

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 35 the Official Code of Georgia Annotated, relating
2 to the Georgia Crime Information Center, so as to provide access by private individuals,
3 businesses, and governmental agencies to an individual's Georgia criminal history without
4 such individual's consent or fingerprints; to change provisions relating to disclosure and
5 dissemination of criminal records to private persons and businesses; to change provisions
6 relating to disclosure and dissemination of records to public agencies and political
7 subdivisions; to change provisions relating to fees; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Article 2 of Chapter 3 of Title 35 the Official Code of Georgia Annotated, relating to the
12 Georgia Crime Information Center, is amended by revising Code Section 34-3-34, relating
13 to disclosure and dissemination of criminal records to private persons and businesses, as
14 follows:

15 "35-3-34.

16 (a) The center shall be authorized to:

17 (1) Make Georgia criminal history records maintained by the center available to private
18 persons and businesses under the following conditions:

19 (A) Private individuals and businesses requesting Georgia criminal history records
20 shall, at the time of the request, either provide the fingerprints of the person whose
21 records are requested ~~or provide a signed consent of the person whose records are~~
22 ~~requested on a form prescribed by the center which shall include such person's full~~
23 ~~name, address, social security number, and date of birth~~ in such manner as prescribed
24 by the center, which may include electronic imaging of a person's fingerprints, or
25 provide sufficient information to identify the individual whose Georgia criminal history
26 is being requested;

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

31 (C) The center shall not provide records of juveniles adjudicated delinquent or records
 32 otherwise protected from disclosure pursuant to law; and

33 ~~(C)(D)~~ (D) When the identifying information provided is sufficient to identify persons
 34 whose records are requested ~~electronically~~, the center may disseminate electronically
 35 Georgia criminal history records of ~~in-state felony convictions, pleas, and sentences~~
 36 without:

37 (i) ~~Fingerprint~~ fingerprint comparison; or

38 (ii) ~~Consent~~ consent of the person whose records are requested; ~~or~~

39 (2) Make Georgia criminal history records of the defendant or witnesses in a criminal
 40 action available to counsel for the defendant upon receipt of a written request from the
 41 defendant's counsel under the following conditions:

42 (A) Such request shall contain the style of the case and the name and identifying
 43 information for each person whose records are requested. Such request shall be
 44 submitted to the center;

45 (B) In cases where the court has determined the defendant to be indigent, any fees
 46 authorized by law shall be waived; and

47 (C) Disclosure of criminal history information to the defendant's counsel as provided
 48 in this paragraph shall be solely in such counsel's capacity as an officer of the court.
 49 Any use of such information in a manner not authorized by law or the court in which
 50 such action is pending where the records were disclosed shall constitute a violation of
 51 Code Section 35-3-38; and

52 (3) Charge fees for disseminating records pursuant to this Code section which will raise
 53 an amount of revenue ~~which~~ that approximates, ~~as nearly as practicable, the direct and~~
 54 ~~indirect~~ costs to the state for providing such disseminations.

55 (b) In the event that an employment decision is made adverse to a person whose ~~record~~
 56 records ~~was~~ were obtained pursuant to this Code section, the person ~~will~~ shall be informed
 57 by the business or person making the adverse employment decision of all information
 58 pertinent to that decision. This disclosure shall include information that ~~a record was~~
 59 records were obtained from the center, the specific contents of ~~the~~ such record records, and
 60 the effect ~~the record~~ such records had upon the decision. Failure to provide all such
 61 information to the person subject to the adverse decision shall be a misdemeanor.

62 (c) Neither the center, its employees, nor any agency or employee of the state shall be
 63 responsible for the accuracy of information nor have any liability for defamation, invasion

64 of privacy, negligence, or any other claim in connection with ~~the~~ any dissemination
 65 pursuant to this Code section and shall be immune from suit based upon any such claims.

66 (d) Local criminal justice agencies may disseminate Georgia criminal history records;
 67 without fingerprint comparison, ~~or~~ prior contact with the center, or consent of the person
 68 whose criminal records are requested to private individuals and businesses under the same
 69 conditions as set forth in paragraph (1) of subsection (a) of this Code section and may
 70 charge fees as needed to reimburse such agencies for their direct and indirect costs related
 71 to the providing of such disseminations. Such agencies shall have the same immunity as
 72 provided in subsection (c) of this Code section.

