

House Bill 13

By: Representatives Scott of the 76th, Dukes of the 154th, Davis of the 87th, Schofield of the 60th, Hutchinson of the 107th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,
2 relating to the Georgia Crime Information Center, so as to reduce the fees associated with
3 filing for record restrictions or the inspection and correction of criminal records; to provide
4 a definition; to remove theft from the list of convictions for which restrictions shall not be
5 appropriate; to remove the prohibition on record restrictions in the event multiple charges
6 were tried and some but not all of the charges resulted in an acquittal; to allow the restriction
7 of criminal history record information for convictions of certain misdemeanors and felonies
8 after the completion of the sentence and a conviction-free period of time; to provide date of
9 applicability; to provide for related matters; to repeal conflicting laws; and for other
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
14 Georgia Crime Information Center, is amended by revising Code Section 35-3-37, relating
15 to review of individual's criminal history record information, definitions, privacy
16 considerations, written application requesting review, and inspection, as follows:

H. B. 13

17 "35-3-37.

18 (a) As used in this Code section, the term:

19 (1) 'Drug court treatment program' means a treatment program operated by a drug court
20 division in accordance with the provisions of Code Section 15-1-15.

21 (2) 'Entity' means the arresting law enforcement agency, including county and municipal
22 jails and detention centers.

23 (2.1) 'Felony sexual offense' means any felony offense of a sexual nature as set forth in
24 Chapter 6 of Title 16.

25 (3) 'Mental health treatment program' means a treatment program operated by a mental
26 health court division in accordance with the provisions of Code Section 15-1-16.

27 (4) 'Nonserious traffic offense' means any offense in violation of Title 40 which is not
28 prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the
29 laws of a state which would not be considered a serious traffic offense under the laws of
30 this state if committed in this state.

31 (5) 'Prosecuting attorney' means the Attorney General, a district attorney, or the
32 solicitor-general who had jurisdiction where the criminal history record information is
33 sought to be modified, corrected, supplemented, amended, or restricted. If the offense
34 was a violation of a criminal law of this state which, by general law, may be tried by a
35 municipal, magistrate, probate, or other court that is not a court of record, the term
36 'prosecuting attorney' shall include the prosecuting officer of such court or, in the absence
37 of such prosecuting attorney, the district attorney of the judicial circuit in which such
38 court is located.

39 (6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record
40 information of an individual relating to a particular offense shall be available only to
41 judicial officials and criminal justice agencies for law enforcement or criminal
42 investigative purposes or to criminal justice agencies for purposes of employment in
43 accordance with procedures established by the center and shall not be disclosed or

44 otherwise made available to any private persons or businesses pursuant to Code
45 Section 35-3-34 or to governmental agencies or licensing and regulating agencies
46 pursuant to Code Section 35-3-35.

47 (7) 'Serious violent felony' shall have the same meaning as set forth in Code Section
48 17-10-6.1.

49 (8) 'State' includes any state, the United States or any district, commonwealth, territory,
50 or insular possession of the United States, and the Trust Territory of the Pacific Islands.

51 (9) 'Veterans treatment program' means a treatment program operated by a veterans court
52 division in accordance with the provisions of Code Section 15-1-17.

53 (10) 'Youthful offender' means any offender who was less than 21 years of age at the
54 time of his or her arrest.

55 (b) Nothing in this article shall be construed so as to authorize any person, agency,
56 corporation, or other legal entity of this state to invade the privacy of any citizen as defined
57 by the General Assembly or as defined by the courts other than to the extent provided in
58 this article.

59 (c) The center shall make an individual's criminal history record information available for
60 review by such individual or his or her designee upon written application to the center.

61 (d) If an individual believes his or her criminal history record information to be inaccurate,
62 incomplete, or misleading, he or she may request a criminal history record information
63 inspection at the center. The center at which criminal history record information is sought
64 to be inspected may prescribe reasonable hours and places of inspection and may impose
65 such additional procedures or restrictions, including fingerprinting, as are reasonably
66 necessary to assure the security of the criminal history record information, to verify the
67 identities of those who seek to inspect such information, and to maintain an orderly and
68 efficient mechanism for inspection of criminal history record information. The fee for
69 inspection of criminal history record information shall not exceed ~~\$15.00~~ \$5.00, which
70 shall ~~not~~ include the cost of the fingerprinting.

