to someone in the custody of the Bureau, or to possess such a device within a correctional facility without written authorization from the Director. The Department also recommends increased penalties for individuals who are employees, contractors, vendors, or volunteers of the Bureau. Since this is a breach of trust and the most common method of contraband entry, it should carry the heaviest consequences under the law.

Second, the bill needs an authorized-use exception, or it will criminalize conduct the Bureau itself requires. Subsection (c)(1)(D) covers “equipment

capable of audio or visual recording, transmitting, or live broadcasting.” Literally interpreted, this includes a Bureau-issued tablet, an approved video visitation terminal, a telemedicine cart, a device used for a confidential video conference with counsel, a hearing aid with a wireless connection, and a medical monitor that transmits data to a physician. As written, an inmate on a lawful video call with his attorney commits a felony. The Department requests a clear exception for any device provided, issued, or authorized in writing by the Director or her designee, and for any medical device that is prescribed and approved through the Bureau’s medical authority.

Third, the penalty lacks teeth, and a single sentence fixes it. Subsection (c)(3) provides for imprisonment of “not less than one year and not more than five years, or a fine of not more than \$5,000, or both.” Consider who the defendant is. He is already incarcerated. A \$5,000 fine against an indigent inmate yields nothing. And a sentence of one to five years, imposed concurrently with his current sentence, costs him nothing at all. The Department asks the Committee to explicitly state that any prison term imposed under this subsection shall run consecutively to any sentence the person is already serving. Without that clarification, this statute is merely a press release. With it, it becomes a deterrent. The Department also notes that the “not less than one year” language is currently meaningless, as the court may

impose a fine instead. The Committee should decide whether it intends a mandatory minimum and state that clearly.

Fourth, the Department urges the Committee to strike or substantially rewrite subsection (c)(5). I bring up this point because the office would need to defend this provision against a motion to dismiss. As written, it makes it a felony to “knowingly participate in acts of violence in proximity to a prohibited device,” or to “allow such acts to be recorded without reporting” to the Warden, the Director, or a correctional officer, or to attempt to prevent them. The knowledge requirement applies to the violence, not to the device. An inmate who commits an assault without knowing that a third person across the day room is filming is guilty of a felony under this language. The terms are unclear: “in proximity to” does not specify a distance; “allow such acts to be recorded” assumes a duty and ability to prevent recordings; and “or attempting to prevent them” is grammatically disconnected from anything. Additionally, the reporting requirement creates a crime of omission—making it a felony for a person in custody not to report. This Body understands what happens inside a facility to someone who fails to do so. The Department will not encourage inmate witnesses to cooperate by threatening them with prosecution.

If the Committee wants to punish the recording and broadcasting of prison violence—and the Department agrees it should—the key element is that the

defendant knew their participation was being recorded or transmitted, or that it was arranged to be. The Department suggests this be addressed through a graduated penalty based on the device's use, as detailed in the appendix.

I will raise one additional matter that could save the Territory money. Subsection (c)(6) instructs the Bureau to use “signal detection technologies.” The Department strongly supports this, but it also warns that jamming cellular signals is illegal under federal law, and a territorial correctional facility cannot legally operate a jammer. Legal options include managed access, contraband interdiction systems authorized by the Federal Communications Commission, detection equipment, and canine assets. The Department requests that the subsection be amended to specify the use of lawful technologies authorized by federal law, ensuring the Bureau does not spend funds on equipment it cannot legally use. Additionally, the Department asks the Committee to allocate funds for this technology and for the digital forensic capacity needed to establish constructive possession under subsection (c)(2) in shared cell and dormitory environments.

The Department of Justice supports Bill No. 36-0301. The conduct it addresses is ongoing and real, directly impacting the Department’s cases and the safety of witnesses who trust us enough to come forward. The Department urges the Committee to close the introduction gap, add an authorized-use exception, make the

sentence consecutive, and strike subsection (c)(5). With these changes, this body will provide the Bureau and the Department with a functional statute.