73 ~~(d.1) Reserved.~~

74 ~~(d.2) When identifying information provided is sufficient to identify persons whose~~
 75 ~~records are requested, local criminal justice agencies may disseminate criminal history~~
 76 ~~records of in-state felony convictions, pleas, and sentences without:~~

77 ~~(1) Fingerprint comparison;~~

78 ~~(2) Prior contact with the center; or~~

79 ~~(3) Consent of the person whose records are requested.~~

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

86 ~~(d.3)(e)~~ No fee charged pursuant to subsection (d) of this Code section ~~may~~ shall exceed
 87 \$20.00 per person whose criminal history ~~record is~~ records are requested or shall be
 88 charged to any person or entity authorized prior to January 1, 1995, to obtain information
 89 pursuant to this Code section without payment of such fee.

90 ~~(d.4)(f)~~ The center shall place a high priority on inquiries from any nuclear power facility
 91 requesting a criminal history and shall respond to such requests as expeditiously as
 92 possible, but in no event shall a response be made more than two business days following
 93 receipt of the request.

94 ~~(e)(g)(1)~~ The ~~Georgia Crime Information Center~~ center shall be authorized to provide
 95 criminal history records, wanted person records, and involuntary hospitalization records
 96 information to the Federal Bureau of Investigation in conjunction with the National
 97 Instant Criminal Background Check System in accordance with the federal Brady
 98 Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

99 (2) The records of the ~~Georgia Crime Information Center~~ center shall include
 100 information as to whether a person has been involuntarily hospitalized. Notwithstanding

101 any other provisions of law and in order to carry out the provisions of this Code section
 102 and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be
 103 provided such information and no other mental health information from the involuntary
 104 hospitalization records of the probate courts concerning persons involuntarily
 105 hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges
 106 Training Council and the Georgia Bureau of Investigation to preserve the confidentiality
 107 of patients' rights in all other respects. Further, notwithstanding any other provisions of
 108 law and in order to carry out the provisions of this Code section and Code Section
 109 16-11-172, the center shall be provided information as to whether a person has been
 110 adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the
 111 time of the crime, has been involuntarily hospitalized, or both from the records of the
 112 clerks of the superior courts concerning persons involuntarily hospitalized after March
 113 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia
 114 and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights
 115 in all other respects. After five years have elapsed from the date that a person's
 116 involuntary hospitalization information has been received by the ~~Georgia Crime~~
 117 ~~Information Center~~ center, the center shall purge its records of such information as soon
 118 as practicable and in any event purge such records within 30 days after the expiration of
 119 such five-year period.

120 ~~(f)~~(h) The council ~~is~~ shall be empowered to adopt rules, regulations, and forms necessary
 121 to implement this Code section. The council shall promulgate regulations to ensure the
 122 identity, confidentiality, and security of all records and data provided in accordance with
 123 this Code section."

124 SECTION 2.

125 Said article is further amended by revising Code Section 35-3-35, relating to disclosure and
 126 dissemination of records to public agencies and political subdivisions, as follows:

127 "35-3-35.

128 (a) The center shall be authorized to:

129 (1) Make Georgia criminal history records maintained by the center available to public
 130 agencies, political subdivisions, authorities, and instrumentalities, including state or
 131 federal licensing and regulatory agencies or their designated representatives, under the
 132 following conditions:

133 (A) Public agencies or political subdivisions shall, at the time of the request, either
 134 provide the fingerprints of the person whose records are requested in such manner
 135 prescribed by the center, which may include the electronic imaging of a person's
 136 fingerprints, ~~or provide a signed consent of the person whose records are requested on~~

137 a form prescribed by the center which shall include such person's full name, address,
 138 social security number, and date of birth; provided, however, that the provisions of this
 139 paragraph shall supersede any other provision relating to the submission of fingerprints
 140 to the center or provide sufficient information to identify the individual whose Georgia
 141 criminal history is being requested;

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

146 (C) The center shall not provide records of juveniles adjudicated delinquent or records
 147 otherwise protected from disclosure pursuant to law; and

148 (D) When the identifying information provided is sufficient to identify persons whose
 149 records are requested ~~electronically~~, the center may disseminate electronically Georgia
 150 criminal history records of in-state felony convictions, pleas, and sentences without:

151 (i) Fingerprint fingerprint comparison; or

152 (ii) ~~Consent~~ consent of the person whose records are requested;

153 ~~(1.1) Make criminal history records maintained by the center available to any county~~
 154 ~~board of registrars or county board of registration and election. The making of an~~
 155 ~~application for voter registration shall be deemed to be consent of the person making the~~
 156 ~~application to release such records to the county board of registrars or county board of~~
 157 ~~registration and election. Such records shall be requested for the sole purpose of~~
 158 ~~verification of information provided on voter registration cards by registration applicants;~~