71 (e) If the criminal history record information is believed to be inaccurate, incomplete, or
72 misleading, the individual may request that the entity having custody or control of the
73 challenged information modify, correct, supplement, or amend the information and notify
74 the center of such changes within 60 days of such request. In the case of county and
75 municipal jails and detention centers, such notice to the center shall not be required. If the
76 entity declines to act within 60 days of such request or if the individual believes the entity's
77 decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the
78 issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the
79 right to appeal to the court with original jurisdiction of the criminal offenses in the county
80 where the entity is located.

81 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order
82 from the court with original jurisdiction of the criminal offenses that the subject
83 information be modified, corrected, supplemented, or amended by the entity with custody
84 of such information. Notice of the appeal shall be provided to the entity and the
85 prosecuting attorney. A notice sent by registered or certified mail or statutory overnight
86 delivery shall be sufficient service on the entity having custody or control of the disputed
87 criminal history record information. The court shall conduct a de novo review and, if
88 requested by a party, the proceedings shall be recorded.

89 (g)(1) Should the court find by a preponderance of the evidence that the criminal history
90 record information in question is inaccurate, incomplete, or misleading, the court shall
91 order such information to be appropriately modified, corrected, supplemented, or
92 amended as the court deems appropriate. Any entity with custody, possession, or control
93 of any such criminal history record information shall cause each and every copy thereof
94 in its custody, possession, or control to be altered in accordance with the court's order
95 within 60 days of the entry of the order.

96 (2) To the extent that it is known by the requesting individual that an entity has
97 previously disseminated inaccurate, incomplete, or misleading criminal history record

98 information, he or she shall, by written request, provide to the entity the name of the
99 individual, agency, or company to which such information was disseminated. Within 60
100 days of the written request, the entity shall disseminate the modification, correction,
101 supplement, or amendment to the individual's criminal history record information to such
102 individual, agency, or company to which the information in question has been previously
103 communicated, as well as to the individual whose information has been ordered so
104 altered.

105 (h) Access to an individual's criminal history record information, including any
106 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
107 restricted by the center for the following types of dispositions:

108 (1) Prior to indictment, accusation, or other charging instrument:

109 (A) The offense was never referred for further prosecution to the proper prosecuting
110 attorney by the arresting law enforcement agency and:

111 (i) The offense against such individual is closed by the arresting law enforcement
112 agency. It shall be the duty of the head of the arresting law enforcement agency to
113 notify the center whenever a record is to be restricted pursuant to this division within
114 30 days of such decision. A copy of the notice shall be sent to the accused and the
115 accused's attorney, if any, by mailing the same by first-class mail within seven days
116 of notifying the center; or

117 (ii) The center does not receive notice from the arresting law enforcement agency that
118 the offense has been referred to the prosecuting attorney or transferred to another law
119 enforcement or prosecutorial agency of this state, any other state or a foreign nation,
120 or any political subdivision thereof for prosecution and the following period of time
121 has elapsed from the date of the arrest of such individual:

122 (I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated
123 nature, two years;

124 (II) If the offense is a felony, other than a serious violent felony or a felony sexual
125 offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age,
126 four years; or

127 (III) If the offense is a serious violent felony or a felony sexual offense specified
128 in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

129 If the center receives notice of the filing of an indictment subsequent to the restriction
130 of a record pursuant to this division, the center shall make such record available in
131 accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive
132 notice of a charging instrument within 30 days of the applicable time periods set forth
133 in this division, such record shall be restricted by the center for noncriminal justice
134 purposes;

135 (B) The offense was referred to the prosecuting attorney but was later dismissed;

136 (C) The grand jury returned two no bills; or

137 (D) The grand jury returned one no bill and the applicable time period set forth in
138 division (ii) of subparagraph (A) of this paragraph has expired; and

139 (2) After indictment or accusation:

