

House Bill 309

By: Representatives Kennard of the 102nd, Dreyer of the 59th, Kendrick of the 93rd, Frye of the 118th, and McLeod of the 105th

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, privacy
3 considerations, written application requesting review, and inspection, so as to define "law
4 enforcement officer"; to provide for the restriction of criminal history records for convictions
5 of certain misdemeanors and felonies after the completion of the sentence and payment of
6 any restitution; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
11 individual's criminal history record information, definitions, privacy considerations, written
12 application requesting review, and inspection, is amended by adding a new paragraph to
13 subsection (a) to read as follows:

14 "(2.1) 'Law enforcement officer' means:

15 (A) A peace officer as such term is defined in paragraph (8) of Code Section 35-8-2;

16 (B) A law enforcement officer of the United States government;

17 (C) An individual employed as a campus police officer or school security officer;

18 (D) A conservation ranger; or

19 (E) A jail officer employed at a county or municipal jail."

20 **SECTION 2.**

21 Said Code section is further amended by revising paragraph (4) of and adding a new
22 paragraph to subsection (j) to read as follows:

23 "(4)(A) When an individual was convicted in this state of a misdemeanor or a series of
24 misdemeanors arising from a single incident, ~~and at the time of such conviction such~~
25 individual ~~was a youthful offender,~~ provided that such individual successfully

26 completed the terms of his or her sentence, ~~and, since completing the terms of his or her~~
 27 ~~sentence, has not been arrested for at least five years, excluding any arrest for a~~
 28 ~~nonserious traffic offense, and provided, further, that he or she was not convicted in this~~
 29 ~~state of a misdemeanor violation or under any other state's law with similar provisions~~
 30 ~~of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she~~
 31 ~~may petition the court in which the conviction occurred to restrict access to criminal~~
 32 ~~history record information. Such court shall maintain jurisdiction over the case for this~~
 33 ~~limited purpose and duration. Such petition shall be served on the prosecuting attorney.~~
 34 ~~If a hearing is requested, such hearing shall be held within 90 days of the filing of the~~
 35 ~~petition. The court shall hear evidence and shall determine whether granting an order~~
 36 ~~restricting such criminal history record information is appropriate, giving due~~
 37 ~~consideration to the individual's conduct and the public's interest in the criminal history~~
 38 ~~record information being publicly available paid any restitution imposed by the~~
 39 ~~convicting court, and was not convicted of one or more of the offenses listed in~~
 40 ~~subparagraph (B) of this paragraph, access to the criminal history record of such~~
 41 ~~convictions shall be restricted.~~

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

- 43 ~~(i) Child molestation in violation of Code Section 16-6-4;~~
- 44 ~~(ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;~~
- 45 ~~(iii) Sexual assault by persons with supervisory or disciplinary authority in violation~~
 46 ~~of Code Section 16-6-5.1;~~
- 47 ~~(iv) Keeping a place of prostitution in violation of Code Section 16-6-10;~~
- 48 ~~(v) Pimping in violation of Code Section 16-6-11;~~
- 49 ~~(vi) Pandering by compulsion in violation of Code Section 16-6-14;~~
- 50 ~~(vii) Masturbation for hire in violation of Code Section 16-6-16;~~
- 51 ~~(viii) Giving massages in a place used for lewdness, prostitution, assignation, or~~
 52 ~~masturbation for hire in violation of Code Section 16-6-17;~~
- 53 ~~(ix) Sexual battery in violation of Code Section 16-6-22.1;~~
- 54 ~~(x) Any offense related to minors generally in violation of Part 2 of Article 3 of~~
 55 ~~Chapter 12 of Title 16;~~
- 56 ~~(xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such~~
 57 ~~prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud~~
 58 ~~in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or~~
- 59 ~~(xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40:~~
 - 60 (i) A serious violent felony as such term is defined in Code Section 17-10-6.1;
 - 61 (ii) A sexual offense as such term is defined in Code Section 17-10-6.2;

