

House Bill 981

By: Representatives Willard of the 51st, Bruce of the 61st, Pezold of the 133rd, Clark of the 147th, Alexander of the 66th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Sections 17-17-12 and 35-3-37 of the Official Code of Georgia Annotated,
2 relating to notification to victim of accused's motion for new trial or appeal, release on bail
3 or recognizance, appellate proceedings, outcome of appeal, notifications regarding death
4 penalty cases, and victim's rights retained at new trial or on appeal and review of individual's
5 criminal history record information, definitions, privacy considerations, written application
6 requesting review, and inspection, respectively, so as to provide for record restriction for
7 individuals convicted of certain felonies and misdemeanors under certain circumstances; to
8 provide for procedure; to provide for notification to victims when an individual petitions for
9 record restriction; to provide for limitations; to provide for related matters; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Code Section 17-17-12 of the Official Code of Georgia Annotated, relating to notification
14 to victim of accused's motion for new trial or appeal, release on bail or recognizance,
15 appellate proceedings, outcome of appeal, notifications regarding death penalty cases, and
16 victim's rights retained at new trial or on appeal, is amended by revising subsection (a) as
17 follows:

18 "(a) Upon the written request of the victim, the prosecuting attorney shall notify the victim
19 of the following:

20 (1) That the ~~accused~~ defendant has filed a motion for new trial, an appeal of his or her
21 conviction, or an extraordinary motion for new trial;

22 (2) Whether the ~~accused~~ defendant has been released on bail or other recognizance
23 pending the disposition of the motion or appeal;

24 (3) The time and place of any appellate court proceedings relating to the motion or
25 appeal and any changes in the time or place of those proceedings; ~~and~~

26 (4) The result of the motion or appeal; and

27 (5) The date, time, and place of any court proceedings relating to a petition for record
 28 restriction under subsection (s) of Code Section 35-3-37."

29 **SECTION 2.**

30 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
 31 individual's criminal history record information, definitions, privacy considerations, written
 32 application requesting review, and inspection, is amended by revising subparagraph (j)(4)(B)
 33 and adding a new subsection to read as follows:

34 "(B) Record restriction shall not be appropriate if the individual was convicted of:

- 35 (i) Child molestation in violation of Code Section 16-6-4;
 36 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
 37 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation
 38 of Code Section 16-6-5.1;
 39 (iv) Bestiality in violation of Code Section 16-6-6;
 40 ~~(v)~~(v) Keeping a place of prostitution in violation of Code Section 16-6-10;
 41 ~~(vi)~~(vi) Pimping in violation of Code Section 16-6-11;
 42 ~~(vii)~~(vii) Pandering by compulsion in violation of Code Section 16-6-14;
 43 ~~(viii)~~(viii) Masturbation for hire in violation of Code Section 16-6-16;
 44 ~~(ix)~~(ix) Giving massages in a place used for lewdness, prostitution, assignation, or
 45 masturbation for hire in violation of Code Section 16-6-17;
 46 ~~(x)~~(x) Sexual battery in violation of Code Section 16-6-22.1;
 47 (xi) Cruelty to animals in violation of Code Section 16-12-4;
 48 (xii) Dogfighting in violation of Code Section 16-12-37;
 49 ~~(xiii)~~(xiii) Any offense related to minors generally in violation of Part 2 of Article 3 of
 50 Chapter 12 of Title 16;
 51 ~~(xiv)~~(xiv) Theft in violation of Chapter 8 of Title 16; provided, however, that such
 52 prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud
 53 in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or
 54 ~~(xv)~~(xv) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title
 55 40."