140 (A) Except as provided in subsection (i) of this Code section, all charged offenses were
141 dismissed, nolle prossed, or reduced to a violation of a local ordinance;

142 (B) The individual was sentenced in accordance with the provisions of subsection (a)
143 or subsection (c) of Code Section 16-13-2, and either the court ordered restriction upon
144 sentencing as permitted in Code Section 16-13-2, or the individual successfully
145 completed the terms and conditions of his or her probation;

146 (C) The individual pleaded guilty to or was found guilty of a violation of paragraph (2)
147 or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in accordance with
148 the provisions of subsection (c) of Code Section 3-3-23.1, and either the court ordered
149 restriction upon sentencing as permitted in Code Section 3-3-23.1, or the individual
150 successfully completed the terms and conditions of his or her probation;

151 (D) The individual successfully completed a drug court treatment program, mental
152 health treatment program, or veterans treatment program, the individual's offense has
153 been dismissed or nolle prossed, and he or she has not been arrested during such
154 program, excluding any arrest for a nonserious traffic offense; or

155 (E) The individual was acquitted of all of the charged offenses by a judge or jury
156 unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial
157 court through clear and convincing evidence that the harm otherwise resulting to the
158 individual is clearly outweighed by the public interest in the criminal history record
159 information being publicly available because either:

160 (i) The prosecuting attorney was barred from introducing material evidence against
161 the individual on legal grounds, including, without limitation, the granting of a motion
162 to suppress or motion in limine; or

163 (ii) The individual has been formally charged with the same or similar offense within
164 the previous five years.

165 (i) After the filing of an indictment or accusation, an individual's criminal history record
166 information shall not be restricted if:

167 (1) The prosecuting attorney affirmatively indicates that the offense was dismissed, nolle
168 prossed, or reduced to a violation of a local ordinance because:

169 (A) Of a plea agreement resulting in a conviction of the individual for an offense
170 arising out of the same underlying transaction or occurrence as the conviction;

171 (B) The prosecuting attorney was barred from introducing material evidence against
172 the individual on legal grounds, including, without limitation, the granting of a motion
173 to suppress or motion in limine;

174 (C) The conduct which resulted in the arrest of the individual was part of a pattern of
175 criminal activity which was prosecuted in another court of the state or a foreign nation;
176 or

177 (D) The individual had diplomatic, consular, or similar immunity or inviolability from
178 arrest or prosecution; or

179 ~~(2) The charged offenses were tried and some, but not all, of the offenses resulted in an~~
180 ~~acquittal; or~~

181 ~~(3)~~(2) The individual was acquitted of all charged offenses but it was later determined
182 that the acquittal was the result of jury tampering or judicial misconduct.

183 (j)(1) When an individual had a felony charge dismissed or nolle prossed or was found
184 not guilty of such ~~charge~~ offense but was convicted of a misdemeanor offense that was
185 not a lesser included offense of the felony charge, such individual may petition the court
186 in which he or she was accused or convicted, as applicable, or, if such charge was
187 dismissed, the superior court in the county where the arrest occurred to restrict access to
188 criminal history record information for the felony charge within four years of the arrest.
189 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
190 Such petition shall be served on the arresting law enforcement agency and the
191 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days
192 of the filing of the petition. The court shall hear evidence and shall grant an order
193 restricting such criminal history record information if the court determines that the
194 misdemeanor conviction was not a lesser included offense of the felony charge and that
195 the harm otherwise resulting to the individual clearly outweighs the public interest in the
196 criminal history record information being publicly available.

197 (2) When an individual was convicted of an offense and was sentenced to punishment
198 other than the death penalty, but such conviction was vacated by the trial court or
199 reversed by an appellate court or other post-conviction court, the decision of which has
200 become final by the completion of the appellate process, and the prosecuting attorney has
201 not retried the case within two years of the date the order vacating or reversing the
202 conviction became final, such individual may petition the court in which he or she was
203 convicted to restrict access to criminal history record information for such offense. Such

204 court shall maintain jurisdiction over the case for this limited purpose and duration. Such
205 petition shall be served on the prosecuting attorney. If a hearing is requested, such
206 hearing shall be held within 90 days of the filing of the petition. The court shall hear
207 evidence and shall determine whether granting an order restricting such criminal history
208 record information is appropriate, giving due consideration to the reason the judgment
209 was reversed or vacated, the reason the prosecuting attorney has not retried the case, and
210 the public's interest in the criminal history record information being publicly available.