- 62 (iii) Trafficking of persons for labor or sexual servitude as prohibited by Code
 63 Section 16-5-46;
- 64 (iv) Neglecting disabled adults, elder persons, or residents as prohibited by Code
 65 Section 16-5-101;
- 66 (v) Exploitation and intimidation of disabled adults, elder persons, and residents as
 67 prohibited by Code Section 16-5-102;
- 68 (vi) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;
- 69 (vii) Electronically furnishing obscene material to a minor as prohibited by Code
 70 Section 16-12-100.1;
- 71 (viii) Computer pornography and child exploitation as prohibited by Code Section
 72 16-12-100.2;
- 73 (ix) Driving under the influence as prohibited by Code Section 40-6-391; or
- 74 (x) Any of the following offenses when such offense is committed against a law
 75 enforcement officer while such officer is engaged in the performance of his or her
 76 official duties:
- 77 (I) Aggravated assault in violation of Code Section 16-5-21;
- 78 (II) Aggravated battery in violation of Code Section 16-5-24; or
- 79 (III) Obstruction of a law enforcement officer in violation of subsection (b) of Code
 80 Section 16-10-24, if such violation results in serious physical harm or injury to such
 81 officer.
- 82 (C) The restriction provided in subparagraph (A) of this paragraph shall not prevent the
 83 disclosure of the criminal history record of an individual who has applied for
 84 employment with:
- 85 (i) A public school, private school, child welfare agency, or a person or entity that
 86 provides day care for minor children or after school care for minor children and the
 87 individual was convicted for a violation of Title 16 in Article 5 of Chapter 5, Chapter
 88 6, or Part 2 or 3 of Article 3 of Chapter 12;
- 89 (ii) A long-term care facility as defined in Code Section 31-8-51 or with a person or
 90 entity that offers day care for elderly persons and the individual who is the subject of
 91 the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of Chapter 5;
 92 or
- 93 (iii) A facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to
 94 individuals who are mentally ill as defined in Code Section 37-1-1 or developmentally
 95 disabled as defined in Code Section 37-1-1 and the individual who is the subject of
 96 the inquiry was prosecuted for a violation of Title 16 in Article 8 of Chapter 5 or
 97 Chapter 6."

98 "(6)(A) When an individual was convicted in this state of felony charges or a series of
99 felonies arising from a single incident, provided that such individual successfully
100 completed the terms of his or her sentence and paid any restitution imposed by the
101 convicting court, and provided that he or she was not convicted of one or more of the
102 offenses listed in subparagraph (B) of this paragraph, access to the criminal history
103 record of such convictions shall be restricted.

104 (B) The record restrictions provided in subparagraph (A) of this paragraph shall not be
105 available if the individual was convicted of any of the following offenses:

106 (i) A serious violent felony as such term is defined in Code Section 17-10-6.1;

107 (ii) A sexual offense as such term is defined in Code Section 17-10-6.2;

108 (iii) Trafficking of persons for labor or sexual servitude as prohibited by Code
109 Section 16-5-46;

110 (iv) Neglecting disabled adults, elder persons, or residents as prohibited by Code
111 Section 16-5-101;

112 (v) Exploitation and intimidation of disabled adults, elder persons, and residents as
113 prohibited by Code Section 16-5-102;

114 (vi) Sexual exploitation of a minor as prohibited by Code Section 16-12-100;

115 (vii) Electronically furnishing obscene material to a minor as prohibited by Code
116 Section 16-12-100.1;

117 (viii) Computer pornography and child exploitation as prohibited by Code Section
118 16-12-100.2;

119 (ix) Driving under the influence as prohibited by Code Section 40-6-391; or

120 (x) Any of the following offenses when such offense is committed against a law
121 enforcement officer while such officer is engaged in the performance of his or her
122 official duties:

123 (I) Aggravated assault in violation of Code Section 16-5-21;

124 (II) Aggravated battery in violation of Code Section 16-5-24; or

125 (III) Obstruction of a law enforcement officer in violation of subsection (b) of Code
126 Section 16-10-24, if such violation results in serious physical harm or injury to such
127 officer.

128 (C) The restriction provided in subparagraph (A) of this paragraph shall not prevent the
129 disclosure of the criminal history record of an individual who has applied for
130 employment with:

131 (i) A public school, private school, child welfare agency, or a person or entity that
132 provides day care for minor children or after school care for minor children and the
133 individual was convicted for a violation of Title 16 in Article 5 of Chapter 5, Chapter
134 6, or Part 2 or 3 of Article 3 of Chapter 12;

135 (ii) A long-term care facility as defined in Code Section 31-8-51 or with a person or
136 entity that offers day care for elderly persons and the individual who is the subject of
137 the inquiry was prosecuted for a violation of Title 16 in Article 5 or 8 of Chapter 5;
138 or
139 (iii) A facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to
140 individuals who are mentally ill as defined in Code Section 37-1-1 or developmentally
141 disabled as defined in Code Section 37-1-1 and the individual who is the subject of
142 the inquiry was prosecuted for a violation of Title 16 in Article 8 of Chapter 5 or
143 Chapter 6."

144 **SECTION 3.**

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