

House Bill 528

By: Representative Ballinger of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated,
2 relating to Georgia Crime Information Center, so as to provide for record restriction for
3 individuals convicted of certain felonies and misdemeanors under certain circumstances; to
4 provide for procedures; to provide for notification to victims when an individual petitions for
5 record restriction; to provide for limitations; 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 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
10 Georgia Crime Information Center, is amended by revising subparagraph (j)(4)(B) of Code
11 Section 35-3-37, relating to review of individual's criminal history record information,
12 definitions, privacy considerations, written application requesting review, and inspection, and
13 adding a new subsection to read as follows:

14 "(B) Record restriction shall not be appropriate if the individual was convicted of a
15 violent offense, a crime against a child, a sexual offense, or a serious felony as
16 delineated below:

- 17 (i) Child molestation in violation of Code Section 16-6-4;
18 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
19 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation
20 of Code Section 16-6-5.1;
21 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;
22 (v) Pimping in violation of Code Section 16-6-11;
23 (vi) Pandering by compulsion in violation of Code Section 16-6-14;
24 (vii) Masturbation for hire in violation of Code Section 16-6-16;
25 (viii) Giving massages in a place used for lewdness, prostitution, assignation, or
26 masturbation for hire in violation of Code Section 16-6-17;

- 27 (ix) Sexual battery in violation of Code Section 16-6-22.1;
- 28 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of
29 Chapter 12 of Title 16;
- 30 (xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such
31 prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud
32 in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or
- 33 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40;
- 34 (xiii) Bestiality in violation of Code Section 16-6-6;
- 35 (xiv) Cruelty to animals in violation of Code Section 16-12-4;
- 36 (xv) Dogfighting in violation of Code Section 16-12-37; or
- 37 (xvi) Any felony delineated in Code Sections 42-8-60 and 17-10-6.1, including:
- 38 (I) Murder or felony murder;
- 39 (II) Armed robbery;
- 40 (III) Kidnapping;
- 41 (IV) Rape;
- 42 (V) Aggravated child molestation;
- 43 (VI) Aggravated sodomy; and
- 44 (VII) Aggravated sexual battery."
- 45 "(s)(1) Notwithstanding subsection (i) of this Code section, an individual may petition
46 the court in the jurisdiction where the conviction occurred to restrict access to criminal
47 history record information as set forth in paragraph (3) of this subsection when an
48 individual was convicted in this state of certain felonies and misdemeanors as set forth
49 in paragraph (2) of this subsection, provided that such individual successfully completed
50 the terms of the sentence and has maintained a law abiding life as shown by not having
51 been convicted of any criminal offense in any jurisdiction for at least five years for a
52 felony and three years for a misdemeanor, excluding any arrest for a nonserious traffic
53 offense; provided, further, that he or she has no pending charges in any jurisdiction.
- 54 (2) Record restriction may be granted if the individual was convicted of a nonviolent
55 offense, a minor drug offense, or a property crime as defined below:
- 56 (A) A misdemeanor, except those set forth in subparagraph (j)(4)(B) of this Code
57 section;
- 58 (B) Any misdemeanor involving family violence as defined in Code Section 19-13-1;
- 59 (C) A felony which has the maximum potential punishment term of no more than ten
60 years, except when such offense involved family violence as defined in Code
61 Section 19-13-1;
- 62 (D) Burglary, provided that the offense did not involve the use or theft of a firearm; or

63 (E) A violation of Article 2 of Chapter 13 of Title 16 involving simple possession of
64 a controlled substance or marijuana.

65 (3) The procedure for filing a petition to restrict and seal the record of arrest and
66 conviction shall be as follows:

