

House Bill 402

By: Representatives Hatfield of the 177th, Lindsey of the 54th, Benfield of the 85th, Murphy of the 120th, Neal of the 1st, and others

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 disclosure and dissemination of criminal records to private persons and businesses; to change
4 provisions relating to inspection, purging, modifying, or supplementing of criminal records;
5 to provide for a definition; to provide for time frames within which certain actions must be
6 taken with respect to restricting access to records or modifying, correcting, supplementing,
7 amending, or sealing criminal records; to provide for procedure; to provide for individuals
8 who have not been convicted to have their arrest records restricted; to amend Code Section
9 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and rulings deemed
10 directly appealable, so as to provide for a cross-reference; to amend Code Section 15-11-83
11 of the Official Code of Georgia Annotated, relating to when a child may be fingerprinted or
12 photographed and confidentiality of information, so as to correct a cross-reference; to
13 provide for related matters; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
17 Georgia Crime Information Center, is amended by revising paragraph (1) of subsection (a)
18 of Code Section 35-3-34, relating to disclosure and dissemination of criminal records to
19 private persons and businesses, by striking "and" at the end of subparagraph (B), by striking
20 "; or" and replacing it with "and" at the end of subparagraph (C), and by adding a new
21 subparagraph to read as follows:

22 "(D) The center shall not provide records of arrests, charges, or dispositions when
23 access has been restricted pursuant to paragraph (1) or (2) of subsection (h) of Code
24 Section 35-3-37; or"

SECTION 2.

25
26 Said article is further amended by revising Code Section 35-3-37, relating to inspection,
27 purging, modifying, or supplementing of criminal records, as follows:

28 "35-3-37.

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

32 ~~(b) The center shall make a person's criminal records available for inspection by such~~
33 ~~person or his or her attorney upon written application to the center. Should the person or~~
34 ~~his or her attorney contest the accuracy of any portion of the records, it shall be mandatory~~
35 ~~upon the center to make available to the person or such person's attorney a copy of the~~
36 ~~contested record upon written application identifying the portion of the record contested~~
37 ~~and showing the reason for the contest of accuracy. Forms, procedures, identification, and~~
38 ~~other related aspects pertinent to access to records may be prescribed by the center.~~

39 ~~(c) If an individual believes his or her criminal records to be inaccurate or incomplete, he~~
40 ~~or she may request the original agency having custody or control of the detail records to~~
41 ~~purge, modify, or supplement them and to notify the center of such changes. Should the~~
42 ~~agency decline to act or should the individual believe the agency's decision to be~~
43 ~~unsatisfactory, the individual or his or her attorney may, within 30 days of such decision,~~
44 ~~enter an appeal to the superior court of the county of his or her residence or to the court in~~
45 ~~the county where the agency exists, with notice to the agency, to acquire an order by the~~
46 ~~court that the subject information be expunged, modified, or supplemented by the agency~~
47 ~~of record. The court shall conduct a de novo hearing and may order such relief as it finds~~
48 ~~to be required by law. Such appeals shall be entered in the same manner as appeals are~~
49 ~~entered from the probate court, except that the appellant shall not be required to post bond~~
50 ~~or pay the costs in advance. If the aggrieved person desires, the appeal may be heard by~~
51 ~~the judge at the first term or in chambers. A notice sent by registered or certified mail or~~
52 ~~statutory overnight delivery shall be sufficient service on the agency having custody or~~
53 ~~control of disputed record that such appeal has been entered. Should the record in question~~
54 ~~be found to be inaccurate, incomplete, or misleading as set forth in paragraph (3) of~~
55 ~~subsection (d) of this Code section, the court shall order it to be appropriately expunged,~~
56 ~~modified, or supplemented by an explanatory notation. Each agency or individual in the~~
57 ~~state with custody, possession, or control of any such record shall promptly cause each and~~
58 ~~every copy thereof in his or her custody, possession, or control to be altered in accordance~~
59 ~~with the court's order. Notification of each such deletion, amendment, and supplementary~~
60 ~~notation shall be promptly disseminated to any individuals or agencies, including the~~

61 center, to which the records in question have been communicated, as well as to the
62 individual whose records have been ordered so altered.

