

The Senate Committee on Judiciary offered the following substitute to HB 909:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
2 Georgia Bureau of Investigation, so as to provide for the restriction and seal of First Offender
3 Act sentences until such status is revoked; to amend Article 3 of Chapter 8 of Title 42 of the
4 Official Code of Georgia Annotated, relating to first offenders relative to probation, so as to
5 provide for the restriction and seal of first offender sentences at the time of sentencing; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
10 Bureau of Investigation, is amended by revising subparagraph (a)(1)(B) of Code Section
11 35-3-34, relating to disclosure and dissemination of criminal records to private persons and
12 businesses, resulting responsibility and liability of issuing center, and provision of certain
13 information to the FBI in conjunction with the National Instant Criminal Background Check
14 System, as follows:

15 "(B)(i) The center shall not provide records of arrests, charges, or sentences when an
16 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 and has

17 ~~been exonerated and discharged without court adjudication of guilt as a matter of law~~
18 ~~or pursuant to a court order or Code Section 15-1-20, including records relating to~~
19 ~~such defendant's bench warrants, failure to appear, and probation for such offense,~~
20 ~~except as specifically authorized by Code Section 42-8-63.1. The center shall not~~
21 ~~provide records of arrests, charges, or sentences when an individual has been~~
22 ~~sentenced as provided in Code Section 15-1-20, including records relating to such~~
23 ~~defendant's bench warrants, failure to appear, and probation for such offense, except~~
24 ~~as specifically authorized by Code Section 42-8-63.1.~~

25 (ii) During the period of time after a defendant; who has been sentenced pursuant to
26 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
27 court adjudication of guilt as a matter of law or pursuant to a court order; has
28 completed active probation supervision through the remainder of such sentence, the
29 center shall not provide records of arrests, charges, or sentences except as specifically
30 authorized by Code Section 42-8-63.1.

31 (iii) The center may provide records of arrests, charges, or sentences when an
32 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has
33 not been exonerated and discharged without court adjudication of guilt as a matter of
34 law or pursuant to a court order, ~~as specifically authorized by Code Section 42-8-63.1,~~
35 ~~while a defendant is under active probation supervision for such offense, or as~~
36 ~~provided in a court order~~ only for the following purposes:

37 (I) As specifically authorized by Code Section 42-8-63.1;

38 (II) To criminal justice agencies for purposes of employment in accordance with
39 procedures established by the center;

40 (III) Pursuant to any disclosure or consideration of criminal history record
41 information required by federal or state law including, but not limited to, those
42 disclosures required for federally insured financial institutions; or

43 (IV) For the purpose of any determination regarding the transfer of a firearm or the
44 issuance of a license pursuant to Code Section 16-11-129;”

45 **SECTION 2.**

46 Said chapter is further amended by revising subparagraph (a)(1)(B) of Code Section 35-3-35,
47 relating to disclosure and dissemination of records to public agencies and political
48 subdivisions and responsibility and liability of issuing center, as follows:

49 “(B)(i) The center shall not provide records of arrests, charges, or sentences when an
50 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~and has~~
51 ~~been exonerated and discharged without court adjudication of guilt as a matter of law~~
52 ~~or pursuant to a court order~~, including records relating to such defendant's bench
53 warrants, failure to appear, and probation for such offense, except as specifically
54 authorized by Code Section 42-8-63.1. The center shall not provide records of arrests,
55 charges, or sentences when an individual has been sentenced as provided in Code
56 Section 15-1-20, including records relating to such defendant's bench warrants, failure
57 to appear, and probation for such offense, except as specifically authorized by Code
58 Section 42-8-63.1.

59 (ii) During the period of time after a defendant, who has been sentenced pursuant to
60 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
61 court adjudication of guilt as a matter of law or pursuant to a court order, has
62 completed active probation supervision through the remainder of such sentence, the
63 center shall not provide records of arrests, charges, or sentences except as specifically
64 authorized by Code Section 42-8-63.1.

65 (iii) The center may provide records of arrests, charges, or sentences when an
66 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has
67 not been exonerated and discharged without court adjudication of guilt as a matter of
68 law or pursuant to a court order, ~~as specifically authorized by Code Section 42-8-63.1,~~

69 ~~while a defendant is under active probation supervision for such offense, or as~~
 70 ~~provided in a court order~~ only for the following purposes:

71 (I) As specifically authorized by Code Section 42-8-63.1;

72 (II) To criminal justice agencies for purposes of employment in accordance with
 73 procedures established by the center;

74 (III) Pursuant to any disclosure or consideration of criminal history record
 75 information required by federal or state law including, but not limited to, those
 76 disclosures required for federally insured financial institutions;

77 (IV) For the purpose of any determination regarding the transfer of a firearm or the
 78 issuance of a license pursuant to Code Section 16-11-129; or

79 (V) To criminal justice agencies, as such term is defined in Code Section 35-3-30;”

80

SECTION 3.

