

House Bill 334

By: Representatives Smith of the 18th, Miller of the 62nd, Werkheiser of the 157th, Greene of the 154th, and Roberts of the 52nd

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 Georgia Crime Information Center, so as to provide for criminal history record
3 information restrictions for certain persons cited with or convicted of certain criminal
4 offenses; to provide that restricted criminal history record information shall be available to
5 criminal justice agencies; to provide for petitions; to provide for criminal history record
6 information restriction for persons granted a pardon for certain offenses; to amend Article
7 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first
8 offenders, so as to revise the procedure for petitioning for exoneration and discharge when
9 an individual has qualified for sentencing as a first offender; to provide for exceptions to
10 retroactively granting first offender treatment; to provide for related matters; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
15 Georgia Crime Information Center, is amended in Code Section 35-3-37, relating to review
16 of individual's criminal history record information, definitions, privacy considerations,

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17 written application requesting review, and inspection, by revising divisions (j)(4)(B)(xvi),
18 (j)(4)(B)(xvii), and (j)(4)(B)(xviii), subparagraph (j)(4)(C), paragraph (7) of subsection (j),
19 and subsections (m) and (v) as follows:

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

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

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

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

35 "(7) When an individual was convicted in this state of an offense for which that
36 individual has been granted a pardon from the State Board of Pardons and Paroles as
37 provided in the Constitution and Code Section 42-9-42, provided that the offense was not
38 a serious violent felony as such term is defined in Code Section 17-10-6.1 or a sexual
39 offense as such term is defined in Code Section 17-10-6.2, and provided, further, that
40 such individual has not been convicted of any crime in any jurisdiction, excluding any
41 conviction for a nonserious traffic offense, since the pardon was granted, and provided,
42 further, that he or she has no pending charged offenses, he or she may petition the court
43 in which the conviction occurred to restrict access to criminal history record information.

44 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
45 Such petition shall be served on the prosecuting attorney. If a hearing is requested, such
46 hearing shall be held within 90 days of the filing of the petition. If the court finds that the
47 criteria for such petition are met, the court shall grant an order restricting such criminal
48 history record information. ~~The court shall hear evidence and shall grant an order~~
49 ~~restricting such criminal history record information if it determines that the harm~~
50 ~~otherwise resulting to the individual clearly outweighs the public's interest in the criminal~~
51 ~~history record information being publicly available."~~

52 "(m)(1) For criminal history record information maintained by the clerk of court, an
53 individual who has a record restricted pursuant to Code Section 17-10-21 or this Code
54 section or an individual who has been cited for a criminal offense but was not arrested
55 and the charged offense was subsequently dismissed, nolle prossed, or reduced to a
56 violation of a local ordinance may petition the court with original jurisdiction over the
57 offenses in the county where the clerk of court is located for an order to seal all criminal
58 history record information maintained by the clerk of court for such individual's charged
59 offense. Notice of such petition shall be sent to the clerk of court and the prosecuting
60 attorney. A notice sent by registered or certified mail or statutory overnight delivery shall
61 be sufficient notice.

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

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

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

69 (3) Notwithstanding paragraph (2) of this subsection, the court shall order all criminal
70 history record information in the custody of the clerk of court, including within any

71 index, to be restricted and unavailable to the public if the criminal history record has been
 72 restricted pursuant to paragraph (7) of subsection (j) of this Code section.

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

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

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

78 (B) By the Judicial Qualifications Commission;

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

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

82 (E) Pursuant to a court order; **and**

83 (F) By an individual who is the subject of restricted criminal history record information
 84 or sealed court files; and

85 (G) By criminal justice agencies for law enforcement or criminal investigative
 86 purposes.

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

88

SECTION 2.

89 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first
 90 offenders, is amended in Code Section 42-8-66, relating to petition for exoneration and
 91 discharge, hearing, retroactive grant of first offender status, and no filing fee, by revising
 92 paragraph (1) of subsection (a) and subsection (d) as follows:

93 "(a)(1) An individual who qualified for sentencing pursuant to this article but who was
 94 not informed of his or her eligibility for first offender treatment may, ~~with the consent of~~
 95 ~~the prosecuting attorney,~~ petition the court in which he or she was convicted for
 96 exoneration of guilt and discharge pursuant to this article."

97 "(d) The court may issue an order retroactively granting first offender treatment and
98 discharge the defendant pursuant to this article if the court finds by a preponderance of the
99 evidence that the defendant was eligible for sentencing under the terms of this article at the
100 time he or she was originally sentenced or that he or she qualifies for sentencing under
101 paragraph (2) of subsection (a) of this Code section and the ends of justice and the welfare
102 of society are served by granting such petition; provided, however, that no relief pursuant
103 to this subsection may be given on a conviction that was used as the underlying conviction
104 for a conviction for violating Code Section 16-11-131 or if the conviction was used to
105 enhance a sentence pursuant to Code Section 17-10-7."

106

SECTION 3.

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