211 (3) When an individual's charged offense has remained on the dead docket for more than
212 12 months, such individual may petition the court in which the charged offense is
213 pending to restrict access to criminal history record information for such charged offense.
214 Such petition shall be served on the prosecuting attorney. If a hearing is requested, such
215 hearing shall be held within 90 days of the filing of the petition. The court shall hear
216 evidence and shall determine whether granting an order restricting such criminal history
217 record information is appropriate, giving due consideration to the reason the offense was
218 placed on the dead docket; provided, however, that the court shall not grant such motion
219 if an active warrant is pending for such individual.

220 (4)(A) When an individual was convicted in this state of a misdemeanor or a series of
221 misdemeanors arising from a single incident, provided that such conviction was not for
222 any offense listed in subparagraph (B) of this paragraph, and such individual has
223 completed the terms of his or her sentence and has not been convicted of any crime in
224 any jurisdiction for ~~at least four years~~ a period of time identified in subparagraph (D)
225 of this paragraph prior to filing a petition under this subparagraph, excluding any
226 conviction for a nonserious traffic offense, and provided, further, that he or she has no
227 pending charged offenses, he or she may petition the court in which the conviction
228 occurred to restrict access to criminal history record information. Such court shall
229 maintain jurisdiction over the case for this limited purpose and duration. Such petition
230 shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall

231 be held within 90 days of the filing of the petition. The court shall hear evidence and
232 shall grant an order restricting such criminal history record information if it determines
233 that the harm otherwise resulting to the individual clearly outweighs the public's interest
234 in the criminal history record information being publicly available.

235 (B) Record restriction under this subsection shall not be appropriate if the individual
236 was convicted of a serious violent felony or felony sexual offense, as well as any of the
237 following offenses:

- 238 (i) Family violence simple assault in violation of subsection (d) of Code Section
239 16-5-20, unless the individual was a youthful offender;
- 240 (ii) Family violence simple battery in violation of subsection (f) of Code Section
241 16-5-23, unless the individual was a youthful offender;
- 242 (iii) Family violence battery in violation of subsection (f) of Code Section 16-5-23.1,
243 unless the individual was a youthful offender;
- 244 (iv) Family violence stalking in violation of Code Section 16-5-90;
- 245 (v) Violating a family violence order in violation of Code Section 16-5-95;
- 246 (vi) Child molestation in violation of Code Section 16-6-4;
- 247 (vii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 248 (viii) Improper sexual contact by employee or agent and improper sexual contact by
249 a foster parent in violation of Code Section 16-6-5.1;
- 250 (ix) Public indecency in violation of subsection (b) of Code Section 16-6-8;
- 251 (x) Keeping a place of prostitution in violation of Code Section 16-6-10;
- 252 (xi) Pimping in violation of Code Section 16-6-11;
- 253 (xii) Pandering by compulsion in violation of Code Section 16-6-12;
- 254 (xiii) Sexual battery in violation of Code Section 16-6-22.1;
- 255 (xiv) Obstructing or hindering persons making emergency telephone call in violation
256 of Code Section 16-10-24.3;
- 257 (xv) Peeping Toms in violation of Code Section 16-11-61;

258 (xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of
259 Chapter 12 of Title 16;

260 (xvii) ~~Theft in violation of Chapter 8 of Title 16; provided, however, that such~~
261 ~~prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud~~
262 ~~in violation of Code Section 16-8-14 or 16-8-14.1, as applicable~~ Reserved; or

263 (xviii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

264 (C) An individual shall be limited to filing a petition under this paragraph to a lifetime
265 maximum of requesting record restriction on two convictions for a misdemeanor or a
266 series of misdemeanors arising from a single incident. For the purposes of this
267 subparagraph, the conviction of two or more offenses charged in separate counts of one
268 or more accusations consolidated for trial shall be deemed to be one conviction. If a
269 petition under this subsection has been denied, an individual may file a subsequent
270 petition on the same conviction for a misdemeanor or series of misdemeanors arising
271 from a single incident after the expiration of two years from the date of the final order
272 from the previous petition.

