



Legislature of the Virgin Islands

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POST AUDIT DIVISION

January 29, 2026

MEMORANDUM

TO: Honorable Novelle E. Francis, Jr.
Chairperson, Committee on Budget, Appropriations and Finance
36th Legislature of the Virgin Islands

FROM: Post Audit Division

SUBJECT: **Bill No. 36-0221** - An Act amending Title 20 Virgin Islands Code, part II Chapter 43, Subchapter 1, Section 493 relating to alcohol consumption and to establish “The Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund”

BACKGROUND AND HISTORY

Driving under the influence (DUI) is a criminal offense that involves operating a vehicle while impaired by alcohol, drugs (legal or illegal), or both, to a degree that compromises safe driving. In the United States Virgin Islands, DUI offenses are governed by Title 20, Virgin Islands Code, Chapter 43, Subchapter I, Section 493, which establishes corresponding fines and penalties based on the nature and severity of the offense.

Bill No. 36-0221 proposes amendments to Section 493 to establish the Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund, which provides a continuous funding source for supporting sobriety checkpoints and impaired driving enforcement activities. As proposed, the measure allocates;

Allocation	In Support of:
<i>Not less than 50%</i> of all deposit each fiscal year to the Virgin Islands Police Department	Traffic control operations, to include equipment, signage and lighting, communication devices, overtime and staffing for special events, road closures, emergency operations, and public information or education.
<i>Not less than 25%</i> to VIPD	Impaired driving enforcement program consisting of Sobriety Checkpoints, saturation patrols, training, overtime, equipment, and public information/education in support of operations.
<i>Balance of the Fund</i> to the Office of Highway Safety	To support programs identified in the Highway Safety Plan as approved by the National Highway Safety Agency (NHTSA)

Bill No.36 – 0221- The Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund

The law, as written, states the following:

20 V.I.C. § 493

Copy Citation

Statutes current through Act 8856 of the 2024 session of the 35th Legislature, including all
code changes through September 10, 2024

§ 493. Driving while under the influence of intoxicating liquors or controlled substances; violations; penalties

(a)

(1) It is unlawful for any person who is under the influence of an intoxicating liquor or a controlled substance included in Schedule I, II, III, IV, or V of section 595, chapter 29, Title 19, Virgin Islands Code, or under the combined influence of an intoxicating liquor and such a controlled substance, to drive, operate, or be in actual physical control of, any motor vehicle within the Territory.

(2) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive, operate, or be in actual physical control of, any motor vehicle within the Territory.

(b)

(1) Any person convicted of a first violation of subsection (a) hereof, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one year, or by a fine of not less than \$500, or by both. Provided, however, if the person was involved in an accident violating subsection (a), the minimum fine shall not be less than \$700.

(2) Any person convicted of violating subsection (a) of this section, if there was at the time of testing 0.15 percent or higher by weight of alcohol in the person's blood, or if at the time accompanied in the vehicle by a person under the age of 18 years, shall be punished for a first offense by a fine of not less than \$1,000 or more than \$2,000, or by imprisonment of not more than one year, or both.

(3) Any person convicted of violating subsection (a) hereof after having been convicted of such a violation within the previous ten years shall be guilty of a felony and shall be punished by imprisonment for not less than 72 consecutive hours and not more than two years and by a fine of not more than \$4,000. However, if the person was involved in an accident while violating subsection (a), the minimum fine that must be assessed under this paragraph is \$800. In lieu of the minimum imprisonment term specified above, a court may require a person to perform not less than 14 days of community service under the direction and supervision of the Police Commissioner under such terms and conditions as the court may specify. Notwithstanding any other provision of law to the contrary, including chapters 313, 405 and 407 of Title 5, Virgin Islands Code, the imposition of the minimum imprisonment term or community service as specified above shall not be suspended and no person subject to the minimum imprisonment term or community service as specified above shall be placed on probation until such imprisonment or community service has been served or carried out.

If a person violates this section, the court may order a presentence screening of the person based upon the person's blood alcohol level at the time of his arrest, his prior alcohol-related convictions, a self-administered questionnaire, and a diagnostic assessment by health officials.

(c)

(1) In addition to the penalties specified in paragraph (1) of subsection (b) hereof, upon a first conviction for a violation of subsection (a) hereof, the court may suspend or revoke, for a period of six months:

(A) the license to operate a motor vehicle of the person so convicted if the person possesses such license;

(B) the operating permit or privilege to operate a motor vehicle of the person so convicted if the person is a non-resident and possesses such a permit or privilege; or

(C) the issuance of a license to operate a motor vehicle to the person so convicted if such person does not possess such a license.

