

HOUSE SUBSTITUTE TO SENATE BILL 22

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 35 and Chapter 8 of Title 42 of the Official Code of Georgia
2 Annotated, relating, respectively, to the Georgia Bureau of Investigation and probation, so
3 as to authorize the Georgia Crime Information Center to provide records related to
4 prosecution of certain first offenders if the person who is the subject of the inquiry has
5 applied for employment caring for minor children or elderly, mentally ill, or mentally
6 retarded persons and was prosecuted for one of a list of specified offenses; to provide that
7 certain persons discharged without adjudication of guilt after probation or confinement may
8 be denied employment caring for minor children or elderly, mentally ill, or mentally retarded
9 persons if prosecuted for one of a list of specified offenses; to change provisions relating to
10 records submitted to the center; to provide for related matters; to provide for an effective
11 date; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
15 Bureau of Investigation, is amended in Code Section 35-3-34, relating to disclosure of
16 criminal records to private persons and businesses by the Georgia Crime Information Center,
17 by striking subparagraph (a)(1)(B) and inserting in lieu thereof the following:

18 "(B) The center may not provide records of arrests, charges, and sentences for crimes
19 relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where
20 offenders have been exonerated and discharged without court adjudications of guilt,
21 except as specifically authorized by Code Section 35-3-34.1 or other law; and".

22 **SECTION 2.**

23 Said chapter is further amended in Code Section 35-3-35, relating to disclosure of criminal
24 records to public agencies or political subdivisions by the Georgia Crime Information Center,
25 by striking subparagraph (a)(1)(B) and inserting in lieu thereof the following:

1 "(e) All persons in charge of law enforcement agencies shall submit to the center detailed
 2 descriptions of arrest warrants and related identifying data for all felonies and for the
 3 misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section
 4 35-3-33 immediately upon determination of the fact that the warrant cannot be served for
 5 the reasons stated. If ~~the~~ any such warrant is subsequently served or withdrawn, the law
 6 enforcement agency concerned must immediately notify the center of the service or
 7 withdrawal. In addition, the agency concerned must annually, no later than January 31 of
 8 each year, and at other times if requested by the center confirm to the center all such arrest
 9 warrants of this type which continue to be outstanding."

10 SECTION 4.

11 Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is
 12 amended in Code Section 42-8-62, relating to discharge without adjudication of guilt for
 13 certain offenders confined or placed on probation as first offenders, by striking subsection
 14 (a) and inserting in lieu thereof the following:

15 "(a) Upon fulfillment of the terms of probation, upon release by the court prior to the
 16 termination of the period thereof, or upon release from confinement, the defendant shall
 17 be discharged without court adjudication of guilt. Except for the registration requirements
 18 under the state sexual offender registry and except as otherwise provided in Code Section
 19 42-8-63.1, the discharge shall completely exonerate the defendant of any criminal purpose
 20 and shall not affect any of his or her civil rights or liberties; and the defendant shall not be
 21 considered to have a criminal conviction. It shall be the duty of the clerk of court to enter
 22 on the criminal docket and all other records of the court pertaining thereto the following:

23 'Discharge filed completely exonerates the defendant of any criminal purpose and shall
 24 not affect any of his or her civil rights or liberties, except for registration requirements
 25 under the state sexual offender registry and except with regard to employment providing
 26 care for minor children or elderly persons as specified in Code Section 42-8-63.1; and the
 27 defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-62.'

28 Such entry shall be written or stamped in red ink, dated, and signed by the person making
 29 such entry or, if the docket or record is maintained using computer print-outs, microfilm,
 30 or similar means, such entry shall be underscored, boldface, or made in a similar
 31 conspicuous manner and shall be dated and include the name of the person making such
 32 entry. The criminal file, docket books, criminal minutes and final record, and all other
 33 records of the court relating to the offense of a defendant who has been discharged without
 34 court adjudication of guilt pursuant to this subsection shall not be altered as a result of that
 35 discharge, except for the entry of discharge thereon required by this subsection, nor shall
 36 the contents thereof be expunged or destroyed as a result of that discharge."

SECTION 5.

Said chapter is further amended by inserting a new Code section to read as follows:

"42-8-63.1.

A discharge under this article may be used to disqualify a person for employment if:

- (1) The offender was discharged under this article on or after July 1, 2004; and either
- (2) The employment is with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the defendant was discharged under this article after prosecution for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;
- (3) The employment is with a nursing home, personal care home, or a person or entity that offers day care for elderly persons and the defendant was discharged under this article after prosecution for the offense of sexual battery, incest, pimping, pandering, or a violation of Code Section 30-5-8; or
- (4) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-3-1 or mentally retarded as defined in Code Section 37-4-2, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering."

SECTION 6.

This Act shall become effective on July 1, 2004, except that Section 3A shall become effective on July 1, 2003.

SECTION 7.

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