

Senate Bill 118

By: Senators Jackson of the 2nd and Jones of the 10th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,
2 relating to the Georgia Crime Information Center, so as to change provisions relating to
3 inspection, purging, modifying, or supplementing criminal records; to provide for time
4 frames within which certain actions must be taken with respect to expungement,
5 modification, or supplementation of criminal records; to provide for procedure; to provide
6 for individuals who have been found not guilty or exonerated to request expungement; to
7 provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
11 Georgia Crime Information Center, is amended by revising Code Section 35-3-37, relating
12 to inspection, purging, modifying, or supplementing criminal records, as follows:

13 "35-3-37.

14 (a) Nothing in this article shall be construed so as to authorize any person, agency,
15 corporation, or other legal entity to invade the privacy of any citizen as defined by the
16 General Assembly or the courts other than to the extent provided in this article.

17 (b) The center shall make ~~a person's~~ an individual's criminal records available for
18 inspection by such ~~person~~ individual or his or her attorney upon written application to the
19 center. Should the ~~person~~ individual or his or her attorney contest the accuracy of any
20 portion of the records, it shall be mandatory upon the center to make available to the ~~person~~
21 ~~or such person's~~ individual or his or her attorney a copy of the contested record upon
22 written application identifying the portion of the record contested and showing the reason
23 for the contest of accuracy. Forms, procedures, identification, and other related aspects
24 pertinent to access to records may be prescribed by the center.

25 (c) If an individual believes his or her criminal records to be inaccurate or incomplete, he
26 or she may request the original agency having custody or control of the detail records to

27 purge, modify, or supplement them and to notify the center of such changes. Should the
 28 agency decline to act within 60 days of such request or should the individual believe the
 29 agency's or prosecuting attorney's decision to be unsatisfactory, the individual or his or her
 30 attorney may, within 30 days of such decision, enter an appeal to the superior court of the
 31 county of his or her residence or to the court in the county where the agency exists, with
 32 notice to the agency and proper prosecuting attorney, if applicable, to acquire an order by
 33 the court that the subject information be expunged, modified, or supplemented by the
 34 agency of record. The court shall conduct a de novo hearing and may order such relief as
 35 it finds to be required by law, including, but not limited to, ordering that all records in the
 36 custody of the court be sealed and removed from public disclosure. Such appeals shall be
 37 entered in the same manner as appeals are entered from the probate court, except that the
 38 appellant shall not be required to post bond or pay the costs in advance. If the aggrieved
 39 ~~person~~ individual desires, the appeal may be heard by the judge at the first term or in
 40 chambers. A notice sent by registered or certified mail or statutory overnight delivery shall
 41 be sufficient service on the agency and prosecuting attorney, if applicable, having custody
 42 or control of the disputed record that such appeal has been entered. By a preponderance
 43 of the evidence, should ~~Should~~ the record in question be found to be inaccurate,
 44 incomplete, or misleading as set forth in paragraph (3) of subsection (d) of this Code
 45 section, the court shall order it such record to be appropriately expunged, modified, or
 46 supplemented by an explanatory notation. Each agency or individual in ~~the~~ this state with
 47 custody, possession, or control of any such record shall promptly cause each and every
 48 copy thereof in his or her custody, possession, or control to be altered in accordance with
 49 the court's order within 60 days of the entry of the order and shall certify to the court within
 50 such 60 day period that the required expungement, modification, or supplementation has
 51 been completed. Notification of each such deletion, amendment, and supplementary
 52 notation shall be promptly disseminated to any individuals or agencies, including the
 53 center, to which the records in question have been communicated, as well as to the
 54 individual whose records have been ordered so altered. If the court declines to expunge,
 55 modify, or supplement an individual's criminal record, or if the court's order is contrary to
 56 the desires of the agency or prosecuting attorney, a party may file an action in the superior
 57 court where the agency is located as provided in Code Section 50-13-19. The ruling of the
 58 court shall not be reversed absent a showing of an abuse of discretion.

