

The Senate Committee on Judiciary offered the following substitute to SB 288:

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 the Georgia Crime Information Center, so as to expand the ability of certain
3 individuals to request record restriction for certain misdemeanor and conditional discharges;
4 to provide for excluded offenses; to change a provision relating to automatic record
5 restriction when charges are reduced to local ordinance violations; to provide for procedure
6 and limitations; to provide for retroactive record restriction under certain circumstances; to
7 provide for applicability; to amend Code Sections 3-3-23.1 and 10-1-393.5 of the Official
8 Code of Georgia Annotated, relating to procedure and penalties upon violation of Code
9 Section 3-3-23 and prohibited telemarketing, internet activities, or home repair; and to amend
10 Article 1 of Chapter 13 of Title 16 and Article 2 of Chapter 3 of Title 35 of the Official Code
11 of Georgia Annotated, relating to conditional discharge for possession of controlled
12 substances as first offense and certain nonviolent property crimes, dismissal of charges, and
13 restitution to victims; and the Georgia Crime Information Center, so as to provide for
14 cross-references; to amend Chapter 4 of Title 24 of the Code of Georgia Annotated, relating
15 to relevant evidence and its limits, so as to prohibit the introduction of criminal history record
16 information of an employee in an action against an employer based upon the conduct of such
17 employee under certain circumstances; to provide for definitions; to provide for related
18 matters; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20

21

PART ONE.

22

SECTION 1-1.

23 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
24 Georgia Crime Information Center, is amended by revising Code Section 35-3-37, relating
25 to review of individual's criminal history information, definitions, privacy considerations,
26 written application requesting review, and inspection, as follows:

27 "35-3-37.

28 (a) As used in this Code section, the term:

29 (1) 'Drug court treatment program' means a treatment program operated by a drug court
30 division in accordance with the provisions of Code Section 15-1-15.

31 (2) 'Entity' means the arresting law enforcement agency, including county and municipal
32 jails and detention centers.

33 (3) 'Mental health treatment program' means a treatment program operated by a mental
34 health court division in accordance with the provisions of Code Section 15-1-16.

35 (4) 'Nonserious traffic offense' means any offense in violation of Title 40 which is not
36 prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the
37 laws of a state which would not be considered a serious traffic offense under the laws of
38 this state if committed in this state.

39 (5) 'Prosecuting attorney' means the Attorney General, a district attorney, or the
40 solicitor-general who had jurisdiction where the criminal history record information is
41 sought to be modified, corrected, supplemented, amended, or restricted. If the offense
42 was a violation of a criminal law of this state which, by general law, may be tried by a
43 municipal, magistrate, probate, or other court that is not a court of record, the term
44 'prosecuting attorney' shall include the prosecuting officer of such court or, in the absence
45 of such prosecuting attorney, the district attorney of the judicial circuit in which such
46 court is located.

47 (6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record
48 information of an individual relating to a particular ~~charge~~ offense shall be available only
49 to judicial officials and criminal justice agencies for law enforcement or criminal
50 investigative purposes or to criminal justice agencies for purposes of employment in
51 accordance with procedures established by the center and shall not be disclosed or
52 otherwise made available to any private persons or businesses pursuant to Code
53 Section 35-3-34 or to governmental agencies or licensing and regulating agencies
54 pursuant to Code Section 35-3-35.

55 (7) 'Serious violent felony' shall have the same meaning as set forth in Code
56 Section 17-10-6.1.

57 (8) 'State' includes any state, the United States or any district, commonwealth, territory,
58 or insular possession of the United States, and the Trust Territory of the Pacific Islands.

59 (9) 'Veterans treatment program' means a treatment program operated by a veterans court
60 division in accordance with the provisions of Code Section 15-1-17.

61 (10) 'Youthful offender' means any offender who was less than 21 years of age at the
62 time of his or her ~~conviction~~ arrest.

63 (b) Nothing in this article shall be construed so as to authorize any person, agency,
64 corporation, or other legal entity of this state to invade the privacy of any citizen as defined
65 by the General Assembly or as defined by the courts other than to the extent provided in
66 this article.

67 (c) The center shall make an individual's criminal history record information available for
68 review by such individual or his or her designee upon written application to the center.

69 (d) If an individual believes his or her criminal history record information to be inaccurate,
70 incomplete, or misleading, he or she may request a criminal history record information
71 inspection at the center. The center at which criminal history record information is sought
72 to be inspected may prescribe reasonable hours and places of inspection and may impose
73 such additional procedures or restrictions, including fingerprinting, as are reasonably
74 necessary to assure the security of the criminal history record information, to verify the
75 identities of those who seek to inspect such information, and to maintain an orderly and
76 efficient mechanism for inspection of criminal history record information. The fee for
77 inspection of criminal history record information shall not exceed \$15.00, which shall not
78 include the cost of the fingerprinting.

79 (e) If the criminal history record information is believed to be inaccurate, incomplete, or
80 misleading, the individual may request that the entity having custody or control of the
81 challenged information modify, correct, supplement, or amend the information and notify
82 the center of such changes within 60 days of such request. In the case of county and
83 municipal jails and detention centers, such notice to the center shall not be required. If the
84 entity declines to act within 60 days of such request or if the individual believes the entity's
85 decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the
86 issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the
87 right to appeal to the court with original jurisdiction of the criminal ~~charges~~ offenses in the
88 county where the entity is located.

