

BILL NO. 31-0094

Thirty-first Legislature of the Virgin Islands

March 26, 2015

An Act amending title 5 Virgin Islands Code, subtitle 3, Part 1, chapter 314 relating to expungement of criminal records to enact “The Second Chance For Jobs and Education After a Misdemeanor Conviction Act”

PROPOSED BY: Senator Nereida Rivera-O’Reilly

1 **WHEREAS**, people convicted of a misdemeanor offense and serving less than
2 one year in jail need a second chance. Many people who plea to a misdemeanor offense
3 and serve only a few days to a few weeks in jail are unable to find work after their
4 conviction. They are then unable to provide support for their family, children, and some
5 become a burden on society despite their ability and willingness to work; and

6 **WHEREAS**, existing law does not provide for expungement of misdemeanor
7 convictions; and

8 **WHEREAS**, the Legislature finds that the protracted waiting period for
9 petitioning the expungement of a misdemeanor conviction under the existing rules of the
10 Superior Court hinders the rehabilitation and reentry into the community of those
11 convicted of misdemeanors; and

12

1 **WHEREAS**, it is the collective sense of the members of the Thirty-first
2 Legislature that legislation providing for the expungement of misdemeanor convictions
3 and establishing shorter waiting periods than those under court rules for filing
4 expungement petitions is in the public interest; Now, therefore;

5 *Be it enacted by the Legislature of the Virgin Islands:*

6 **SECTION 1.** This Act may be cited as “The Second Chance For Jobs And
7 Education After A Misdemeanor Conviction Act”.

8 **SECTION 2.** Title 5 Virgin Islands Code, subtitle 3, part 1, chapter 314, section
9 3732 is amended by striking “may” and inserting “must” and by striking “by” and
10 inserting “upon”, and section 3733, subsection (a) is amended in the introductory
11 language by striking “by” and inserting “upon”.

12 **SECTION 3.** Title 5 of the Virgin Islands Code, subtitle 3, part 1, chapter 314,
13 section 3734 is amended by striking the existing language in its entirety and inserting
14 new language that reads as follows:

15 “(a) The Court may expunge the record of a misdemeanor conviction of an
16 individual, including finger prints photographs and DNA samples, and records of other
17 police or judicial proceedings of the individual, upon the petition of the individual and
18 subject to the provisions of this chapter and rules of the Court.

19 (b) The Department of Justice has the burden of proving by clear and
20 convincing evidence that a petition for expungement should not be granted. The Court
21 shall grant the petition for expungement, if the Department of Justice fails to meet its
22 burden.”

23 **SECTION 4** Title 5 Virgin Islands Code, subtitle 3, part 1, chapter 314, section
24 3735 is amended in the following instances:

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1 (a) Subsection (c) is amended at the end of the subsection by adding a
2 sentence that reads as follows: “If the Department of Justice elects not to file an
3 opposition to the petition for expungement, or does not file a timely objection, the Court
4 shall grant the petition for expungement.”

5 (b) Subsection (d) is amended at the end of the subsection after “Justice” by
6 adding the following: “, if the Petitioner is seeking to have more than one record of
7 misdemeanor conviction expunged.”

8 **SECTION 5.** Title 5 Virgin Islands Code, subtitle 3, part 1, chapter 314, section
9 3737 is amended by striking all of the existing language and inserting new language that
10 reads as follows:

11 “(a) Waiting times are calculated from the day a person completes the jail term
12 or probation term whichever is later.

13 (b) Waiting times are as follows:

14 (1) A person who serves between zero and 14 days in jail must wait 6
15 months before filing a petition for expungement of the conviction.

16 (2) A person who serves between 14 days and 60 days must wait 1
17 year before filing a petition for expungement of the conviction.

18 (3) A person who serves between 181 and three hundred and sixty five
19 365 days must wait 5 years from before filing a petition for expungement of the
20 conviction.”

21 **Bill Summary**

22 Section 1 sets forth the short title of the proposed act. Section 2 amends 5 V.I.C.
23 §3732 and section 3733 (a) relating to when criminal records may be expunged. This
24 change makes clear that people who were not convicted are entitles to an expungement.
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1 Section 3 amends section 3734 to grant jurisdiction to expunge records of
2 misdemeanor convictions. The courts have ruled that the existing language in section
3 3734 does not grant the court jurisdiction to expunge a record of a misdemeanor
4 conviction. Nor did the Legislation intend to grant the court jurisdiction to expunge
5 misdemeanor convictions. The only mention of expungement of misdemeanor
6 conviction records in section 3734's existing language is in the descriptive section
7 heading, or catchline to the section. Under the Virgin Islands statutory construction law,
8 the descriptive headings or catch lines preceding the texts of the individual sections of the
9 Virgin Islands Code are not a part of the law. 1 V.I.C. §45 (a) (2), and no implication,
10 inference, or presumption of a legislative construction may be drawn from them. **1 V. I.**
11 **C. §44.** Consequently, the existing language in section 3734 provides only the procedure
12 for filing a petition, not a grant of authority to the court to expunge misdemeanor
13 conviction records. *See, In re Petition of Mejia, 58 V.I. 3, (V.I. Super. 2013) citing In*
14 *re Petition of Dorsett Misc. Civ. No St. T.-13-MC-04, (2013 LEXIS 23).* Moreover, the
15 legislative history of section 3734 enacted under Act No. 7136 evinces that the
16 Legislature intended to authorize the expungement of records only in certain criminal
17 matters that were disposed of without a conviction. *Id.* Accordingly, section 2 changes
18 the former policy and gives the courts authority to expunge misdemeanor convictions.

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20 Section 4 amends section 3735 relating the granting of a petition or expungement
21 by directing the court to grant the expungement upon untimely objection or no response
22 from the Government. Section 4 (b) allows for a judge to conduct a hearing on any
23 person seeking the expungement of two or more misdemeanor, even if the Department of
24 Justice does not object. Under exiting the law, the court may schedule a hearing despite
25 the lack of opposition from the Government.

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27 Section 5 removes the provision that mandates that decisions of the Superior
28 Court are not appealable. The section also adds provisions that set forth waiting times for
29 an expungement shorter than those under court rules. Existing law does not provide
30 waiting times, thus the Superior Court has promulgated waiting times in Superior Court
31 Rule 400.6.1. Under the Superior Court's Rule 400.6.1 the waiting time ranges from two
32 years for a conviction where the jail time is less than six months, five years for jail time
33 of six months to not more than a year and involving no violence, threats of violence or
34 domestic violence, ten years for jail time of six months to not more than a year and
35 involving violence, threats of violence, or domestic violence, and for special
36 requirements for convictions of sexual offenses requiring sexual offender registration
37 under 14 V.I.C. §1722. Under this proposed bill, the waiting times would range from six
38 months, one year (for serving up to 14 days and 60 days, respectively) and five years for
39 serving jail time of 181 days to 365 days.

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41 **BR15-0446/February 10 2015/YLT**

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43 **DRAFTER'S NOTE**

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45 **In section 5, subsection (b) there is an internal inconsistency with subsection**
46 **(a). The waiting periods in subsection (b) for filing expungement petitions are based**
47 **solely upon time served, and there also appears to be gaps in the periods for filing**
48 **an expungement period. In other words not all periods are covered between 60 days**
49 **and 181 days.**