After a person's driving privileges have been suspended or revoked for at least 30 days under this paragraph, the person may petition the court for a restricted license and the court may order the Police Commissioner to issue a restricted driving license for the remainder of the period of suspension or revocation. If a person is granted a restricted driving license, he may only operate a motor vehicle to or from his place of employment or in the course of his employment.

(2) In addition to the penalties specified in paragraph (2) of subsection (b) hereof, upon a second or subsequent conviction for a violation of subsection (a) hereof, the court shall suspend or revoke for at least one year and not more than five years:

(A) the license to operate a motor vehicle of the person so convicted if the person possesses such a license;

(B) the operating permit or privilege to operate a motor vehicle of the person so convicted if the person is a nonresident and possesses such a permit or privilege; or

(C) the issuance of a license to operate a motor vehicle to the person so convicted if such person so convicted does not possess such a license.

(3) Suspensions or revocations of licenses or permits to operate motor vehicles pursuant to the provisions of this subsection may be in addition to any suspensions or revocations made pursuant to the provisions of section 493c of this chapter.

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(d) In addition to the penalties specified in subsections (b) and (c) hereof, upon a conviction of a violation of subsection (a) hereof, the court may:

(1) order the person to attend and satisfactorily complete a substance abuse treatment program approved by the Court; or

(2) order the person so convicted to attend and satisfactorily complete a substance abuse prevention and education program approved by the court.

(e) Any person convicted of violating subsection (a) while serving a sentence imposed pursuant to subsection (b)(1) or (2) of this section shall have their license revoked for life.

(f) Notwithstanding any law to the contrary, the clerk of the Superior Court in which a person is convicted for a second or subsequent time under this or any other section of the Virgin Islands Code shall notify the Police Department of the conviction. Upon issuance or reinstatement of any limited driving permit, probationary license, or driver's license to the convicted person thereafter, temporary or otherwise, the driver's license must be distinctively and permanently marked with the words "DUI Offender" prominently displayed across the face of the license. The cost of the specially marked license shall be borne by the licensee. After expiration of 48 months from issuance or reinstatement of the license and if the person's license is not otherwise under suspension or revocation, the convicted person may obtain a new license without the distinctive markings upon payment of any fees required for issuance of a new driver's license.

Bill No. 36-0221 proposes the following:

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 20 Virgin Islands Code, part II, chapter 43, subchapter I, section 493, as amended by Act No. 9054, (Bill No. 36-0123) is amended as follows:

(1) Add the following subsection (i):

“(i) Sobriety Checkpoint Program: minimum operations; compliance; reporting.

(1) There is established within Virgin Islands Police Department a Sobriety Checkpoint Program to deter and detect violations of section 493 of this chapter.

(2) The Virgin Islands Police Department shall conduct no fewer than 12 sobriety checkpoints each calendar year Territory-wide, including at least four checkpoints on St. Croix, four on St. Thomas, and two on St. John with the remaining two checkpoints deployed based on data-driven need.

(3) All checkpoints must be operated pursuant to a written plan approved in advance by a supervising officer, employ objective site and time selection, minimize delay to motorists, and include advance public notice consistent with best practices and applicable constitutional requirements.

(4) The Virgin Islands Police Department shall coordinate checkpoint planning with the Office of Highway Safety and may partner with local, federal, or any other agency deemed necessary.

(5) No later than December 1st of each fiscal year, the Virgin Islands Police Department shall submit a report to the Legislature and the Office of Highway Safety detailing the number of checkpoints by island and date, staffing and costs, arrests by offense category, alcohol-involved crash data in checkpoint corridors, and a summary of public education activities supported by funds from the Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund established in title 33 Virgin Islands Code, subtitle 3, chapter 111.”

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SECTION 2. Title 33 Virgin Islands Code, subtitle 3, chapter 111, is amended by inserting the following appropriately numbered section:

“§ ____ . Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund

(a) There is established in the Treasury of the Government of the Virgin Islands the Impaired Driving and Sobriety Checkpoint Program Safety Fund, a separate and distinct, non-lapsing special fund.

