

House Bill 950

By: Representatives Kennard of the 102<sup>nd</sup>, Kendrick of the 93<sup>rd</sup>, Bennett of the 94<sup>th</sup>, Wilson of the 80<sup>th</sup>, Werkheiser of the 157<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to  
2 review of individual's criminal history record information, definitions, privacy  
3 considerations, written application requesting review, and inspection, so as to revise the  
4 handling of arrest-only criminal history record information; to provide for the automatic  
5 restriction of an individual's criminal history record information upon arrest; to provide that  
6 such criminal history record information shall be made publicly available only upon the  
7 issuance of an indictment, accusation, or other charging instrument; to provide for related  
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of  
12 individual's criminal history record information, definitions, privacy considerations, written  
13 application requesting review, and inspection, is amended by revising subsection (h) and by  
14 adding a new subsection to read as follows:

15 "(g.1)(1) Access to an individual's criminal history record information, including any  
16 fingerprints or photographs of the individual taken in conjunction with the arrest, shall  
17 be restricted by the center unless the case is referred for further prosecution to the proper  
18 prosecuting attorney by the arresting law enforcement agency and such prosecuting  
19 attorney issues or secures an indictment, accusation, or other charging instrument relating  
20 to such case. No criminal history record information shall be made publicly available  
21 until the center has received notice from the prosecuting attorney of such indictment,  
22 accusation, or other charging instrument or, for criminal history record information which  
23 was obtained in conjunction with an arrest on or before June 30, 2020, the center has  
24 sufficient basis in such criminal history record information to believe that an indictment,  
25 accusation, or other charging instrument has been issued or secured.

26 (2) For criminal history record information obtained on and after July 1, 2020, a copy of  
 27 the notice provided for under paragraph (1) of this subsection shall be sent by the  
 28 prosecuting attorney to the accused or the accused's attorney, if represented, by mailing  
 29 such copy of the notice by first-class mail within seven days of notifying the center.

30 (h) Access to an individual's criminal history record information, including any  
 31 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be  
 32 restricted by the center for the following types of dispositions when, after an indictment,  
 33 accusation, or other charging instrument:

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

35 ~~(A) The case was never referred for further prosecution to the proper prosecuting~~  
 36 ~~attorney by the arresting law enforcement agency and:~~

37 ~~(i) The offense against such individual is closed by the arresting law enforcement~~  
 38 ~~agency. It shall be the duty of the head of the arresting law enforcement agency to~~  
 39 ~~notify the center whenever a record is to be restricted pursuant to this division within~~  
 40 ~~30 days of such decision. A copy of the notice shall be sent to the accused and the~~  
 41 ~~accused's attorney, if any, by mailing the same by first-class mail within seven days~~  
 42 ~~of notifying the center; or~~

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

48 ~~(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated~~  
 49 ~~nature, two years;~~

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

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

55 ~~If the center receives notice of the filing of an indictment subsequent to the restriction~~  
 56 ~~of a record pursuant to this division, the center shall make such record available in~~  
 57 ~~accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive~~  
 58 ~~notice of a charging instrument within 30 days of the applicable time periods set forth~~  
 59 ~~in this division, such record shall be restricted by the center for noncriminal justice~~  
 60 ~~purposes and shall be considered sealed.~~

61 ~~(B) The case was referred to the prosecuting attorney but was later dismissed;~~

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

63 ~~(D) The grand jury returned one no bill and the applicable time period set forth in~~  
 64 ~~division (ii) of subparagraph (A) of this paragraph has expired; and~~  
 65 ~~(2) After indictment or accusation:~~  
 66 ~~(A)(1) Except as provided in subsection (i) of this Code section, all charges were~~  
 67 ~~dismissed or nolle prossed;~~  
 68 ~~(B)(2) The individual was sentenced in accordance with the provisions of subsection (a)~~  
 69 ~~or (c) of Code Section 16-13-2, and the individual successfully completed the terms and~~  
 70 ~~conditions of his or her probation;~~  
 71 ~~(C)(3) The individual pleaded guilty to or was found guilty of a violation of~~  
 72 ~~paragraph (2) or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in~~  
 73 ~~accordance with the provisions of subsection (c) of Code Section 3-3-23.1, and the~~  
 74 ~~individual successfully completed the terms and conditions of his or her probation;~~  
 75 ~~(D)(4) The individual successfully completed a drug court treatment program, mental~~  
 76 ~~health treatment program, or veterans treatment program, the individual's case has been~~  
 77 ~~dismissed or nolle prossed, and he or she has not been arrested during such program,~~  
 78 ~~excluding any arrest for a nonserious traffic offense; or~~  
 79 ~~(E)(5) The individual was acquitted of all of the charges by a judge or jury unless, within~~  
 80 ~~ten days of the verdict, the prosecuting attorney demonstrates to the trial court through~~  
 81 ~~clear and convincing evidence that the harm otherwise resulting to the individual is~~  
 82 ~~clearly outweighed by the public interest in the criminal history record information being~~  
 83 ~~publicly available because either:~~  
 84 ~~(i)(A) The prosecuting attorney was barred from introducing material evidence against~~  
 85 ~~the individual on legal grounds, including, without limitation, the granting of a motion~~  
 86 ~~to suppress or motion in limine; or~~  
 87 ~~(ii)(B) The individual has been formally charged with the same or similar offense~~  
 88 ~~within the previous five years."~~

89

**SECTION 2.**

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