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September 2, 2025

Honorable Clifford A. Joseph, Sr.
Chairman, Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
3022 Estate Golden Rock
Christiansted, VI 00820

Via email: senatorcliffordjoseph@legvi.org

Re: Testimony on Bill No. 36- 0123

Dear Chairman Joseph,

Pursuant to your invitation dated August 11, 2025, inviting the Office of the Territorial Public Defender (“OTPD”) to provide testimony at the Committee hearing scheduled for September 4, 2025, I hereby submit the attached written testimony on Bill No. 36-0123.

This testimony reflects our office’s perspective representing indigent defendants and addresses the bill’s implications for public safety, enforcement equity, and access to justice.

Testimony Regarding Bill No. 36-0123

Honorable Chairman Clifford A. Joseph, Sr., esteemed members of the Committee on Homeland Security, Justice and Public Safety and distinguished guests, thank you for the opportunity to provide testimony on Bill No. 36-0123, which seeks to amend Title 20 Virgin Islands Code, Part II, Chapter 43,

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender
Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
September 4, 2025
Page 2

Subchapter I, Section 493, to establish stricter blood alcohol concentration (BAC) limits for commercial motor vehicle (CMV) operators and underage drivers.¹ As Chief Territorial Public Defender, I present this testimony from the perspective of our office, which represents indigent defendants in the Virgin Islands. My focus is on the bill's implications for fairness, enforceability, and access to justice.

First, know from the beginning that both Puerto Rico and the Virgin Islands have set 18 years as the age for purchase and consumption of alcoholic beverages. 14 V.I.C. § 485; 13 L.P.R.A. § 32565. This is important as Puerto Rico and the Virgin Islands are the only 2 jurisdictions that permit consumption of alcohol for those under 21.

When reviewing this legislation, two baseline points are important. First, both Puerto Rico and the Virgin Islands set the minimum legal age to purchase alcoholic beverages at 18. See 14 V.I. Code Ann. § 485; P.R. Laws Ann. tit. 13, § 32565. Second, federal law conditions certain highway funds on State 'zero tolerance' laws that treat a BAC of 0.02 g/dL or greater for drivers under 21 as DUI. See 23 U.S.C. § 161. Separately, FMCSA regulations establish a 0.04 g/dL standard and related consequences for CMV operators. See 49 C.F.R. §§ 382.201, 383.51.²

¹ Both Puerto Rico and the Virgin Islands have set 18 years as the age for purchase and consumption of alcoholic beverages. 14 V.I.C. § 485; 13 L.P.R.A. § 32565. The 0.04% BAC limit for CMV drivers aligns with existing FMCSA regulations (49 CFR 382.201), ensuring consistency with federal standards. This provision strengthens enforcement in territories by codifying the limit locally.

² .08% by weight: This is a common legal threshold for blood alcohol concentration (BAC) in many jurisdictions, including the Virgin Islands (as per 20 V.I.C. § 493), expressed as the weight of alcohol per unit volume of blood (typically grams per deciliter, g/dL, where 1% = 1 g/dL). **80 milligrams per 100 milliliters:** This is equivalent to 0.08 g/dL, since 80 mg = 0.08 g, and 100 mL is the standard volume for 1 dL. This confirms the first two parts are consistent. **0.08**

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender
Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
September 4, 2025
Page 3

Support for Public Safety Objectives

The Office of the Territorial Public Defender supports the intent of Bill No. 36-0123 to enhance public safety by deterring impaired driving. Specifically:

- The proposed 0.04% BAC limit for CMV operators, applicable to drivers of all ages, aligns with the federal standard set by the Federal Motor Carrier Safety Administration (FMCSA).¹ We also encourage explicit cross-references to related FMCSA provisions, including CDL disqualification consequences under 49 C.F.R. § 383.51 and the 24-hour removal from safety-sensitive functions for drivers with alcohol concentrations between 0.02 and 0.039 under 49 C.F.R. § 382.505.^{2,3}
- The zero-tolerance policy for drivers under 21, which prohibits any detectable amount of alcohol, mirrors the strictest not-a-drop laws in states like Alaska, Illinois, and Maine.² These measures are important for (0.04% protecting Virgin Islands roads and curbing impaired driving. This approach also aligns with similar strict underage BAC policies in other US territories, including Puerto Rico (0.02% for ages 18-20 and 0.00% under 18), Guam under 21; 0.02% for drivers under 18 with a learner's permit or intermediate license), American Samoa (0.02% zero tolerance under 21), and the Northern Mariana Islands (0.01% under 21).^{12,13,14,15}