56 "(s)(1) Notwithstanding subsection (i) of this Code section, when an individual was
 57 convicted in this state of certain misdemeanors and felonies as set forth in paragraph (2)
 58 of this subsection, provided that such individual successfully completed the terms of his
 59 or her sentence and, since completing the terms of his or her sentence, has not been
 60 arrested for any criminal offense in any jurisdiction for at least five years, excluding any
 61 arrest for a nonserious traffic offense; provided, further, that, if he or she was not
 62 convicted in this state, or under any other state's law with similar provisions, of a

63 violation of one or more of the offenses listed in subparagraph (j)(4)(B) of this Code
64 section, a serious violent felony as such term is defined in Code Section 17-10-6.1, or a
65 sexual offense as such term is defined in Code Section 17-10-6.2, then he or she may
66 petition the court in which the conviction occurred to restrict access to criminal history
67 record information as set forth in paragraph (3) of this subsection.

68 (2) Record restriction may be granted if the individual was convicted of:

69 (A) A misdemeanor, except those set forth in subparagraph (j)(4)(B);

70 (B) A felony which has a maximum punishment term of ten years, except when such
71 offense involved family violence as such term is defined in Code Section 19-13-1;

72 (C) Burglary, provided that the offense did not involve the use or theft of a firearm; or

73 (D) A violation of Article 2 of Chapter 13 of Title 16 involving simple possession of
74 a controlled substance or marijuana.

75 (3) The court in which the conviction occurred shall maintain jurisdiction over the case
76 for this limited purpose and duration. A petition for record restriction shall be served on
77 the prosecuting attorney who shall investigate such request and make a report to the court
78 regarding such petition in a written communication to the prosecuting attorney or at the
79 court hearing on such petition. If a hearing is requested, such hearing shall be held within
80 90 days of the filing of the petition. A victim may express an opinion as to such petition
81 in a written communication to the prosecuting attorney or at the court hearing on such
82 petition. The court shall hear evidence and shall determine whether granting an order
83 restricting such criminal history record information is appropriate. The burden shall be
84 on the petitioner to show by a preponderance of evidence that his or her interest in having
85 his or her record restricted outweighs the public's interest in the criminal history record
86 information being publicly available. The existence of any conviction on an individual's
87 criminal record which is ineligible for restriction under this Code section shall not
88 prohibit such individual from petitioning for the restriction and sealing of any conviction
89 which is eligible under this Code section.

90 (4) The petition to restrict and seal the record of arrest and conviction shall be filed in
91 the court in which the conviction was obtained.

92 (A) The petition must include information regarding the harm caused to the defendant
93 in the public maintaining access to the record;

94 (B) The person filing the petition must serve a copy, either electronically where
95 available or by United States mail, of the motion to the office of the prosecuting
96 attorney that prosecuted the case, and to the court clerk's office; and

97 (C) The person filing the petition must attach a copy of his or her Georgia Crime
98 Information Center record, generated within the previous 30 days, to the prosecuting
99 attorney office's service copy.

100 (5) Within 90 days of service, the prosecuting attorney's office must file a response to
101 the motion, indicating its objection or lack of objection to the petition. The prosecuting
102 attorney's office must serve a copy of its response on the defendant. Should the
103 prosecuting attorney's office wish to object to the granting of such a petition, it must
104 specifically state the reasons for the objection.

105 (6) Unless otherwise agreed upon by the parties, if the prosecuting attorney's office files
106 a timely written objection, the court shall hold a hearing within 60 days after the timely
107 objection is filed, giving reasonable notice of the hearing to the defendant. The burden
108 shall be on the petitioner to show by a preponderance of evidence that his or her interest
109 in having his or her record restricted or restricted and sealed outweighs the public's
110 interest in the criminal history record information being publicly available. The court
111 shall separately decide whether to restrict the record or to restrict and seal the record.

112 (7) If the prosecuting attorney's office files a lack of objection into the record, or fails to
113 respond within 90 days, the court may grant the motion to restrict or to restrict and seal
114 the record without a hearing if the court determines that the defendant has met the
115 requirements for restriction or for restriction and sealing under subsections (1), (2), and
116 (3) of this Code section, and that the harm caused to the defendant in maintaining the
117 public availability of the record outweighs the public's interest in maintaining that public
118 availability.