273 (D) Criminal history record information for convictions shall be eligible for restriction
274 after a conviction-free period of time following the completion of a sentence, based
275 upon the original offense, as follows:

276 (i) Two years if the offense is a misdemeanor; or

277 (ii) Four years if the offense is a felony.

278 (5) When an individual was arrested on a fugitive from justice warrant as provided in
279 Code Section 17-13-4, such individual may petition the superior court in the county
280 where the arrest occurred to restrict access to criminal history record information for such
281 warrant. Such court shall maintain jurisdiction over the case for this limited purpose and
282 duration. Such petition shall be served on the arresting law enforcement agency and the
283 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days
284 of the filing of the petition. The court shall hear evidence and shall grant an order

285 restricting such criminal history record information if the court determines that
286 circumstances warrant restriction and that the harm otherwise resulting to the individual
287 clearly outweighs the public interest in the criminal history record information being
288 publicly available.

289 (6)(A) A defendant convicted of an offense and sentenced while such individual was
290 a victim of an offense of trafficking under Code Section 16-5-46 may petition the court
291 imposing the sentence to restrict such conviction. Such court shall maintain the
292 jurisdiction, power, and authority to restrict such conviction and sentence.

293 (B) The defendant shall serve the petition provided for under paragraph (1) of this
294 subsection upon the prosecuting attorney, and such petition:

295 (i) Shall be submitted on a form promulgated by the Attorney General; and

296 (ii) May include documentation of a defendant's status as a victim of an offense of
297 trafficking under Code Section 16-5-46 at the time of the offense; provided, however,
298 that official documentation shall not be required to obtain relief under this paragraph.
299 Such documentation shall create a rebuttable presumption that the defendant was a
300 victim of trafficking under Code Section 16-5-46. As used in this subparagraph, the
301 term 'official documentation' includes, but is not limited to, the following:

302 (I) A copy of an official record, certification, or eligibility letter from a federal,
303 state, tribal, or local proceeding showing that the defendant was a victim of
304 trafficking under Code Section 16-5-46;

305 (II) An affidavit, a letter, or sworn testimony from a member of the clergy, medical
306 professional, member of a victim services organization, or certified, licensed, or
307 registered professional from whom the defendant has sought assistance, counseling,
308 or legal counsel related to his or her victimization; or

309 (III) Any other evidence that the court determines is of sufficient credibility or
310 probative value.

311 (C) If the prosecuting attorney, to the court, consents in writing to the restriction of
312 such conviction and sentence or fails to respond to such petition within 30 days of
313 service, the court imposing the conviction and sentence shall, without notice or hearing,
314 issue an order restricting the conviction and sentence.

315 (D) If the prosecuting attorney, to the court, objects in writing to the petition, the court
316 shall determine, by a preponderance of the evidence, whether the defendant committed
317 such offense while such individual was a victim of an offense of trafficking under Code
318 Section 16-5-46. If the court finds, by a preponderance of the evidence, that the
319 defendant committed such offense while such individual was a victim of an offense of
320 trafficking under Code Section 16-5-46, the court may issue an order restricting the
321 conviction and sentence. The court shall hold a hearing within 90 days of the filing of
322 the petition to hear evidence for purposes of making a determination under this
323 subparagraph or make a determination upon the pleadings or record.

324 (E) When the petition provided for under subparagraph (A) of this paragraph is filed,
325 it shall be filed under seal.

326 (F) For purposes of considering such petition, testimony from the defendant or any
327 other party may be taken by the court by remote electronic means.

328 (G) No fee shall be charged to an individual for restricting access to criminal history
329 record information under this paragraph.

