

**COMMITTEE ON HOMELAND SECURITY, JUSTICE
AND PUBLIC SAFETY**

BILL NO. 31-0042

Thirty-first Legislature of the Virgin Islands

February 17, 2015

An Act amending title 23 Virgin Islands Code, chapter 16 adding subchapter II relating to the Virgin Islands Police Internal Affairs Division

PROPOSED BY: Senator Clifford F. Graham

1 **WHEREAS**, the purpose of this Act is to enhance accountability and transparency of our
2 law enforcement activities within the entire Government; and

3 **WHEREAS**, this Act insures that the integrity of all law enforcement agencies of all
4 departments, agencies, semi-autonomous and autonomous entities of the government maintain a
5 standardized system of internal discipline in which fairness and justice is executed through
6 objective and impartial investigation and review procedures; and

7 **WHEREAS**, the Internal Affairs Bureau of the Virgin Islands Police Department will
8 conduct all investigations of alleged misconduct, policy violations, work rules violations,
9 collective bargaining agreement violations, and review the adjudication of all complaints of all
10 law enforcement agencies, Departments, agencies, semi-autonomous and autonomous entities of
11 the entire Government of the Virgin Islands; and

1 **WHEREAS**, the Internal Affairs Bureau must be notified immediately of all firearms
2 discharged by sworn personnel of all departments, agencies and instrumentalities of the
3 Government of the Virgin Islands as well as firearms discharged by personnel of, semi-
4 autonomous and autonomous agencies that are not related to training; all use of force incidents
5 that result in injury to a person, and all collisions involving government owned vehicles and once
6 notification has been received, the Internal Affairs Bureau shall document and determine
7 whether additional investigation is necessary; and

8 **WHEREAS**, the Internal Affairs Bureau shall review and investigate any allegations of
9 misconduct committed by of law enforcement employees that is a potential violation of any
10 departments, agencies, semi-autonomous and autonomous agencies rules and regulations or
11 which indicates that the employee is unable, unwilling or unfit to perform his duties; and

12 **WHEREAS**, the obligation to investigate includes not only acts of serious misconduct
13 that are alleged to have occurred while the law enforcement officer was on-duty, but also acts of
14 serious misconduct which were alleged to have occurred outside the employing agency's
15 jurisdiction or while the officer was off-duty; Now, Therefore,

16 *Be it enacted by the Legislature of the Virgin Islands:*

17 **SECTION 1.** Title 23 Virgin Islands Code, chapter 16 is amended by designating the
18 existing provisions as subchapter I by adding subchapter II to read as follow:

19 **"Subchapter II Internal Affairs Bureau**

20 **§1231 Internal affairs Bureau**

21 (a) As used in this subchapter, unless the context clearly requires otherwise:

22 (1) "Director" means the Director of the Internal Affairs Bureau including the
23 Internal Affairs & Applicant Screening section of the Virgin Islands Police Department.

1 (2) “Assistant Director” means the executive officer to the Director
2 responsible for ensuring the policies, rules, regulations and other duties as assigned by
3 the Director are implemented in furtherance of the Bureau’s mandates as outlined within
4 this statute.

5 (3) “Commissioner” means the Commissioner of the Virgin Islands Police
6 Department.

7 (4) “Internal Affairs Bureau” or “IAB” means a bureau within the Virgin
8 Islands Police Department empowered with, among other responsibilities, the
9 responsibility to investigate all serious misconduct allegedly committed by Government
10 of the Virgin Islands law enforcement officers.

11 (5) “Internal Affairs Agent” or “IAA” means a trained law enforcement
12 officer within the Bureau, charged with the responsibility to investigate cases of serious
13 misconduct by law enforcement officers of all departments, agencies, and independent
14 instrumentalities of the Government of the Virgin Islands.

15 (6) “LEO” means a law enforcement officer.

16 (b) There is established an Internal Affairs Bureau within the Virgin Islands Police
17 Department that is the investigative and regulatory body for all law enforcement agencies in the
18 Virgin Islands. At the head of the Bureau there is the Director assisted by an Assistant Director,
19 who have managerial and supervisory responsibilities who must:

20 (1) possess peace officer status as defined in title 5 Virgin Islands Code,
21 chapter 305, section 3561;

22 (2) be qualified by training and experience in criminal, administrative, and the
23 administration of criminal justice; and

24 (3) be appointed by the Commissioner.

1 (c) The Commissioner is responsible for ensuring the Bureau is adequately staffed
2 with personnel who are in the career service of the Government or when necessary with
3 alternative sworn personnel when necessary for the proper functioning and operation of the unit.

4 (d) The Commissioner, with the advice of the Bureau Director, shall promulgate such
5 regulations pursuant to 3 V.I.C., chapter 35, as are necessary to conduct its affairs and to comply
6 with provisions of applicable Federal and Virgin Islands laws.

