



The mission of VIDOL is to administer a system of effective programs and services designed to develop, protect, and maintain a viable workforce.

GARY MOLLOY

COMMISSIONER

MARCH 12, 2024

Virgin Islands Department of Labor Testimony

Committee on Homeland Security, Public Safety and Justice Meeting

March 12, 2024

Good Morning, Senator Kenneth L. Gittens, Chairperson of the Committee on Homeland Security, Public Safety and Justice, distinguished Senators, and the viewing and listening audience. I am Assistant Commissioner and Legal Counsel Nesha Christian-Hendrickson, representing Gary Molloy, Commissioner of the Virgin Islands Department of Labor (VIDOL).

Thank you for inviting the Virgin Islands Department of Labor to provide crucial testimony on Bill No. 35-0115 - An Act repealing title 24 Virgin Islands Code chapter 17, subchapter II, “Limited Use of Criminal Records in Hiring Practices,” and enacting in its place “The Fair Chance for Employment Act” relative to criminal records checks in the employment application process; and amending title 3 Virgin Islands Code, Chapter 25, subchapter I, section 452 requiring the Director of Personnel to develop and implement fair chance hiring policies; and for other related proposes.

The Department of Labor is in agreement with the spirit of the Bill with a few caveats. The Bill attempts to provide additional opportunities for those who may have had a previous conviction or other criminal contact. We are all aware that there are times in the past when individuals make one or two bad choices, these choices then spiral their lives in a negative direction. In keeping with the Department of Labor’s Vision to Protect, Improve, and Employ (PIE) the entire Virgin

Islands labor force we agree that second chances are needed. We want everyone to get a piece of the PIE!

We at VIDOL acknowledge the need to employ as many people as possible. By creating second chances more people will contribute thereby increasing the overall taxable wage base. This includes an invitation back to the workforce for persons with criminal contacts (arrested but not convicted) as well as include persons convicted of crimes. Research indicates that the majority of states already have a Fair Chance in Employment Act.

The current law “Limited Use of Criminal Records in Hiring Practices” states that: ‘a) No employer, whether a public agency or private individual or corporation, may ask any applicant for employment to disclose, through any written form or orally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, or participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law; nor may any employer seek from any source whatsoever, or use, as a factor in determining any condition of employment, including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or post-trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law.’ VI ST tit. 24, § 465.

In practical terms, requesting a police report when an individual was not convicted of a crime would be a violation of the current statute. In other words, if you have not been convicted of a crime, an employer has no right to ask you to produce proof. The proposed law says after a conditional offer the employer can ask you for your record. We understand this maybe controversial for some. VIDOL's position remains that there must be protections for both the employer and the job seeker by creating second chances.

The proposed Bill goes further to add opportunities for those who are arrested but not convicted, and those who are convicted of crimes.

There are a few suggested edits.

In the definition section an employer is defined as:

(b) "Employer" means a public agency private individuals, businesses and corporations, training and apprenticeship program, vendor or contractor.

VIDOL assumes that the definition was meant to include a comma after public agency.

Therefore line 4 would read:

(b) "Employer" **means a public agency, private individuals, businesses,** and corporations, training and apprenticeship program, vendor or contractor.

Thereby differentiating a public agency from a private individual.

“§ 467. Rescission of conditional offers of employment 10 (a) An employer may rescind a conditional offer of employment for an applicant who has pending charges filed within the last six months.

§ 468. Exceptions 1 (a) Nothing in this subchapter prohibits an employer from asking an applicant orally 2 or in writing about an arrest for which the applicant is out on bail or his own recognizance.”

Under the proposed bill, we interpret section 467 and section 468 to mean that a person can be arrested with pending charges and be required to disclose even though no conviction has occurred.

Section 467(b) states:

“(b) Employers who rescind offers of employment to job applicants due to criminal history must:

- 1) State in writing that the applicant’s criminal history was the basis for the rescission of the conditional offer and
- 2) Provide an opportunity for the applicant to discuss the rescission of the offer with the employers or a qualified person designated by the employer.”

This procedure does not balance the administrative realities that employers in today's economy are faced with. VIDOL agrees that a short-written statement when an offer to rescind may be appropriate, but requiring an opportunity to meet with the individual is too managerially difficult.

