

**PRESENTATION OF CHIEF DEPUTY ATTORNEY GENERAL
IAN S.A. CLEMENT
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS
COMMITTEE ON HOMELAND SECURITY, JUSTICE,
AND PUBLIC SAFETY
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Good morning, Chairman Joseph, members of the Committee on Homeland Security, Justice, and Public Safety, legislative staff, and everyone tuning in or listening. My name is Ian S.A. Clement, and I serve as the Chief Deputy Attorney General of the Virgin Islands Department of Justice. On behalf of Attorney General Gordon C. Rhea, I am here today to provide testimony regarding Bill No. 36-0231.

Bill No. 36-0231, proposed by Senator Kenneth L. Gittens, would amend title 5 of the Virgin Islands Code, subtitle 3, part III, chapter 401, by adding a new section 4507a that establishes procedures for transferring inmates to facilities outside the Territory. The Department of Justice has finished its review of the measure. The Department shares the Committee's concern for the families of incarcerated Virgin Islanders and for the transparency of decisions made in their name. However, the Department does not support Bill No. 36-0231 in its current form. I will clearly and specifically explain why and what changes would enable the Department to support it.

I. What the Bill Does

Subsection (b) states that the Director of the Bureau of Corrections cannot transfer an inmate serving less than a ten-year sentence to a facility outside the Territory unless the transfer is approved under subsection (c). Subsection (c) requires a written request from the warden or supervising officer; review by a new four-member Multidisciplinary Case Review Committee; a written recommendation within ten business days, with a copy provided to the inmate's legal counsel; and, if the Committee recommends approval, submission to the Governor, who must approve or deny within five business days. No transfer can occur without the Governor's approval. Subsection (d) establishes an emergency procedure that requires forty-eight hours' notice to the Governor and a gubernatorial decision within forty-eight hours. Subsection (e) defines the Committee as including the Attorney General or his designee, a mental health professional designated by the Commissioner of Health, the Public Defender or his designee, and a family liaison officer appointed by the Director. Subsections (f) through (i) outline exemptions, an annual report, a discipline provision, and grant investigative authority to the Inspector General.

II. **The Existing Law and the Litigation Background**

Off-island transfer authority is currently granted by 5 V.I.C. § 4503(c), which allows the Director to enter into agreements to use facilities of the United States Bureau of Prisons or correctional facilities of any state, local government, or private correctional entity in the United States that is accredited by the American Correctional Association, when the Director determines that facilities in the Virgin Islands are insufficient to serve the best interests of the inmate or the overall welfare of the Territory.

That discretion is not an oversight. It is the reason the Territory has been able to defend off-island transfers when they have been challenged—and they have been challenged repeatedly, in the Superior Court, the Appellate Division, and the District Court — by inmates claiming a right to notice and a hearing before transfer. The Department’s defense in those matters has rested squarely on the breadth of the Director’s discretion under § 4503(c). The Supreme Court of the United States has held that where officials may transfer a prisoner for any reason or for no reason at all, no liberty interest arises and no process is due.¹ The Court has held that an inmate has no justifiable expectation of confinement in any particular prison, or in any particular State, and that an interstate transfer—even one across an ocean—does not

¹ *Meachum v. Fano*, 427 U.S. 215, 228 (1976); *Montanye v. Haymes*, 427 U.S. 236 (1976).

deprive an inmate of a protected liberty interest.² To date, no court has recognized a right under Virgin Islands law to be housed in any particular facility or to remain within the Territory.

I mention that not to argue that the Legislature cannot change it. The Legislature can, of course, impose conditions on the authority it grants. I point this out so the Committee clearly understands what Bill No. 36-0231 relinquishes and what it replaces. The Department's concern is not just theoretical about rights; it is a practical matter of who operates the prison.

