

BILL NO. 35-0318

Thirty-Fifth Legislature of the Virgin Islands

August 30, 2024

An Act amending title 5 Virgin Islands Code, subtitle 3, part I, chapter 311 by enacting Jah’niqua’s Law requiring a defendant to pay restitution in the form of child maintenance if the victim of the offense was the parent or guardian of a minor child or dependent and if the defendant was convicted of negligent homicide by means of a motor vehicle, a violation of title 20 Virgin Islands Code, section 504, while under the influence of or affected by intoxicating liquor or narcotic drugs; or was convicted of driving under the influence of intoxicating liquors or controlled substances, a violation of title 20 Virgin Islands Code, section 493, which results in an accident that causes the victim to become disabled or totally and permanently disabled

PROPOSED BY: Senator Kenneth L. Gittens

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 5 Virgin Islands Code, subtitle 3, part I, chapter 311 is amended by adding section 3677 as follows:

“§ 3677. Restitution in form of child maintenance

(a) This section may be cited as “Jah’niqua’s Law”.

(b) As used in this section:

(1) “Disabled” means a legal disability measured by functional inabilities in a person 17 years of age or older including inabilities caused by psychological, psychiatric, or stress-related trauma to the extent that the person lacks the capacity to provide for his physical health and safety or the physical health and safety of a minor child, including providing health care, food, shelter, clothing, and performing personal hygiene;

1 (2) “Totally and permanently disabled” means the inability to do any substantial
2 gainful activity by reason of any medically determinable physical or mental impairment
3 which can be expected to result in death, or which has lasted or can be expected to last
4 for a continuous period of not less than 12 months, including a person who qualifies for
5 Social Security Administration benefits upon a finding that the person is permanently and
6 totally disabled.

7 (3) “Disabled victim” means a person who becomes disabled or totally and
8 permanently disabled as a result of an accident caused by another person who has been
9 convicted of a violation of 20 V.I.C. § 493.

10 (c) The court shall order a defendant convicted of a violation of 20 V.I.C. § 504 who
11 was under the influence of, or affected by intoxicating liquor or narcotic drugs; or convicted of
12 a violation of 20 V.I.C. § 493, which results in an accident that causes the victim to become
13 disabled or totally and permanently disabled, to pay child maintenance if the victim was the
14 parent or guardian of a minor child or dependent. The court shall order the defendant to pay
15 child maintenance until the child or dependent reaches:

16 (1) 18 years of age; or

17 (2) 19 years of age if the child or dependent is still enrolled in high school.

18 (d) In determining an amount that is reasonable and necessary for child maintenance,
19 the court shall consider all relevant factors, including the:

20 (1) financial needs and resources of the child or dependent;

21 (2) financial resources and needs of the disabled victim or the surviving parent
22 or guardian, as applicable;

23 (3) standard of living to which the child or dependent is accustomed;

24 (4) physical and emotional condition of the child or dependent and the child’s or
25 dependent’s educational needs;

26 (5) child’s or dependent’s physical and legal custody arrangements; and

(6) reasonable childcare expenses of the disabled victim or the surviving parent or guardian, as applicable.

(e) The court shall order that the payments be made to the clerk of court as trustee for remittance to the disabled victim or the surviving parent or guardian, as applicable. The clerk shall deposit all payments no later than the next working day after receipt. The clerk shall remit the payments to the disabled victim or the surviving parent or guardian not later than three working days of receipt.

(f) If a defendant who has been ordered to pay child maintenance is incarcerated and unable to pay, the defendant has not more than one year after the release from incarceration to begin payments, including entering into a payment plan with the clerk of the court to pay any arrearage.

(g) If a defendant's child maintenance payments are set to terminate but the defendant's obligation is not paid in full, the child maintenance payments continue until the entire arrearage is paid.

(h)(1) If the disabled victim or the surviving parent or guardian of the child or dependent brings a civil action against the defendant before the court enters an order for child maintenance and the disabled victim or the surviving parent or guardian obtains a judgment and full satisfaction of damages in the civil suit, the court may not enter a child maintenance order.

(2) If the court orders the defendant to pay child maintenance and the disabled victim or the surviving parent or guardian subsequently brings a civil action and obtains a judgment, the child maintenance order must be offset by the amount of the judgment awarded and paid by the defendant or the defendant's insurance.”.

SECTION 2. Title 20 Virgin Islands Code, part II, chapter 43, subchapter I is amended in the following instances:

(a) Section 493 is amended by adding subsection (g) as follows:

“(g) A person convicted of a violation of this section which results in an accident that causes the victim to become disabled or totally and permanently disabled, shall be

ordered to pay restitution in accordance with 5 V.I.C. § 3677 in the form of child maintenance if the victim of the offense was the parent or guardian of a minor child or dependent.”

(b) Designate the existing language in section 504 as subsection (a) and add subsection (b) to read as follows:

“(b) A person convicted of a violation of this section who was under the influence of, or affected by intoxicating liquor or narcotic drugs, shall be ordered to pay restitution in the form of child maintenance in accordance with 5 V.I.C. § 3677 if the victim of the offense was the parent or guardian of a minor child or dependent.”

BILL SUMMARY

The bill amends title 5 Virgin Islands Code by adding section 3677, known as Jah’niqua’s Law, to require a defendant convicted of negligent homicide by means of a motor vehicle, a violation of 20 V.I.C. § 504, who was under the influence of or affected by intoxicating liquor or narcotic drugs; or convicted of driving under the influence of intoxicating liquors or controlled substances, in violation of 20 V.I.C. § 493, which violation results in an accident that causes the victim to become disabled or totally and permanently disabled, to pay restitution in the form of child maintenance if the victim of the offense was the parent or guardian of a minor child or dependent until 18 years of age or 19 years of age if the child or dependent is still enrolled in high school. The bill also amends title 20 Virgin Islands Code sections 493 and 504 to update the penalties to include child maintenance under 5 V.I.C. § 3677.

BR24-1031/July 11, 2024/GC