

House Bill 300

By: Representatives Kennard of the 102nd, Beverly of the 143rd, McLaurin of the 51st, Kendrick of the 93rd, Boddie of the 62nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to
2 review of individual's criminal history record information, definitions, privacy
3 considerations, written application requesting review, and inspection, so as to define "law
4 enforcement officer"; to provide for the restriction of criminal history records for convictions
5 of certain misdemeanors and felonies after the completion of the sentence and payment of
6 any restitution; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

14 "(2.1) 'Law enforcement officer' means:

15 (A) A peace officer as such term is defined in paragraph (8) of Code Section 35-8-2;

16 (B) A law enforcement officer of the United States government;

- 17 (C) An individual employed as a campus police officer or school security officer;
18 (D) A conservation ranger; or
19 (E) A jail officer employed at a county or municipal jail."

20

SECTION 2.

21 Said Code section is further amended by revising paragraph (4) of subsection (j) as follows:

22 "(4)(A) When an individual was convicted in this state of a misdemeanor or a series of
23 misdemeanors arising from a single incident, provided that such conviction was not for
24 any offense listed in subparagraph (B) of this paragraph, and such individual has
25 completed the terms of his or her sentence and ~~has not been convicted of any crime in~~
26 ~~any jurisdiction for at least four years prior to filing a petition under this subparagraph,~~
27 ~~excluding any conviction for a nonserious traffic offense, and provided, further, that he~~
28 ~~or she has no pending charged offenses, he or she may petition the court in which the~~
29 ~~conviction occurred to restrict access to criminal history record information. Such court~~
30 ~~shall maintain jurisdiction over the case for this limited purpose and duration. Such~~
31 ~~petition shall be served on the prosecuting attorney. If a hearing is requested, such~~
32 ~~hearing shall be held within 90 days of the filing of the petition. The court shall hear~~
33 ~~evidence and shall grant an order restricting such criminal history record information~~
34 ~~if it determines that the harm otherwise resulting to the individual clearly outweighs the~~
35 ~~public's interest in the criminal history record information being publicly available~~ paid
36 any restitution imposed by the convicting court, and was not convicted of one or more
37 of the offenses listed in subparagraph (B) of this paragraph, access to the criminal
38 history record of such convictions shall be restricted.

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

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

- 43 (ii) Family violence simple battery in violation of subsection (f) of Code
44 Section 16-5-23, unless the individual was a youthful offender;
- 45 (iii) Family violence battery in violation of subsection (f) of Code Section 16-5-23.1,
46 unless the individual was a youthful offender;
- 47 (iv) Family violence stalking in violation of Code Section 16-5-90;
- 48 (v) Violating a family violence order in violation of Code Section 16-5-95;
- 49 ~~(vi) Child molestation in violation of Code Section 16-6-4;~~
- 50 ~~(vii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;~~
- 51 ~~(viii) Improper sexual contact by employee or agent and improper sexual contact by
52 a foster parent in violation of Code Section 16-6-5.1;~~
- 53 ~~(ix) Public indecency in violation of subsection (b) of Code Section 16-6-8;~~
- 54 ~~(x) Keeping a place of prostitution in violation of Code Section 16-6-10;~~
- 55 ~~(xi) Pimping in violation of Code Section 16-6-11;~~
- 56 ~~(xii) Pandering by compulsion in violation of Code Section 16-6-12;~~
- 57 ~~(xiii) Sexual battery in violation of Code Section 16-6-22.1;~~
- 58 ~~(xiv) Obstructing or hindering persons making emergency telephone call in violation
59 of Code Section 16-10-24.3;~~
- 60 ~~(xv) Peeping Toms in violation of Code Section 16-11-61;~~
- 61 ~~(xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of
62 Chapter 12 of Title 16;~~
- 63 ~~(xvii) Theft in violation of Chapter 8 of Title 16, provided, however, that such
64 prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud
65 in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or~~
- 66 ~~(xviii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.~~
- 67 (vi) A serious violent felony as such term is defined in Code Section 17-10-6.1;
- 68 (vii) A sexual offense as such term is defined in Code Section 17-10-6.2;

- 69 (viii) Trafficking of persons for labor or sexual servitude as prohibited by Code
70 Section 16-5-46;
- 71 (ix) Neglecting disabled adults, elder persons, or residents as prohibited by Code
72 Section 16-5-101;
- 73 (x) Exploitation and intimidation of disabled adults, elder persons, and residents as
74 prohibited by Code Section 16-5-102;
- 75 (xi) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;
- 76 (xii) Electronically furnishing obscene material to a minor as prohibited by Code
77 Section 16-12-100.1;
- 78 (xiii) Computer pornography and child exploitation as prohibited by Code
79 Section 16-12-100.2;
- 80 (xiv) Driving under the influence as prohibited by Code Section 40-6-391; or
- 81 (xv) Any of the following offenses when such offense is committed against a law
82 enforcement officer while such officer is engaged in the performance of his or her
83 official duties:
- 84 (I) Aggravated assault in violation of Code Section 16-5-21;
- 85 (II) Aggravated battery in violation of Code Section 16-5-24; or
- 86 (III) Obstruction of a law enforcement officer in violation of subsection (b) of Code
87 Section 16-10-24, if such violation results in serious physical harm or injury to such
88 officer.
- 89 ~~(C) An individual shall be limited to filing a petition under this paragraph to a lifetime~~
90 ~~maximum of requesting record restriction on two convictions for a misdemeanor or a~~
91 ~~series of misdemeanors arising from a single incident. For the purposes of this~~
92 ~~subparagraph, the conviction of two or more offenses charged in separate counts of one~~
93 ~~or more accusations consolidated for trial shall be deemed to be one conviction. If a~~
94 ~~petition under this subsection has been denied, an individual may file a subsequent~~
95 ~~petition on the same conviction for a misdemeanor or series of misdemeanors arising~~