330 (7) When an individual was convicted in this state of an offense for which that individual
331 has been granted a pardon from the State Board of Pardons and Paroles as provided in the
332 Constitution and Code Section 42-9-42, provided that the offense was not a serious
333 violent felony as such term is defined in Code Section 17-10-6.1 or a sexual offense as
334 such term is defined in Code Section 17-10-6.2, and provided, further, that such
335 individual has not been convicted of any crime in any jurisdiction, excluding any
336 conviction for a nonserious traffic offense, since the pardon was granted, and provided,
337 further, that he or she has no pending charged offenses, he or she may petition the court

338 in which the conviction occurred to restrict access to criminal history record information.
339 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
340 Such petition shall be served on the prosecuting attorney. If a hearing is requested, such
341 hearing shall be held within 90 days of the filing of the petition. The court shall hear
342 evidence and shall grant an order restricting such criminal history record information if
343 it determines that the harm otherwise resulting to the individual clearly outweighs the
344 public's interest in the criminal history record information being publicly available.

345 (8)(A) When an individual was convicted in this state of a misdemeanor or a series of
346 misdemeanors arising from a single incident, of certain felonies or a series of felonies
347 arising from a single incident, provided that such individual successfully completed the
348 terms of his or her sentence and, since completing the terms of his or her sentence, has
349 not been convicted of any crime, excluding any nonserious traffic offenses, for a period
350 of time determined by the original offense, as listed in subparagraph (C) of this
351 paragraph, and provided, further, that he or she was not convicted in this state of a
352 misdemeanor or felony offense or under any other state's law with similar provisions
353 of any of the offenses listed in subparagraph (B) of this paragraph, he or she may
354 petition the superior court in the county where the conviction occurred to restrict access
355 to criminal history record information. Such court shall maintain jurisdiction over the
356 case for this limited purpose and duration. Except when the offense is a misdemeanor
357 of a high and aggravated nature, if the statutory requirements of this subparagraph have
358 been met, restriction must be granted and the position of the prosecutor or of any victim
359 cannot be considered by the court. If the offense is a misdemeanor of a high and
360 aggravated nature, or if an individual requests the restriction of his or her record prior
361 to the conclusion of the period of nonconviction defined in subparagraph (C) of this
362 paragraph, such petition shall be served on the prosecuting attorney. If a hearing is
363 requested, such hearing shall be held within 90 days of the filing of the petition and the
364 position of the prosecutor or of any victim may be considered by the court. The court

365 shall hear evidence and shall determine whether granting an order restricting such
366 criminal history record information is appropriate, giving due consideration to the
367 individual's conduct and the public's interest in the criminal history record information
368 being publicly available.

369 (B) Record restriction under this subsection shall not be appropriate if the individual
370 was convicted of a serious violent felony or felony sexual offense, as well as any of the
371 following offenses:

372 (i) Family violence simple assault in violation of subsection (d) of Code Section
373 16-5-20, unless the individual was a youthful offender;

374 (ii) Family violence simple battery in violation of subsection (f) of Code Section
375 16-5-23, unless the individual was a youthful offender;

376 (iii) Family violence battery in violation of subsection (f) of Code Section 16-5-23.1,
377 unless the individual was a youthful offender;

378 (iv) Family violence stalking in violation of Code Section 16-5-90;

379 (v) Violating a family violence order in violation of Code Section 16-5-95;

380 (vi) Child molestation in violation of Code Section 16-6-4;

381 (vii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

382 (viii) Improper sexual contact by employee or agent and improper sexual contact by
383 a foster parent in violation of Code Section 16-6-5.1;

384 (ix) Public indecency in violation of subsection (b) of Code Section 16-6-8;

385 (x) Keeping a place of prostitution in violation of Code Section 16-6-10;

386 (xi) Pimping in violation of Code Section 16-6-11;

387 (xii) Pandering by compulsion in violation of Code Section 16-6-12;

388 (xiii) Sexual battery in violation of Code Section 16-6-22.1;

389 (xiv) Obstructing or hindering persons making emergency telephone call in violation
390 of Code Section 16-10-24.3;

391 (xv) Peeping Toms in violation of Code Section 16-11-61;

392 (xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of
393 Chapter 12 of Title 16;

394 (xvii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

395 (C) Criminal history record information for convictions shall be eligible for restriction
396 after a conviction-free period of time following the completion of a sentence, based
397 upon the original offense, as follows:

398 (i) Two years if the offense is a misdemeanor; or

399 (ii) Four years if the offense is a felony.

