

Senate Bill 288

By: Senators Anderson of the 43rd, Jones II of the 22nd, Jordan of the 6th, Parent of the 42nd, Jones of the 10th and others

**AS PASSED SENATE**

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 expand the ability of certain  
 3 individuals to request record restriction for certain misdemeanor and conditional discharges;  
 4 to provide for excluded offenses; to change a provision relating to automatic record  
 5 restriction when charges are reduced to local ordinance violations; to provide for procedure  
 6 and limitations; to provide for retroactive record restriction under certain circumstances; to  
 7 provide for applicability; to amend Code Sections 3-3-23.1 and 10-1-393.5 of the Official  
 8 Code of Georgia Annotated, relating to procedure and penalties upon violation of Code  
 9 Section 3-3-23 and prohibited telemarketing, internet activities, or home repair; and to amend  
 10 Article 1 of Chapter 13 of Title 16 and Article 2 of Chapter 3 of Title 35 of the Official Code  
 11 of Georgia Annotated, relating to conditional discharge for possession of controlled  
 12 substances as first offense and certain nonviolent property crimes, dismissal of charges, and  
 13 restitution to victims; and the Georgia Crime Information Center, so as to provide for  
 14 cross-references; to amend Chapter 4 of Title 24 of the Code of Georgia Annotated, relating  
 15 to relevant evidence and its limits, so as to prohibit the introduction of criminal history record  
 16 information of an employee in an action against an employer based upon the conduct of such  
 17 employee under certain circumstances; to provide for definitions; to provide for related  
 18 matters; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20

21

**PART ONE.**

22

**SECTION 1-1.**

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

27 "35-3-37.

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

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

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

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

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

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

47 (6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record  
48 information of an individual relating to a particular ~~charge~~ offense shall be available only  
49 to judicial officials and criminal justice agencies for law enforcement or criminal  
50 investigative purposes or to criminal justice agencies for purposes of employment in  
51 accordance with procedures established by the center and shall not be disclosed or  
52 otherwise made available to any private persons or businesses pursuant to Code  
53 Section 35-3-34 or to governmental agencies or licensing and regulating agencies  
54 pursuant to Code Section 35-3-35.

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

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

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

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

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

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

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

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

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

97 (g)(1) Should the court find by a preponderance of the evidence that the criminal history  
98 record information in question is inaccurate, incomplete, or misleading, the court shall  
99 order such information to be appropriately modified, corrected, supplemented, or

100 amended as the court deems appropriate. Any entity with custody, possession, or control  
101 of any such criminal history record information shall cause each and every copy thereof  
102 in its custody, possession, or control to be altered in accordance with the court's order  
103 within 60 days of the entry of the order.

104 (2) To the extent that it is known by the requesting individual that an entity has  
105 previously disseminated inaccurate, incomplete, or misleading criminal history record  
106 information, he or she shall, by written request, provide to the entity the name of the  
107 individual, agency, or company to which such information was disseminated. Within 60  
108 days of the written request, the entity shall disseminate the modification, correction,  
109 supplement, or amendment to the individual's criminal history record information to such  
110 individual, agency, or company to which the information in question has been previously  
111 communicated, as well as to the individual whose information has been ordered so  
112 altered.

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

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

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

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

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

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

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

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

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

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

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

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

147 (2) After indictment or accusation:

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

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

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

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

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

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

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

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

176 (1) ~~The charges were~~ prosecuting attorney affirmatively indicates that the offense was  
 177 dismissed, nolle prossed, or otherwise dismissed reduced to a violation of a local  
 178 ordinance because:

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

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

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

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

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

191 (3) The individual was acquitted of all ~~charges~~ charged offenses but it ~~is~~ was later  
 192 determined that the acquittal was the result of jury tampering or judicial misconduct.

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

207 (2) When an individual was convicted of an offense and was sentenced to punishment  
 208 other than the death penalty, but such conviction was vacated by the trial court or  
 209 reversed by an appellate court or other post-conviction court, the decision of which has  
 210 become final by the completion of the appellate process, and the prosecuting attorney has

211 not retried the case within two years of the date the order vacating or reversing the  
 212 conviction became final, such individual may petition the court in which he or she was  
 213 convicted to restrict access to criminal history record information for such offense. Such  
 214 court shall maintain jurisdiction over the case for this limited purpose and duration. Such  
 215 petition shall be served on the prosecuting attorney. If a hearing is requested, such  
 216 hearing shall be held within 90 days of the filing of the petition. The court shall hear  
 217 evidence and shall determine whether granting an order restricting such criminal history  
 218 record information is appropriate, giving due consideration to the reason the judgment  
 219 was reversed or vacated, the reason the prosecuting attorney has not retried the case, and  
 220 the public's interest in the criminal history record information being publicly available.