I thank the Committee for the opportunity to testify. This concludes my remarks, and I am prepared to answer any questions that this Body may have.

APPENDIX

RECOMMENDED AMENDMENTS TO BILL NO. 36-0301

Submitted for the record by the Virgin Islands Department of Justice

- 1. Add an introduction and delivery offense.** Make it unlawful for any person to introduce, deliver, provide, attempt, or conspire to provide a prohibited device or any part of one to a person in Bureau custody, or to possess such a device within a correctional facility without written authorization from the Director. Impose enhanced penalties for offenders who are employees, contractors, vendors, or volunteers of the Bureau. Clearly specify that the offense includes delivery by unmanned aircraft.
 - 2. Add an authorized-use exception.** Exempt any device provided, issued, or authorized in writing by the Director or her designee, as well as any medical device prescribed and approved through the Bureau's medical authority. Absent this exemption, subsection (c)(1)(D) applies to bureau-issued tablets, video visitation terminals, telemedicine equipment, confidential video
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conferences with counsel, wireless hearing aids, and transmitting medical monitors.

3. **Make the sentence consecutive.** Provide that any term of imprisonment imposed under this subsection shall run consecutively to any sentence the person is currently serving. A concurrent term imposed on someone already incarcerated is not a penalty, and a fine is not collectible against an indigent inmate.
 4. **Resolve the penalty structure.** The phrase “not less than one year” is misleading as drafted because the court may impose a fine as an alternative. The Committee should clearly state whether a mandatory minimum is intended. They should also confirm that the felony classification aligns with Title 14's scheme for probation eligibility and related consequences.
 5. **Strike or rewrite subsection (c)(5).** The knowledge element pertains to the violence itself rather than the device, meaning that an inmate who assaults another without knowing he is being filmed commits a felony. “In proximity to,” “allow such acts to be recorded,” and “or attempting to prevent them” are vague and can be challenged on grounds of vagueness. The reporting aspect creates a crime of omission enforceable against persons in custody, raises self-incrimination concerns for participants, and subjects reporting inmates to
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retaliation. If maintained, the element must involve participation in violence, with knowledge that it is being recorded or transmitted, or that it has been arranged for it to be recorded or transmitted.

6. **Add a graduated penalty keyed to use.** Possessing a device is one offense. Using a device to contact a victim or witness, to direct a narcotics operation, to facilitate the introduction of additional contraband, to record or share an act of violence, or to plan an escape is a separate and more serious offense and should be punished accordingly.
 7. **Amend subsection (c)(4).** Replace “is punishable as a principal” with “shall be charged as a principal.” Virgin Islands law already allows for accomplice liability, and the decision to charge rests with the Attorney General. The subsection also covers only the recording of violent acts or disturbances; the introduced offense suggested above addresses the remaining gap.
 8. **Add seizure, forensic examination, and forfeiture authority.** Specify that a prohibited device and its components can be seized, retained, forensically examined, and forfeited to the Government, and that lawfully obtained data from it is admissible in any criminal, civil, or administrative proceeding. Direct the Bureau to establish a protocol for handling privileged attorney-client material found on a seized device.
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9. **Conform subsection (c)(6) to federal law, and fund it.** Refer to lawful signal detection, managed access, and contraband interdiction technologies authorized under federal law. A territorial correctional facility may not lawfully operate cellular jamming. Appropriate use of this technology, for the annual training required by subsection (c)(7), and for the digital forensic capacity necessary to prove constructive possession under subsection (c)(2).
 10. **Direct notice within the ninety-day window.** Instruct the Bureau, before the effective date, to provide written notice of the new offense to everyone in custody, to post it in all housing units, and to update the inmate handbook and disciplinary code accordingly. Ensure that criminal prosecution under this subsection does not replace administrative discipline by the Bureau.
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