63 ~~(d)(1) An individual who was:~~

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

67 ~~(B) After such offense referred to the proper prosecuting attorney, and the prosecuting~~
68 ~~attorney dismisses the charges without seeking an indictment or filing an accusation~~
69 ~~may request the original agency in writing to expunge the records of such arrest,~~
70 ~~including any fingerprints or photographs of the individual taken in conjunction with such~~
71 ~~arrest, from the agency files. Such request shall be in such form as the center shall~~
72 ~~prescribe. Reasonable fees shall be charged by the original agency and the center for the~~
73 ~~actual costs of the purging of such records, provided that such fees shall not exceed~~
74 ~~\$50.00.~~

75 ~~(2) Upon receipt of such written request, the agency shall provide a copy of the request~~
76 ~~to the proper prosecuting attorney. Upon receipt of a copy of the request to expunge a~~
77 ~~criminal record, the prosecuting attorney shall promptly review the request to determine~~
78 ~~if it meets the criteria for expungement set forth in paragraph (3) of this subsection. If~~
79 ~~the request meets those criteria, the prosecuting attorney shall review the records of the~~
80 ~~arrest to determine if any of the material contained therein must be preserved in order to~~
81 ~~protect the constitutional rights of an accused under *Brady v. Maryland*.~~

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

86 ~~(A) The charge was dismissed under the conditions set forth in paragraph (1) of this~~
87 ~~subsection;~~

88 ~~(B) No other criminal charges are pending against the individual; and~~

89 ~~(C) The individual has not been previously convicted of the same or similar offense~~
90 ~~under the laws of this state, the United States, or any other state within the last five~~
91 ~~years, excluding any period of incarceration.~~

92 ~~(4) The agency shall expunge the record by destroying the fingerprint cards,~~
93 ~~photographs, and documents relating exclusively to such person. Any material which~~
94 ~~cannot be physically destroyed or which the prosecuting attorney determines must be~~
95 ~~preserved under *Brady v. Maryland* shall be restricted by the agency and shall not be~~
96 ~~subject to disclosure to any person except by direction of the prosecuting attorney or as~~
97 ~~ordered by a court of record of this state.~~

98 ~~(5) It shall be the duty of the agency to notify promptly the center of any records which~~
99 ~~are expunged pursuant to this subsection. Upon receipt of notice from an agency that a~~
100 ~~record has been expunged, the center shall, within a reasonable time, restrict access to the~~
101 ~~criminal history of such person relating to such charge. Records for which access is~~
102 ~~restricted pursuant to this subsection shall be made available only to criminal justice~~
103 ~~officials upon written application for official judicial law enforcement or criminal~~
104 ~~investigative purposes.~~

105 ~~(6) If the agency declines to expunge such arrest record, the individual may file an action~~
106 ~~in the superior court where the agency is located as provided in Code Section 50-13-19.~~
107 ~~A decision of the agency shall be upheld only if it is determined by clear and convincing~~
108 ~~evidence that the individual did not meet the criteria set forth in paragraph (3) of this~~
109 ~~subsection or subparagraphs (A) through (G) of paragraph (7) of this subsection. The~~
110 ~~court in its discretion may award reasonable court costs including attorney's fees to the~~
111 ~~individual if he or she prevails in the appellate process. Any such action shall be served~~
112 ~~upon the agency, the center, the prosecuting attorney having jurisdiction over the offense~~
113 ~~sought to be expunged, and the Attorney General who may become parties to the action.~~

114 ~~(7) After the filing of an indictment or an accusation, a record shall not be expunged if~~
115 ~~the prosecuting attorney shows that the charges were nolle prossed, dead docketed, or~~
116 ~~otherwise dismissed because:~~

117 ~~(A) Of a plea agreement resulting in a conviction for an offense arising out of the same~~
118 ~~underlying transaction or occurrence as the conviction;~~

119 ~~(B) The government was barred from introducing material evidence against the~~
120 ~~individual on legal grounds including but not limited to the grant of a motion to~~
121 ~~suppress or motion in limine;~~

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

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

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

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

132 ~~(G) The individual had diplomatic, consular, or similar immunity or inviolability from~~
133 ~~arrest or prosecution.~~

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

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

147 ~~(10) Nothing in this subsection shall be construed as requiring the destruction of incident~~
148 ~~reports or other records that a crime was committed or reported to law enforcement.~~
149 ~~Further, nothing in this subsection shall be construed to apply to custodial records~~
150 ~~maintained by county or municipal jail or detention centers. It shall be the duty of the~~
151 ~~agency to take such action as may be reasonable to prevent disclosure of information to~~
152 ~~the public which would identify such person whose records were expunged.~~

153 ~~(e) Agencies, including the center, at which criminal offender records are sought to be~~
154 ~~inspected may prescribe reasonable hours and places of inspection and may impose such~~
155 ~~additional procedures, fees not to exceed \$3.00, or restrictions including fingerprinting as~~
156 ~~are reasonably necessary to assure the records' security, to verify the identities of those who~~
157 ~~seek to inspect them, and to maintain an orderly and efficient mechanism for inspection of~~
158 ~~records.~~

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

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

169 (a) As used in this Code section, the term 'entity' means the arresting law enforcement
170 agency, other law enforcement agency, including county and municipal jails and detention
171 centers, or clerk of court's office.

