

House Bill 113

By: Representatives Kidd of the 145<sup>th</sup>, Powell of the 32<sup>nd</sup>, Oliver of the 82<sup>nd</sup>, Neal of the 2<sup>nd</sup>, Parrish of the 158<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to  
2 review of an individual's criminal history record information, so as to authorize the purging  
3 of convictions of minors for driving under the influence of alcohol or drugs under limited  
4 circumstances; to provide for related matters; to provide an effective date; to repeal  
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of an  
9 individual's criminal history record information, is amended by adding a new subsection to  
10 read as follows:

11 "(s)(1) An individual who:

12 (A) Was under the age of 18 at the time he or she was arrested for the offense of  
13 driving under the influence of alcohol or drugs in violation of Code Section 40-6-391  
14 and the arrest resulted in a conviction for such offense;

15 (B) Was convicted of driving under the influence of alcohol or drugs arising from an  
16 incident that resulted in no damages to other persons including physical injury or  
17 property damage;

18 (C) For five years following the date of his or her arrest for the offense of driving  
19 under the influence of alcohol or drugs has not had any points assessed against his or  
20 her driver's license pursuant to Code Section 40-5-57;

21 (D) Has no other criminal charges pending against him or her; and

22 (E) Has not been previously convicted or arrested for the same or similar offense under  
23 the laws of this state, the United States, or any other state

24 may request the original prosecuting agency in writing to expunge the records of such  
25 arrest and conviction, including any fingerprints or photographs of the individual taken  
26 in conjunction with such arrest, from the agency files. Such request shall be in such form

27 as the center shall prescribe. Reasonable fees shall be charged by the original agency and  
28 the center for the actual costs of the purging of such records, provided that such fees shall  
29 not exceed \$100.00.

30 (2) Upon receipt of such written request, the agency shall provide a copy of the request  
31 to the proper prosecuting attorney. Upon receipt of a copy of the request to expunge a  
32 criminal record, the prosecuting attorney shall promptly review the request to determine  
33 if it meets the criteria for expungement set forth in this subsection.

34 (3) An individual meeting the criteria of this subsection shall have his or her records of  
35 such arrest and conviction expunged, including any fingerprints or photographs of the  
36 individual taken in conjunction with such arrest and conviction.

37 (4) The agency shall expunge the record by destroying the fingerprint cards,  
38 photographs, and documents relating exclusively to such person.

39 (5) It shall be the duty of the agency to notify promptly the center of any records which  
40 are expunged pursuant to this subsection. Upon receipt of notice from an agency, the  
41 center shall, within a reasonable time, restrict access to the criminal history of such  
42 person relating to such charge and conviction. Records for which access is restricted  
43 pursuant to this subsection shall be made available only to criminal justice officials upon  
44 written application for official judicial law enforcement or criminal investigative  
45 purposes.

46 (6) If the agency declines to expunge such arrest and conviction records, the individual  
47 may file an action in the superior court where the agency is located as provided in Code  
48 Section 50-13-19. A decision of the agency shall be upheld only if it is determined by  
49 clear and convincing evidence that the individual did not meet the criteria set forth in this  
50 subsection. The court in its discretion may award reasonable court costs including  
51 attorney's fees to the individual if he or she prevails in the appellate process. Any such  
52 action shall be served upon the agency, the center, the prosecuting attorney having  
53 jurisdiction over the offense sought to be expunged, and the Attorney General who may  
54 become parties to the action."

55 **SECTION 2.**

56 This Act shall become effective on July 1, 2013.

57 **SECTION 3.**

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