7 (e) The Bureau, through the Commissioner may call upon any department, division,
8 commission, office or agency of the Government of the Virgin Islands to supply such data,
9 document, information or assistance as is reasonably necessary for the discharge of the Bureau's
10 responsibilities. Each department, division, commission, office, agency or semi-autonomous
11 agency of the Government of the Virgin Islands shall provide such data, information, document
12 or assistance within a reasonable time upon request of the Bureau Director or Commissioner, to
13 the extent that such compliance is not inconsistent with any applicable law.

14 (f) The Bureau shall:

15 (1) through the Commissioner advise and assist the Governor in developing
16 policies, plans, and programs, for improving the rules of conduct for government
17 personnel authorized to carry and possess firearms;

18 (2) establish goals, priorities and standards for the reduction of incidents
19 involving the use of deadly force by government personnel;

20 (3) through the Commissioner, recommend legislation to the Governor and
21 Legislature on the use of firearms or deadly force by government personnel;

22 (4) monitor and evaluate all off duty employment by government personnel
23 authorized to carry and possess firearms aimed at reducing crime and delinquency by

government personnel authorized to carry and possess firearms and improving the image of the administration of justice carried out by the government;

(5) apply for grants from the Federal Government that may be available for training in the use of force or the investigation of the use of force;

(6) have the authority to collect from any governmental entity information, data, reports, statistics or such other material which is necessary to carry out the Bureau's functions; and

(7) perform such other duties as may be necessary to carry out the purposes of this subchapter.

§1232. Applicability

(a) No later than 30 days after the effective date of this section the Internal Affairs Bureau in conjunction with the human resources section of each department, bureau, and agency of the Government of the Virgin Islands and each autonomous or semi-autonomous instrumentality of the Government of the Virgin Islands shall develop a standard operation procedure manual for all peace officers or law enforcement officers in the respective departments or agencies or autonomous or semi-autonomous instrumentality. The manual must be a written instrument that includes the following subjects:

(1) Drug Testing;

(2) Duties and responsibilities;

(3) Policy management System;

(4) Prevention of misconduct;

(5) Investigation of officers' complaint;

(6) Investigation and adjudication of minor complaints;

(7) Investigation and adjudication of serious complaints;

- (8) Domestic violence;
- (9) Time limitations on judicial actions;
- (10) Immediate suspension, whether paid or unpaid, pending investigation and disposition;
- (11) Polygraph testing;
- (12) Administrative search and seizure;
- (13) Electronic surveillance;
- (14) Collateral issues;
- (15) Firearms discharge;
- (16) Background check;
- (17) Reporting of incident;
- (18) Confidentiality; and
- (19) Risk Management Procedures.

(b) The Internal Affairs Bureau may investigate any law enforcement officer's conduct pertaining to the topics listed in subsection (a) and make recommendations or referrals as to the filing of internal disciplinary charges or criminal charges.

(c) This section applies specifically to the enforcement officers and agents of following agencies:

- (1) Licensing & Consumer Affairs;
- (2) Planning & Natural Resources;
- (3) Taxicab Commission;
- (4) Attorney General's Office ,V.I. Department of Justice;
- (5) Port Authority;
- (6) University of the Virgin Islands;

- 1 (7) Bureau of Correction;
2 (8) Bureau of Internal Revenue Agents;
3 (9) Department of Finance Treasury ;
4 (10) Virgin Islands Lottery;
5 (11) Department of Health Inspectors;
6 (12) The Virgin Islands Bureau of Narcotics and Dangerous Drugs Control
7 Agents;
8 (13) Office of the Inspector General;
9 (14) Waste Management Authority; and
10 (15) Any agency or instrumentality that employs a peace officer as defined in
11 title 5 Virgin Islands Code, chapter 305, section 3561 or any personnel with law
12 enforcement authority.

13 **§1233. Investigative Procedures**

14 (a) Whenever a LEO is under administrative disciplinary investigation and subject to
15 interrogation by Agents of the Internal Affairs Bureau for any reason that could lead to
16 disciplinary action, suspension, demotion, or dismissal, the interrogation must be conducted
17 under the following conditions:

18 (1) The interrogation must be conducted at a reasonable hour, at a time when
19 the LEO is on duty, unless the seriousness of the investigation is of such a degree that
20 immediate action is required.

21 (2) The interrogation must take place either at the office of the Command or
22 Bureau of the investigating Agent or at the office of the local office, precinct, zone,

1 police unit, or correctional unit in which the incident allegedly occurred, as designated by
2 the investigating agent or department or agency.

3 (3) The LEO under investigation must be informed of the rank and name of
4 the agent in charge of the investigation, the interrogating agent, and all persons present
5 during the interrogation. All questions directed to the LEO under interrogation must be
6 asked by or through one interrogator during any one investigative interrogation, unless
7 specifically waived by the LEO under investigation.