(b) Notwithstanding title 33 Virgin Islands Code, section 3087, all fines imposed and collected for violations of title 20 Virgin Islands Code section 493 shall be deposited into the Impaired Driving and Sobriety Checkpoint Program Safety Fund. The Fund may also receive grants, donations, and federal reimbursements related to impaired-driving enforcement, education, and traffic safety.

(c) The Commissioner of the Department of Finance shall administer the Fund in coordination with the Virgin Islands Office of Highway Safety. Monies in the Fund are continuously appropriated for the purposes set forth in this section and remain available until expended.

(d) Allocation; intended uses

(1) Not less than 50 percent of all deposits each fiscal year shall be transferred to the Virgin Islands Police Department to support traffic control operations, purchase and maintenance of traffic control equipment, signage and lighting, communication devices, overtime and staffing for special events, road closures, emergency operations, and public information or education directly supporting such activities

(2) Not less than 25 percent of all deposits each fiscal year shall be transferred to the Virgin Islands Police Department to operate an impaired driving enforcement program consisting of sobriety checkpoints, saturation patrols, training, overtime, equipment, and public information and education directly supporting such operations.

(3) The balance of the Fund shall be used by the Office of Highway Safety to support programs identified in an approved highway safety plan, including the Impaired Driving Program, Occupant Protection Program, Police Traffic Services Program, and Traffic Records Program.

(e) No later than 60 days after the close of each fiscal year, the Department of

Finance, in coordination with the Office of Highway Safety, shall submit a report to the Legislature detailing all revenues deposited into the Fund and expenditures from the Fund during the prior fiscal year, including the amount transferred to the Virgin Islands Police Department under subsection (d) and programmatic uses by the Office of Highway Safety.”

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ANALYSIS

The proposed measure substantially duplicates the mission, structure and activities of the Virgin Islands Office of Highway Safety (VIOHS), which already operates a similar program under an approved Federal Highway Safety Plan. That plan is developed annually in accordance with federal requirements and is designed to reduce traffic crashes, fatalities, and serious injuries throughout the U.S. Virgin Islands using data-driven strategies.

Sobriety checkpoints are not ancillary to VIOHS operations, but core programmatic tools already funded and administered through federal highway safety grants. Establishing a parallel statutory framework risk:

- Fragmenting oversight and accountability,
- Creating conflicting operational directives,
- Undermining the federally approved planning and reporting process that governs highway safety activities.

Rather than strengthening enforcement, the measure may dilute program effectiveness by imposing statutory requirements outside the federally recognized safety framework.

Additionally, the requirement that “**no fewer than twelve sobriety checkpoints be conducted territory-wide each year**” raises significant policy and operational concerns. Highway safety enforcement is most effective when guided by data, risk patterns, and resource availability; not fixed legislative quotas. This practice runs the risk of encouraging a check-the-box compliance culture rather than strategic deployment and risks inefficient use of personnel, particularly during periods when other traffic safety strategies may be more impactful.

The Virgin Islands Highway Safety Program operates under federal grant conditions that require:

- Alignment with the approved Highway Safety Plan,
- Performance measures tied to crash and fatality reductions, and
- Demonstrated flexibility to adjust strategies annually

Statutorily mandating checkpoint numbers outside this framework may:

- Create compliance conflicts with federal planning requirements,
- Complicate grant reporting and justification,
- Increase the risk of questioned costs or reduced future funding.

Federal highway safety best practices emphasize performance-based planning, allowing agencies to adapt enforcement levels based on trends, outcomes, and community conditions. Quotas run counter to this evidence-based approach.

Federal funds are awarded based on outcomes and strategic planning, not statutory minimums.

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Reported Staffing and Execution Challenges

The VIOHS has formally acknowledged persistent operational constraints that have directly affected its ability to execute planned enforcement initiatives. In the *Year 3 Update of the Triennial Highway Safety Plan*, the agency reported challenges including limited manpower and difficulty recruiting officers to participate in enforcement activities.

As documented in the federal filing, “these constraints significantly limited participation, resulting in minimal enforcement activity to date.” This admission is particularly relevant when evaluating legislation that seeks to mandate minimum enforcement outputs, such as fixed number of sobriety checkpoints, without addressing underlying capacity limitations. Given the office’s own acknowledgment of staffing shortages and recruitment difficulties, legislating a minimum number of sobriety checkpoints would impose an unfunded and operationally unrealistic mandate.