III. **The Department's Objections**

First, the Bill removes the administration of the Territory's correctional facilities from the officer charged by law with administering them. Read subsection (c)(4) carefully. The Director can only inform the Governor if the Committee recommends approving the transfer request. A recommendation against transfer is final; it ends the matter. The Director has no appeal, no reconsideration, and no override. The Committee is established "within the Bureau," but the Director does not sit on it, and only one of its four members—the family liaison officer—answers to her. The Director remains the officer responsible for the safety of every inmate and correctional officer in her institutions, accountable to this Body when

² *Olim v. Wakinekona*, 461 U.S. 238, 245, 248 (1983).

something goes wrong. Bill No. 36-0231 preserves her accountability but removes the tool to enforce it. Authority and responsibility must sit in the same chair. Under this bill, they do not.

Second, one of the four members holding that veto is counsel for the inmate. The Public Defender has an undivided loyalty to the person whose transfer is being reviewed. Seating him on the body that decides whether that person may be moved puts the Office of the Territorial Public Defender in an impossible position. It makes the Director's security judgment dependent on the very office that is supposed to oppose it. If the Public Defender's designee votes to recommend transfer, he acts against his own client's expressed interests. If he recuses himself in every case where his office has a client—as conflict rules would normally require—the seat often remains vacant, and the bill offers no alternative. Neither outcome benefits the inmate, the Public Defender, or the Bureau.

Third, the bill places the Attorney General in three incompatible roles at once. Under subsection (e)(1), the Attorney General or his designee sits as a voting member of an adjudicative body. The Attorney General is also the legal advisor to the Bureau and to the Governor, both of whom are parties to the very decision under review. And the Attorney General is the lawyer who must later defend that decision. The Committee's written recommendation—which the bill requires to be handed to

opposing counsel before any litigation even begins—will be Exhibit A. The Department cannot sit as judge, advisor, and defendant in the same proceeding. The Attorney General should be counsel to the Committee. He should not be a member of it.

Fourth, the Committee has an even number of members, with no quorum, no tie-breaker, and no default. There are four members, including a chairman elected from among them, who does not have a tie-breaking vote. Subsection (c)(3) requires a recommendation within ten business days but does not specify what occurs if the Committee deadlocks two-to-two or fails to act. Under subsection (c)(4), silence or deadlock results in the transfer being rejected. In contrast, subsection (d)(2) allows a transfer when the governor remains silent. The defaults in this bill are inconsistent: inaction blocks routine transfers but allows emergency ones.

Fifth, the emergency provision is not an emergency provision. Subsection (d) applies only when an inmate presents an imminent threat and “the Bureau lacks sufficient capacity to handle the situation internally.” It then requires the Director to notify the Governor “at least 48 hours before the requested transfer,” and gives the Governor another forty-eight hours to decide. A threat that can wait two to four days for a decision is not truly imminent. Conversely, the second condition—inadequate

internal capacity—will be contested in every case, since the Bureau’s capacity is exactly what is at issue. Meanwhile, the provision only covers threats from an inmate. It does not address a credible threat to an inmate. It does not cover the urgent move of a cooperating witness tonight. It does not cover the separation of co-defendants, an escape risk, a medical emergency, a court order, or a hurricane that makes a housing unit uninhabitable. These are not hypothetical scenarios in this Territory.

Sixth, the bill requires the Bureau to disclose security-sensitive information to the inmate. Subsection (c)(3) requires that a copy of the Committee’s written recommendation be provided to the inmate’s legal counsel. That recommendation will necessarily rely on the material in the transfer request and the Committee’s review: documented behavioral incidents, security classification, gang intelligence, the identities of persons the inmate is being separated from, protective-custody rationales, and input from mental health professionals. The bill contains no protective order, no redaction authority, no in camera procedure, no confidentiality provision, and no exemption from disclosure. It also does not address the disclosure of protected health information to the Attorney General, the Public Defender, or a family liaison officer. What is written in a Committee

recommendation doesn't stay within the Committee. It goes to counsel, then to the inmate, and from the inmate to the housing unit.

