

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

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 Official Code of Georgia Annotated,
 15 relating to relevant evidence and its limits, so as to prohibit the introduction of criminal
 16 history record information of an employee in an action against an employer based upon the
 17 conduct of such employee under certain circumstances; to provide for definitions; to provide
 18 for related 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:

S. B. 288

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) In the course of a civil action and upon request, the court shall order that any relevant
426 criminal history record information that has been restricted or sealed pursuant to this Code
427 section for any witness in that civil action shall be provided to the parties in that proceeding
428 for use only in that proceeding. Any information disclosed in such order shall not be
429 published outside the proceedings and any subsequent appeal.
- 430 (u) A restriction or sealing pursuant to this Code section may be used to disqualify an
431 individual for employment or appointment to office in the same manner that a discharge
432 under Article 3 of Chapter 8 of Title 42 may be used to disqualify an individual from

433 employment as set forth in Code Section 42-8-63.1, and such restriction or sealing shall not
 434 supersede any disclosure or consideration of criminal history record information required
 435 by federal law, including, but not limited to, those disclosures required by financial
 436 institutions, as such term is defined in Code Section 7-1-4.

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

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

440 (B) By the Judicial Qualifications Commission;

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

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

444 (E) Pursuant to a court order; and

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

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

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

449 **PART TWO.**

450 **SECTION 2-1.**

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

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

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

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

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

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

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

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

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

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

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

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

493 **SECTION 2-2.**

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

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

499 **SECTION 2-3.**

500 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
 501 general provisions regarding controlled substances, is amended by adding a new subsection
 502 to Code Section 16-13-2, relating to conditional discharge for possession of controlled

503 substances as first offense and certain nonviolent property crimes, dismissal of charges, and
 504 restitution to victims, to read as follows:

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

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

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

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

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

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

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

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

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

527

SECTION 2-4.

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

534 "(D) The center shall not provide records of arrests, charges, or dispositions when
 535 access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2,
 536 35-3-37, or 42-8-62.1; or"

537 "(d.2) When identifying information provided is sufficient to identify persons whose
 538 records are requested, local criminal justice agencies may disseminate criminal history

539 records of in-state felony convictions, pleas, and sentences unless such records are
 540 restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code
 541 Section 42-8-63.1, without:

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

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

551 **SECTION 2-5.**

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

555 "(D) The center shall not provide records of arrests, charges, or dispositions when
 556 access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2,
 557 35-3-37, or 42-8-62.1;"

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

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

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

573

PART THREE.

574

SECTION 3-1.

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

577 "24-4-419.

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

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

583 (1) The nature of such criminal history record information is not relevant to the facts
584 underlying such proceeding or the veracity of the witness;

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

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

590

PART FOUR.

591

SECTION 4-1.

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