Evidence of Under-execution Reflected in Grant Activity

The Office of Highway Safety’s federally reported financial activity further reflects these execution challenges. Recent filings to the federal grantor agency indicate recurring carryforward of unspent highway safety funds, attributable in part to limited enforcement participation capacity:

- FY 2023: \$508,545.38 carried forward into FY 2024
- FY 2024: \$239,873 carried forward into FY 2025

While carryforward authority is permissible under federal grant rules, sustained unspent balances signal implementation constraints rather than funding shortages. These trends underscore that the primary barrier to expanded enforcement activity is not the absence of statutory authority or dedicated funding, but rather personnel availability and operational capacity.

Proposed Funding Structure of Bill No. 36-0221.

The bill proposes to redirect specified revenues from fines and penalties resulting from enforcement activities to the Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund. ***Exhibit I*** displays the fines and penalties for DUI offenses according to Title 20 Virgin Islands Code, Chapter 43, Subchapter I, Section 493.

Offenses	Fines & Penalties
First Violation (Misdemeanor)	\$500/ One year imprisonment or both
First Violation involving accident (Misdemeanor)	No less than \$700/one year imprisonment or both
Convicted of violation with 0.15 percent or higher of alcohol in blood	No less than \$1000 and no more than \$2000/one year imprisonment or both
Convicted of violation within 10 previous years	No more than \$4000/ No less than 72 consecutive hours and not more than two-year imprisonment

Exhibit I.

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According to the Virgin Islands Police Department’s Bureau of Planning and Research, DUI arrest statistics indicate a total of 192 DUI arrests recorded between 2023 and 2025. However, the manner in which these arrests were made, and the level of each offense are not specified. Given that most DUI offenses are classified as first offenses and treated as misdemeanors, it is reasonable to assume that, at a minimum, 192 DUI arrests occurred across the three islands during this period.

For purposes of this analysis, the revenue (*assumed from sobriety checkpoints*) and will be calculated using the statutory minimum fine of \$500 per offense, exclusive of court costs, surcharges, license reinstatement fees, or enhanced penalties for repeat offenses. At this minimum fine, the estimated gross fine revenue is as follows:

Island	2023	2024	2025	Total
St. Croix	47	31	32	110
St. Thomas	26	28	27	81
St. John	-	1	-	1
Total	73	60	59	192

Exhibit II

Island	Arrests	Minimum Fine	Estimated Revenue
St. Croix	110	\$500	\$55,000
St. Thomas	81	\$500	\$40,500
St. John	1	\$500	\$500
Total	192		\$96,000

Exhibit III

Allocation Share	Percentage	Dollar Amount
Portion A	50%	\$48,000
Portion B	25%	\$24,000
Portion C	25%	\$24,000
Total		\$96,000

Exhibit IV

The estimated \$96,000 represents a baseline minimum revenue.

If deposited into the proposed Impaired Driving and Highway Sobriety Checkpoint Program Safety Fund, the actual amount collected would likely be less than the estimated \$96,000. Not all assessed fines are collected due to payment plans, delinquencies, dismissals, or reductions from adjudication.

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SUMMARY

Although the goal of reducing impaired driving is supported, the measure as drafted is duplicative, fiscally insufficient, and operationally misaligned. It replicates the functions of the federally funded Virgin Islands Office of Highway Safety Program, which already conducts sobriety checkpoints under an approved Highway Safety Plan using data-driven enforcement strategies.

The proposed mandate requiring no fewer than twelve sobriety checkpoints annually fails to account for documented staffing and recruitment challenges reported by VIOHS, which have already limited enforcement activity and resulted in unspent federal funds. Imposing statutory quotas without addressing these constraints risks inefficiency and non-compliance.

Financially, the proposed Safety Fund is not a sustainable enforcement funding mechanism. Further divided under the proposed allocation formula, may be insufficient to support recurring checkpoint operations.

Bill No. 36-0221 creates unnecessary duplication and appears to prioritize numerical targets over outcomes; without addressing the root causes limiting enforcement capacity. For these reasons, approval of the measure is not recommended by the Post Audit Division.



Theodora Philip, DBA
Post Auditor

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Checkpoint Program Safety Fund

ADDENDUM



VIRGIN ISLANDS POLICE DEPARTMENT

DUI ARREST STATISTICS

Island	2023	2024	2025
St. Croix	47	31	32
St. Thomas	26	28	27
St. John	0	1	0
Total	73	60	59