

The Virgin Islands Consortium

Bill Requiring Governor's Approval for Off-Island Inmate Transfers Advances by One Vote

A divided committee advanced Bill 36-0231, requiring outside review and the governor's approval for many off-island inmate transfers, despite warnings from BOC and DOJ that the process could undermine safety, confidentiality and federal court compliance.

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Bill 36-0231 advanced to the Senate Committee on Rules and Judiciary by a narrow 4-3 vote Thursday, despite opposition from the V.I. Bureau of Corrections and Department of Justice, which warned that the proposed oversight process for transferring inmates outside the territory could interfere with prison management, security and federal compliance.

Sponsored by Senator Kenneth Gittens, the measure would require multidisciplinary review and gubernatorial approval before certain inmates could be transferred to correctional institutions outside the Virgin Islands. BOC Director Wynn Timermark and Chief Deputy Attorney General Ian Clement opposed the bill in its current form, while private attorney Martial Webster strongly supported it.

The legislation would amend Title 5 of the Virgin Islands Code, subtitle 3, part III, chapter 401, by adding Section 4507a to establish procedures for off-island inmate transfers.

Among its stated purposes are to “prevent abuse of administrative authority” and “ensure transfers are done only when necessary, and with oversight.” The bill also seeks to protect inmates’ connections with their families and support rehabilitation.

Bill 36-0231 would prohibit the BOC director from transferring an inmate serving a sentence of less than 10 years to an off-island correctional facility unless the request is approved through the process established in the legislation.

The bill would create a Multidisciplinary Case Review Committee responsible for evaluating transfer requests. Factors considered would include the inmate’s proximity to family for visitation and rehabilitation purposes, security classification and the potential effect of the transfer on pending legal proceedings.

The committee would consist of the attorney general or a designee; a licensed mental-health professional selected by the commissioner of the V.I. Department of Health; the public defender or a designee; and a BOC family liaison officer selected by the director.

The BOC director would not serve on the committee.

The committee would be required to issue a recommendation within 10 days. When a transfer is recommended, the BOC director would forward the recommendation to the governor, who would have five days to issue a written approval or denial.

Under the bill, “no transfer may proceed without the Governor’s approval.”

The legislation would preserve the director’s ability to conduct an emergency transfer when an inmate “poses an imminent threat to the safety of other inmates, staff, or to themselves, and the Bureau lacks adequate capacity to address the situation internally.”

Even under those circumstances, the director would have to notify the governor at least 48 hours before the transfer. The governor would then have 48 hours to approve or deny the request.

If the governor does not respond within that period, “the transfer may proceed but must be reviewed by the Committee within seven days.”

The bill further states that “if the Committee finds that the transfer should not have been made, the Bureau shall arrange for the inmate to be returned to the Virgin Islands within 30 days.”

BOC would also be required to submit an annual report to the Legislature detailing off-island inmate transfers.

Introducing the measure, Mr. Gittens said “it establishes reasonable safeguards to ensure that such decisions are made thoroughly, or thoughtfully, consistently, and with appropriate oversight.”

Under the proposed system, “inmate transfers are no longer left solely to a single administrative decision,” he said.

“Accountability is not obstruction. Transparency is not bureaucracy. These principles are fundamental to good government,” Senator Gittens maintained.

“I believe this legislation reflects the values of fairness, accountability, and responsible governance that the people of the Virgin Islands expects from this body,” he said.

Mr. Gittens acknowledged during the hearing that amendments may be necessary but maintained that the question before lawmakers was a “matter of policy and not personality.”

Ms. Testamark told lawmakers she could not support the legislation as drafted.

“Unlike most government agencies, correctional administrators must be able to respond immediately to changing security conditions,” she testified.

The BOC director outlined as many as 10 objections, including her position that the measure “undermines professional correctional judgment.”

Ms. Testamark argued that introducing outside committee members into the transfer process could weaken the confidentiality normally associated with correctional decisions.

She also said “gubernatorial approval is operationally impractical” and warned that the legislation could “jeopardize federal and constitutional compliance.”

The director cited possible overcrowding concerns, particularly in light of the existing federal consent decree governing the territory’s correctional system.

She further maintained that the measure “creates significant administrative burdens” and “may undermine staff safety and rehabilitation.”

Overall, Ms. Testamark said Bill 36-0231 “would significantly impair the Bureau's ability to manage correctional institutions safely and effectively.”

The Department of Justice also expressed reservations.

Mr. Clement noted that under the bill, “a recommendation against transfer is final. It ends the matter. Director has no appeal, no reconsideration, and no override.” He argued that the committee structure gives veto authority to an inmate’s attorney, who could reasonably be expected to act in the interests of the client.

Mr. Clement also said the legislation “places the Attorney General in three incompatible roles at once.”

He recommended removing the attorney general or designee from the committee and instead allowing that official to serve as legal counsel. He also recommended that the

public defender be removed as a voting member.

DOJ raised additional concerns about the handling of confidential information.

Mr. Clement said the legislation “contains no protective order, no redaction authority, no in-camera procedure, no confidentiality provision, and no exemption from disclosure.”

The department submitted suggested amendments.

Summarizing DOJ’s position, Mr. Clement said Bill 36-0231 “will hinder the Director’s ability to manage her institutions, undermine their security and make it more difficult for the territory to meet its oversight standards set by the federal court, which has supervised its prison for 40 years.”

Private Attorney Strongly Supports Measure

Mr. Webster provided a contrasting view in 19 pages of testimony supporting the bill.

He said the legislation “would not be importing an untested or unusually oppressive standard. It would be giving the Virgin Islands more structure around involuntary capacity-driven transfers than the default national compact framework provides.”

Mr. Webster reminded lawmakers that the executive branch is responsible for carrying out policies enacted by the Legislature.

He argued that “to leave this matter without the obvious necessary safeguards proposed by Bill 36-0231...constitutes a derogation of your office and an abdication of your responsibility to the people of the Virgin Islands.”

Lawmakers Split Over Governor’s Role

Committee members spent considerable time weighing the competing arguments.

“It’s not far-fetched to believe that this is something that cannot be accomplished,” Senator Angel Bolques Jr said.

Senator Avery Lewis questioned the proposed role of the governor. “I don’t think no governor should be involved in that,” he said.

Mr. Lewis later voted against sending the bill to the Rules and Judiciary Committee.

Senator Dwayne DeGraff agreed that the governor should be “excluded.”

“I will support if we’re going to amend it because, as it is written, I will not support it,” he said.

Mr. DeGraff supported creating a review committee but maintained that the BOC director should retain final decision-making authority.

“I don’t want to take the authority away from the director,” Senator DeGraff said.

He also proposed establishing a “separate process if the decision is going to be that based on a financial issue we need to send prisoners off-island to save money...”

Senator Novelle Francis, who was not a voting member of the committee, said, “I agree that this bill needs some additional work to it.”

Mr. Gittens responded to the objections raised by Ms. Testamark and Mr. Clement and ultimately secured the four votes needed to advance the legislation. Amendments may be added when Bill 36-0231 is considered by the Committee on Rules and Judiciary.