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Bill Requiring Automatic Expungement for Acquitted Individuals Advances Despite AG's Warning on DNA Evidence

Sponsored by Senator Alma Francis Heyliger, the bill would clear arrest records upon acquittal without requiring a petition—but AG Rhea warns this could erase critical DNA tied to murder, rape, and cold case investigations.

Senate / **Published On June 06, 2025 06:10 AM /**

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Despite misgivings from the Attorney General, members of the Committee on Homeland Security, Justice, and Public Safety voted in favor of legislation to automatically expunge the records of acquitted individuals.

Senator Alma Francis Heyliger sponsored Bill 36-0057. It is an act amending title 5 Virgin Islands Code, chapter 314, section 3733, subsection (a), and will require “automatic expungement of the arrest record and complaint or information when the accused has been acquitted.”

Ms. Francis Heyliger considered the process of expungement as a “cumbersome task for many.” She lamented that though some individuals are acquitted, “all of this information is still stored with our government.” She considered it an “unfair situation.” The Virgin Islands Code already allows expungement, but as Senator Francis Heyliger outlined, it involves filing a petition and going through the courts.

Territorial Public Defender Julie Smith-Todman was a strong proponent of the bill. She anticipated that implementing the bill “would result in reduction in recidivism rates, as demonstrated in Michigan, where only 4% of Michigan expungement recipients are reconvicted within five years.”

Sean Santos, VIPD’s assistant commissioner of police, called the bill a “vital step towards equity and justice” but nonetheless harbored reservations. Though understanding the importance of expungements, he urged the Legislature to include “specific safeguards and stipulations, especially in cases involving prior arrests of felonious violations to maintain public safety.” He recommended that individuals with “prior arrests or convictions for felonious offenses within a... look-back period, say five to ten years, should not be eligible for automatic expungement, even if they’re acquitted of the current charge.” In such cases, Mr. Santos recommended the filing of a separate petition to be considered by the courts.

He also asked that records “remain accessible to law enforcement agencies, the Attorney General’s Office and the judiciary for investigative or sentencing purposes, even if no longer publicly visible.” Further, he urged that the bill indicate that “automatic expungement applies only to nonviolent offenses.” The expungement of sexual and violent crimes against a person should remain subject to “judicial review”, Mr. Santos argued.

Meanwhile, Attorney General Gordon Rhea argued that the bill “weakens the laws related to the expungement of criminal records and due process protections that already exist.” He complained that there are “collateral consequences of expunging the record of arrest,” which include “the destruction of DNA samples and the erasure of their prior history or contact with law enforcement.”

Mr. Rhea maintained that DNA evidence stored in national databases is a “valuable tool used by law enforcement to identify suspects in murder, rape and unsolved cold cases.” Prior arrest and charging history, he said, are “important pieces of information for prosecutors when evaluating how best to proceed with the case.”

“Sufficient expungement laws exist within the territory to facilitate due process,” assured Mr. Rhea. “It would be beneficial to use our resources to make existing expungement laws more accessible to residents who would otherwise qualify,” he advised.

Senator Avery Lewis wondered whether saving records even after an automatic expungement would “undermine the presumption of innocence, enshrined in our justice system.” Mr. Rhea disagreed. “The fact of an arrest, even though nothing came from it, can be important in the law enforcement business,” he offered. “I hate to see material that can be relevant to investigating and identifying offenders destroyed or removed.”

“I do not favor it, because the automatic expungement means that there's no discretion that can be applied by a judge, and no looking at the individual facts and circumstances,” Mr. Rhea maintained.

Pushing back, Senator Francis Heyliger told the hesitant parties that her bill was written so that “people don't have to find lawyers. They don't have to waste time and spend years upon years to get their record expunged.” She received the backing of Territorial Defender Smith-Todman, who argued that “we're penalizing the poor...Why continue penalizing them when they were found not guilty?”

Ultimately these arguments may have prevailed over the sentiments of the Attorney General. Lawmakers ultimately voted the bill through to the Committee on Rules and Judiciary.

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