Seventh, the ten-year threshold is inverted, and the term “sentence” is undefined. The bill’s protections apply only to inmates serving less than 10 years. However, the findings in subsection (a) focus on rehabilitation and family connection—interests most heavily impacted by the longest separations. The inmates whose transfers have actually caused controversy and litigation in this Territory have been long-sentenced, maximum-custody inmates. Bill No. 36-0231 would not have applied to any of them. If the Committee’s goal is reentry, the trigger should be the time remaining to serve, not the length of the sentence given. The bill also does not clarify whether “sentence” refers to the imposed term, the total of consecutive sentences, or the remaining time to serve, nor whether it includes pretrial detainees, who are not serving any sentence and are likely subject to the most restrictive part of the bill. This ambiguity alone will lead to litigation.

Eighth, the bill collides with the Territory’s obligations in federal court. The Bureau has operated under federal oversight at the John A. Bell Adult Correctional Facility since 1986, now governed by a settlement agreement that the District Court continues to supervise. The Territory has made significant progress—by November 2025, the District Court ended the medical and dental provisions of

the settlement—but it still retains jurisdiction over other areas, including mental health and security. The main reason for non-compliance, as the Court and monitors have repeatedly observed, is the Bureau’s shortage of correctional officers. Off-island placement remains one of the few tools the Bureau uses to manage classification, separation, and population pressure, even as staffing issues persist. A law that can delay routine transfers by three weeks, allow a two-to-two deadlock to prevent them entirely, and require the return of an inmate within thirty days based on a four-member panel’s retroactive decision, limits the Bureau’s ability to comply with federal court orders. When a territorial law conflicts with a federal court’s remedial order, the order prevails—and the Territory bears the cost of the conflict.

Ninth, the thirty-day mandatory return provision is unworkable as written. Subsection (d)(2) states that if the Committee later determines that an emergency transfer was inappropriate, “the Bureau shall arrange for the inmate to be returned to the Virgin Islands within 30 days.” It does not allow exceptions due to changed circumstances, nor does it consider situations where a return could endanger the inmate or others, nor whether an appropriate bed is available in the Territory. It also does not acknowledge that the return depends on the cooperation of the receiving jurisdiction and the terms of the governing agreement. The Bureau cannot be required to perform actions it has no lawful or physical means to carry out.

Tenth, subsections (h) and (i) are unnecessary and imprecise. Subsection (h) subjects “[a]ny official or employee who violates this section” to discipline, “including suspension from duty without pay or removal from office.” It does not specify who imposes that discipline, by what process, or if there is an appeal. It does not exempt the Governor, who is clearly an “official” capable of “violating” this section. It also ignores the Personnel Merit System and the collective bargaining agreements covering Bureau employees, under which suspension without pay is a grievable and arbitrable matter. Existing law already allows for disciplining employees who violate the law. Subsection (i) similarly grants the Inspector General authority he largely possesses, without clear standards, procedures, or a savings clause for the Attorney General’s criminal jurisdiction.

Eleventh, the bill is unfunded, and it does not fund the thing it says it cares about. The bill establishes a committee, a family liaison officer role, a reporting requirement, and a role for the Inspector General, but provides no funding. More importantly, if the Legislature believes that family connections and rehabilitation are important, the measures that would actually achieve these goals—such as in-territory programs, expanded video visitation, subsidized inmate phone rates, a family travel fund, and especially the correctional officers the Bureau cannot

hire—cost money. A procedural veto, on the other hand, costs nothing and accomplishes nothing.

IV. **Amendments That Would Permit the Department to Support the Bill**

The Department does not oppose oversight of off-island transfers. It opposes this mechanism. The following amendments would allow the Department to support Bill No. 36-0231.

1. Strike the “right” language and add a non-entitlement clause. Replace the declaration in subsection (a) that inmates “have a right to rehabilitation and family connection” with a statement of territorial policy. Add: “Nothing in this section creates a substantive right, liberty interest, or private cause of action, nor shall a violation of this section be grounds for the release, transfer, or return of an inmate.” Subsection (a) as written claims a right that no court has recognized under Virgin Islands law, and it should not serve as a basis for creating one by implication.