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

175 (c) The center shall make an individual's criminal history record information available for
176 review by such individual or his or her attorney upon written application to the center.
177 Forms, procedures, identification, and other related aspects pertinent to access to criminal
178 history record information may be prescribed by the center.

179 (d) If an individual believes his or her criminal history record information to be inaccurate,
180 incomplete, or misleading, he or she may request a criminal history record information
181 inspection at the center or entity having custody or control of the criminal history record
182 information. The center and any entity at which criminal history record information is
183 sought to be inspected may prescribe reasonable hours and places of inspection and may
184 impose such additional procedures or restrictions, including fingerprinting, as are
185 reasonably necessary to assure the security of the criminal history record information, to
186 verify the identities of those who seek to inspect such information, and to maintain an
187 orderly and efficient mechanism for inspection of criminal history record information. The
188 fee for inspection of criminal history record information shall not exceed \$3.00, which shall
189 not include the cost of the fingerprinting.

190 (e) If the criminal history record information is believed to be inaccurate, incomplete, or
191 misleading, the individual may request the entity having custody or control of the
192 challenged information to modify, correct, supplement, amend, or seal the information and
193 to notify the center of such changes within 60 days. In the case of county and municipal
194 jails and detention centers, such notice to the center shall not be required. If the entity
195 declines to act within 60 days of such request or if the individual believes the entity's
196 decision to be unsatisfactory, within 30 days of the end of the 60 day period or the
197 unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal
198 to the superior court of the county where the entity is located.

199 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order
200 by the court that the subject information be modified, corrected, supplemented, amended,
201 or sealed by the entity with custody of such information. Such appeals shall be entered in
202 the same manner as appeals are entered from the probate court, except that the appellant
203 shall not be required to post bond or pay the costs in advance. Notice of the appeal shall
204 be provided to the entity. A notice sent by registered or certified mail or statutory
205 overnight delivery shall be sufficient service on the entity having custody or control of the

206 disputed criminal history record information. The court shall conduct a de novo hearing
207 within 90 days of the filing of the appeal and may order such relief as it deems just and
208 proper. If the aggrieved individual requests, the appeal may be heard by the judge at the
209 next term or in chambers. The proceedings shall be recorded at the request of the
210 appellant.

211 (g) Should the court find by a preponderance of the evidence that the criminal history
212 record information in question is inaccurate, incomplete, or misleading, the court shall
213 order such information to be appropriately modified, corrected, supplemented, amended,
214 or sealed as the court deems appropriate. Any entity with custody, possession, or control
215 of any such criminal history record information shall cause each and every copy thereof in
216 its custody, possession, or control to be altered in accordance with the court's order within
217 60 days of the entry of the order. To the extent that the entity has previously disseminated
218 the inaccurate, incomplete, or misleading criminal history record information, notification
219 of each modification, correction, supplement, amendment, or sealing shall be disseminated
220 to any individuals or agencies, including the center, to which the information in question
221 has been communicated, as well as to the individual whose information has been ordered
222 so altered within 60 days of the court order. If the court declines to modify, correct,
223 supplement, amend, or seal an individual's criminal history record information or if the
224 court's order is contrary to the desires of the entity or prosecuting attorney, any party may
225 file an appeal pursuant to Code Section 5-6-34. The ruling of the court shall not be
226 reversed absent a showing of an abuse of discretion.

227 (h) Access to an individual's criminal record history information shall be restricted,
228 including criminal history record information from county or municipal jails and detention
229 centers, and any fingerprints or photographs of the individual taken in conjunction with the
230 arrest, for the following types of dispositions:

231 (1) Prior to indictment or accusation:

232 (A) The case was never referred for further prosecution to the prosecuting attorney by
233 the arresting law enforcement agency because either such agency closed the case
234 without referring the case to the prosecuting attorney or a period of two years for
235 misdemeanor offenses or four years for felony offenses has elapsed from the date of
236 arrest; or

237 (B) The case was referred to the prosecuting attorney but was later dismissed; and

238 (2) After indictment or accusation:

239 (A) The case was dismissed or nolle prossed or the case was placed on the dead docket
240 and a period of 12 months has expired from the date of placing such case on the dead
241 docket;

242 (B) The individual went to trial but was found not guilty of the offense;

243 (C) The individual was convicted of an offense, but such conviction was vacated by
244 the trial court or reversed by an appellate court, the decision of which has been made
245 final, and the prosecuting attorney has not retried the case within 18 months of the final
246 order of the court unless the prosecuting attorney obtains a court order, prior to the
247 expiration of the 18 months, lengthening the time due to ongoing investigation or other
248 appropriate circumstances; or

249 (D) The grand jury returned a no bill.

