



January 24, 2024

Honorable Diane T. Capehart
Chair, Committee on Rules and Judiciary
Legislature of the Virgin Islands
Capitol Building
Charlotte Amalie, VI 00804

RE: Letter of Support for Bill 35-0178

Dear Senator Capehart:

On behalf of the Virgin Islands Justice Initiative, I offer our support for Bill 35-0178, an Act amending title 5 Virgin Islands Code, chapter 314 to allow for the automatic expungement of charges on a person's arrest records upon a finding by a judge that the arrest lacked probable cause.

We are pleased by the wide support that this Bill has garnered. On December 12, 2023, this bill passed the Committee on Homeland Security, Justice and Public Safety. For that hearing, our organization provided a letter of support and live testimony from our Special Advisor J. Russell B. Pate, Esq.

Our organization believes that this bill is necessary to further economic justice in the Virgin Islands. It is an access to justice issue that we have not streamlined the expungement process to create a path to expungement of arrest records that is accessible to the population. When Virgin Islands law already provides a **right** to expungement for certain charges, why do our people have to carry these charges on their arrest records forever just because they cannot afford an attorney?

The consequences of a criminal record don't end with the conviction, plea, or dismissal of a case. Today, we are focussing on the person's arrest record. For the purposes of this letter, I will be using "arrest record" and Background Check interchangeably. When an employer obtains a Background Check for a potential employee, for \$12 the Virgin Islands Police Department ("VIPD") Records provides a document that shows: (1) the date of the arrest; (2) the charge(s); and (3) the date and disposition of the Court, if available. Virgin Islands law provides a right to expungement for some charges, but requires a Court Order from a Judge in order for VIPD Records to remove any charge from a person's Background Check.

Our 501(c)(3) non-profit organization's Clean Slate Program offers a **free** attorney to Virgin Islanders who are eligible under the law of the Virgin Islands to obtain an expungement. The value of our services is \$2,500 per client served, which is a conservative estimate of how much that individual would have had to pay for similar representation out of pocket.

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We believe that it is unconscionable that Virgin Islanders have to keep charges on their arrest records **forever** because they are too poor to afford an attorney to assist with this process. We believe that it is a racial justice issue, because expungement services are widely available free of charge on the mainland. But here, where we have a population that is majority black these records continue to hold Virgin Islanders back from economic and social mobility.

There are collateral consequences to having charges on your arrest record. One example of a collateral consequence is that arrest records can block a person's ability to obtain gainful employment. Our office recently represented a student at the University of the Virgin Islands who was offered a job upon graduation. This individual did not think anything of it when the employer requested a Background Check from the VIPD. However, that Background Check showed an arrest for a charge that had already been dismissed by the Superior Court of the Virgin Islands and was eligible for expungement. The UVI graduate did not know that the charge would not come off of the Background Check on its own, but would require an Order from a Superior Court Judge to remove the charge from the Background Check. The graduate lost the job opportunity.

This is not a unique case. The majority of referrals to our Clean Slate Program come from VIPD Records when a Virgin Islander goes to pick up their Background Check for employment purposes and learns for the first time that there is a charge on their record from a case that was dismissed. **Most people in that situation immediately stop their job search**, which is understandable. That is the gravity of this mark on their arrest record. Some Virgin Islanders who have the means hire an attorney to petition the Court for an expungement. Some try to do it on their own. With workforce development being a top priority in the Virgin Islands, do we want Virgin Islanders who are actively seeking job opportunities to stop job searching because they cannot afford an attorney or figure out how to represent themselves when the law already provides a right to the expungement of this charge from their record?

Let's turn to Bill 35-0178. This bill is crucial because there is absolutely no reason why a charge should remain on a person's Background Check when there is a finding by a judge that the charge lacked probable cause. Under the 4th Amendment of the Constitution, a police offer must have probable cause to arrest someone.

