

# SMITHWILLIAMS, PLLC

1710 Kongens Gade  
St. Thomas, U.S. Virgin Islands 00802

Carl R. Williams, Esq.  
(340) 998-8202  
vislandslaw@yahoo.com

December 10, 2023

Honorable Kenneth L. Gittens  
Chairman, Committee on Homeland Security, Justice and Public Safety  
Legislature of the Virgin Islands  
Capitol Building  
Charlotte Amalie, VI 00804

## **RE: Letter of Support for Bill 35-0178**

Dear Senator Gittens:

As a twenty-year member of the Virgin Islands Bar Association and a practicing attorney that specializes in the practice of criminal defense for indigent clients, I offer this letter of support for Bill 35-0178, an Act amending Title 5 Virgin Islands Code, chapter 314 to allow for the automatic expungement of any charges on a person's arrest records immediately upon a finding by a judge that the arrest lacked probable cause for the charges. his Bill is necessary to promote economic justice in the Virgin Islands. I am staunchly in favor of creating and streamlining the mechanism necessary to clear an arrested person's record when no probable cause was found for that arrest.

Employers in the Virgin Islands nigh uniformly require an applicant or prospective hire to produce a VIPD police record before they are hired. These documents reflect (1) the date of an arrest; (2) the charge(s) upon which someone was arrested; and (3) the date and disposition of the Court. Virgin Islands law provides a right to expungement for some of these charges but requires a Court Order from a Judge in order for the VIPD to remove any charge from a person's criminal record. It is important to note, that on many, many police background check records I have encountered, the record may also reflect "No Known Disposition." This leaves the prospective applicant in the uncomfortable position of having to explain the facts and circumstances of the arrest during interviews instead of directing the conversation towards their strengths. In my experience, employers who encounter an applicant with an arrest are far less inclined to consider hiring that individual. This is a tragedy when no probable cause was determined to exist for the arrest or initial charges brought against the prospective candidate.

I recently represented a former Superior Court law clerk who was offered a job with Delta Airlines. During my client's initial interview, my client represented to Delta that my client had no arrests or convictions in their past and my client confidently requested their police record from the VIPD. When the record was produced by VIPD, an arrest two years earlier was reflected on their otherwise clean background check. That arrest resulted in charges being brought against my client. However, following my client's Advice of Rights hearing, the charges pending against my client were immediately dismissed by a Magistrate Judge as the Magistrate Judge determined there was no probable cause to have arrested my client in the first place. The charges were eligible for expungement. My client did not know that a record of the arrest would continue to sully my client's police record . My client was very surprised to learn that it would require an Order from a Superior Court Judge to remove the arrest from the VIPD's records. My client lost this lucrative job opportunity during the time my office worked expeditiously through the court system seeking an Order to remove the record of the arrest. My client stopped their job search until their record could be updated . My client was understandably dispirited by the entire experience.

The majority of my clients are indigent. I am keenly aware that when my clients become employed, their time and attention usually become laser focused on doing everything necessary to keep their jobs; focus on their families and supporting themselves. All laudable goals. I am aware that workforce development is a priority in the Virgin Islands. It is also my considered opinion that the current system for expunging arrests where no probable cause was found creates a direct impediment to promoting local workforce development and impeding local hiring practices.

Bill 35-0178 is crucial to aiding Virgin Islanders finding their first jobs or transitioning into new positions. While I am familiar with the Government's inherent interest in maintaining arrest and criminal records, in my view there is absolutely no reason why a charge should remain on a person's police record when a Magistrate Judge has examined the facts and circumstances of the charge and determined that the arrest or charges lacked probable cause.

In the Virgin Islands, after a person is arrested, they proceed to an Advice of Rights hearing before a Magistrate Judge in the Superior Court of the Virgin Islands. The Magistrate Judge presides over the hearing, which includes an Assistant Attorney General and the defendant either represented by an Assistant Territorial Public Defender or private attorney. The Magistrate Judge determines whether each charge identified by the Police Officer for the basis of the arrest is properly supported by the Probable Cause Fact Sheet. The Magistrate Judge then makes a finding that there either was probable cause or there was no probable cause for each individual charge.

The next hearing a defendant attends is Arraignment. During Arraignment, an Assistant Attorney General advises a Defendant of the pending charges. However, not all cases make it to Arraignment. If a Magistrate Judge has determined that no probable cause exists for the arrest, the case may be dismissed. The Attorney General may also decide not to prosecute a case for its own reasons. In these circumstances, a person whose case does not make it to Arraignment may have no way of knowing that despite the Magistrate Judge finding no probable cause or the Attorney General's decision not to prosecute its case, that their arrest and the initial charges will continue to appear on their police record forever unless they petition the Court for an Order to expunge their arrest record. This can result in unwarranted, unexpected and undeserved costs to clear their police records.

I support Bill 35-0178 to promote economic justice and workforce development as well as on grounds of simple fundamental fairness. I respectfully ask that this committee do so as well.

Sincerely,



CARL R. WILLIAMS, ESQ.