Furthermore, careful consideration ought to be given to Section 467(b) as it can provide for a very toxic, tense and even violent result given that the rejection calls for in-person consultation.

As such, the Department of Labor remains in full support of fair employment standards and opportunities for all within our community. It is our position that to ask an employer to comply with Section 467 (b) would be too administratively difficult. VIDOL would suggest a review of the complaint and resolution procedure as outlined in the proposed bill.

To provide some national background according to the National Employment Law Project, “...Nationwide, 37 states and over 150 cities and counties have adopted what is widely known as “ban the box” so that employers consider a job candidate’s qualifications first—without the stigma of a conviction or arrest record. Borne out of the work of All of Us or None of Us, these policies provide applicants a fair chance at employment by removing conviction and arrest history questions from job applications and delaying background checks until later in the hiring process.”

Additionally, in the Federal system, the Federal Office of Personnel Management has also provided a Final Rule called “Fair Chance To Compete for Jobs” as found on their site: “...the Office of Personnel Management (OPM) is issuing final regulations governing when, during the hiring process, a hiring agency can request information typically collected during a background investigation from an applicant for Federal employment. In addition, OPM is issuing new regulations establishing the requirement for the timing of the collection of criminal history

information and for governing complaint procedures under which an applicant for a position in the civil service may submit a complaint, or any other information, relating to compliance by an employee of an agency about the timing of collection of criminal history information.

Furthermore, the Final Rule outlines adverse action procedures that apply when it is alleged that an agency employee has violated the requirements and appeal procedures that will be available from a determination by OPM adverse to the Federal employee.”

Hence, with the adoption of the Fair Chance for Employment Act, Ban the Box and the Final Rule - Fair Chance to Compete for Jobs, proposed bill 35-0115 seems to suggest a bit of redundancy.

Turning to what we are doing on a local level, we respect the position of the Division of Personnel that the protections that the proposed bill are already built into the GVI employment hiring process.

Additionally, as outlined by the Bureau of Corrections wrap around services are provided to ensure that persons who are justice involved can get the best possible start once they exit custody. VIDOL is currently in partnership with the BOC to create work-based learning opportunities. There is a registered Apprenticeship Program in Culinary Arts. Moreover, VIDOL has been successful in connecting justice involved job seekers to employers who have Landscaping jobs.

Another division that is key in preventing discrimination is our Labor Relations division that performs vigilant investigating of any cases in which claims of discrimination or potential wrongful discharge are presented.

VIDOL serves all persons including those justice-involved in a variety of ways. One such way is the Workforce Opportunity Tax Credit (WOTC) program. VIDOL's Workforce Development Unit currently implements WOTC, a federal tax credit available to employers who hire individuals from eligible target groups with significant barriers to employment. Eligible companies can file at: <https://workforce.vidol.gov/wotc>

Employers must apply for and receive a certification verifying the new hire is a member of a targeted group before they can claim the tax credit. After the required certification is secured, taxable employers claim the WOTC as a general business credit against their income taxes, and tax-exempt employers claim the WOTC against their payroll taxes.

Individuals that were convicted of a felony and are hired within one year after the date of the conviction or release from prison are included. WOTC allows employers to earn between \$2,400 to \$9,600 in federal tax credit per new hire, make the hiring decision, and they have no limit to the number of new hires who can qualify for the tax savings.

The Qualified groups locally are:

- 1) Qualified IV-A ("TANF") recipient; 2) Qualified Veteran; 3) Qualified Ex-Felon;
- 4) Vocational Rehabilitation Referral; 5) Supplemental Nutrition Assistance Program (SNAP or "food stamps") recipient; 6) Long-term Family Assistance (Long-term TANF) recipient; and 7) Qualified Long-term Unemployment recipient.

Based on VIDOL's reading of the proposed bill the most significant change from the current law to the proposed bill is the increase of protections for those who are convicted, however, the grievance process especially in requiring a meeting with the rejected applicant warrants further review. There must be a balance between the employer and the job seeker.

I would like to thank the VIDOL team and all my colleagues for providing background and informing us of our suggestions regarding this Bill. I stand ready to answer any questions you may have.