

The House Committee on Judiciary Non-civil offers the following substitute to HB 402:

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 provide for a contingent effective date; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

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

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

26 **SECTION 2.**

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

29 "35-3-37.

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

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

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

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

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

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

68 (B) ~~After such offense referred to the proper prosecuting attorney, and the prosecuting~~
69 ~~attorney dismisses the charges without seeking an indictment or filing an accusation~~
70 ~~may request the original agency in writing to expunge the records of such arrest,~~
71 ~~including any fingerprints or photographs of the individual taken in conjunction with such~~
72 ~~arrest, from the agency files. Such request shall be in such form as the center shall~~
73 ~~prescribe. Reasonable fees shall be charged by the original agency and the center for the~~
74 ~~actual costs of the purging of such records, provided that such fees shall not exceed~~
75 ~~\$50.00.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

181 (d) If an individual believes his or her criminal history record information to be inaccurate,
182 incomplete, or misleading, he or she may request a criminal history record information
183 inspection at the center or entity having custody or control of the criminal history record
184 information. The center and any entity at which criminal history record information is
185 sought to be inspected may prescribe reasonable hours and places of inspection and may
186 impose such additional procedures or restrictions, including fingerprinting, as are
187 reasonably necessary to assure the security of the criminal history record information, to
188 verify the identities of those who seek to inspect such information, and to maintain an
189 orderly and efficient mechanism for inspection of criminal history record information. The
190 fee for inspection of criminal history record information shall not exceed \$15.00, which
191 shall not include the cost of the fingerprinting.

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

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

207 overnight delivery shall be sufficient service on the entity having custody or control of the
208 disputed criminal history record information. The court shall conduct a de novo review and
209 shall, if requested by a party, hold a hearing within 90 days of the filing of the appeal;
210 provided, however, that such time requirement may be waived if agreed upon by both
211 parties. If the appellant requests, the appeal may be heard by the judge in chambers. The
212 proceedings shall be recorded at the request of the appellant.

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

231 (h) The center shall restrict access to an individual's criminal history record information,
232 including any fingerprints or photographs of the individual taken in conjunction with the
233 arrest, for the following types of dispositions:

234 (1) Prior to indictment or accusation:

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

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

241 (2) After indictment or accusation:

242 (A) The case was dismissed or nolle prossed or the case was placed on the dead docket
243 without the consent of the state and a period of 12 months has expired from the date of
244 placing such case on the dead docket;

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

252 (C) The grand jury returned two no bills.

253 (i) After the filing of an indictment or accusation, a record shall not be restricted if:

254 (1) The charges were nolle prossed, dead docketed, or otherwise dismissed because of
255 a plea agreement resulting in a conviction for an offense arising out of the same
256 underlying transaction or occurrence as the conviction;

257 (2) The charges were tried and some but not all of the charges resulted in an acquittal;

258 (3) The conduct which resulted in the arrest of the individual was part of a pattern of
259 criminal activity which was prosecuted in another court of this state, the United States,
260 another state, or a foreign nation; or

261 (4) The individual had diplomatic, consular, or similar immunity or inviolability from
262 arrest or prosecution.

263 (j) An individual may petition the superior court for the jurisdiction in which the arrest for
264 the offense occurred to restrict access to criminal history record information for such
265 offense within four years of the arrest. Such court shall maintain jurisdiction over the case
266 for this limited purpose and duration. Such petition shall be served on the arresting law
267 enforcement agency. Such court shall hear evidence and may hold a hearing, if requested,
268 and shall grant such relief as the court deems appropriate if extraordinary circumstances
269 are shown to warrant restricted access to the criminal history record information; provided,
270 however, that access shall not be restricted to criminal history record information of any
271 arrest which resulted in a felony conviction of the petitioner. Such court shall file its order
272 granting or denying the request for restricting information within 60 days of the hearing.
273 Any party may file an appeal of an order entered pursuant to this subsection as provided
274 in Code Section 5-6-34.

275 (k)(1) The center shall notify the arresting law enforcement agency or other law
276 enforcement agency of any criminal history record information, access to which has been
277 restricted pursuant to this Code section, within 30 days of the date access to such
278 information is restricted. Upon receipt of notice from the center that access to

279 information has been restricted, the arresting law enforcement agency or other law
280 enforcement agency shall, within 30 days, restrict access to all such information
281 maintained by such arresting law enforcement agency or other law enforcement agency
282 for such individual's offense.

283 (2) An individual who has had criminal history record information restricted pursuant
284 to this Code section may submit a written request to the appropriate county or municipal
285 jail or detention center to have all records maintained by the appropriate county or
286 municipal jail or detention center restricted. Within 30 days of such request, the
287 appropriate county or municipal jail or detention center shall restrict access to all such
288 information maintained by such appropriate county or municipal jail or detention center
289 for such individual's offense.

290 (3) As to all arrests occurring subsequent to the effective date of this Code section, a
291 clerk of court shall restrict access to an individual's criminal history record information
292 if such criminal history record information is required to be restricted pursuant to this
293 Code section.

294 (4) As to arrests occurring prior to the effective date of this Code section, an individual
295 who has had criminal history record information restricted pursuant to this Code section
296 may submit a written request to a clerk of court to have all records maintained by such
297 clerk of court restricted. Within 60 days of such request, the clerk of court shall restrict
298 access to all such information maintained by such clerk of court for such individual's
299 offense.

300 (5) Information for which access is restricted pursuant to this subsection shall be made
301 available only to criminal justice officials for official judicial law enforcement or criminal
302 investigative purposes.

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

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

314 (n) If the center has notified a firearms dealer that an individual is prohibited from
315 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title

316 16 and if the prohibition is the result of such individual being involuntarily hospitalized
 317 within the immediately preceding five years, upon such individual or his or her attorney
 318 making an application to inspect his or her criminal history record information, the center
 319 shall provide the record of involuntary hospitalization and also inform the individual or
 320 attorney of his or her right to a hearing before the judge of the probate court or superior
 321 court relative to such individual's eligibility to possess or transport a handgun."

322 **SECTION 3.**

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

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

328 **SECTION 4.**

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

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

341 **SECTION 5.**

342 This Act shall become effective only if:

343 (1) Funds are specifically appropriated for purposes of this Act in an appropriations Act
 344 making specific reference to this Act and only if funds so appropriated become available
 345 for expenditure; or

346 (2) Funds are otherwise made available to the Georgia Bureau of Investigation for
 347 purposes of this Act, provided that the director of the bureau shall certify in writing to the
 348 Office of Legislative Counsel, as staff for the Code Revision Commission, that funds
 349 have been made available for such purposes and the date such funds became available.

350

SECTION 6.

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