

Senate Bill 102

By: Senators Hamrick of the 30th and Mullis of the 53rd

AS PASSED SENATE

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:**

21 **SECTION 1.**

22 Code Section 35-3-33 of the Official Code of Georgia Annotated, relating to the powers and
 23 duties of the center generally, is revised in subsection (a) by striking "and" at the end of
 24 paragraph (14), by striking the period and inserting "; and" at the end of paragraph (15), and
 25 by adding a new paragraph to read as follows:

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 2A.**

74 Said Code section is further amended by revising subsections (d.2) and (d.3) as follows:

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

- 78 (1) Fingerprint comparison;
- 79 (2) Prior contact with the center; or
- 80 (3) Consent of the person whose records are requested.

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

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

91 (d.3) Reserved."

SECTION 3.

92

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

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

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

101 (A) Public agencies or political subdivisions shall, at the time of the request, provide
102 the fingerprints of the person whose records are requested in such manner prescribed
103 by the center, which may include the electronic imaging of a person's fingerprints, or
104 provide a signed consent of the person whose records are requested on a form
105 prescribed by the center which shall include such person's full name, address, social
106 security number, and date of birth; provided, however, that the provisions of this
107 paragraph shall supersede any other provision relating to the submission of fingerprints
108 to the center;

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

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

116 (i) Fingerprint comparison; or

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

118 (1.1) Make criminal history records maintained by the center available to any county
119 board of registrars or county board of registration and election. The making of an
120 application for voter registration shall be deemed to be consent of the person making the
121 application to release such records to the county board of registrars or county board of
122 registration and election. Such records shall be requested for the sole purpose of
123 verification of information provided on voter registration cards by registration applicants;

124 (1.2) Make criminal history records maintained by the center and national criminal
125 history records maintained by the Federal Bureau of Investigation, obtained by the center,
126 available to the governing authority of any county or municipality, for any applicant or
127 licensee in a specified occupation for which such local governing authority has adopted
128 an ordinance or resolution requiring such applicants or licensees in a particular

129 occupation or profession regulated by the governing authority to be fingerprinted as a
 130 condition of submitting an application or obtaining or renewing a license. The center
 131 shall establish a uniform method of obtaining criminal history records required under this
 132 paragraph. Such uniform method shall require the submission to the center of two
 133 complete sets of fingerprints and the records search fee. Upon receipt thereof, the center
 134 shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for
 135 a search of bureau records and an appropriate report and shall retain the other set and
 136 promptly conduct a search of its own records and records to which it has access. After
 137 receiving the fingerprints and fee, the center shall notify the requesting local government
 138 authority in writing of any derogatory finding, including, but not limited to, any criminal
 139 record data regarding the fingerprint records check or if there is no such finding. Nothing
 140 in this paragraph shall prevent the local governing authority from obtaining national
 141 criminal history records directly from the Federal Bureau of Investigation, if an ordinance
 142 or resolution requiring the fingerprints of an applicant or licensee of a particular
 143 occupation or profession regulated by the local governing authority has been adopted by
 144 such governing authority of the county or municipality; and
 145 (2) Charge reasonable fees for disseminating records pursuant to this Code section which
 146 will raise an amount of revenue ~~which approximates, as nearly as practicable, the direct~~
 147 ~~and indirect costs to the state for providing such disseminations."~~

148 SECTION 4.

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

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

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

156 (B) After such offense referred to the proper prosecuting attorney, and the prosecuting
 157 attorney dismisses the charges without seeking an indictment or filing an accusation
 158 may request the original agency in writing to expunge the records of such arrest,
 159 including any fingerprints or photographs of the individual taken in conjunction with
 160 such arrest, from the agency files. Such request shall be in such form as the center shall
 161 prescribe. ~~Reasonable fees shall be charged by the original agency and the center for~~
 162 ~~the actual costs of the~~ A reasonable fee shall be charged for the purging of such records,
 163 provided that such fees fee shall not exceed \$50.00. The fee amount shall be
 164 established and collected by the original agency. Of the fee charged for purging such

165 records, 50 percent shall be retained by the original agency and 50 percent shall be
166 forwarded by the original agency to the center. The fee shall be sent by the original
167 agency to the center at the time the request for expungement is forwarded by the
168 original agency to the center."

169 **SECTION 5.**

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

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

183 **SECTION 6.**

184 This Act shall become effective upon its approval by the Governor or upon its becoming law
185 without such approval.

186 **SECTION 7.**

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