

House Bill 663

By: Representatives Neal of the 1<sup>st</sup>, Lindsey of the 54<sup>th</sup>, Hatfield of the 177<sup>th</sup>, Benfield of the 85<sup>th</sup>, Brooks of the 63<sup>rd</sup>, 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.