400 (k)(1) The center shall notify the arresting law enforcement agency of any criminal
401 history record information, access to which has been restricted pursuant to this Code
402 section, within 30 days of the date access to such information is restricted. Upon receipt
403 of notice from the center that access to criminal history record information has been
404 restricted, the arresting law enforcement agency or other law enforcement agency shall,
405 within 30 days, restrict access to all such information maintained by such arresting law
406 enforcement agency or other law enforcement agency for such individual's offense that
407 has been restricted.

408 (2) An individual who has had criminal history record information restricted pursuant
409 to this Code section may submit a written request to the appropriate county or municipal
410 jail or detention center to have all records for such individual's offense that has been
411 restricted maintained by the appropriate county or municipal jail or detention center
412 restricted. Within 30 days of such request, the appropriate county or municipal jail or
413 detention center shall restrict access to all such criminal history record information
414 maintained by such appropriate county or municipal jail or detention center for such
415 individual's offense that has been restricted.

416 (3) The center shall be authorized to unrestrict criminal history record information based
417 on the receipt of a disposition report showing that the individual was convicted of an
418 offense which was restricted pursuant to this Code section.

419 (l) If criminal history record information is restricted pursuant to this Code section and if
420 the entity declines to restrict access to such information, the individual may file a civil
421 action in the superior court where the entity is located. A copy of the civil action shall be
422 served on the entity and prosecuting attorney for the jurisdiction where the civil action is
423 filed, and they may become parties to the action. A decision of the entity shall be upheld
424 only if it is determined by clear and convincing evidence that the individual did not meet
425 the criteria set forth in subsection (h) or (j) of this Code section.

426 (m)(1) For criminal history record information maintained by the clerk of court, an
427 individual who has a record restricted pursuant to this Code section may petition the court
428 with original jurisdiction over the offenses in the county where the clerk of court is
429 located for an order to seal all criminal history record information maintained by the clerk
430 of court for such individual's charged offense. Notice of such petition shall be sent to the
431 clerk of court and the prosecuting attorney. A notice sent by registered or certified mail
432 or statutory overnight delivery shall be sufficient notice.

433 (2) The court shall order all criminal history record information in the custody of the
434 clerk of court, including within any index, to be restricted and unavailable to the public
435 if the court finds by a preponderance of the evidence that:

436 (A) The criminal history record information has been restricted pursuant to this Code
437 section; and

438 (B) The harm otherwise resulting to the privacy of the individual clearly outweighs the
439 public interest in the criminal history record information being publicly available.

440 (3) Within 60 days of the court's order, the clerk of court shall cause every document,
441 physical or electronic, in its custody, possession, or control to be restricted.

442 (n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring
443 before July 1, 2013, an individual may, in writing, request the arresting law enforcement
444 agency to restrict the criminal history record information of an arrest, including any
445 fingerprints or photographs taken in conjunction with such arrest. ~~Reasonable fees shall~~

446 ~~be~~ The fee charged by the arresting law enforcement agency and the center for the actual
447 costs of restricting such records, ~~provided that such fee shall not exceed \$50.00~~ \$5.00.

448 (2) Within 30 days of receipt of such written request, the arresting law enforcement
449 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days
450 of receiving the request, the prosecuting attorney shall review the request to determine
451 if the request meets the criteria set forth in subsection (h) of this Code section for record
452 restriction, and the prosecuting attorney shall notify the arresting law enforcement agency
453 of his or her decision within such 90 day period. If the prosecuting attorney denies such
454 request, he or she shall cite with specificity the reason for such denial in writing and
455 attach to such denial any relevant documentation in his or her possession used to make
456 such denial. There shall be a presumption that the prosecuting attorney does not object
457 to the request to restrict the criminal history record information if he or she fails to
458 respond to the request for a determination within the 90 day period set forth in this
459 paragraph. The arresting law enforcement agency shall inform the individual of the
460 prosecuting attorney's decision, and, if record restriction is approved by the prosecuting
461 attorney, the arresting law enforcement agency shall restrict the criminal history record
462 information within 30 days of receipt of the prosecuting attorney's decision.