67 (A) The petition shall be filed in the court where the conviction was obtained;
68 (B) The petition shall state the alleged harm to the individual if the record is not
69 restricted and sealed and were to remain available to the public;
70 (C) The petition shall be served electronically where available or by United States
71 mail, upon the office of the prosecuting attorney where the conviction occurred and to
72 the appropriate court clerk's office;
73 (D) A copy of the individual's Georgia Crime Information Center record, which shall
74 be generated within 30 days of the filing of the petition, shall be attached to the filing;
75 (E) The clerk of court shall collect a \$150.00 petition filing fee and deposit such funds
76 in the general fund of the county to be utilized by the appropriate court or prosecution
77 staff for processing petitions subject to this Code section. The filing fee may be waived
78 by the court upon a finding of indigency related to this matter;
79 (F) Within 45 days of service, the prosecuting attorney's office shall file a response
80 indicating its objection or lack of objection to the petition. The prosecuting attorney's
81 office shall serve a copy of its response upon the individual;
82 (G) Should the prosecuting attorney's office wish to object to the granting of such a
83 petition, it shall specifically state the reasons for the objection;
84 (H) The prosecutor's office shall make an effort to locate and notify the victim, as
85 defined in paragraph (11) of Code Section 17-17-3 or the victim's representative of the
86 filing of such petition. The victim of the crime, if there was an identified victim, and
87 any other person who may have relevant information related to the restriction of the
88 record, may be heard by the court. Inability to locate the victim shall not delay the
89 proceedings related to the petition or preclude the holding of a hearing or the granting
90 or denial of a restriction;
91 (I) Unless otherwise agreed upon by the parties, if the prosecuting attorney's office files
92 a timely written objection, the court shall hold a hearing within 90 days after the timely
93 objection is filed, giving reasonable notice of the hearing to the individual. The burden
94 shall be upon the petitioner to show by a preponderance of the evidence that his or her
95 interest in having his or her record restricted and sealed substantially outweighs the
96 public's interest in the criminal history record information being publicly available to
97 an employer or potential employer;
98 (J) If no objection is filed by the prosecuting attorney's office, the victim, or any
99 interested party, or the prosecutor's office fails to respond within 45 days, the court may

100 grant the motion to restrict and seal the record without a hearing if the court determines
101 that the individual has met the necessary requirements outlined in this subsection for
102 restriction and sealing;

103 (K) In determining whether the petition shall be granted, the court shall consider the
104 following factors:

105 (i) The nature and seriousness of the offense;

106 (ii) The age of the person at the time the offense was committed;

107 (iii) The length of time elapsed since the offense was committed;

108 (iv) The individual's prior criminal history;

109 (v) Individual circumstances relating to the individual, including, but not limited to,
110 mitigating circumstances and conduct since the offense;

111 (vi) Individual circumstances relative to the offense; and

112 (vii) The opinion of the victims impacted, if such opinion is offered, after reasonable
113 attempts to notify the victims have been made;

114 (L) The court shall not deny the individual's petition without first holding a hearing;

115 (M) If the court denies the individual's petition under this Code section, the individual
116 shall not submit a new petition to restrict and seal the same conviction until at least two
117 years have passed from the date of such final decision;

118 (N) Upon the granting of a restriction under this Code section, the clerk of court shall
119 file the order in the case record and shall enter the restriction into the Georgia Crime
120 Information Center data base in the manner prescribed by Georgia Crime Information
121 Center; and

122 (O) Within 60 days of the court's order, the clerk of court shall seal its records and
123 cause every document, physical or electronic, in its custody, possession, or control to
124 be restricted. Such information shall always be available for inspection, copying, and
125 use by criminal justice agencies as defined in paragraph (4.1) of Code Section 17-17-3,
126 the Judicial Qualifications Commission, and the individual who filed the motion under
127 this Code section without a court order unsealing such records.

128 (4) An individual may petition and receive relief under this subsection for no more than
129 three indictments or accusations in a lifetime.

130 (5) If an individual's record is restricted pursuant to this Code section, such individual
131 may lawfully deny or fail to acknowledge the arrests and convictions to an employer or
132 potential employer except when that individual:

133 (A) Is a candidate for employment with a criminal justice agency;

134 (B) Is seeking employment, a license, or a contract with the Department of Human
135 Resources' Division of Family and Children Services, Adult Protective Services in the
136 Division of Aging Services, the Department of Public Health, or the Department of

137 Juvenile Justice, or to be employed or used as a contractor or licensee in a position
138 having direct contact with children, the disabled, or the elderly;
139 (C) Is seeking employment, a license, or a contract with the Department of Education,
140 any district school board, any university laboratory school, any charter school, any
141 private or parochial school, or any local government entity that licenses child care
142 facilities;
143 (D) Is seeking a professional license issued by the Secretary of State; or
144 (E) Is seeking employment in a fiduciary position.
145 (6) Nothing in this Code section shall prohibit the use of an individual's restricted
146 conviction from being admitted in a court of law."

147 **SECTION 2.**

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