

**PRESENTATION OF ATTORNEY GENERAL  
GORDON C. RHEA  
DEPARTMENT OF JUSTICE'S TESTIMONY  
THIRTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS  
IN RE: BILL NO. 36-0057  
COMMITTEE ON HOMELAND SECURITY,  
JUSTICE AND PUBLIC SAFETY  
JUNE 5, 2025**

Good afternoon, Chairman Clifford Joseph, Sr., Committee on Homeland Security, Justice and Public Safety members, Senators, legislative staff, and the listening and viewing audiences. I am Attorney General Gordon Rhea. It is an honor and privilege to appear before you this afternoon.

The Department of Justice appreciates the opportunity to comment on Bill No. 36-0057. The Department of Justice has completed a preliminary review of Bill No. 36-0057 and offers the following comments.

Bill No. 36-0057 seeks to amend title 5 of the Virgin Islands Code, chapter 314, section 3733, subsection (a) to require the automatic expungement of the arrest record and complaint or information when the accused has been acquitted.

It is estimated that 77 million Americans, or 1 in 3 adults, have some type of criminal record.<sup>1</sup> Having a criminal record, including an arrest record or criminal

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<sup>1</sup> See <https://www.ncsl.org/civil-and-criminal-justice/criminal-records-and-reentry-toolkit#:~:text=Approximately%2077%20million%20Americans%2C%20or,adults%2C%20have%20a%20criminal%20record>, last viewed 6/3/2025

charges, can affect a person's ability to obtain employment, higher education and housing. These obstacles can lead to increased poverty, racial disparities, crime and recidivism. While there is real interest in decreasing these barriers, we must remember there also is public interest in criminal justice, which remains a key government function.

An acquittal occurs when there is a finding by a court or jury that a defendant, or someone who has been accused in a court of law, is not guilty of a crime. "In common law jurisdictions, an acquittal means that the criminal prosecution has failed to prove that the accused is guilty beyond a reasonable doubt of the charge presented."<sup>2</sup> It does not, however, mean that the individual accused is not responsible for the crime they were accused of.

Bill No. 36-0057 proposes to require the automatic expungement of the arrest record and complaint or information when someone has been acquitted. Bill No. 36-0057 states "upon the acquittal of an accused, the Court shall enter an order expunging the accused record of the arrest and the criminal complaint or information upon which the accused was tried."

Expungement is defined by the Virgin Islands Code as "the sealing, of criminal records within any court, correctional facility, police department or other

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<sup>2</sup> See <https://en.wikipedia.org/wiki/Acquittal>, last viewed on 6/3/2025

law enforcement agency, concerning a person's arrest, detention, apprehension, trial or disposition of an offense within the criminal justice system.”<sup>3</sup> Further, records “include all arrest records, complaints, warrants, summons, commitments, processing records, photographs, judicial docket records, fingerprints and the collection of DNA samples.”<sup>4</sup>

Bill No. 36-0057 weakens the laws related to the expungement of criminal records and due process protections that already exist within the territory. Virgin Islands law currently requires the expungement of the arrest records, criminal complaint or of an information that does not result in a conviction when, upon petition of the Court:

- (1) Where the case has been dismissed without prejudice and the statute of limitation has expired.
- (2) Where the case has been tried and there was an acquittal.
- (3) Where there is a statement of Nolle Prosequi, and the People have not filed an information or complaint and the statute of limitation has expired.<sup>5</sup>

Additionally, Virgin Islands law allows for the expungement of criminal records that do not result in prosecution, including when a person successfully completes the Pretrial Intervention Program, when a person has received a statement

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<sup>3</sup> 5 V.I.C. § 3731(4)

<sup>4</sup> 5 V.I.C. § 3731(6)

<sup>5</sup> 5 V.I.C. § 3733

of Nolle Prosequi, when a person's case has been dismissed with prejudice, or a person has been arrested and no complaint or information has been filed and the statute of limitation has expired.<sup>6</sup> Expungements are also allowed for misdemeanor convictions<sup>7</sup> and certain marijuana-related convictions.<sup>8</sup>

The proposed legislation goes a step further by requiring the automatic expungement of the arrest record and criminal complaint or information of a person accused of a crime and acquitted. The territory's existing expungement laws already provide a right to expungement, including mandatory expungement in many cases. They also provide due process, ensuring fairness, to both residents and the government.

Beyond legal and practical considerations, there are also collateral consequences of expunging the record of arrest and the criminal complaint or information of an accused. These include the destruction of DNA samples and the erasure of their prior history or contact with law enforcement. A person's prior contact with law enforcement and their history of charges are important pieces of information for prosecutors when evaluating how best to proceed with a case.

For example, the proposed law calls for the expungement, or permanent destruction, of the record of an arrest, which includes fingerprints and DNA samples.

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<sup>6</sup> 5 V.I.C. § 3732

<sup>7</sup> 5 V.I.C. § 3734

<sup>8</sup> 5 V.I.C. § 3734a

Currently, pursuant to Virgin Islands Code, a DNA sample is collected from a suspect upon their arrest of a misdemeanor or felony sex offense. That DNA sample is then uploaded to CODIS, or the Combined DNA Index System, which is maintained by the FBI. Within the CODIS system, hits occur when DNA from a crime scene is matched to another DNA profile in the database. This is a valuable tool used by law enforcement to identify suspects in murder, rape and unsolved cold cases. The proposed legislation could prevent a suspect's DNA from being entered into, or remaining, in CODIS, eliminating a useful resource for the Virgin Islands.

Further, when a suspect is arrested, information related to the arrest is added to the National Crime Information Center, or NCIC, database. The proposed law would automatically remove this entry. The NCIC is routinely used by law enforcement officers and personnel and is directly related to officer safety. For instance, when an officer initiates a traffic stop or prepares to arrest a suspect, the officer can check the NCIC for past arrests, including arrests involving guns or violence, to determine if there is a safety concern. Similarly, a person's prior contact with law enforcement and their history of charges, as recorded in the NCIC, are important pieces of information for prosecutors when evaluating how best to proceed with a case.

The Department of Justice's preference is to maintain the opportunity for its attorneys and an impartial judge to evaluate a Petition for Expungement for legal sufficiency and appropriateness. Currently, sufficient expungement laws exist within the territory to facilitate due process and other concerns that should be considered. It would be beneficial to use our resources to make existing expungement laws more accessible to residents who would otherwise qualify.

I thank the Committee for allowing the Department of Justice to testify on Bill No. 36-0057. This concludes my formal remarks. I respectfully welcome any questions this body may have.