

House Bill 10

By: Representatives Levitas of the 82<sup>nd</sup>, Ramsey of the 72<sup>nd</sup>, Powell of the 29<sup>th</sup>, Talton of the 145<sup>th</sup>, O`Neal of the 146<sup>th</sup>, and others

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 style="text-align:center">**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.