8 (4) The LEO under investigation must be informed of the nature of the
9 investigation before any interrogation begins, and must be informed of the names of all
10 complainants. The complaint, any witness statements, not including other existing
11 subject LEO statements, must be provided to each LEO who is the subject of the
12 complaint before the beginning of the investigative interrogation. A LEO, after being
13 informed of the right to review the complaint and witness statements, may voluntarily
14 waive the provisions of this paragraph and provide a voluntary statement at any time.

15 (5) Interrogation sessions must be for reasonable periods and must be timed to
16 allow for such personal necessities and rest periods as are reasonably necessary.

17 (6) The LEO under interrogation may not be subjected to offensive language
18 or be threatened with transfer, dismissal, or disciplinary action. A promise or reward
19 may not be made as an inducement to answer any questions.

20 (7) The formal interrogation of a LEO, including all recess periods, must be
21 recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript
22 to be prepared, and there must be no unrecorded questions or statements. Upon the
23 request of the interrogated officer, a copy of any recording of the interrogation session

1 must be made available to the interrogated officer no later than 72 hours, excluding
2 holidays and weekends, following said interrogation.

3 (8) If the LEO under interrogation is under arrest, or is likely to be placed
4 under arrest as a result of the interrogation, the LEO must be completely informed of all
5 the LEO's rights before commencing the interrogation, including the right to have an
6 attorney present.

7 (9) A subject to paragraph (8), the request of any LEO under investigation, the
8 LEO has the right to be represented by a union representative of the LEO's choice, who
9 must be present at the times during the interrogation whenever the interrogation relates to
10 the member's continued fitness for law enforcement or correctional service.

11 (10) Notwithstanding the rights and privileges provided by this subsection, the
12 subsection does not limit the right of an agency or department to discipline or to pursue
13 criminal charges against a LEO.

14 (b) Except as provided in this subsection, disciplinary investigations, actions,
15 suspension, demotion, or dismissal may not be undertaken by an agency or department against a
16 LEO for any act, omission, or other allegation of misconduct if the investigation of the allegation
17 is not completed within 120 days after the date the agency or department receives notice of the
18 allegation by a person authorized by the agency or department to initiate an investigation of the
19 misconduct. If the agency or department determines that disciplinary action is appropriate, it
20 shall complete its investigation and give notice in writing to the LEO of its intent to proceed with
21 disciplinary action, along with a proposal of the specific action sought, including length of
22 suspension, if applicable. Notice to the LEO must be provided within 120 days after the date the
23 agency or department received notice of the alleged misconduct, except as follows:

1 (1) The running of the limitations period may be tolled for a period specified
2 in a written waiver of the limitation by the LEO;

3 (2) The running of the limitations period is tolled during the time that any
4 criminal investigation or prosecution is pending in connection with the act, omission, or
5 other allegation of misconduct;

6 (3) If the investigation involves a LEO who is incapacitated or otherwise
7 unavailable, the running of the limitations period is tolled during the period of
8 incapacitation or unavailability;

9 (4) In a multi-agency investigation, the limitations period may be extended for
10 a period of time reasonably necessary to facilitate the coordination of the agencies
11 involved;

12 (5) The running of the limitations period may be tolled for emergencies or
13 natural disasters during the time period wherein the Governor has declared a state of
14 emergency within the jurisdictional boundaries of the concerned agency;

15 (6) The running of the limitations period is tolled during the time that the
16 Leo's disciplinary hearing proceeding is continuing beginning with the filing of the
17 notice of violation and or Charges and specifications; or a request for subsequent
18 hearings and ending with the written determination of the Department or Agency Head or
19 upon the violation being remedied by the agency or department.

20 (c) An investigation against a LEO may be reopened, notwithstanding the limitations
21 period for commencing disciplinary action, demotion, or dismissal, if:

22 (1) Significant new evidence has been discovered that is likely to affect the
23 outcome of the investigation.

(2) The evidence could not have reasonably been discovered in the normal course of the investigation or the evidence resulted from the pre-disciplinary response of the officer.

(3) Any disciplinary action resulting from an investigation that is reopened pursuant to this subsection must be completed no later than 90 days after the date the investigation is reopened.

§1334. The Director shall promulgate regulations to carry out the purpose of this subchapter.”

SECTION 2. The Governor of the Virgin Islands in conjunction with the Commissioner of Police shall execute a Memorandum of Understanding with all departments and agencies of the Government of the Virgin Islands as well as semiautonomous and autonomous instrumentalities of the government that have peace officers or law enforcement divisions to determine adequate compensation to the Police Department to support the additional responsibilities of the Internal Affairs Division.

SECTION 3. This Act takes effect 90 days after enactment.

BILL SUMMARY

The purpose of this bill is to establish a unit within the Virgin Islands Police Department responsible for the investigation of all incidents involving all government personnel authorized to possess and carry firearms.

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