

The Public Safety Committee offered the following substitute to SB 102:

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 35-3-33 of the Official Code of Georgia Annotated, relating to the
2 powers and duties of the center generally, so as to require the Georgia Crime Information
3 Center to make certain reports relating to the status of the center; to amend Code Section
4 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and dissemination
5 of criminal records to private persons and businesses, resulting responsibility and liability
6 of issuing center, and provision of certain information to the FBI in conjunction with the
7 National Instant Criminal Background Check System, so as to provide for charging
8 reasonable fees for disseminating records; to amend Code Section 35-3-35 of the Official
9 Code of Georgia Annotated, relating to disclosure and dissemination of records to public
10 agencies and political subdivisions, so as to provide for charging reasonable fees for
11 disseminating records; to amend Code Section 35-3-37 of the Official Code of Georgia
12 Annotated, relating to the inspection of criminal records, purging, modifying, or
13 supplementing of records, so as to clarify the process for collecting expungement fees; to
14 amend Code Section 35-3-151 of the Official Code of Georgia Annotated, relating to
15 responsibilities of the Georgia Bureau of Investigation, so as to require a report from the
16 Division of Forensic Sciences for the Georgia Bureau of Investigation relating to the status
17 of the division's ability to timely and effectively perform the mandated and suggested
18 statutory duties; to provide for related matters; to provide an effective date; to repeal
19 conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

21 Code Section 35-3-33 of the Official Code of Georgia Annotated, relating to the powers and
22 duties of the center generally, is revised in subsection (a) by striking "and" at the end of
23 paragraph (14), by striking the period and inserting "; and" at the end of paragraph (15), and
24 by adding a new paragraph to read as follows:
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26 "(16) Submit a report annually no later than September 30 of each year to the Governor,
 27 the President of the Senate, and the Speaker of the House of Representatives which
 28 provides information and data relating to the status of the center's ability to timely and
 29 effectively perform statutorily imposed duties required by this chapter. Such report shall
 30 include information and data regarding the need, if any, for additional equipment or
 31 personnel. The report shall also include the number of requests for and the amount of all
 32 funds collected by the center for fees charged for the dissemination, inspection, purging,
 33 modifying, or supplementing of criminal records."

34 **SECTION 2.**

35 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and
 36 dissemination of criminal records to private persons and businesses, resulting responsibility
 37 and liability of issuing center, and provision of certain information to the FBI in conjunction
 38 with the National Instant Criminal Background Check System, is amended by revising
 39 subsection (a) as follows:

40 "(a) The center shall be authorized to:

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

43 (A) Private individuals and businesses requesting criminal history records shall, at the
 44 time of the request, provide the fingerprints of the person whose records are requested
 45 or provide a signed consent of the person whose records are requested on a form
 46 prescribed by the center which shall include such person's full name, address, social
 47 security number, and date of birth;

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

52 (C) When the identifying information provided is sufficient to identify persons whose
 53 records are requested electronically, the center may disseminate electronically criminal
 54 history records of in-state felony convictions, pleas, and sentences without:

55 (i) Fingerprint comparison; or

56 (ii) Consent of the person whose records are requested; or

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

- 60 (A) Such request shall contain the style of the case and the name and identifying
 61 information for each person whose records are requested. Such request shall be
 62 submitted to the center;
- 63 (B) In cases where the court has determined the defendant to be indigent, any fees
 64 authorized by law shall be waived; and
- 65 (C) Disclosure of criminal history information to the defendant's counsel as provided
 66 in this paragraph shall be solely in such counsel's capacity as an officer of the court.
 67 Any use of such information in a manner not authorized by law or the court in which
 68 such action is pending where the records were disclosed shall constitute a violation of
 69 Code Section 35-3-38; and
- 70 (3) Charge reasonable fees for disseminating records pursuant to this Code section ~~which~~
 71 ~~will raise an amount of revenue which approximates, as nearly as practicable, the direct~~
 72 ~~and indirect costs to the state for providing such disseminations."~~

73 SECTION 3.

74 Code Section 35-3-35 of the Official Code of Georgia Annotated, relating to disclosure and
 75 dissemination of records to public agencies and political subdivisions, and the responsibility
 76 and liability of issuing center, is amended by revising subsection (a) as follows:

77 "(a) The center shall be authorized to:

78 (1) Make criminal history records maintained by the center available to public agencies,
 79 political subdivisions, authorities, and instrumentalities, including state or federal
 80 licensing and regulatory agencies or their designated representatives, under the following
 81 conditions:

82 (A) Public agencies or political subdivisions shall, at the time of the request, provide
 83 the fingerprints of the person whose records are requested in such manner prescribed
 84 by the center, which may include the electronic imaging of a person's fingerprints, or
 85 provide a signed consent of the person whose records are requested on a form
 86 prescribed by the center which shall include such person's full name, address, social
 87 security number, and date of birth; provided, however, that the provisions of this
 88 paragraph shall supersede any other provision relating to the submission of fingerprints
 89 to the center;

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

94 (C) When the identifying information provided is sufficient to identify persons whose
 95 records are requested electronically, the center may disseminate electronically criminal
 96 history records of in-state felony convictions, pleas, and sentences without:

97 (i) Fingerprint comparison; or

98 (ii) Consent of the person whose records are requested;

99 (1.1) Make criminal history records maintained by the center available to any county
 100 board of registrars or county board of registration and election. The making of an
 101 application for voter registration shall be deemed to be consent of the person making the
 102 application to release such records to the county board of registrars or county board of
 103 registration and election. Such records shall be requested for the sole purpose of
 104 verification of information provided on voter registration cards by registration applicants;

105 (1.2) Make criminal history records maintained by the center and national criminal
 106 history records maintained by the Federal Bureau of Investigation, obtained by the center,
 107 available to the governing authority of any county or municipality, for any applicant or
 108 licensee in a specified occupation for which such local governing authority has adopted
 109 an ordinance or resolution requiring such applicants or licensees in a particular
 110 occupation or profession regulated by the governing authority to be fingerprinted as a
 111 condition of submitting an application or obtaining or renewing a license. The center
 112 shall establish a uniform method of obtaining criminal history records required under this
 113 paragraph. Such uniform method shall require the submission to the center of two
 114 complete sets of fingerprints and the records search fee. Upon receipt thereof, the center
 115 shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for
 116 a search of bureau records and an appropriate report and shall retain the other set and
 117 promptly conduct a search of its own records and records to which it has access. After
 118 receiving the fingerprints and fee, the center shall notify the requesting local government
 119 authority in writing of any derogatory finding, including, but not limited to, any criminal
 120 record data regarding the fingerprint records check or if there is no such finding. Nothing
 121 in this paragraph shall prevent the local governing authority from obtaining national
 122 criminal history records directly from the Federal Bureau of Investigation, if an ordinance
 123 or resolution requiring the fingerprints of an applicant or licensee of a particular
 124 occupation or profession regulated by the local governing authority has been adopted by
 125 such governing authority of the county or municipality; and

126 (2) Charge reasonable fees for disseminating records pursuant to this Code section which
 127 will raise an amount of revenue ~~which approximates, as nearly as practicable, the direct~~
 128 ~~and indirect costs to the state for providing such disseminations."~~

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SECTION 4.

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Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to the inspection of criminal records, purging, modifying, or supplementing of records, is amended by revising paragraph (1) of subsection (d) as follows:

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"(d)(1) An individual who was:

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(A) Arrested for an offense under the laws of this state but subsequent to such arrest is released by the arresting agency without such offense being referred to the prosecuting attorney for prosecution; or

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(B) After such offense referred to the proper prosecuting attorney, and the prosecuting attorney dismisses the charges without seeking an indictment or filing an accusation may request the original agency in writing to expunge the records of such arrest, including any fingerprints or photographs of the individual taken in conjunction with such arrest, from the agency files. Such request shall be in such form as the center shall

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prescribe. ~~Reasonable fees shall be charged by the original agency and the center for the actual costs of the~~ A reasonable fee shall be charged for the purging of such records,

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provided that such ~~fees~~ fee shall not exceed \$50.00. The fee amount shall be

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established and collected by the original agency. Of the fee charged for purging such

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records, 50 percent shall be retained by the original agency and 50 percent shall be

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forwarded by the original agency to the center. The fee shall be sent by the original

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agency to the center at the time the request for expungement is forwarded by the original agency to the center."

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SECTION 5.

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Code Section 35-3-151 of the Official Code of Georgia Annotated, relating to responsibilities of the Georgia Bureau of Investigation, is revised by striking "and" at the end of paragraph (6), by striking the period and inserting "; and" at the end of paragraph (7), and by adding a new paragraph to read as follows:

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"(8) Shall provide a report annually no later than September 30 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives which provides information and data related to the status of the division's ability to timely and effectively perform the mandated and suggested duties provided by this Code section. Such report shall include information and data regarding the need, if any, for additional equipment or personnel, the timeliness of responses to agency requests for forensic services, the ability of the division to provide testimony, and any recommended statutory changes or budgetary needs that would assist the division in meeting statutorily imposed obligations or providing other essential public safety services."

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SECTION 6.

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This Act shall become effective upon its approval by the Governor or upon its becoming law

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without such approval.

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SECTION 7.

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