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

230 (4)(A) When an individual was convicted in this state of a misdemeanor or a series of  
 231 misdemeanors arising from a single incident, ~~and at the time of such conviction such~~  
 232 ~~individual was a youthful offender,~~ provided that such individual ~~successfully~~  
 233 ~~completed the terms of his or her sentence and, since completing the terms of his or her~~  
 234 ~~sentence,~~ conviction was not for any offense listed in subparagraph (B) of this  
 235 paragraph, and such individual has not been arrested for at least five years, excluding  
 236 any arrest completed the terms of his or her sentence and has not been convicted of any  
 237 crime in any jurisdiction for at least four years prior to filing a petition under this  
 238 subparagraph, excluding any conviction for a nonserious traffic offense, and provided,  
 239 further, that he or she ~~was not convicted in this state of a misdemeanor violation or~~  
 240 ~~under any other state's law with similar provisions of one or more of the offenses listed~~  
 241 ~~in subparagraph (B) of this paragraph~~ has no pending charged offenses, he or she may  
 242 petition the court in which the conviction occurred to restrict access to criminal history  
 243 record information. Such court shall maintain jurisdiction over the case for this limited  
 244 purpose and duration. Such petition shall be served on the prosecuting attorney. If a  
 245 hearing is requested, such hearing shall be held within 90 days of the filing of the  
 246 petition. The court shall hear evidence and shall ~~determine whether granting~~ grant an  
 247 order restricting such criminal history record information is ~~appropriate, giving due~~

248 ~~consideration to the individual's conduct and if it determines that the harm otherwise~~  
 249 ~~resulting to the individual clearly outweighs~~ the public's interest in the criminal history  
 250 record information being publicly available.

251 (B) Record restriction under this subsection shall not be appropriate if the individual  
 252 was convicted of:

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

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

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

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

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

261 ~~(i)~~(vi) Child molestation in violation of Code Section 16-6-4;

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

263 ~~(iii)~~(viii) Improper sexual contact by employee or agent in violation of Code  
 264 Section 16-6-5.1;

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

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

267 ~~(v)~~(xi) Pimping in violation of Code Section 16-6-11;

268 ~~(vi)~~(xii) Pandering by compulsion in violation of Code Section ~~16-6-14~~ 16-6-12;

269 ~~(vii) Masturbation for hire in violation of Code Section 16-6-16;~~

270 ~~(viii) Giving massages in a place used for lewdness, prostitution, assignation, or~~  
 271 ~~masturbation for hire in violation of Code Section 16-6-17;~~

272 ~~(ix)~~ (xiii) Sexual battery in violation of Code Section 16-6-22.1;

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

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

276 ~~(x)~~(xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of  
 277 Chapter 12 of Title 16;

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

281 ~~(xii)~~(xviii) Any serious traffic offense in violation of Article 15 of Chapter 6 of  
 282 Title 40.

283 (C) An individual shall be limited to filing a petition under this paragraph to a lifetime  
 284 maximum of requesting record restriction on two convictions for a misdemeanor or a



285 series of misdemeanors arising from a single incident. For the purposes of this  
286 subparagraph, the conviction of two or more offenses charged in separate counts of one  
287 or more accusations consolidated for trial shall be deemed to be one conviction. If a  
288 petition under this subsection has been denied, an individual may file a subsequent  
289 petition on the same conviction for a misdemeanor or series of misdemeanors arising  
290 from a single incident after the expiration of two years from the date of the final order  
291 from the previous petition.

292 (5) When an individual was arrested on a fugitive from justice warrant as provided in  
293 Code Section 17-13-4, such individual may petition the superior court in the county  
294 where the arrest occurred to restrict access to criminal history record information for such  
295 warrant. Such court shall maintain jurisdiction over the case for this limited purpose and  
296 duration. Such petition shall be served on the arresting law enforcement agency and the  
297 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days  
298 of the filing of the petition. The court shall hear evidence and shall grant an order  
299 restricting such criminal history record information if the court determines that  
300 circumstances warrant restriction and that the harm otherwise resulting to the individual  
301 clearly outweighs the public interest in the criminal history record information being  
302 publicly available.