463 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
464 history record information, such individual may file a civil action in the superior court
465 where the entity is located. A copy of the civil action shall be served on the entity and
466 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
467 become parties to the action. A decision of the prosecuting attorney to decline a request
468 to restrict access to criminal history record information shall be upheld unless the
469 individual demonstrates by clear and convincing evidence that the arrest is eligible for
470 record restriction pursuant to subsection (h) of this Code section and the harm otherwise
471 resulting to the privacy of the individual clearly outweighs the public interest in the
472 criminal history record information being publicly available.

473 (4) To restrict criminal history record information at the center, an individual shall
474 submit a prosecuting attorney's approved record restriction request or a court order issued
475 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access
476 to such criminal history record information within 30 days of receiving such information.

477 (o) Nothing in this Code section shall give rise to any right which may be asserted as a
478 defense to a criminal prosecution or serve as the basis for any motion that may be filed in
479 any criminal proceeding. The modification, correction, supplementation, amendment, or
480 restriction of criminal history record information shall not abate or serve as the basis for
481 the reversal of any criminal conviction.

482 (p) Any application to the center for access to or restriction of criminal history record
483 information made pursuant to this Code section shall be made in writing on a form
484 approved by the center. The center shall be authorized to develop and publish such
485 procedures as may be necessary to carry out the provisions of this Code section. In
486 adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the 'Georgia
487 Administrative Procedure Act,' shall not apply.

488 (q) It shall be the duty of the entity to take such action as may be reasonable to prevent
489 disclosure of information to the public which would identify any individual whose criminal
490 history record information is restricted pursuant to this Code section.

491 (r) If the center has notified a firearms dealer that an individual is prohibited from
492 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title
493 16 and if the prohibition is the result of such individual being involuntarily hospitalized
494 within the immediately preceding five years, upon such individual or his or her attorney
495 making an application to inspect his or her records, the center shall provide the record of
496 involuntary hospitalization and also inform the individual or attorney of his or her right to
497 a hearing before the judge of the probate court or superior court relative to such individual's
498 eligibility to possess or transport a handgun.

499 (s) The center shall be authorized to provide such individual's criminal history record
500 information to the employers and entities and under the conditions set forth in subsections
501 (u) and (v) of this Code section.

502 (t) In the course of a civil action and upon request, the court shall order that any relevant
503 criminal history record information that has been restricted or sealed pursuant to this Code
504 section for any witness in that civil action shall be provided to the parties in that proceeding
505 for use only in that proceeding. Any information disclosed in such order shall not be
506 published outside the proceedings and any subsequent appeal.

507 (u) A restriction or sealing pursuant to this Code section may be used to disqualify an
508 individual for employment or appointment to office in the same manner that a discharge
509 under Article 3 of Chapter 8 of Title 42 may be used to disqualify an individual from
510 employment as set forth in Code Section 42-8-63.1, and such restriction or sealing shall not
511 supersede any disclosure or consideration of criminal history record information required
512 by federal law, including, but not limited to, those disclosures required by financial
513 institutions, as such term is defined in Code Section 7-1-4.

514 (v)(1) Information restricted and sealed pursuant to this Code section shall always be
515 available for inspection, copying, and use:

516 (A) For the purpose of imposing a sentence under Article 3 of Chapter 8 of Title 42;

517 (B) By the Judicial Qualifications Commission;

518 (C) By an attorney representing an accused individual who submits a sworn affidavit
519 to the clerk of court attesting that such information is relevant to a criminal proceeding;

520 (D) By a prosecuting attorney or a public defender;

521 (E) Pursuant to a court order; and

522 (F) By an individual who is the subject of restricted criminal history record information
523 or sealed court files.

524 (2) The confidentiality of such information shall be maintained insofar as practicable.

525 (w) This Code section shall apply to sentences imposed before, on, or after July 1, 2020
526 2021.

527

SECTION 2.

528 All laws and parts of laws in conflict with this Act are repealed.