

House Bill 663

By: Representatives Neal of the 1st, Lindsey of the 54th, Hatfield of the 177th, Benfield of the 85th, Brooks of the 63rd, 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 inspection, purging, modifying, or supplementing of criminal records; to provide for a
4 definition; to provide for time frames within which certain actions must be taken with respect
5 to restricting access to records or modifying, correcting, supplementing, or amending
6 criminal records; to provide for procedure; to provide for individuals who have not been
7 convicted to have their arrest records restricted; to amend Code Section 5-6-34 and Code
8 Section 15-11-83 of the Official Code of Georgia Annotated, relating to judgments and
9 rulings deemed directly appealable and when a child may be fingerprinted or photographed
10 and confidentiality of information, respectively, so as to provide for and correct a
11 cross-reference; to provide for related matters; to provide for a contingent effective date; to
12 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 SECTION 1.

15 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
16 Georgia Crime Information Center, is amended by revising subparagraph (A) of paragraph
17 (4) of Code Section 35-3-30, relating to definitions for the article, as follows:

18 "(A) 'Criminal history record information' means information collected by criminal
19 justice agencies or clerk of court's office on individuals consisting of identifiable
20 descriptions and notations of arrests, detentions, indictments, accusations, information,
21 or other formal charges, and any disposition arising therefrom, sentencing, correctional
22 supervision, and release. Such term also includes the age and sex of each victim as
23 provided by criminal justice agencies or clerk of court's office. The term ~~does~~ shall not
24 include identification information, such as fingerprint records, to the extent that such
25 information does not indicate involvement of the individual in the criminal justice
26 system."

27

SECTION 2.

28 Said article if further amended by revising paragraph (1) of subsection (a) of Code Section
 29 35-3-34, relating to disclosure and dissemination of criminal records to private persons and
 30 businesses, by deleting "and" at the end of subparagraph (B), by replacing "or" with "and"
 31 at the end of subparagraph (C), and by adding a new subparagraph to read as follows:

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

35

SECTION 3.

36 Said article is further amended by repealing Code Section 35-3-37, relating to inspection,
 37 purging, modifying, or supplementing of criminal records, and enacting a new Code Section
 38 35-3-37 to read as follows:

39 "35-3-37.

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

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

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

51 (d) If an individual believes his or her criminal history record information to be inaccurate,
 52 incomplete, or misleading, he or she may request a criminal history record information
 53 inspection at the center or entity having custody or control of the criminal history record
 54 information. The center and any entity at which criminal history record information is
 55 sought to be inspected may prescribe reasonable hours and places of inspection and may
 56 impose such additional procedures or restrictions, including fingerprinting, as are
 57 reasonably necessary to assure the security of the criminal history record information, to
 58 verify the identities of those who seek to inspect such information, and to maintain an
 59 orderly and efficient mechanism for inspection of criminal history record information. The
 60 fee for inspection of criminal history record information shall not exceed \$15.00, which
 61 shall not include the cost of the fingerprinting.

62 (e) If the criminal history record information is believed to be inaccurate, incomplete, or
63 misleading, the individual may request the entity having custody or control of the
64 challenged information to modify, correct, supplement, or amend the information and to
65 notify the center of such changes within 60 days. In the case of county and municipal jails
66 and detention centers, such notice to the center shall not be required. If the entity declines
67 to act within 60 days of such request or if the individual believes the entity's decision to be
68 unsatisfactory, within 30 days of the end of the 60 day period or of the issuance of the
69 unsatisfactory decision, whichever occurs last, the individual shall have the right to appeal
70 to the superior court of the county where the entity is located.

71 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order
72 by the court that the subject information be modified, corrected, supplemented, or amended
73 by the entity with custody of such information. Such appeals shall be entered in the same
74 manner as appeals are entered from the probate court, except that the appellant shall not be
75 required to post bond or pay the costs in advance. Notice of the appeal shall be provided
76 to the entity. A notice sent by registered or certified mail or statutory overnight delivery
77 shall be sufficient service on the entity having custody or control of the disputed criminal
78 history record information. The court shall conduct a de novo review and shall, if
79 requested by a party, hold a hearing within 90 days of the filing of the appeal; provided,
80 however, that such time requirement may be waived if agreed upon by both parties. If the
81 appellant requests, the appeal may be heard by the judge in chambers. The proceedings
82 shall be recorded at the request of the appellant.