2. Make the Committee advisory. The Committee should issue a written recommendation; the Director should retain final authority; and if the Director departs from the recommendation, he should be required to state his reasons in writing, transmit them to the Governor, and report them to this Legislature in the annual report. Transparency is maintained, and accountability remains with the officer who bears it.

3. Reconstitute the Committee. Remove the Public Defender and eliminate the Attorney General as voting members. Ensure an odd number of members for a quorum, establish a tie-breaking rule, and designate the Attorney General as counsel to the Committee. If the Legislature seeks an independent voice for the inmate, consider using an ombudsman or a designee from the Virgin Islands Bar Association who is not the counsel of record for any inmate, and who is subject to recusal.

4. Remove the Governor from case-by-case adjudication. Substitute notice to the Governor and a certification of compliance by the Director. If gubernatorial approval is retained, provide an affirmative-approval default in the routine channel so that inaction does not silently kill a transfer.

5. Fix the threshold and define the terms. Key the process to the remaining time to serve rather than the imposed sentence; define “sentence”; and explicitly state whether the section applies to pretrial detainees. If so, provide them with a separate, expedited track that accounts for access to counsel and the courts.

6. Rebuild the emergency channel. Allow the Director to execute an emergency transfer immediately upon her written certification, with notification to the Governor and the Committee within forty-eight hours of the transfer, followed by a subsequent review by the Committee. Expand the grounds to include threats to the inmate, protective custody, separation of witnesses and co-defendants, risk of

escape, medical necessity, compliance with a court order, and loss of facility capacity, such as due to a natural disaster. Make any order of return conditional on the availability of suitable in-territory housing and the safety of all involved persons.

7. Protect the record. Keep the transfer request, the Committee’s deliberations, and its recommendation confidential and not subject to disclosure; authorize the Director to withhold or redact any information whose disclosure could endanger individuals, compromise institutional security, or hinder an ongoing investigation; allow for in camera review; and establish a clear authorization framework for protected health information, limiting the clinician’s role to providing a clinical conclusion rather than revealing the underlying record.

8. Add a federal-compliance savings clause. “Nothing in this section shall be construed to limit, delay, or impair the ability of the Bureau to comply with any order, judgment, consent decree, or settlement agreement of a court of the United States, or with federal law.” Include corresponding exemptions in subsection (f) for transfers made pursuant to a writ, detainer, or court order, transfers for medical care, and transfers requested by the inmate.

9. Remove subsection (h); align subsection (i). Existing personnel law, Bureau rules, and relevant collective bargaining agreements already address

discipline. The Inspector General’s role should be defined by his current organic authority, with a clause to retain the Attorney General’s criminal jurisdiction.

10. Fix the effective date and fund the bill. Make the operative provisions effective on the later of ninety days after enactment or the date the Committee is first formed; add a savings clause for transfers approved or in progress and for existing agreements; and appropriate funds for the Committee, the reporting requirement, and—if the Legislature intends what subsection (a) says—for in-territory programming, video visitation, and family visitation support.

The Department can support subsection (g), the annual reporting requirement, mostly as written, as long as personally identifying and security-sensitive information is combined or left out. Reporting is the part of this bill that would create the transparency the findings call for, and it would do so safely without risking anyone.

V. **Conclusion**

The Department of Justice takes seriously the concern that motivates Bill No. 36-0231. A transfer to the mainland from these islands is not the same as a transfer across a county line. It can prevent a family from visiting, which is a real cost that requires a real solution. However, the solution proposed by this bill—a four-member panel, including counsel for the inmate, with a silent veto over the Director’s

judgment on who is dangerous, and subject to a three-week limit—will not improve the treatment of any incarcerated Virgin Islander. Instead, it will hinder the Director's ability to manage her institutions, undermine their security, and make it more difficult for the Territory to meet the oversight standards set by the federal court, which has supervised its prisons for 40 years. The Department is ready to collaborate with the Committee, the sponsor, and the Bureau of Corrections to develop language that provides the transparency this Body seeks without incurring those consequences.

I appreciate the Committee for letting the Department of Justice testify on Bill No. 36-0231. That concludes my formal remarks. I am ready to answer any questions this body may have.