303 (6) When an individual was convicted in this state of an offense for which that individual  
304 has been granted a pardon from the State Board of Pardons and Paroles as provided in the  
305 Constitution and Code Section 42-9-42, provided that the offense was not a serious  
306 violent felony as such term is defined in Code Section 17-10-6.1 or a sexual offense as  
307 such term is defined in Code Section 17-10-6.2, and provided, further, that such  
308 individual has not been convicted of any crime in any jurisdiction, excluding any  
309 conviction for a nonserious traffic offense, since the pardon was granted, and provided,  
310 further, that he or she has no pending charged offenses, he or she may petition the court  
311 in which the conviction occurred to restrict access to criminal history record information.  
312 Such court shall maintain jurisdiction over the case for this limited purpose and duration.  
313 Such petition shall be served on the prosecuting attorney. If a hearing is requested, such  
314 hearing shall be held within 90 days of the filing of the petition. The court shall hear  
315 evidence and shall grant an order restricting such criminal history record information if  
316 it determines that the harm otherwise resulting to the individual clearly outweighs the  
317 public's interest in the criminal history record information being publicly available.

318 (k)(1) The center shall notify the arresting law enforcement agency of any criminal  
319 history record information, access to which has been restricted pursuant to this Code  
320 section, within 30 days of the date access to such information is restricted. Upon receipt  
321 of notice from the center that access to criminal history record information has been

322 restricted, the arresting law enforcement agency or other law enforcement agency shall,  
 323 within 30 days, restrict access to all such information maintained by such arresting law  
 324 enforcement agency or other law enforcement agency for such individual's charge offense  
 325 that has been restricted.

326 (2) An individual who has had criminal history record information restricted pursuant  
 327 to this Code section may submit a written request to the appropriate county or municipal  
 328 jail or detention center to have all records for such individual's charge offense that has  
 329 been restricted maintained by the appropriate county or municipal jail or detention center  
 330 restricted. Within 30 days of such request, the appropriate county or municipal jail or  
 331 detention center shall restrict access to all such criminal history record information  
 332 maintained by such appropriate county or municipal jail or detention center for such  
 333 individual's charge offense that has been restricted.

334 (3) The center shall be authorized to unrestrict criminal history record information based  
 335 on the receipt of a disposition report showing that the individual was convicted of an  
 336 offense ~~arising out of an arrest of which the information~~ which was restricted pursuant  
 337 to this Code section.

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

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

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

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

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

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

361 ~~(4) The person who is the subject of such sealed criminal history record information may~~  
362 ~~petition the court for inspection of the criminal history record information included in the~~  
363 ~~court order. Such information shall always be available for inspection, copying, and use~~  
364 ~~by criminal justice agencies and the Judicial Qualifications Commission.~~

365 (n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring  
366 before July 1, 2013, an individual may, in writing, request the arresting law enforcement  
367 agency to restrict the criminal history record information of an arrest, including any  
368 fingerprints or photographs taken in conjunction with such arrest. Reasonable fees shall  
369 be charged by the arresting law enforcement agency and the center for the actual costs  
370 of restricting such records, provided that such fee shall not exceed \$50.00.

371 (2) Within 30 days of receipt of such written request, the arresting law enforcement  
372 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days  
373 of receiving the request, the prosecuting attorney shall review the request to determine  
374 if the request meets the criteria set forth in subsection (h) of this Code section for record  
375 restriction, and the prosecuting attorney shall notify the arresting law enforcement agency  
376 of his or her decision within such 90 day period. If the prosecuting attorney denies such  
377 request, he or she shall cite with specificity the reason for such denial in writing and  
378 attach to such denial any relevant documentation in his or her possession used to make  
379 such denial. There shall be a presumption that the prosecuting attorney does not object  
380 to the request to restrict the criminal history record information if he or she fails to  
381 respond to the request for a determination within the 90 day period set forth in this  
382 paragraph. The arresting law enforcement agency shall inform the individual of the  
383 prosecuting attorney's decision, and, if record restriction is approved by the prosecuting  
384 attorney, the arresting law enforcement agency shall restrict the criminal history record  
385 information within 30 days of receipt of the prosecuting attorney's decision.

386 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal  
387 history record information, such individual may file a civil action in the superior court  
388 where the entity is located. A copy of the civil action shall be served on the entity and  
389 prosecuting attorney for the jurisdiction where the civil action is filed, and they may  
390 become parties to the action. A decision of the prosecuting attorney to decline a request  
391 to restrict access to criminal history record information shall be upheld unless the  
392 individual demonstrates by clear and convincing evidence that the arrest is eligible for  
393 record restriction pursuant to subsection (h) of this Code section and the harm otherwise  
394 resulting to the privacy of the individual clearly outweighs the public interest in the  
395 criminal history record information being publicly available.

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

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

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

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

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

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

425 (t) Except as otherwise provided by law, in the course of a civil action and upon request,  
426 an individual shall reveal criminal history record information that has been restricted or  
427 sealed pursuant to this Code section.

