

House Bill 268

By: Representatives Mitchell of the 88<sup>th</sup>, Scott of the 76<sup>th</sup>, and Boddie of the 62<sup>nd</sup>

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~~ such proceedings; ~~and~~

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

27 (5) The 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 by 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 ~~(v)~~(vi) Pimping in violation of Code Section 16-6-11;  
 42 ~~(vi)~~(vii) Pandering by compulsion in violation of Code Section 16-6-14;  
 43 ~~(vii)~~(viii) Masturbation for hire in violation of Code Section 16-6-16;  
 44 ~~(viii)~~(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 ~~(ix)~~(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 ~~(x)~~(xiii) Any offense related to minors generally in violation of Part 2 of Article 3 of  
 50 Chapter 12 of Title 16;  
 51 ~~(xi)~~(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 ~~(xii)~~(xv) Any serious traffic offense in violation of Article 15 of Chapter 6 of  
 55 Title 40."

56 "(s)(1) Notwithstanding subsection (i) of this Code section, when an individual was  
 57 convicted of certain misdemeanors and felonies in this state 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 of record restriction. A petition for record  
77 restriction shall be served on the prosecuting attorney who shall investigate such request  
78 and shall make a report to the court regarding such petition in a written communication  
79 to the prosecuting attorney or at the court hearing on such petition. If a hearing is  
80 requested, such hearing shall be held within 90 days of the filing of the petition. A victim  
81 may express an opinion as to such petition in a written communication to the prosecuting  
82 attorney or at the court hearing. The court shall hear evidence and shall determine  
83 whether granting an order restricting such criminal history record information is  
84 appropriate. The burden shall be on the petitioner to show by a preponderance of  
85 evidence that his or her interest in having his or her record restricted outweighs the  
86 public's interest in the criminal history record information being publicly available. The  
87 existence of any conviction on an individual's criminal record which is ineligible for  
88 restriction under this Code section shall not prohibit such individual from petitioning for  
89 the restriction and sealing of any conviction 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 by maintaining public accessibility to the record;

94 (B) The person filing the petition must serve a copy of the motion, either electronically  
95 where available or by United States mail, to the office of the prosecuting attorney that  
96 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 such 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 paragraphs (1), (2),  
116 and (3) of this Code section, and that the harm caused to the defendant by maintaining  
117 public accessibility of the record outweighs the public's interest by maintaining such  
118 public accessibility.

119 (8) In determining whether the harm caused to the defendant by maintaining such public  
120 accessibility of the record is greater than the public's interest by maintaining such public  
121 accessibility, 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 accessibility of the  
133 record, 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 restrict and seal the same conviction until at

137 least one year has passed from the date of denial or if appealed, the date of the final  
138 appellate 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 60 days of receipt of the order, the entities enumerated in paragraph (12)  
153 of this subsection must restrict and seal any records related to the arrest and conviction  
154 from public access. The order shall not preclude a prosecuting attorney's office from  
155 retaining a nonpublic record thereof for law enforcement purposes only; and

156 (C) Within 60 of the court's order, the clerk of court must seal its records and cause  
157 every document, physical or electronic, in its custody, possession, or control to be  
158 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 or restricted and sealed shall not have  
163 to disclose the fact of the record or any matter relating thereto on an application for  
164 employment. No employer shall use the fact of a restricted or a restricted and sealed  
165 conviction to disqualify an individual for employment, except as provided under  
166 paragraph (15) of 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 this subsection may lawfully deny or fail to acknowledge the arrests and convictions

174 covered by the restricted record on matters related to employment and hiring, except  
175 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  
180 licensee in a sensitive position having direct contact with children, the disabled, or the  
181 elderly;

182 (C) Is seeking to be employed or licensed by the Department of Education, any district  
183 school board, any university laboratory school, any charter school, any private or  
184 parochial school, or any local governmental entity that licenses child care facilities;

185 (D) Is seeking to be issued a professional license; and

186 (E) Is seeking employment in a fiduciary position."

187 **SECTION 3.**

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