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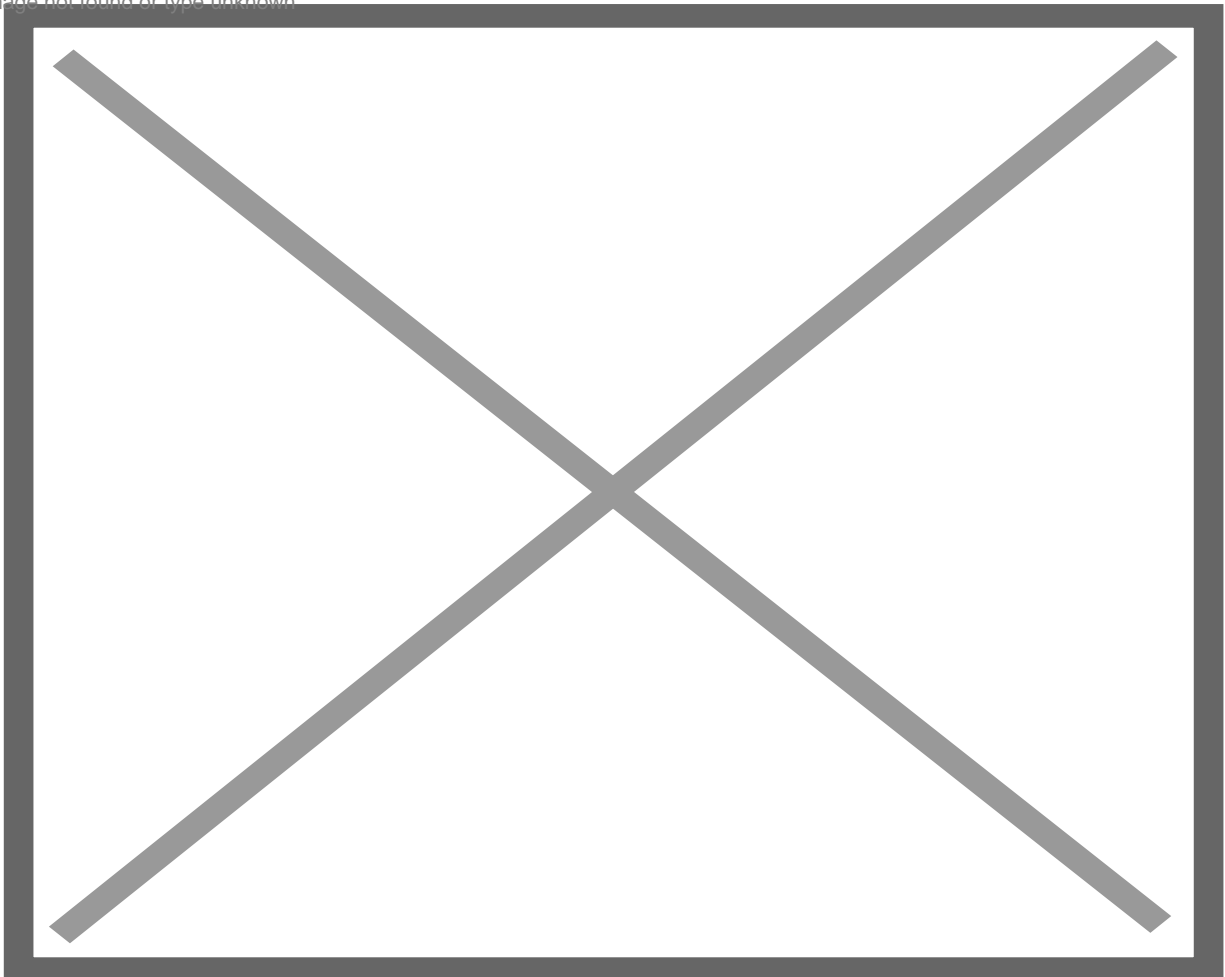
Bill From Javan James For Automatic Expungement of Unjust Arrests Approved in Committee

Sponsored bill aims to address community injustices stemming from wrongful arrests

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Nelcia Charlemagne **December 13, 2023**

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Legislation proposed by Senator Javan James to automatically expunge arrest records if the court determines the arrest was made without probable cause, has been approved in the Senate Committee on Homeland Security, Justice and Public Safety. The measure will be forwarded to the Committee on Rules and Judiciary for further consideration.

If signed into all, Bill 35-0178 would amend Virgin Islands Code to designate expunged criminal records as confidential records.

The act, Mr. James said on Tuesday, is a “vital step towards rectifying the injustices that many individuals in our community face due to wrongful arrest.” He appealed to his colleagues and reminded them that arrests without probable cause can have “severe and lasting consequences,” on individuals, and called for their support for legislation that will ensure that people are “not unfairly burdened by the stigma of an unjust arrest.”

Julie Smith Todman, interim chief of the Office of the Territorial Public Defender, said her office fully supports the proposed amendments to Title 3 of the Code, noting that the OTPD “generally supports any effort to increase the availability and efficiency of expungement under territorial law.” Ms. Smith Todman explained that when an arrest is effected, several records – including fingerprints – are collected. “Even when the court determined that no probable cause existed for the arrest of an individual, those records remain as a legacy of the arrest,” she said.

Russell Pate, managing partner at the Pate Law Firm represented the VI Justice Initiative. He read from a letter penned by VI Justice Initiative Executive Director Casey Payton, and told lawmakers that the failure of the territory to streamline the expungement process to date is a “justice issue.” While Virgin Islanders currently have the right to request an expungement for certain charges, he says that many are unaware, or cannot afford the associated legal costs. “It is unconscionable that Virgin Islanders have to keep charges on their arrest record forever because they are too poor to afford an attorney to assist with this process,” said Mr. Pate.

“We believe it's a racial justice issue because expungement services are widely available free of charge in the mainland. But here, we are a population that is majority black. These records continue to hold Virgin Islanders back from economic and social mobility,” contended Mr. Pate. Senators were largely in support, with Senator Novelle Francis calling the bill a “very good piece of legislation.” He referred to the current process as “cumbersome,” and “very complicated.”

Senator Alma Francis-Heyliger, however, had some reservations. She described examples where people were found not guilty due to “technicalities,” or other causes, and wondered whether it would be fair to expunge the sentences of those who “got off just for the sake of getting off.” Mr. Pate told the lawmaker that whether or not someone is found not guilty after a trial, “someone's gonna Google you later, and they're gonna see you are arrested.” Committee chair Kenneth Gittens also assured her that the proposed legislation references “particular arrests and not previous arrest records where individuals may have been found guilty.”

In an attempt to clarify some of the bill's language, Sen. James introduced an amendment to the proposed legislation and ultimately earned positive votes from all committee members present. He assured constituents that the bill sponsors are “in no way shape or form, protecting criminals.”