250 (i) An individual may petition the superior court for the jurisdiction in which the arrest for
251 the offense occurred to restrict access to criminal history record information for such
252 offense within four years of the arrest. Such court shall maintain jurisdiction over the case
253 for this limited purpose and duration. Such petition shall be served on the arresting law
254 enforcement agency. Such court shall hear evidence and may hold a hearing, if requested,
255 and shall grant such relief as the court deems appropriate if extraordinary circumstances
256 are shown to warrant restricted access to the criminal history record information. Such
257 court shall file its order granting or denying the request for restricting information within
258 60 days of the hearing. Either party may petition the court for reconsideration by filing a
259 request for reconsideration within 20 days of the order. Any party may file an appeal of
260 an order entered pursuant to this subsection as provided in Code Section 5-6-34.

261 (j) The center shall notify the entity of any criminal history record information, access to
262 which has been restricted pursuant to this Code section, within 30 days of the date access
263 to such information is restricted. Within 30 days of such notice, it shall be the
264 responsibility of the clerk of court to notify the appropriate county or municipal jail or
265 detention center of any criminal history record information access to which has been
266 restricted. Upon receipt of notice from the center or the clerk of court that access to
267 information has been restricted, the entity shall, within 30 days, restrict access to all such
268 information maintained by such entity for such individual's offense. Information for which
269 access is restricted pursuant to this subsection shall be made available only to criminal
270 justice officials upon written application for official judicial law enforcement or criminal
271 investigative purposes.

272 (k) If criminal history record information is restricted pursuant to this Code section or
273 pursuant to a court order and if an entity declines to restrict access to such information, the
274 individual may file an action in the superior court where the entity is located as provided
275 in Code Section 50-13-19. A decision of the entity shall be upheld only if it is determined
276 by clear and convincing evidence that the individual did not meet the criteria set forth in
277 paragraph (1) or (2) of subsection (h) of this Code section. Any such action shall be served
278 upon the entity, the center, the prosecuting attorney having jurisdiction over the offense
279 sought to be restricted, and the Attorney General who may become parties to the action.

280 The court in its discretion may award reasonable court costs including attorney's fees to the
 281 individual if he or she prevails in the appellate process.

282 (l) It shall be the duty of the entity to take such action as may be reasonable to prevent
 283 disclosure of information to the public which would identify any individual whose criminal
 284 history record information is restricted.

285 (m) If the center has notified a firearms dealer that an individual is prohibited from
 286 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title
 287 16 and if the prohibition is the result of such individual being involuntarily hospitalized
 288 within the immediately preceding five years, upon such individual or his or her attorney
 289 making an application to inspect his or her criminal history record information, the center
 290 shall provide the record of involuntary hospitalization and also inform the individual or
 291 attorney of his or her right to a hearing before the judge of the probate court or superior
 292 court relative to such individual's eligibility to possess or transport a handgun.

293 (n) Any individual whose criminal history record information is restricted pursuant to this
 294 Code section shall not have to disclose the fact of the arrest, record, or any matter relating
 295 thereto on an application for employment."

296 **SECTION 3.**

297 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
 298 rulings deemed directly appealable, is amended in subsection (a) by striking "and" at the end
 299 of paragraph (10), by striking the period and inserting "; and" at the end of paragraph (11),
 300 and by adding a new paragraph to read as follows:

301 "(12) All judgments or orders entered pursuant to Code Section 35-3-37."

302 **SECTION 4.**

303 Code Section 15-11-83 of the Official Code of Georgia Annotated, relating to when a child
 304 may be fingerprinted or photographed and confidentiality of information, is amended by
 305 revising subsection (e) as follows:

306 "(e) Upon application of the child, fingerprints and photographs of a child shall be
 307 removed from the file and destroyed if a petition alleging delinquency is not filed or the
 308 proceedings are dismissed after either a petition is filed or the case is transferred to the
 309 juvenile court as provided in Code Section 15-11-30.4 or the child is adjudicated not to be
 310 a delinquent child. The court shall notify the deputy director of the Georgia Crime
 311 Information Center when fingerprints and photographs are destroyed pursuant to this
 312 subsection, and the Georgia Bureau of Investigation shall treat such records in the same
 313 manner as ~~expunged records~~ criminal history record information restricted pursuant to
 314 subsection (c) of Code Section 35-3-37."

315

SECTION 5.

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