grams per 210 liters of breath: This refers to breath alcohol concentration (BrAC), often used in breathalyzer tests. The ratio of 210 liters of breath to 1 dL of blood is a standard partition ratio (approximately 2100:1) used to estimate BAC from breath. If 0.08 g of alcohol is found in 210 liters of breath, it corresponds to a BAC of approximately 0.08 g/dL when converted using this ratio, aligning with the blood measurement.

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender

Committee on Homeland Security, Justice and Public Safety

36th Legislature of the Virgin Islands

September 4, 2025

Page 4

- **(Underage Drivers):** The “any detectable amount” rule for drivers under 21 aligns with federal zero-tolerance laws (23 U.S.C. 161), which impose a 0.02% BAC limit for underage drivers.

Concerns Regarding Implementation and Equity

While the bill’s goals are commendable, several refinements will help ensure fair and effective implementation:

1. Testing accuracy and due process for underage drivers

- A literal 0.00% standard risks false positives from medications, mouthwash, or fermentation. To prevent unjust prosecutions, we recommend operationalizing “zero tolerance” with clear, evidence-based testing rules and a measurable threshold that recognizes instrument uncertainty.

2. Impact of license suspensions on indigent defendants

- The proposed 12-month license suspension for underage drivers could have severe economic consequences, particularly for low-income youth and families who rely on driving for work and education. While this penalty aligns with practices in some states, it exceeds typical durations elsewhere.^{4,5} Graduated penalties and alternatives can preserve deterrence while avoiding disproportionate harm.

3. Resource needs for public defense

- New offenses will increase caseloads for our office, which is already under-resourced. Adequate funding is necessary to meet constitutional obligations and avoid case delays.

Recommendations

In order to balance safety and fairness, we recommend the following targeted amendments and implementation measures:

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender
Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
September 4, 2025
Page 5

- Adopt evidence-based testing protocols
 - Use evidential breath or blood tests (not roadside screening devices) to establish an offense. Require:
 - A 15-minute observation period before evidential breath testing
 - Two consecutive evidential breath tests within an acceptable agreement range
 - Instrument approval from the most recent NHTSA Conforming Products List and Department certification; maintain calibration/maintenance logs and operator certifications⁶
 - Chain-of-custody standards for all specimens
 - Apply measurement uncertainty (e.g., ± 0.005 g/dL or $\pm 5\%$, whichever is greater) in the accused's favor.
 - For under-21 cases with an evidential breath result between 0.01–0.019, require a confirmatory blood test at the Territory's expense before issuing a citation.
 - Clarify that preliminary breath tests (PBTs) are for probable cause only and are not admissible to establish the offense.
- Implement graduated, rehabilitative penalties for under-21
 - Set the under-21 per se threshold at 0.02 g/dL to avoid prosecuting trace, non-impairing alcohol, consistent with jurisdictions that operationalize zero tolerance at 0.01–0.02.^{3, 5}
 - First offense, 0.02–0.049: non-criminal infraction; 90-day suspension with eligibility for a restricted hardship license after 30 days for work, school, family care, or medical needs; alcohol education; up to 20 hours community service; automatic sealing upon completion.

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender

Committee on Homeland Security, Justice and Public Safety

36th Legislature of the Virgin Islands

September 4, 2025

Page 6

- First offense, 0.05–0.079: non-criminal infraction; 6-month suspension with restricted license eligibility after 60 days conditioned on ignition interlock, plus education or counseling.
- Subsequent offenses within 5 years: calibrated increases in suspension duration and programming.
- Require ability-to-pay findings before imposing fines/fees; permit sliding-scale costs, waivers, or conversion to community service.
- Ensure CDL and federal conformity
 - Cross-reference 49 C.F.R. §§ 382.201, 382.505, and 383.51 to preserve federal standards, including the 0.04 CMV threshold, mandated removal from service at 0.02–0.039, and CDL disqualification periods.^{2,3}
 - Clarify that under-21 provisions do not limit standard DUI enforcement at 0.08 or impairment-based DUI under existing § 493.
- Equity, transparency, and evaluation
 - Require annual public reporting of stops, tests, BAC distributions (e.g., 0.01–0.019 vs. ≥ 0.02), demographics, dispositions, diversion completion, and recidivism. This enables assessment of safety impact and disparate enforcement, and informs course corrections.
- Phased, well-resourced implementation
- Provide a delayed effective date (12 months) for rulemaking, instrument certification, training, laboratory readiness, and public education.
 - Appropriate funds to the Office of the Territorial Public Defender for additional attorneys, investigators, expert toxicology services, and training; fund law enforcement training and laboratory accreditation (e.g., ISO/IEC 17025).¹⁰