119 (8) In determining whether the harm caused to the defendant in maintaining the public
120 availability of the record is greater than the public's interest in maintaining that public
121 availability, the court shall consider the following factors:

122 (A) The nature and seriousness of the offense;

123 (B) The age of the person at the time the offense was committed;

124 (C) The length of time elapsed since the offense was committed;

125 (D) The defendant's prior criminal history;

126 (E) Individual circumstances relative to the defendant, including, but not limited to,
127 mitigating circumstances and conduct since the offense;

128 (F) Individual circumstances relative to the offense;

129 (G) The opinion of the victim or victims impacted, whether in writing or in person, if
130 such opinion is offered after reasonable attempts at notice to the victim or victims has
131 been made as required by paragraph (5) of subsection (a) of Code section 17-17-12; and

132 (H) The adverse collateral consequences caused by the public availability of the record,
133 including, but not limited to employment.

134 (9) The court may not deny the defendant's petition without first holding a hearing.

135 (10) If the court denies the defendant's petition under this Code section, the defendant
136 may not submit a new petition to restrict or seal the same conviction until at least one

137 year has passed from the date of denial or if appealed, the date of the final appellate
138 decision.

139 (11) Upon the granting of either a restriction or a restriction and sealing under this Code
140 section, the clerk of court shall file the order into the case record and shall enter the
141 restriction into the Georgia Crime Information Center database, in the manner prescribed
142 by Georgia Crime Information Center.

143 (12) Upon the granting of a restriction and sealing under this Code section:

144 (A) The clerk of court shall also serve the order of record restriction and sealing by
145 United States mail or electronically upon all of the following entities:

146 (i) The office of the prosecuting attorney that prosecuted the case;

147 (ii) The county jail, municipal jail, or other detention facility at which the defendant
148 was held in connection with the restricted and sealed case;

149 (iii) The arresting agency; and

150 (iv) If applicable, any other court where the person appeared before the transfer to the
151 court where the conviction occurred;

152 (B) Within sixty days of receipt of the order, the above entities must restrict and seal
153 any records related to the arrest and conviction from public access. The order shall not
154 preclude a prosecuting attorney office from retaining a nonpublic record thereof for law
155 enforcement purposes only; and

156 (C) Within sixty days of the court's order, the clerk of court must seal its records and
157 cause every document, physical or electronic, in its custody, possession, or control to
158 be restricted.

159 Such information shall always be available for inspection, copying, and use by criminal
160 justice agencies, the Judicial Qualifications Commission, and the defendant who filed the
161 motion under this Code section without a court order unsealing such records.

162 (13) The person whose record is ordered restricted and sealed shall not have to disclose
163 the fact of the record or any matter relating thereto on an application for employment.
164 Any employer shall not use the fact of a restricted or a restricted and sealed conviction
165 to disqualify an individual for employment, except as provided under paragraph (15) of
166 this Code section.

167 (14) An individual shall be limited in filing a petition under this subsection to a lifetime
168 maximum of requesting restriction on one felony conviction and three misdemeanor
169 convictions. For purposes of this subsection, the conviction of two or more crimes
170 charged in separate counts of one indictment or accusation or charged in two or more
171 indictments or accusations consolidated for trial shall be deemed to be one conviction.

172 (15) The person who is the subject of a criminal history record that is restricted under
173 subparagraph (j)(4)(C) of this Code section may lawfully deny or fail to acknowledge the

174 arrests and convictions covered by the restricted record on matters related to employment
175 and hiring, except when that person:
176 (A) Is a candidate for employment with a criminal justice agency;
177 (B) Is seeking to be employed or licensed by or to contract with the Department of
178 Children and Families, Adult Protective Services, the Department of Health, or the
179 Department of Juvenile Justice or to be employed or used by such contractor or licensee
180 in a sensitive position having direct contact with children, the disabled, or the elderly;
181 (C) Is seeking to be employed or licensed by the Department of Education, any district
182 school board, any university laboratory school, any charter school, any private or
183 parochial school, or any local governmental entity that licenses child care facilities;
184 (D) Is seeking to be issued a professional license; and
185 (E) Is seeking employment in a fiduciary position."

186

SECTION 3.

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