

**PRESENTATION OF ATTORNEY GENERAL
GORDON C. RHEA
DEPARTMENT OF JUSTICE'S TESTIMONY
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS
IN RE: BILL NO. 36-0031
COMMITTEE ON HOMELAND SECURITY,
JUSTICE AND PUBLIC SAFETY
JUNE 5, 2025**

Good afternoon, Chairman Clifford Joseph, Sr., Committee on Homeland Security, Justice and Public Safety members, Senators, legislative staff, and the listening and viewing audiences. I am Attorney General Gordon Rhea. It is an honor and privilege to appear before you this afternoon.

The Department of Justice appreciates the opportunity to comment on Bill No. 36-0031. The Department of Justice has completed a preliminary review of Bill No. 36-0031 and offers the following comments.

Bill No. 36-0031 seeks to amend title 23 of the Virgin Islands Code, chapter 10, subchapter IV, section 1073, by inserting a new subsection (c) to exempt a public safety agency or private safety entity from liability for acts of negligence in the operation, administration or maintenance of a 911 service, unless the acts are committed in a grossly negligent manner or are committed with willful intent.

Liability for agencies providing 911 services is a valid concern, as liability can result in costly legal and financial obligations. These service providers may face

liability for negligence, especially when their actions lead to harm. Although there are laws that often protect local and state governments, and their actors, against tort liability, this protection is not afforded in every jurisdiction and does not always extend to third-party service providers.

For example, in the Virgin Islands, the Government waives its immunity from liability and assumes liability with respect to injury, loss of property or death caused by the negligent or wrongful act or omission of an employee while acting within the scope of their office or employment.¹ This waiver of immunity from liability does not apply, however, if the injury or loss of property is caused by the gross negligence of an employee of the Government of the Virgin Islands while acting within the scope of their office or employment.² Gross negligence is a higher level of negligence than ordinary negligence involving a severe lack of care and often demonstrates a conscious and reckless disregard for safety.

Several states limit liability for 911 operators, protecting them from lawsuits for damages related to system failures or errors, unless the injury was caused by wrongful acts or gross negligence. These limits are intended to encourage the development and maintenance of emergency communication systems without the threat of excessive and expensive lawsuits.

¹ 33 V.I.C. § 3408(a)

² 33 V.I.C. § 3408(b)

In South Dakota, “in contracting for the 911 emergency reporting system or the provisioning of the 911 service, except for willful or wanton negligence or intentional acts, the board, the governing body, the public agency, the service provider, the prepaid wireless service provider, the prepaid wireless service seller, and the service supplier, their employees and agents, are immune from liability for a failure in the use or operation of the 911 system.”³

Kansas limits liability for “each provider, and their employees, agents, suppliers and subcontractors, and each seller, and their employees, agents, suppliers and subcontractors, shall not be liable for the payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining or providing 911 service.”⁴

In North Carolina, the standard of proof, or the level of certainty required to prove a claim in a legal proceeding, for liability for public safety telecommunicators and dispatchers is established by statute. As a result, a plaintiff’s burden of proof is by clear and convincing evidence “in any civil action arising from any act or omission by the defendant in the performance of any lawful and prescribed actions pertaining to the defendant's assigned job duties as a 911 or public safety

³ SDCL 34-45-17

⁴ KS Stat § 12-5376

telecommunicator or dispatcher.”⁵ Clear and convincing evidence requires a higher degree of certainty than the preponderance of the evidence standard, which is often used in civil cases.

The decision to exempt a public safety agency or private safety entity from liability for acts of negligence in the operation, administration or maintenance of a 911 service is a policy decision, not a legal one. While liability can be limited through statutory immunity, a clear standard of conduct should still be expected.

I thank the Committee for allowing the Department of Justice to testify on Bill No. 36-0057. This concludes my formal remarks. I respectfully welcome any questions this body may have.

⁵ NC Gen Stat § 99E-65