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender
Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
September 4, 2025
Page 7

- Codify independent-test rights (defendants may obtain an additional chemical test of their choosing) and require preservation of samples/records for retesting.

Conclusion

Bill No. 36-0123 is an important step toward enhancing road safety by aligning with federal CMV standards and adopting a firm stance on underage drinking and driving. With the refinements above—particularly clear testing protocols, proportional penalties, data transparency, and resource support for public defense, the legislation will be fairer, more enforceable, and more effective. It is also important that the proposed changes be harmonized with existing penalties under Title 20 V.I.C. § 493 to ensure a cohesive framework for impaired driving offenses.

The Office of the Territorial Public Defender hopes that Bill No. 36-0123 is implemented in a way that balances public safety with justice for all Virgin Islanders.

Respectfully,



Julie Smith Todman, Esq.
Chief Territorial Public Defender

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender
Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
September 4, 2025
Page 8

References

1. 49 C.F.R. § 382.201 (2025).
2. Alaska Stat. § 28.35.280 (2025); Alaska Stat. § 28.35.030 (2025); 625 Ill. Comp. Stat. Ann. 5/11-501.8 (2025); Me. Rev. Stat. tit. 29-A, § 2472 (2025); Me. Rev. Stat. tit. 29-A, § 2411 (2025).
3. Cal. Veh. Code § 23136 (2025); N.J. Stat. Ann. § 39:4-50.14 (2025).
4. Ala. Code § 32-5A-191 (2025); Colo. Rev. Stat. Ann. § 42-2-126 (2025); Colo. Rev. Stat. § 42-4-1301(2)(d) (2025).
5. Ark. Code Ann. § 5-65-103 (2025); Ark. Code Ann. § 5-65-303 (2025); Mont. Code Ann. § 61-8-410 (2025).
6. Ga. Code Ann. § 40-5-63 (2025); Ga. Code Ann. § 40-6-391 (2025).
7. Haw. Rev. Stat. Ann. § 291E-41 (2025); Haw. Rev. Stat. Ann. § 291E-64 (2025).
8. 49 C.F.R. § 383.51 (2025).
9. 49 C.F.R. § 382.505 (2025).
10. NHTSA Conforming Products List for Evidential Breath Alcohol Measurement Devices (most recent).
11. *ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories* (International Organization for Standardization 2017).

Testimony on Bill No. 36-0123

Presented by: Julie Smith Todman, Esq., Chief Territorial Public Defender
Committee on Homeland Security, Justice and Public Safety
36th Legislature of the Virgin Islands
September 4, 2025
Page 9

12. P.R. Laws Ann. tit. 9, § 5202 (penalties: 1st up to \$500 fine, 6-mo suspension, possible IID; 2nd up to \$700, 1-yr suspension, min 5 days jail; 3rd felony, min 10 days jail, \$1,000 fine).

13. 9 Guam Code Ann. §§ 92101 – 92302 (2024) 9 Guam Code Ann. § 92104(d) (penalties: 1st min 48 hrs jail, 6-month suspension, \$1,000+ fine, possible impoundment; notes clarify 0.04% general under-21 limit, with 0.02% for drivers under 18 holding learner's permit or intermediate license. 9 Guam Code Ann. §§ 92101–92302; 16 Guam Code Ann. §§ 31A00 et seq.

14. Am. Samoa Code Ann. § 22.0707 (penalties: Class A misdemeanor, fines, suspension, possible jail; enforcement increasing).

15. 9 CMC § 7105; 7109, 9 N. Mar. I. Code § 7105, (penalties: 1st 1-yr suspension, fines, mandatory education; general underage prohibitions).