81 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first
 82 offenders relative to probation, is amended by revising Code Section 42-8-62.1, relating to
 83 limiting public access to first offender status, petitioning, and sealing record, is amended as
 84 follows:

85 "42-8-62.1.

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

87 (1) 'Criminal history record information' shall have the same meaning as set forth in
 88 Code Section 35-3-30.

89 (2) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section
 90 35-3-37.

91 (3) 'Restrict,' 'restricted,' or 'restriction' shall have the same meaning as set forth in Code
 92 Section 35-3-37.

93 (4) 'Victim' shall have the same meaning as set forth in Code Section 17-17-3.

94 (b)(1) At the time of sentencing, ~~or during the term of a sentence that was imposed~~
95 ~~before July 1, 2016, the defendant may seek to~~ the court shall limit public access to his
96 or her first offender sentencing information, ~~and the court may, in its discretion, order any~~
97 ~~of~~ by ordering the following:

98 (A) Restrict dissemination of the defendant's first offender records, except as provided
99 in subsection (h) of this Code section;

100 (B) The criminal file, docket books, criminal minutes, final record, all other records of
101 the court, and the defendant's criminal history record information in the custody of the
102 clerk of court, including within any index, be sealed and unavailable to the public,
103 except as provided in subsection (h) of this Code section; and

104 (C) Law enforcement agencies, jails, or detention centers to restrict the defendant's
105 criminal history record information of arrest, including any fingerprints or photographs
106 taken in conjunction with such arrest, except as provided in subsection (h) of this Code
107 section.

108 (2) ~~When considering the defendant's request under this subsection, the court shall weigh~~
109 ~~the public's interest in the defendant's criminal history record information being publicly~~
110 ~~available and the harm to the defendant's privacy and issue written findings of fact~~
111 ~~thereupon.~~

112 (3) ~~The court shall specify the date that such prohibited dissemination, sealing, and~~
113 ~~restrictions will take effect.~~

114 (c) An individual who has been exonerated of guilt and discharged pursuant to this article,
115 ~~including those individuals exonerated of guilt and discharged prior to July 1, 2016,~~ was
116 sentenced pursuant to this article prior to July 1, 2024, and has not had their sentence
117 revoked and adjudicated guilty, may petition the court that ~~granted~~ ordered such discharge
118 sentence for an order to ~~seal and make unavailable to the public the criminal file, docket~~
119 ~~books, criminal minutes, final record, all other records of the court, and the defendant's~~
120 ~~criminal history record information in the custody of the clerk of court, including within~~

121 ~~any index~~ limit public access to his or her case information pursuant to subsection (b) of
122 this Code section. Notice of such petition shall be sent to the clerk of court and the
123 prosecuting attorney. A notice sent by registered or certified mail or statutory overnight
124 delivery shall be sufficient notice.

125 (d) Within 90 days of the filing of a petition pursuant to subsection (c) of this Code
126 section, the court shall order restriction and sealing of the criminal file, docket books,
127 criminal minutes, final record, all other records of the court, and the defendant's criminal
128 history record information in the custody of the clerk of court, including within any index,
129 to be sealed and made unavailable to the public, except as provided in subsection (h) of this
130 Code section if the court finds by a preponderance of the evidence that:

131 ~~(1) An exoneration of guilt and discharge has been granted pursuant to this article; and~~
132 ~~(2) The harm otherwise resulting to the privacy of the individual outweighs the public~~
133 ~~interest in the criminal history record information being publicly available.~~

134 (e)(1) Within 60 days of the filing of the court's order under subsection (b) or (d) of this
135 Code section, the clerk of court shall cause every document in connection with such
136 individual's case, physical or electronic, in its custody, possession, or control to be sealed
137 to the public except as provided in subsection (h) of this Code section.

138 (2) Upon sealing and making unavailable to the public, the clerk of court shall display
139 on the file in bold print on the cover of the file a notice to all court personnel that such
140 file is sealed from the public view and dissemination of the contents to anyone other than
141 those authorized by this Code section is prohibited. Such notice shall be sealed from
142 public view and only available to the parties listed in subsection (h) of this Code section.
143 Parties provided for in subsection (h) of this Code section shall maintain access to the
144 record.

145 (f) When a court orders sealing of court records under subsection (b) or (d) of this Code
146 section, the court ~~may~~ shall also order that records maintained by law enforcement
147 agencies, jails, and detention centers be restricted and unavailable to the public. Such

148 entities shall comply with such ~~restriction order~~ within 30 days of receiving a copy of such
149 order.

