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February 12, 2024

35th LEGISLATURE'S COMMITTEE ON
HOMELAND SECURITY, JUSTICE, AND PUBLIC SAFETY

TESTIMONY
ON
BILL NO. 35 - 0182

My name is Julie Smith Todman and I am the Chief Territorial Public Defender.

I thank the members and staff of the Committee on Homeland Security, Justice, and Public Safety of the 35th Legislature for this invitation to testify on proposed Bill Number 35-0182: "An Act amending title 14 of the Virgin Islands Code chapter 51 by designating the existing provisions as subchapter I and adding a subchapter II relating to the non-consensual dissemination of sexually explicit images," sponsored by Senator Donna A. Frett-Gregory.

The nonconsensual dissemination of sexually explicit images, is colloquially termed as 'Revenge Porn.' I have had the opportunity to review the proposed legislation and to receive comments from some staff within the Office of the Territorial Public Defender (OTPD).

The Office of the Territorial Public Defender takes NO POSITION on the necessity of the legislation. As the Superior Court of the Virgin Islands pointed out in *People of the V.I. vs. Roebuck*, the Virgin Islands is in the minority of U.S. jurisdictions by not having a statute concerning the nonconsensual publication of sexually graphic images/information.¹ That being said, it is noteworthy that the *Roebuck* opinion is from a Magistrate Judge of the Superior Court and there is no definitive statement from the Supreme Court of the Virgin Islands as to the state of the local law in this area.

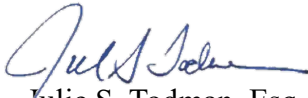
There is one error in the Bill as currently crafted. The current draft of the legislation states in Section 1035(a) that, "[a] person who is convicted for the first time for a violation of this subchapter is guilty of a **misdemeanor** and is subject to a term of imprisonment of not more than **two years**, or a fine of not more than \$5,000, or both." (emphasis added). This is an error because misdemeanors are, by definition, crimes

¹ In *Roebuck*, the Court states that similar statutes are in place in 46 states, the District of Columbia, and Guam. 2021 V.I. LEXIS 5, *17 (V.I. Superior 2021). As of October 2023, it appears to have increased to 48 states, the District of Columbia, and Guam. See Ballotpedia: Nonconsensual pornography (revenge porn) laws in the United States, available at [https://ballotpedia.org/Nonconsensual_pornography_\(revenge_porn\)_laws_in_the_United_States](https://ballotpedia.org/Nonconsensual_pornography_(revenge_porn)_laws_in_the_United_States)

which carry less than one year in jail as a punishment. See 14 V.I.C. § 2 (“[A] felony is a crime or offense which is punishable by imprisonment for more than one year; and ... every other crime or offense is a misdemeanor.”) The OTPD assumes that this is a scrivener’s error, and that the Legislature intends to keep the offense in Part (a) to a misdemeanor – punishable by up to one year in jail. That punishment would still be an increase over the Petty Misdemeanor-level punishment provided by the current obscenity statute – which holds a maximum punishment of ninety (90) days in jail and/or a fine of \$100. While OTPD understands the need to update a 65-year-old obscenity statute to embrace current technological realities, the reasoning behind such an increase in the punishment provided does not necessarily follow.

I hope that this correspondence adds to your consideration of the proposed legislation. I and the Office of the Territorial Public Defender are pleased to have been a part of this process and look forward to further discussions on the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie S. Todman".

Julie S. Todman, Esq.
Chief Territorial Public Defender