159 ~~(1.2)~~(2) Make Georgia criminal history records maintained by the center and national
 160 criminal history records maintained by the Federal Bureau of Investigation, obtained by
 161 the center, available to the governing authority of any county or municipality; for any
 162 applicant or licensee in a specified occupation for which such local governing authority
 163 has adopted an ordinance or resolution requiring such applicants or licensees in a
 164 particular occupation or profession regulated by the governing authority to be
 165 fingerprinted as a condition of submitting an application or obtaining or renewing a
 166 license. The center shall establish a uniform method of obtaining criminal history records
 167 required under this paragraph. Such uniform method shall require the submission to the
 168 center of two complete sets of fingerprints and the records search fee. Upon receipt
 169 thereof, the center shall promptly transmit one set of fingerprints to the Federal Bureau
 170 of Investigation for a search of bureau records and an appropriate report and shall retain
 171 the other set and promptly conduct a search of its own records and records to which it has
 172 access. After receiving the fingerprints and fee, the center shall notify the requesting
 173 local government authority in writing of any derogatory finding, including, but not

174 limited to, any criminal record data regarding the fingerprint records check or if there is
 175 no such finding. Nothing in this paragraph shall prevent the local governing authority
 176 from obtaining national criminal history records directly from the Federal Bureau of
 177 Investigation, if an ordinance or resolution requiring the fingerprints of an applicant or
 178 licensee of a particular occupation or profession regulated by the local governing
 179 authority has been adopted by such governing authority of the county or municipality;
 180 and

181 ~~(2)~~(3) Charge fees for disseminating records pursuant to this Code section which will
 182 raise an amount of revenue ~~which~~ that approximates, ~~as nearly as practicable, the direct~~
 183 ~~and indirect~~ costs to the state for providing such disseminations.

184 (b) In the event an employment or licensing decision is made adverse to a person whose
 185 ~~record was~~ records were obtained pursuant to this Code section, the person ~~will~~ shall be
 186 informed by the public agency, political subdivision, authority or instrumentality, or
 187 licensing or regulatory agency making the adverse ~~employment~~ decision of all information
 188 pertinent to that decision. This disclosure shall include information that ~~a record was~~
 189 records were obtained from the center, the specific contents of ~~the record~~ such records, and
 190 the effect ~~the record~~ such records had upon the decision. Failure to provide all such
 191 information to the person subject to the adverse decision shall be a misdemeanor.

192 (c) Neither the center, its employees, nor any agency or employee of the state shall be
 193 responsible for the accuracy of information disseminated nor have any liability for
 194 defamation, invasion of privacy, negligence, ~~nor~~ or any other claim in connection with any
 195 dissemination pursuant to this Code section and shall be immune from suit based upon such
 196 claims.

197 (d) Local criminal justice agencies may disseminate Georgia criminal history records
 198 without fingerprint comparison, prior contact with the center, or consent of the person
 199 whose criminal records are requested to public agencies, political subdivisions, authorities,
 200 and instrumentalities, including state or federal licensing and regulatory agencies, under
 201 the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and
 202 may charge fees as necessary to reimburse such agencies for their direct and indirect costs
 203 associated with providing such disseminations. Such agencies shall have the same
 204 immunity as provided in subsection (c) of this Code section.

205 ~~(d.1) When identifying information provided is sufficient to identify persons whose~~
 206 ~~records are requested, local criminal justice agencies may disseminate criminal history~~
 207 ~~records of in-state felony convictions, pleas, and sentences without:~~

208 (1) Fingerprint comparison;

209 (2) ~~Prior contact with the center; or~~

210 (3) ~~Consent of the person whose records are requested.~~

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

218 ~~(d.2)(e)~~ No fee charged pursuant to subsection (d) of this Code section ~~may~~ shall exceed
 219 \$20.00 per person whose criminal history ~~record is~~ records are requested or shall be
 220 charged to any person or entity authorized prior to January 1, 1995, to obtain information
 221 pursuant to this Code section without payment of such fee.

222 ~~(e)(f)~~ The council ~~is~~ shall be empowered to adopt rules, regulations, and forms necessary
 223 to implement this Code section. The council shall promulgate regulations to ensure the
 224 identity, confidentiality, and security of all records and data provided in accordance with
 225 this Code section."

226 **SECTION 3.**

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