428 (u) A restriction or sealing pursuant to this Code section may be used to disqualify an  
429 individual for employment or appointment to office in the same manner that a discharge  
430 under Article 3 of Chapter 8 of Title 42 may be used to disqualify an individual from  
431 employment as set forth in Code Section 42-8-63.1, and such restriction or sealing shall not  
432 supersede any disclosure or consideration of criminal history record information required

433 by federal law, including, but not limited to, those disclosures required by financial  
 434 institutions, as such term is defined in Code Section 7-1-4.

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

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

438 (B) By the Judicial Qualifications Commission;

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

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

442 (E) Pursuant to a court order; and

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

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

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

447 **PART TWO.**

448 **SECTION 2-1.**

449 Code Section 3-3-23.1 of the Official Code of Georgia Annotated, relating to procedure and  
 450 penalties upon violation of Code Section 3-3-23, is amended by revising subsection (c) as  
 451 follows:

452 "(c)(1) As used in this subsection, the term:

453 (A) 'Criminal history record information' shall have the same meaning as set forth in  
 454 Code Section 35-3-30.

455 (B) 'Restrict' or 'restriction' shall have the same meaning as set forth in Code  
 456 Section 35-3-37.

457 (2) Whenever any person who has not been previously convicted of any offense under  
 458 this Code section or under any other law of the United States or this or any other state  
 459 relating to alcoholic beverages pleads guilty to or is found guilty of a violation of  
 460 paragraph (2) or (3) of subsection (a) of Code Section 3-3-23, the court, without entering  
 461 a judgment of guilt and with the consent of such person, may defer further proceedings  
 462 and place such person on probation upon such reasonable terms and conditions as the  
 463 court may require. The terms of probation shall preferably be such as require the person  
 464 to undergo a comprehensive rehabilitation program (including, if necessary, medical  
 465 treatment), not to exceed three years, designed to acquaint such person with the ill effects  
 466 of alcohol abuse and with knowledge of the gains and benefits which can be achieved by  
 467 being a good member of society. Upon violation of a term or condition of probation, the

468 court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of  
 469 the terms and conditions of probation, the court shall discharge such person and dismiss  
 470 the proceedings against him or her. Discharge and dismissal under this subsection shall  
 471 be without court adjudication of guilt and shall not be deemed a conviction for purposes  
 472 of this subsection or for purposes of disqualifications or disabilities imposed by law upon  
 473 conviction of a crime. Discharge and dismissal under this subsection may occur only  
 474 once with respect to any person.

475 (3)(A) At the time of sentencing, a defendant may seek to limit public access to his or  
 476 her sentencing information, and the court may, in its discretion, order that:

477 (i) The defendant's records be restricted from dissemination;

478 (ii) The criminal file, docket books, criminal minutes, final record, all other records  
 479 of the court, and the defendant's criminal history record information in the custody of  
 480 the clerk of court, including within any index, be sealed and unavailable to the public;  
 481 and

482 (iii) The defendant's criminal history record information of arrest, including any  
 483 fingerprints or photographs taken in conjunction with such arrest, be restricted by law  
 484 enforcement agencies, jails, or detention centers.

485 (B) When considering the defendant's request under this paragraph, the court shall  
 486 weigh the public's interest in the defendant's criminal history record information being  
 487 publicly available and the harm to the defendant's privacy and issue written findings of  
 488 fact thereupon.

489 (C) The court shall specify the date that such prohibited dissemination, sealing, and  
 490 restrictions will take effect."

491 **SECTION 2-2.**

492 Code Section 10-1-393.5 of the Official Code of Georgia Annotated, relating to prohibited  
 493 telemarketing, Internet activities, or home repair, is amended by revising  
 494 division (b.1)(1)(B)(i) as follows:

495 "(i) Access to his or her case or charges was restricted pursuant to Code  
 496 Section 3-3-23.1, 15-1-20, 16-13-2, 35-3-37, or 42-8-62.1;"

497 **SECTION 2-3.**

498 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to  
 499 general provisions regarding controlled substances, is amended by adding a new subsection  
 500 to Code Section 16-13-2, relating to conditional discharge for possession of controlled  
 501 substances as first offense and certain nonviolent property crimes, dismissal of charges, and  
 502 restitution to victims, to read as follows:

503 “(d)(1) As used in this subsection, the term:  
 504 (A) 'Criminal history record information' shall have the same meaning as set forth in  
 505 Code Section 35-3-30.  
 506 (B) 'Restrict' or 'restriction' shall have the same meaning as set forth in Code  
 507 Section 35-3-37.  
 508 (2)(A) At the time of sentencing, the defendant may seek to limit public access to his  
 509 or her sentencing information, and the court may, in its discretion, order that:  
 510 (i) The defendant's records be restricted from dissemination;  
 511 (ii) The criminal file, docket books, criminal minutes, final record, all other records  
 512 of the court, and the defendant's criminal history record information in the custody of  
 513 the clerk of court, including within any index, be sealed and unavailable to the public;  
 514 and  
 515 (iii) The defendant's criminal history record information of arrest, including any  
 516 fingerprints or photographs taken in conjunction with such arrest, be restricted by law  
 517 enforcement agencies, jails, or detention centers.  
 518 (B) When considering the defendant's request under this paragraph, the court shall  
 519 weigh the public's interest in the defendant's criminal history record information being  
 520 publicly available and the harm to the defendant's privacy and issue written findings of  
 521 fact thereupon.  
 522 (C) The court shall specify the date that such prohibited dissemination, sealing, and  
 523 restrictions will take effect.”

524 **SECTION 2-4.**

525 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the  
 526 Georgia Crime Information Center, is amended by revising subparagraph (a)(1)(D) and  
 527 subsection (d.2) of Code Section 35-3-34, relating to disclosure and dissemination of  
 528 criminal records to private persons and businesses, resulting responsibility and liability of  
 529 issuing center, and provision of certain information to the FBI in conjunction with the  
 530 National Instant Criminal Background Check System, as follows:

531 “(D) The center shall not provide records of arrests, charges, or dispositions when  
 532 access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2,  
 533 35-3-37, or 42-8-62.1; or”

534 “(d.2) When identifying information provided is sufficient to identify persons whose  
 535 records are requested, local criminal justice agencies may disseminate criminal history  
 536 records of in-state felony convictions, pleas, and sentences unless such records are  
 537 restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code  
 538 Section 42-8-63.1, without:

539 (1) Fingerprint comparison;  
 540 (2) Prior contact with the center; or  
 541 (3) Consent of the person whose records are requested.  
 542 Such information may be disseminated to private individuals and businesses under the  
 543 conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the  
 544 fee for the request and when the request is made upon a form prescribed by the center.  
 545 Such agencies may charge and retain fees as needed to reimburse such agencies for the  
 546 direct and indirect costs of providing such information and shall have the same immunity  
 547 therefor as provided in subsection (c) of this Code section."

548 **SECTION 2-5.**

549 Said article is further amended by revising subparagraph (a)(1)(D) and (d.1) of Code  
 550 Section 35-3-35, relating to disclosure and dissemination of records to public agencies and  
 551 political subdivisions and responsibility and liability of issuing center, as follows:

552 "(D) The center shall not provide records of arrests, charges, or dispositions when  
 553 access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2,  
 554 35-3-37, or 42-8-62.1;"

555 "(d.1) When identifying information provided is sufficient to identify persons whose  
 556 records are requested, local criminal justice agencies may disseminate criminal history  
 557 records of in-state felony convictions, pleas, and sentences unless such records are  
 558 restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code  
 559 Section 42-8-63.1, without:

560 (1) Fingerprint comparison;  
 561 (2) Prior contact with the center; or  
 562 (3) Consent of the person whose records are requested.

563 Such information may be disseminated to entities to which such records may be made  
 564 available under subsection (d) of this Code section under the conditions specified in  
 565 subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and  
 566 when the request is made upon a form prescribed by the center. Such agencies may charge  
 567 and retain fees as needed to reimburse such agencies for the direct and indirect costs of  
 568 providing such information and shall have the same immunity therefor as provided in  
 569 subsection (c) of this Code section."

570 **PART THREE.**

571 **SECTION 3-1.**



572 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to relevant evidence  
573 and its limits, is amended by adding a new Code section to read as follows:

574 "24-4-419.

575 (a) As used in this Code section, the term 'criminal history record information' shall have  
576 the same meaning as set forth in Code Section 35-3-30.

577 (b) In a civil proceeding against an employer, its employees, or its agents based on the  
578 conduct of an employee or former employee, criminal history record information shall not  
579 be admissible if:

580 (1) The nature of such criminal history record information does not bear a direct  
581 relationship to the facts underlying such proceeding;

582 (2) Prior to the act giving rise to such proceedings, criminal history record information  
583 was restricted or sealed as provided in Code Section 35-3-37, or a pardon for such  
584 conduct was granted; or

585 (3) Such criminal history information is for an arrest or charge that did not result in a  
586 conviction."

587 **PART FOUR.**

588 **SECTION 4-1.**

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