In the Virgin Islands, after a person is arrested they go 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 parties have the opportunity to ask questions of the police officer and the attorney, on behalf of the defendant, can argue that the Police Officer did not have probable cause for one or more of the charges based on the Probable Cause Fact Sheet. The Magistrate Judge then makes a finding of either yes there was probable cause or no there was no probable cause for each individual charge.

The next hearing that a defendant goes to is Arraignment. This hearing is where the Assistant Attorney General makes the “formal” charges against the defendant. These formal charges may include the same charges from the Advice of Rights hearing, more charges, or less charges.

Not all cases make it to an Arraignment hearing. The Attorney General can decide not to prosecute a case and/or a Magistrate Judge can find that there was no probable cause. Virgin Islanders whose cases don’t make it to the Arraignment hearing may never have any further court involvement and no way of knowing that despite the Attorney General’s decision not to move forward with their case that their arrest -- along with the charge(s) that the police officer thought that the defendant should get -- will still show on the Virgin Islander’s Background Check **forever**, unless they petition the Court for an Order to expunge their arrest record. If the Virgin Islander realizes that the arrest is still on their arrest record by requesting a Background Check from VIPD Records for employment, housing, or other purposes then they find themselves in a position that no Virgin Islander should find themselves in and it is avoidable by this body by supporting Bill 35-0178.

You may ask yourself, don’t these charges automatically come off of a person’s record after a certain period of time? The answer is **no**. The charges **never** come off without petitioning the Court for an expungement. Only a Court Order provides the VIPD with the mandate to remove a charge from a person’s Background Check.

This bill creates a right to a process that automatically removes these charges from a person’s arrest record. Virgin Islanders should not have to pay thousands of dollars for an attorney to remove a charge from their record when a Judge found no probable cause.

If this bill is passed, moving forward we could create a process that will eliminate the need for expungements when no probable cause is found. One idea would be for the VIPD Records Department to wait until the formal charges are filed by the Attorney General at the Arraignment hearing to add any charges to a person’s criminal record. That way only formal charges made by a prosecutor and Constitutionally supported by probable cause will land on a person’s Background Check. This would eliminate the need for this type of expungement in the future.

Here is an example of how this process could benefit a Virgin Islander in the future. Let’s imagine that a person is arrested and the Police Officer says that the person was arrested for a felony, but at the Advice of Rights hearing the Judge says that the Police Officer’s Probable Cause Fact Sheet doesn’t support probable cause for the felony, but the Probable Cause Fact Sheet does support probable cause for a misdemeanor. If only VIPD Records could wait to until after the Arraignment hearing to put the formal misdemeanor charge on the defendant’s Background Check then the defendant would not be burdened with a Background Check that reflects a felony charge that a Superior Court Magistrate Judge found unconstitutional.

THE VIRGIN ISLANDS JUSTICE INITIATIVE

The Virgin Islands Justice Initiative is a 501(c)(3) legal non-profit organization. Our mission is focused on creating opportunities for the poor to succeed through economic justice and poverty

law. We provide free legal representation, education, and resources for economic and social mobility.

We believe that everyone deserves a second chance and our Clean Slate Program helps youth and adults overcome the barriers of their past by providing them with a clean slate. Our Teen Education and Criminal Deterrence Project partners with the Office of the Territorial Public Defender to provide educational opportunities for teenagers in grades 7-10 to learn from attorneys how seemingly innocent behavior could actually be criminal in nature. The goal of this program is to empower youth with the agency to make good decisions that can change the trajectory of their lives.

Tonight, we are holding a reception at St. Thomas Social in Yacht Haven Grande at 6:00 pm. At this reception we will have a young lady who received an expungement of her record earlier this month. She was represented throughout the expungement process by our organization. She will share the impact of her arrest on her, on her family, and let us know what achieving an expungement truly meant to her. More information about our organization is available on our website at vijustice.org.

Sincerely,



Casey Payton, Esq.
Executive Director, Virgin Islands Justice Initiative