150 ~~(g)(1) Information sealed or restricted pursuant to this Code section shall always be~~
151 ~~available for inspection, copying, and use:~~

152 ~~(A) As provided in subsection (c) of Code Section 42-8-65;~~

153 ~~(B) By the Judicial Qualifications Commission;~~

154 ~~(C) By a prosecuting attorney or public defender who submits a sworn affidavit to the~~
155 ~~clerk of court that attests that such information is relevant to a criminal proceeding;~~

156 ~~(D) Pursuant to a court order; and~~

157 ~~(E) By an individual who is the subject of sealed court files or restricted criminal~~
158 ~~history record information upon court order.~~

159 ~~(2) The confidentiality of such information shall be maintained insofar as practical.~~

160 (g) If a court of competent jurisdiction revokes the First Offender Act sentence and
161 adjudicates the defendant guilty of the underlying First Offender Act offense while such
162 defendant is serving a first offender sentence, restriction and sealing of such court records
163 shall be removed, and such records may be disseminated by the court, law enforcement
164 agencies, jails, and detention centers.

165 (h)(1) The following entities shall be entitled to access the criminal file, docket books,
166 criminal minutes, final record, and all other records of the court during the period of time
167 a defendant has been sentenced pursuant to this article but has not been exonerated and
168 discharged without court adjudication of guilt as a matter of law or pursuant to a court
169 order. No court order or affidavit shall be required for the following entities to access
170 such records unless otherwise provided:

171 (A) As authorized by Code Section 42-8-63.1;

172 (B) To criminal justice agencies, as such term is defined in Code Section 35-3-30;

173 (C) As authorized by subsection (c) of Code Section 42-8-65;

- 174 (D) Any prosecuting attorney. Prosecuting attorneys shall be authorized to share
175 relevant case information with the victim of the underlying first offender offense
176 pursuant to the Crime Victims' Bill of Rights, as provided in Code Section 17-17-1;
177 (E) Any judge or court personnel;
178 (F) Any public defender;
179 (G) An individual who is the subject of sealed court files or restricted criminal history
180 record information;
181 (H) The Judicial Qualifications Commission;
182 (I) The Department of Community Supervision;
183 (J) Pursuant to any disclosure or consideration of criminal history record information
184 required by federal or state law including, but not limited to, those disclosures required
185 for federally insured financial institutions;
186 (K) For the purpose of any determination regarding the transfer of a firearm or the
187 issuance of a license pursuant to Code Section 16-11-129; or
188 (L) When such records are made available for inspection, copying, and use pursuant
189 to a court order.
190 (2) The confidentiality of such information shall be maintained insofar as practical."

191 **SECTION 4.**

192 Said article is further amended by adding a new Code section, to read as follows:

193 "42-8-62.2.

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

195 (1) 'Criminal history record information' shall have the same meaning as set forth in
196 Code Section 35-3-30.

197 (2) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section
198 35-3-37.

199 (3) 'Restrict,' 'restricted,' or 'restriction' shall have the same meaning as set forth in Code
200 Section 35-3-37.

201 (b) At the time a defendant who has been sentenced pursuant to this article has been
202 exonerated and discharged without court adjudication of guilt as a matter of law or
203 pursuant to a court order, the criminal file, docket books, criminal minutes, final record,
204 and all other records of the court shall be restricted except as provided in subsection (g) of
205 this Code section.

206 (c) An individual who has been exonerated of guilt and discharged without court
207 adjudication of guilt as a matter of law or pursuant to a court order pursuant to this article
208 prior to July 1, 2024, may petition the court that granted such discharge for an order to seal
209 and make unavailable to the public the criminal file, docket books, criminal minutes, final
210 record, all other records of the court, and the defendant's criminal history record
211 information in the custody of the clerk of court, including within any index. Notice of such
212 petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by
213 registered or certified mail or statutory overnight delivery shall be sufficient notice.

214 (d) Within 90 days of the filing of a petition pursuant to subsection (c) of this Code
215 section, the court shall order the criminal file, docket books, criminal minutes, final record,
216 all other records of the court, and the defendant's criminal history record information in the
217 custody of the clerk of court, including within any index, to be sealed and made unavailable
218 to the public.

219 (e) Within 60 days of exoneration and discharge under subsection (b) of this Code section
220 or the filing of the court's order under subsection (d) of this Code section, the clerk of court
221 shall cause every document in connection with such individual's case, physical or
222 electronic, in its custody, possession, or control to be sealed.

223 (f) When a court orders sealing of court records under this Code section, the court shall
224 also order that records maintained by law enforcement agencies, jails, and detention centers

225 be restricted and unavailable to the public. Such entities shall comply with such restriction
226 within 30 days of receiving a copy of such order.

227 (g)(1) Information sealed or restricted pursuant to this Code section shall always be
228 available for inspection, copying, and use:

229 (A) As provided in subsection (c) of Code Section 42-8-65;

230 (B) By the Judicial Qualifications Commission;

231 (C) By judges of courts of competent jurisdiction in the State of Georgia;

232 (D) By a prosecuting attorney or public defender who submits a sworn affidavit to the
233 clerk of court that attests that such information is relevant to a criminal proceeding. No
234 prosecuting attorney or public defender shall be required to obtain a court order to
235 obtain such information that is relevant to a criminal proceeding;

236 (E) Pursuant to a court order; and

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

239 (2) The confidentiality of such information shall be maintained insofar as practical."

240 **SECTION 5.**

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