

House Bill 271

By: Representatives Neal of the 2nd, Lindsey of the 54th, Meadows of the 5th, Oliver of the 82nd, Abrams of the 89th, 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 individual's criminal history record information, definitions, and privacy
3 considerations, so as to revise definitions; to clarify provisions relating to record restriction
4 involving certain felony offenses; to change provisions relating to the application of the Code
5 section to arrests occurring prior to July 1, 2013; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
10 individual's criminal history record information, definitions, and privacy considerations, is
11 amended in subsection (a) by deleting paragraphs (1) and (3), redesignating paragraph (2)
12 as paragraph (1), and redesignating paragraphs (4) through (9) as paragraphs (2) through (7),
13 respectively, and by revising paragraph (2) of subsection (h), paragraph (1) of subsection (j),
14 and subsection (n) as follows:

15 "(2) After indictment or accusation:

16 (A) Except as provided in subsection (i) of this Code section, all charges were
17 dismissed or nolle prossed;

18 (B) The individual pleaded guilty to or was found guilty of possession of a narcotic
19 drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in
20 accordance with the provisions of Code Section 16-13-2, and the individual
21 successfully completed the terms and conditions of his or her probation; or

22 ~~(C) The individual successfully completed a drug court treatment program or mental~~
23 ~~health treatment program, the individual's case has been dismissed or nolle prossed, and~~
24 ~~he or she has not been arrested for at least five years, excluding any arrest for a~~
25 ~~nonserious traffic offense; or~~

26 (D) The individual was acquitted of all of the charges by a judge or jury unless, within
 27 ten days of the verdict, the prosecuting attorney demonstrates to the trial court through
 28 clear and convincing evidence that the harm otherwise resulting to the individual is
 29 clearly outweighed by the public interest in the criminal history record information
 30 being publicly available because either:

31 (i) The prosecuting attorney was barred from introducing material evidence against
 32 the individual on legal grounds, including, without limitation, the granting of a motion
 33 to suppress or motion in limine; or

34 (ii) The individual has been formally charged with the same or similar offense within
 35 the previous five years."

36 "(j)(1) When an individual had a felony charges charge dismissed or nolle prossed or was
 37 found not guilty of felony charges such charge but was convicted of a misdemeanor
 38 offense or offenses arising out of the same underlying transaction or occurrence that was
 39 not a lesser included offense of the felony charge, such individual may petition the
 40 superior court in the county where the arrest occurred to restrict access to criminal history
 41 record information for such felony charges charge within four years of the arrest. Such
 42 court shall maintain jurisdiction over the case for this limited purpose and duration. Such
 43 petition shall be served on the arresting law enforcement agency and the prosecuting
 44 attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing
 45 of the petition. The court shall hear evidence and shall grant an order restricting such
 46 criminal history record information if the court determines the charges in question did not
 47 arise out of the same underlying transaction or occurrence that the misdemeanor
 48 conviction was not a lesser included offense of the felony charge and that the harm
 49 otherwise resulting to the individual is clearly outweighed by the public interest in the
 50 criminal history record information being publicly available."

51 "(n)(1) Except as provided in subsection (j) of this Code section, as As to arrests
 52 occurring before July 1, 2013, an individual may, in writing, request the arresting law
 53 enforcement agency to restrict the criminal history record information of an arrest,
 54 including any fingerprints or photographs taken in conjunction with such arrest.
 55 Reasonable fees shall be charged by the arresting law enforcement agency and the center
 56 for the actual costs of restricting such records, provided that such fee shall not exceed
 57 \$50.00.

58 (2) Within 30 days of receipt of such written request, the arresting law enforcement
 59 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days
 60 of receiving the request, the prosecuting attorney shall review the request to determine
 61 if he or she agrees to the request meets the criteria set forth in subsection (h) of this Code
 62 section for record restriction, and the prosecuting attorney shall notify the arresting law

63 enforcement agency of his or her decision within such 90 day period. The arresting law
 64 enforcement agency shall inform the individual of the prosecuting attorney's decision,
 65 and, if record restriction is approved by the prosecuting attorney, the arresting law
 66 enforcement agency shall restrict the criminal history record information within 30 days
 67 of receipt of the prosecuting attorney's decision.

68 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
 69 history record information, such individual may file a civil action in the superior court
 70 where the entity is located. A copy of the civil action shall be served on the entity and
 71 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
 72 become parties to the action. A decision of the prosecuting attorney to decline a request
 73 to restrict access to criminal history record information shall not be upheld ~~if it is~~
 74 ~~determined unless it can be demonstrated~~ by clear and convincing evidence that the ~~harm~~
 75 ~~otherwise resulting to the privacy of the individual clearly outweighs the public interest~~
 76 ~~in the criminal history record information being publicly available~~ arrest is not eligible
 77 for record restriction pursuant to subsection (h) of this Code section.

78 (4) To restrict criminal history record information at the center, an individual shall
 79 submit a prosecuting attorney's approved record restriction request or a court order issued
 80 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access
 81 to such criminal history record information within 30 days ~~from~~ of receiving such
 82 information."

83 **SECTION 2.**

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