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

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

- 63 (B) After such offense, referred to the proper prosecuting attorney, and the prosecuting
 64 attorney dismisses the charges without seeking an indictment or filing an accusation;
 65 (C) The defendant in an indictment or accusation which was placed on the dead docket
 66 or nolle prossed;
 67 (D) Found not guilty of the charges by a judge or jury;
 68 (E) Successful in completing a pretrial diversion program, the terms of which did not
 69 specifically provide for the expungement of the arrest record; or
 70 (F) Convicted of an offense, but such conviction was reversed by an appellate court
 71 and the decision has been made final and the prosecuting attorney has elected not to
 72 pursue the charges further

73 may request the original agency in writing to expunge all of the records of such arrest,
 74 including any fingerprints or photographs of the individual taken in conjunction with such
 75 arrest, and any records relating to the arrest, charge, or other matters arising out of the
 76 arrest or charge from the agency files. Such request shall be in such form as the center
 77 shall prescribe. Reasonable fees shall be charged by the original agency and the center
 78 for the actual costs of the purging of such records, provided that such fees shall not
 79 exceed \$50.00.

80 (2) Upon receipt of such written request, the agency shall provide a copy of the request
 81 to the proper prosecuting attorney. Upon receipt of a copy of the request to expunge a
 82 criminal record, the prosecuting attorney shall ~~promptly~~ review the request to determine
 83 if it meets the criteria for expungement set forth in paragraph (3) of this subsection within
 84 60 days of the date of receiving such request and shall object in writing to such request
 85 within such 60 day period. The prosecuting attorney shall be deemed to have consented
 86 to such request if he or she fails to object to such request in the requisite period of time.
 87 The prosecuting attorney shall serve the individual seeking the expungement with a copy
 88 of the objection. If ~~the request meets those criteria~~ no objection is filed in the requisite
 89 period of time, the prosecuting attorney shall review the records of the arrest to determine
 90 if any of the material contained therein must be preserved in order to protect the
 91 constitutional rights of an accused under *Brady v. Maryland*. If an objection is filed in
 92 the requisite period of time, the individual shall have the right to appeal as provided in
 93 subsection (c) of this Code section.

94 (3) An individual has the right to have his or her record of such arrest expunged,
 95 including any fingerprints or photographs of the individual taken in conjunction with such
 96 arrest, if the prosecuting attorney determines that the following criteria have been
 97 satisfied:

- 98 (A) The charge was ~~dismissed~~ resolved under the conditions set forth in paragraph (1)
 99 of this subsection;

- 100 (B) No other criminal charges are pending against the individual; and
- 101 (C) The individual has not been previously convicted of the same or similar offense
- 102 under the laws of this state, the United States, or any other state within the last five
- 103 years from the date of the expungement request, excluding any period of incarceration.
- 104 (4) The agency shall expunge the record by destroying the fingerprint cards,
- 105 photographs, and documents relating exclusively to such ~~person~~ individual. Any material
- 106 which cannot be physically destroyed or which the prosecuting attorney determines must
- 107 be preserved under *Brady v. Maryland* shall be restricted by the agency and shall not be
- 108 subject to disclosure to any person except by direction of the prosecuting attorney or as
- 109 ordered by a court of record of this state.
- 110 (5) It shall be the duty of the agency to notify promptly the center of any records which
- 111 are expunged pursuant to this subsection. Upon receipt of notice from an agency that a
- 112 record has been expunged, the center shall, within a ~~reasonable time~~ 30 days, restrict
- 113 access to the criminal history of such ~~person~~ individual relating to such charge. Records
- 114 for which access is restricted pursuant to this subsection shall be made available only to
- 115 criminal justice officials upon written application for official judicial law enforcement
- 116 or criminal investigative purposes.
- 117 (6) If the agency declines to expunge such arrest record, the individual may file an action
- 118 ~~in the superior court where the agency is located as provided in Code Section 50-13-19~~
- 119 subsection (c) of this Code section. A decision of the agency shall be upheld only if it
- 120 is determined by clear and convincing evidence that the individual did not meet the
- 121 criteria set forth in paragraph (3) of this subsection or subparagraphs (A) through ~~(G)~~ (D)
- 122 of paragraph (7) of this subsection. The court in its discretion may award reasonable
- 123 court costs, including attorney's fees, to the individual if he or she prevails in the
- 124 appellate process. Any such action shall be served upon the agency, the center, the
- 125 prosecuting attorney having jurisdiction over the offense sought to be expunged, and the
- 126 Attorney General who may become parties to the action.
- 127 (7) After the filing of an indictment or an accusation, a record shall not be expunged if
- 128 the prosecuting attorney shows that the charges were nolle prossed, dead docketed, or
- 129 otherwise dismissed because:
- 130 (A) Of a plea agreement resulting in a conviction for an offense arising out of the same
- 131 underlying transaction or occurrence as the conviction;
- 132 ~~(B) The government was barred from introducing material evidence against the~~
- 133 ~~individual on legal grounds including but not limited to the grant of a motion to~~
- 134 ~~suppress or motion in limine;~~