96 from a single incident after the expiration of two years from the date of the final order
 97 from the previous petition. The restriction provided in subparagraph (A) of this
 98 paragraph shall not prevent the disclosure of the criminal history record of an individual
 99 who has applied for employment with:

100 (i) A public school, private school, child welfare agency, or a person or entity that
 101 provides day care for minor children or after-school care for minor children and the
 102 individual was convicted for a violation of Title 16 in Article 5 of Chapter 5,
 103 Chapter 6, or Part 2 or 3 of Article 3 of Chapter 12;

104 (ii) A long-term care facility as defined in Code Section 31-8-51 or with a person or
 105 entity that offers day care for elderly persons and the individual who is the subject of
 106 the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of Chapter 5;

107 or

108 (iii) A facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to
 109 individuals who are mentally ill as defined in Code Section 37-1-1 or developmentally
 110 disabled as defined in Code Section 37-1-1 and the individual who is the subject of
 111 the inquiry was prosecuted for a violation of Title 16 in Article 8 of Chapter 5 or
 112 Chapter 6."

113 SECTION 3.

114 Said Code section is further amended by revising paragraph (7) of subsection (j) as follows:

115 ~~"(7) When an individual was convicted in this state of an offense for which that~~
 116 ~~individual has been granted a pardon from the State Board of Pardons and Paroles as~~
 117 ~~provided in the Constitution and Code Section 42-9-42, provided that the offense was not~~
 118 ~~a serious violent felony as such term is defined in Code Section 17-10-6.1 or a sexual~~
 119 ~~offense as such term is defined in Code Section 17-10-6.2, and provided, further, that~~
 120 ~~such individual has not been convicted of any crime in any jurisdiction, excluding any~~
 121 ~~conviction for a nonserious traffic offense, since the pardon was granted, and provided,~~

122 further, that he or she has no pending charged offenses, he or she may petition the court
123 in which the conviction occurred to restrict access to criminal history record information.
124 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
125 Such petition shall be served on the prosecuting attorney. If a hearing is requested, such
126 hearing shall be held within 90 days of the filing of the petition. The court shall hear
127 evidence and shall grant an order restricting such criminal history record information if
128 it determines that the harm otherwise resulting to the individual clearly outweighs the
129 public's interest in the criminal history record information being publicly available.

130 (7)(A) When an individual was convicted in this state of felony charges or a series of
131 felonies arising from a single incident, provided that such individual successfully
132 completed the terms of his or her sentence and paid any restitution imposed by the
133 convicting court, and provided that he or she was not convicted of one or more of the
134 offenses listed in subparagraph (B) of this paragraph, access to the criminal history
135 record of such convictions shall be restricted.

136 (B) The record restrictions provided in subparagraph (A) of this paragraph shall not be
137 available if the individual was convicted of any of the following offenses:

138 (i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

139 (ii) A sexual offense as such term is defined in Code Section 17-10-6.2;

140 (iii) Trafficking of persons for labor or sexual servitude as prohibited by Code
141 Section 16-5-46;

142 (iv) Neglecting disabled adults, elder persons, or residents as prohibited by Code
143 Section 16-5-101;

144 (v) Exploitation and intimidation of disabled adults, elder persons, and residents as
145 prohibited by Code Section 16-5-102;

146 (vi) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;

147 (vii) Electronically furnishing obscene material to a minor as prohibited by Code
148 Section 16-12-100.1;

149 (viii) Computer pornography and child exploitation as prohibited by Code
150 Section 16-12-100.2;

151 (ix) Driving under the influence as prohibited by Code Section 40-6-391; or

152 (x) Any of the following offenses when such offense is committed against a law
153 enforcement officer while such officer is engaged in the performance of his or her
154 official duties:

155 (I) Aggravated assault in violation of Code Section 16-5-21;

156 (II) Aggravated battery in violation of Code Section 16-5-24; or

157 (III) Obstruction of a law enforcement officer in violation of subsection (b) of Code
158 Section 16-10-24, if such violation results in serious physical harm or injury to such
159 officer.

160 (C) The restriction provided in subparagraph (A) of this paragraph shall not prevent the
161 disclosure of the criminal history record of an individual who has applied for
162 employment with:

163 (i) A public school, private school, child welfare agency, or a person or entity that
164 provides day care for minor children or after-school care for minor children and the
165 individual was convicted for a violation of Title 16 in Article 5 of Chapter 5,
166 Chapter 6, or Part 2 or 3 of Article 3 of Chapter 12;

167 (ii) A long-term care facility as defined in Code Section 31-8-51 or with a person or
168 entity that offers day care for elderly persons and the individual who is the subject of
169 the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of Chapter 5;
170 or

171 (iii) A facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to
172 individuals who are mentally ill as defined in Code Section 37-1-1 or developmentally
173 disabled as defined in Code Section 37-1-1 and the individual who is the subject of
174 the inquiry was prosecuted for a violation of Title 16 in Article 8 of Chapter 5 or
175 Chapter 6."

176

SECTION 4.

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