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

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART ONE.

SECTION 1-1.

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

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

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

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

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

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

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

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

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

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

10. 'Youthful offender' means any offender who was less than 21 years of age at the time of his or her conviction or arrest.
(b) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity of this state to invade the privacy of any citizen as defined by the General Assembly or as defined by the courts other than to the extent provided in this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) If the offense is a serious violent felony or a felony sexual offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.
If the center receives notice of the filing of an indictment subsequent to the restriction of a record pursuant to this division, the center shall make such record available in accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive notice of a charging instrument within 30 days of the applicable time periods set forth in this division, such record shall be restricted by the center for noncriminal justice purposes; and shall be considered sealed.

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

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

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

(2) After indictment or accusation:

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

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

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

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

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

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

(ii) The individual has been formally charged with the same or similar offense within the previous five years.
(i) After the filing of an indictment or accusation, an individual's criminal history record information shall not be restricted if:

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

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

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

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

or

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

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

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

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

(2) When an individual was convicted of an offense and was sentenced to punishment other than the death penalty, but such conviction was vacated by the trial court or reversed by an appellate court or other post-conviction court, the decision of which has become final by the completion of the appellate process, and the prosecuting attorney has
not retried the case within two years of the date the order vacating or reversing the conviction became final, such individual may petition the court in which he or she was convicted to restrict access to criminal history record information for such offense. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due consideration to the reason the judgment was reversed or vacated, the reason the prosecuting attorney has not retried the case, and the public's interest in the criminal history record information being publicly available.

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

(4)(A) When an individual was convicted in this state of a misdemeanor or a series of misdemeanors arising from a single incident, and at the time of such conviction such individual was a youthful offender, provided that such individual successfully completed the terms of his or her sentence and, since completing the terms of his or her sentence, conviction was not for any offense listed in subparagraph (B) of this paragraph, and such individual has not been arrested for at least five years, excluding any arrest completed the terms of his or her sentence and has not been convicted of any crime in any jurisdiction for at least four years prior to filing a petition under this subparagraph, excluding any conviction for a nonserious traffic offense, and provided, further, that he or she was not convicted in this state of a misdemeanor violation or under any other state's law with similar provisions of one or more of the offenses listed in subparagraph (B) of this paragraph has no pending charged offenses, he or she may petition the court in which the conviction occurred to restrict access to criminal history record information. Such court shall maintain jurisdiction over the case for this limited purpose and duration. Such petition shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing of the petition. The court shall hear evidence and shall determine whether granting an order restricting such criminal history record information is appropriate, giving due
consideration to the individual's conduct and if it determines that the harm otherwise
resulting to the individual clearly outweighs the public's interest in the criminal history
record information being publicly available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.
(3) Within 60 days of the court's order, the clerk of court shall cause every document, physical or electronic, in its custody, possession, or control to be restricted.

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

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

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

(3) If a prosecuting attorney declines an individual's request to restrict access to criminal history record information, such individual may file a civil action in the superior court where the entity is located. A copy of the civil action shall be served on the entity and prosecuting attorney for the jurisdiction where the civil action is filed, and they may become parties to the action. A decision of the prosecuting attorney to decline a request to restrict access to criminal history record information shall be upheld unless the individual demonstrates by clear and convincing evidence that the arrest is eligible for record restriction pursuant to subsection (h) of this Code section and the harm otherwise resulting to the privacy of the individual clearly outweighs the public interest in the criminal history record information being publicly available.
(4) To restrict criminal history record information at the center, an individual shall submit a prosecuting attorney's approved record restriction request or a court order issued pursuant to paragraph (3) of this subsection to the center. The center shall restrict access to such criminal history record information within 30 days of receiving such information.

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

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

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

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

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

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

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

(v)(1) Information restricted and sealed pursuant to this Code section shall always be
available for inspection, copying, and use:
(A) For the purpose of imposing a sentence under Article 3 of Chapter 8 of Title 42;
(B) By the Judicial Qualifications Commission;
(C) By an attorney representing an accused individual who submits a sworn affidavit
to the clerk of court attesting that such information is relevant to a criminal proceeding;
(D) By a prosecuting attorney or a public defender;
(E) Pursuant to a court order; and
(F) By an individual who is the subject of restricted criminal history record information
or sealed court files.

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

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

PART TWO.
SECTION 2-1.

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

*(c)(1) As used in this subsection, the term:
(A) 'Criminal history record information' shall have the same meaning as set forth in
Code Section 35-3-30.
(B) 'Restrict' or 'restriction' shall have the same meaning as set forth in Code
Section 35-3-37.

(2) Whenever any person who has not been previously convicted of any offense under
this Code section or under any other law of the United States or this or any other state
relating to alcoholic beverages pleads guilty to or is found guilty of a violation of
paragraph (2) or (3) of subsection (a) of Code Section 3-3-23, the court, without entering
a judgment of guilt and with the consent of such person, may defer further proceedings
and place such person on probation upon such reasonable terms and conditions as the
court may require. The terms of probation shall preferably be such as require the person
to undergo a comprehensive rehabilitation program (including, if necessary, medical
treatment), not to exceed three years, designed to acquaint such person with the ill effects

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of alcohol abuse and with knowledge of the gains and benefits which can be achieved by
being a good member of society. Upon violation of a term or condition of probation, the
court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of
the terms and conditions of probation, the court shall discharge such person and dismiss
the proceedings against him or her. Discharge and dismissal under this subsection shall
be without court adjudication of guilt and shall not be deemed a conviction for purposes
of this subsection or for purposes of disqualifications or disabilities imposed by law upon
conviction of a crime. Discharge and dismissal under this subsection may occur only
once with respect to any person.

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

(i) The defendant's records shall be restricted in accordance with Code
Section 35-3-37;
(ii) The criminal file, docket books, criminal minutes, final record, all other records
of the court, and the defendant's criminal history record information in the custody of
the clerk of court, including within any index, be sealed and unavailable to the public;

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

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

(C) The court shall specify the date that such sealing and restrictions will take effect."

SECTION 2-2.

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

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

SECTION 2-3.

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

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

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

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

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

(i) The defendant's records shall be restricted in accordance with Code Section 35-3-37;

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

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

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

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

SECTION 2-4.

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

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

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

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

Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section."

SECTION 2-5.

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

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

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

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

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

SECTION 3-1.

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

"24-4-419.
(a) As used in this Code section, the term 'criminal history record information' shall have the same meaning as set forth in Code Section 35-3-30.
(b) In a civil proceeding against an employer, its employees, or its agents based on the conduct of an employee or former employee, criminal history record information shall not be admissible if:

(1) The nature of such criminal history record information is not relevant to the facts underlying such proceeding or the veracity of the witness;
(2) Prior to the act giving rise to such proceedings, criminal history record information was restricted or sealed as provided in Code Section 35-3-37, or a pardon for such conduct was granted; or
(3) Such criminal history information is for an arrest or charge that did not result in a conviction."

PART FOUR.

SECTION 4-1.

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