135 ~~(C) A material witness refused to testify or was unavailable to testify against the~~
 136 ~~individual unless such witness refused to testify based on his or her statutory right to~~
 137 ~~do so;~~

138 ~~(D)~~(B) The individual was incarcerated on other criminal charges and the prosecuting
 139 attorney elected not to prosecute for reasons of judicial economy;

140 ~~(E) The individual successfully completed a pretrial diversion program, the terms of~~
 141 ~~which did not specifically provide for expungement of the arrest record;~~

142 ~~(F)~~(C) The conduct which resulted in the arrest of the individual was part of a pattern
 143 of criminal activity which was prosecuted in another court of this state, the United
 144 States, another state, or a foreign nation; or

145 ~~(G)~~(D) The individual had diplomatic, consular, or similar immunity or inviolability
 146 from arrest or prosecution.

147 (8) If the prosecuting attorney having jurisdiction determines that the records should not
 148 be expunged because the criteria set forth in paragraph (3) or subparagraphs (A)
 149 through ~~(G)~~ (D) of paragraph (7) of this subsection were not met, and the agency or
 150 center fails to follow the prosecuting attorney's recommendation, the prosecuting attorney
 151 having jurisdiction over the offense sought to be expunged or the Attorney General may
 152 appeal a decision by the agency or center to expunge a criminal history as provided in
 153 Code Section 50-13-19.

154 ~~(9) An individual who has been indicted or charged by accusation that was subsequently~~
 155 ~~dismissed, dead docketed, or nolle prossed may request an expungement as provided by~~
 156 ~~paragraphs (1) through (3) of this subsection; provided, however, that if the prosecuting~~
 157 ~~attorney objects to the expungement request within 60 days after receiving a copy of said~~
 158 ~~request from the agency, the agency shall decline to expunge and the individual shall~~
 159 ~~have the right to appeal as provided by paragraph (6) of this subsection.~~

160 ~~(10)~~ Nothing in this subsection shall be construed as requiring the destruction of incident
 161 reports or other records that a crime was committed or reported to law enforcement.
 162 Further, nothing in this subsection shall be construed to apply to custodial records
 163 maintained by county or municipal jail or detention centers. It shall be the duty of the
 164 agency and center to take such action as may be reasonable to prevent disclosure of
 165 information to the public which would identify such ~~person~~ individual whose records
 166 were expunged.

167 (e) Agencies, including the center, at which criminal offender records are sought to be
 168 inspected may prescribe reasonable hours and places of inspection and may impose such
 169 additional procedures, fees not to exceed \$3.00, or restrictions, including fingerprinting,
 170 as are reasonably necessary to assure the records' security, to verify the identities of those

171 who seek to inspect them, and to maintain an orderly and efficient mechanism for
 172 inspection of records.

173 (f) ~~The provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'~~
 174 ~~shall not apply to proceedings under this Code section.~~

175 (g) If the center has notified a firearms dealer that a ~~person~~ an individual is prohibited from
 176 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title
 177 16 and if the prohibition is the result of such ~~person's~~ individual being involuntarily
 178 hospitalized within the immediately preceding five years, upon such ~~person~~ individual or
 179 his or her attorney making an application to inspect his or her records, the center shall
 180 provide the record of involuntary hospitalization and also inform the ~~person~~ individual or
 181 attorney of his or her right to a hearing before the judge of the probate court or superior
 182 court relative to such ~~person's~~ individual's eligibility to possess or transport a handgun.

183 (g) Any individual whose record was expunged pursuant to this Code section shall not
 184 have to disclose the fact of the arrest, record, or any matter relating thereto on an
 185 application for employment."

186 **SECTION 2.**

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