

**PRESENTATION OF DEPUTY ATTORNEY GENERAL
IAN S.A. CLEMENT
THIRTY-FIFTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON RULES & JUDICIARY
JULY 18, 2024**

Good morning, Madam Chair Capehart, Committee on Rules and Judiciary members, legislative staff, and those of you in the viewing and listening audience. My name is Ian S.A. Clement, and I am the Deputy Attorney General of St. Thomas, St. John, and Water Island District. On behalf of Attorney General Nominee Gordon Rhea, I am pleased to provide a few remarks regarding proposed Bill No. 35-0269.

Bill No. 35-0269, as proposed by Senator Kenneth L. Gittens, seeks to amend Title 2 of the Virgin Islands Code, Chapter 1, by adding a new section to provide a penalty for the commission of perjury in proceedings before the Legislature of the Virgin Islands. The Department of Justice has completed a preliminary review of Bill No. 35-0269 and offers the following comments.

If approved, Bill No. 35-0269 would make a person “personally liable for a fine of not less than \$250” or imprisonment “for not more than 30 days” if during, or in connection with, any proceeding, hearing or inquiry before the Legislature of the Virgin Islands, they commit perjury. To commit perjury, a person must: (1) swear or affirm that they will testify truthfully before, (2) willingly and knowingly testify

falsely. This law would apply whether statements are spoken or written. Both elements must be met for a person to commit perjury before the Legislature.

Similar provisions can be found elsewhere in federal and state law.¹ For example, federal law in Title 18 of the United States Code, section 1621, generally covers perjury, including in official federal proceedings such as congressional hearings. A violation of 18 U.S.C. § 1621 is a crime punishable by a fine, up to five years in prison, or both. And federal law does not specifically include perjury committed during a legislative proceeding; instead, it is applied “in any case in which a law of the United States authorizes an oath to be administered.”² Many states take a similar approach and do not include a special carve out for perjury that occurs before the Legislature.

Some states do. Idaho, Mississippi, and Maine specifically include legislative hearings in their perjury statutes. Idaho Code § 67-411a states, “Whenever conducting legislative business, a committee may require that testimony be given under oath...Any person who takes an oath pursuant to this section who states as true any material matter which he knows to be false is guilty of perjury and shall be punished pursuant to chapter 54, title 18, Idaho Code.”³ In Mississippi, “every

¹ 18 U.S.C. § 1621

² *Id.*

³ Idaho Code § 67-411a

witness shall be liable to prosecution and punishment for perjury committed by him in any examination. Moreover, if the perjury is manifest, such witness shall be guilty thereby of contempt of the senate or house, as the case may be, and shall be punished accordingly.”⁴

Maine’s perjury statute is more comprehensive and includes the offense, at least one affirmative defense, and definitions. In Maine, a person is guilty of perjury if he makes:

- A. In any official proceeding, a false material statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe the statement to be true; or
- B. Inconsistent material statements, in the same official proceeding, under oath or affirmation, both within the period of limitations, one of which statements is false and not believed by him to be true.⁵

17 MRS § 451.

The Maine Revised Statutes defines “official proceeding” as “any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or

⁴ Miss. Code Ann. § 5-1-27

⁵ 17 MRS § 451

other person taking evidence in connection with any such proceeding.”⁶ Perjury is a Class C felony in Maine.⁷

Other states do not include a separate criminal offense or penalty for committing perjury before the Legislature. Instead, many states incorporate perjury committed during legislative hearings into statutes covering perjury as a criminal offense. In South Carolina, “it is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding” in the state.⁸ The South Carolina statute does not expressly apply to legislative hearings, but legislative hearings are covered as administrative or regulatory proceedings.

The language in Bill No. 35-0269 is similar to that found in 14 V.I.C. § 1541, which defines perjury as a criminal offense. Perjury, as defined by the Virgin Islands Code, occurs when someone:

in or in connection with, any action, proceeding, hearing
or inquiry or on any occasion when an oath may be
lawfully administered –

1. swears or affirms –

A. that he will truly testify, declare, depose, or certify; or

⁶ 17 MRS § 451(5)(A)

⁷ 17 MRS § 451(6)

⁸ S.C. Code Ann. § 16-9-10(A)(1)

- B. that any testimony, declaration, deposition, certificate, affidavit or other writing subscribed by him is true; and
2. willfully and knowingly testifies, declares, deposes or certifies falsely or states in his testimony, deposition, affidavit or certificate any matter to be true which he knows to be false

—

shall be imprisoned not more than 10 years.

14 V.I.C. § 1541.

As the laws exist, the commission of perjury in proceedings before the Legislature of the Virgin Islands is covered by 14 V.I.C. § 1541 if an oath was lawfully administered during the hearing or proceeding. Thus, this Body might consider simply swearing in witnesses in some or all Legislative proceedings.

And prosecuting a violation of Bill No. 35-0269 could be difficult, as it must be proved that a person willingly and knowingly made false statements. To do so, prosecutors must present evidence that a defendant acted deliberately and with knowledge that the statements were false. As a defense, a person accused of committing perjury before the Legislature could assert that they did not know the statement was false when it was made. It may be hard to hold someone accountable for actions of perjury before the Legislature without contradictory evidence to refute

the assertion that the person did not act deliberately. The Bill is also unclear whether separate untruths in a single paragraph constitute separate offenses.

The following should be considered as you review Bill No. 35-0269. First, I would consider defining willfully. How is willfully being used in this context? Consider referencing the definition of willfulness in Title 1 of the Virgin Islands Code, Section 41, which defines “willful” or “willfully” as “when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to.” 1 V.I.C. § 41.

Second, imposing stiff fines and penalties may discourage citizens from testifying here. Bill No. 35-0269 suggests a fine of not less than \$250 and imprisonment for not more than 30 days as penalties for perjury before the Legislature. To strike a balance between the need to penalize perjury and the need to gain useful information, I suggest that the fines be capped at \$1,000 and the imprisonment be up to 1 year as a misdemeanor.

Finally, title 2 of the Virgin Islands Code, chapter 1, already includes a section “10.” Further, 2 V.I.C. §§ 11 and 12 have been repealed. Should this new section be renumbered and included as Section “11,” “12,” or 13?

I thank the Committee for allowing the Department of Justice to testify on Bill No. 35-0269. This concludes my formal remarks. I stand ready to respond to any questions this Body may have.