83 (g)(1) The court shall file a decision within 60 days of the hearing should the court find
84 by a preponderance of the evidence that the criminal history record information in
85 question is inaccurate, incomplete, or misleading and the court shall order such
86 information to be appropriately modified, corrected, supplemented, or amended as the
87 court deems appropriate. Any entity with custody, possession, or control of any such
88 criminal history record information shall cause each and every copy thereof in its
89 custody, possession, or control to be altered in accordance with the court's order within
90 60 days of the entry of the order. If the court declines to modify, correct, supplement, or
91 amend an individual's criminal history record information or if the court's order is
92 contrary to the desires of the entity or prosecuting attorney, any party may file an appeal
93 pursuant to Code Section 5-6-34. The ruling of the court shall not be reversed absent a
94 showing of an abuse of discretion.

95 (2) To the extent that an entity has previously disseminated inaccurate, incomplete, or
96 misleading criminal history record information, and upon written request by the
97 individual, or his or her designee, whose criminal history record information is at issue,
98 notification of each modification, correction, supplement, or amendment shall be

99 disseminated to any individuals or agencies, including the center, to which the
100 information in question has been communicated, as well as to the individual whose
101 information has been ordered so altered within 60 days of the written request. To the
102 extent it is known by the requesting individual, he or she shall provide the name of the
103 individual, agency, or company that was disseminated inaccurate, incomplete, or
104 misleading criminal history record information.

105 (h) Access to an individual's criminal history record information, including any
106 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
107 restricted for the following types of dispositions:

108 (1) Prior to indictment or accusation:

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

114 (B) The case was referred to the prosecuting attorney but was later dismissed; or

115 (C) The grand jury returned two no bills; and

116 (2) After indictment or accusation:

117 (A) All charged were dismissed or nolle prossed or the case was placed on the dead
118 docket with the consent of the state and a period of 12 months has expired from the date
119 of placing such case on the dead docket;

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

127 (C) The individual was acquitted of all charges by a judge or jury.

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

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

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

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

136 (4) The individual had diplomatic, consular, or similar immunity or inviolability from
137 arrest or prosecution; or

138 (5) The individual was acquitted of all charges but it is later determined that the acquittal
139 was as a result of jury tampering.

140 (j) In extraordinary circumstances an individual may petition the superior court in the
141 county where the arrest for the offense occurred to restrict access to criminal history record
142 information for such offense within four years of the arrest. Such court shall maintain
143 jurisdiction over the case for this limited purpose and duration. Such petition shall be
144 served on the arresting law enforcement agency and where appropriate on the prosecuting
145 attorney and clerk of court for the county in which the petition was filed. Such court shall
146 hear evidence and may hold a hearing, if requested, and shall grant such relief as the court
147 deems appropriate; provided, however, that access shall not be restricted to the criminal
148 history record information of any arrest which resulted in a felony conviction of the
149 petitioner. Such court shall file its order granting or denying the request for restricting
150 information within 60 days of the hearing. Any party may file an appeal of an order
151 entered pursuant to this subsection as provided in Code Section 5-6-34.

152 (k)(1) The center shall notify the arresting law enforcement agency or other law
153 enforcement agency of any criminal history record information, access to which has been
154 restricted pursuant to this Code section, within 30 days of the date access to such
155 information is restricted. Upon receipt of notice from the center that access to
156 information has been restricted, the arresting law enforcement agency or other law
157 enforcement agency shall, within 30 days, restrict access to all such information
158 maintained by such arresting law enforcement agency or other law enforcement agency
159 for such individual's offense.

160 (2) An individual who has had criminal history record information restricted pursuant
161 to this Code section may submit a written request to the appropriate county or municipal
162 jail or detention center to have all records maintained by the appropriate county or
163 municipal jail or detention center restricted. Within 30 days of such request, the
164 appropriate county or municipal jail or detention center shall restrict access to all such
165 information maintained by such appropriate county or municipal jail or detention center
166 for such individual's offense.

167 (3) As to all arrests occurring subsequent to the effective date of this Code section, the
168 arresting law enforcement agency or other law enforcement agency shall restrict access
169 to an individual's criminal history record information if such criminal history record
170 information is required to be restricted pursuant to this Code section.

