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**35TH LEGISLATURE'S COMMITTEE ON
HOMELAND SECURITY, JUSTICE AND PUBLIC SAFETY**

TESTIMONY

ON

BILL NO. 35-0178

My name is Julie S. Todman and I am the Interim Chief Territorial Public Defender.

I thank the members and staff of the Committee on Homeland Security, Justice, and Public Safety of the 35th Legislature for this invitation to testify on proposed Bill Number 35-0178: An Act amending title 5 Virgin Islands Code, chapter 314, to add a section 3732a to allow for the automatic expungement of arrest records upon a finding that the arrest lacked probable cause and amending title 3 Virgin Islands Code, chapter 33, section 881(g), item 9 relating to public records to designate expunged criminal records as confidential records. I thank Senator Javan E. James, Sr. as sponsors of the proposed Bill.

The Office of the Territorial Public Defender was established by title 5, section 3521 of the Virgin Islands Code to represent the indigent charged with crimes in court. I appreciate the opportunity to provide you with the position of my office as to these changes. After considering the amendments

promulgated in Bill 35-0178, the Office of the Territorial Public Defender fully supports the contemplated changes. OTPD generally supports any effort to increase the availability and efficacy of expungements under Territorial law.

The vast majority of arrests in our community occur without an arrest warrant. These citizens are brought before a Judge or Magistrate Judge who makes a determination as to whether the arrest is supported by probable cause. This requirement is grounded in the Fourth Amendment to the U.S. Constitution which guarantees “a fair and reliable determination of probable cause as a condition for any significant pretrial restraint.”¹

When an individual is arrested and charged with a crime, a number of records are generated. Some of those – such as fingerprint records taken by the arresting officers – are held internally by the authorities. Other records – like those documenting court proceedings – are open to the public.

Even when the Court determines that no probable cause existed for the arrest of an individual, those records remain as a legacy of the arrest. To quote Justice Sonya Sotomayor, “[e]ven if you are innocent, you will now join the 65 million Americans with an arrest record and experience the ‘civil

¹ *Gerstein vs. Pugh*, 420 U.S. 103, 125, 95 S. Ct. 854, 43 L. Ed. 2d 54 (1975).

death’ of discrimination by employers, landlords, and whoever else conducts a background check.”²

In the past, there was a prevailing attitude that it was unnecessary to regulate access to outcomes less serious than a conviction – partially based upon the practical obscurity of most criminal records. However, the advent of digitized record systems has opened up an entirely new industry that traffics in personal information. A criminal record – even when it is only the record of an arrest with no conviction – can have serious impacts upon a person’s life. Here are some examples of that impact.

- Schools can and have denied admission to students based upon criminal arrests.
- Employers and licensing authorities can and have denied employment and professional licenses based upon criminal arrests.
- Landlords can and have denied housing based upon criminal arrests.
- Insurance companies can and have utilized arrest records as the basis for higher premiums.

² *Utah vs. Strieff*, 579 U.S. 232, 253, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016)

- Other countries can and have denied entry to visitors with an arrest record.
- Well-intentioned community groups can and have utilized arrest records to deny access to volunteer opportunities.

Above and beyond that, we all have a certain right to privacy in our actions.³

When a neutral and detached magistrate makes a determination that the authorities lack the probable cause necessary to allow a criminal action to proceed, we should protect our citizens from these harmful impacts – or as Justice Sotomayer labeled it, “the civil death of discrimination.”

By allowing for the *automatic* expungement of these records, the Virgin Islands joins a growing movement. Twelve U.S. jurisdictions have or are currently implementing automatic expungement laws.⁴

The Office of the Territorial Public Defender fully supports efforts to increase the availability of expungements for Virgin Islanders. Making these processes automatic provides a great benefit to our citizens. I am

³ See *Types of Consequences*, Collateral Consequences Resource Center, available at <https://ccresourcecenter.org/topics/topics/cctypes/>.

⁴ *Restoration of Rights Project, 50 State Comparison: Expungement, Sealing & Other Record Relief*, Collateral Consequences Resource Center, available at <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside-2-2/>.

pleased to provide my office's wholehearted support for Bill Number 35-0178.

Again, I thank this body for the opportunity to address the question and am happy to answer any questions that I can.