171 (4) As to arrests occurring prior to the effective date of this Code section, an individual
172 who has had criminal history record information restricted pursuant to this Code section

173 may submit a written request to the arresting law enforcement agency or other law
174 enforcement agency to have all records maintained by such agency restricted. Within 60
175 days of such request, such agency shall restrict access to all such information maintained
176 by such agency for such individual's offense.

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

180 (1) If criminal history record information is restricted pursuant to this Code section and if
181 the arresting law enforcement agency or other law enforcement agency, including county
182 and municipal jails and detention centers, declines to restrict access to such information,
183 the individual may file an action in the superior court where the entity is located as
184 provided in Code Section 50-13-19. A decision of the arresting law enforcement agency
185 or other law enforcement agency, including county and municipal jails and detention
186 centers, shall be upheld only if it is determined by clear and convincing evidence that the
187 individual did not meet the criteria set forth in paragraph (1) or (2) of subsection (h) of this
188 Code section. Any such action shall be served upon the arresting law enforcement agency
189 or other law enforcement agency, including county and municipal jails and detention
190 centers, the prosecuting attorney having jurisdiction over the offense sought to be
191 restricted, and the Attorney General who may become parties to the action.

192 (m)(1) For criminal history record information maintained by the clerk of court, an
193 individual who has a record restricted pursuant to this Code section may petition the
194 superior court in the county where the clerk of court is located for an order to seal all
195 criminal history record information maintained by the clerk of court for such individual's
196 offense. Notice of such petition shall be sent to the clerk of court and the district
197 attorney. A notice sent by registered or certified mail or statutory overnight delivery shall
198 be sufficient notice.

199 (2) The court shall, if requested by a party, hold a hearing within 90 days of the filing of
200 the petition; provided, however, that such time requirement may be waived if agreed
201 upon by all parties. If the petitioner requests, the proceedings may be heard by the judge
202 in chambers.

203 (3) The court shall file a decision within 60 days of the hearing and shall order sealed all
204 criminal history record information in the custody of the clerk of court if the court finds
205 by a preponderance of the evidence:

206 (A) The criminal history record information has been restricted pursuant to this Code
207 section; and

208 (B) The harm otherwise resulting to the privacy of a person in interest clearly
 209 outweighs the public interest in the criminal history record information being publicly
 210 available.

211 (4) Within 60 days of the court's order, the clerk of court shall cause every document,
 212 physical or electronic, in its custody, possession, or control to be sealed in accordance
 213 with the court's order.

214 (5) Inspection of the criminal history record information included in the court order may
 215 thereafter be permitted by the court only upon petition by criminal justice agencies or by
 216 the person who is the subject of such criminal history record information.

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

220 (o) If the center has notified a firearms dealer that an individual is prohibited from
 221 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title
 222 16 and if the prohibition is the result of such individual being involuntarily hospitalized
 223 within the immediately preceding five years, upon such individual or his or her attorney
 224 making an application to inspect his or her criminal history record information, the center
 225 shall provide the record of involuntary hospitalization and also inform the individual or
 226 attorney of his or her right to a hearing before the judge of the probate court or superior
 227 court relative to such individual's eligibility to possess or transport a handgun."

228 **SECTION 4.**

229 Code Section 5-6-34 of the Official Code of Georgia Annotated, relating to judgments and
 230 rulings deemed directly appealable, is amended in subsection (a) by deleting "and" at the end
 231 of paragraph (10), by replacing the period with "; and" at the end of paragraph (11), and by
 232 adding a new paragraph to read as follows:

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

234 **SECTION 5.**

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

238 "(e) Upon application of the child, fingerprints and photographs of a child shall be
 239 removed from the file and destroyed if a petition alleging delinquency is not filed or the
 240 proceedings are dismissed after either a petition is filed or the case is transferred to the
 241 juvenile court as provided in Code Section 15-11-30.4 or the child is adjudicated not to be
 242 a delinquent child. The court shall notify the deputy director of the Georgia Crime

243 Information Center when fingerprints and photographs are destroyed pursuant to this
244 subsection, and the Georgia Bureau of Investigation shall treat such records in the same
245 manner as ~~expunged records~~ criminal history record information restricted pursuant to
246 ~~subsection (c)~~ of Code Section 35-3-37."

247 **SECTION 6.**

248 This Act shall become effective only:

249 (1) Upon the effective date of a specific appropriation of funds for the purposes of this
250 Act as expressed in a line item making specific reference to the full funding of this Act
251 in an appropriations Act enacted by the General Assembly; or

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

256 **SECTION 7.**

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