89 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order
90 from the court with original jurisdiction of the criminal ~~charges~~ offenses that the subject
91 information be modified, corrected, supplemented, or amended by the entity with custody
92 of such information. Notice of the appeal shall be provided to the entity and the
93 prosecuting attorney. A notice sent by registered or certified mail or statutory overnight
94 delivery shall be sufficient service on the entity having custody or control of the disputed
95 criminal history record information. The court shall conduct a de novo review and, if
96 requested by a party, the proceedings shall be recorded.

97 (g)(1) Should the court find by a preponderance of the evidence that the criminal history
98 record information in question is inaccurate, incomplete, or misleading, the court shall
99 order such information to be appropriately modified, corrected, supplemented, or

100 amended as the court deems appropriate. Any entity with custody, possession, or control
 101 of any such criminal history record information shall cause each and every copy thereof
 102 in its custody, possession, or control to be altered in accordance with the court's order
 103 within 60 days of the entry of the order.

104 (2) To the extent that it is known by the requesting individual that an entity has
 105 previously disseminated inaccurate, incomplete, or misleading criminal history record
 106 information, he or she shall, by written request, provide to the entity the name of the
 107 individual, agency, or company to which such information was disseminated. Within 60
 108 days of the written request, the entity shall disseminate the modification, correction,
 109 supplement, or amendment to the individual's criminal history record information to such
 110 individual, agency, or company to which the information in question has been previously
 111 communicated, as well as to the individual whose information has been ordered so
 112 altered.

113 (h) Access to an individual's criminal history record information, including any
 114 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
 115 restricted by the center for the following types of dispositions:

116 (1) Prior to indictment, accusation, or other charging instrument:

117 (A) The ~~case~~ offense was never referred for further prosecution to the proper
 118 prosecuting attorney by the arresting law enforcement agency and:

119 (i) The offense against such individual is closed by the arresting law enforcement
 120 agency. It shall be the duty of the head of the arresting law enforcement agency to
 121 notify the center whenever a record is to be restricted pursuant to this division
 122 within 30 days of such decision. A copy of the notice shall be sent to the accused and
 123 the accused's attorney, if any, by mailing the same by first-class mail within seven
 124 days of notifying the center; or

125 (ii) The center does not receive notice from the arresting law enforcement agency that
 126 the offense has been referred to the prosecuting attorney or transferred to another law
 127 enforcement or prosecutorial agency of this state, any other state or a foreign nation,
 128 or any political subdivision thereof for prosecution and the following period of time
 129 has elapsed from the date of the arrest of such individual:

130 (I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated
 131 nature, two years;

132 (II) If the offense is a felony, other than a serious violent felony or a felony sexual
 133 offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age,
 134 four years; or

135 (III) If the offense is a serious violent felony or a felony sexual offense specified
 136 in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

137 If the center receives notice of the filing of an indictment subsequent to the restriction
 138 of a record pursuant to this division, the center shall make such record available in
 139 accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive
 140 notice of a charging instrument within 30 days of the applicable time periods set forth
 141 in this division, such record shall be restricted by the center for noncriminal justice
 142 purposes; ~~and shall be considered sealed.~~

143 (B) The ~~case~~ offense was referred to the prosecuting attorney but was later dismissed;

144 (C) The grand jury returned two no bills; or

145 (D) The grand jury returned one no bill and the applicable time period set forth in
 146 division (ii) of subparagraph (A) of this paragraph has expired; and

147 (2) After indictment or accusation:

148 (A) Except as provided in subsection (i) of this Code section, all ~~charges~~ charged
 149 offenses were dismissed, ~~or nolle prossed, or reduced to a violation of a local~~
 150 ordinance;

151 (B) The individual was sentenced in accordance with the provisions of subsection (a)
 152 or subsection (c) of Code Section 16-13-2, and either the court ordered restriction upon
 153 sentencing as permitted in Code Section 16-13-2, or the individual successfully
 154 completed the terms and conditions of his or her probation;

155 (C) The individual pleaded guilty to or was found guilty of a violation of paragraph (2)
 156 or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in accordance with
 157 the provisions of subsection (c) of Code Section 3-3-23.1, and either the court ordered
 158 restriction upon sentencing as permitted in Code Section 3-3-23.1, or the individual
 159 successfully completed the terms and conditions of his or her probation;

160 (D) The individual successfully completed a drug court treatment program, mental
 161 health treatment program, or veterans treatment program, the individual's ~~case~~ offense
 162 has been dismissed or nolle prossed, and he or she has not been arrested during such
 163 program, excluding any arrest for a nonserious traffic offense; or

164 (E) The individual was acquitted of all of the ~~charges~~ charged offenses by a judge or
 165 jury unless, within ten days of the verdict, the prosecuting attorney demonstrates to the
 166 trial court through clear and convincing evidence that the harm otherwise resulting to
 167 the individual is clearly outweighed by the public interest in the criminal history record
 168 information being publicly available because either:

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

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

174 (i) After the filing of an indictment or accusation, an individual's criminal history record
175 information shall not be restricted if:

176 (1) ~~The charges were~~ prosecuting attorney affirmatively indicates that the offense was
177 dismissed, nolle prossed, or otherwise dismissed reduced to a violation of a local
178 ordinance because:

179 (A) Of a plea agreement resulting in a conviction of the individual for an offense
180 arising out of the same underlying transaction or occurrence as the conviction;

181 (B) The prosecuting attorney was barred from introducing material evidence against
182 the individual on legal grounds, including, without limitation, the granting of a motion
183 to suppress or motion in limine;

184 (C) The conduct which resulted in the arrest of the individual was part of a pattern of
185 criminal activity which was prosecuted in another court of the state or a foreign nation;
186 or

187 (D) The individual had diplomatic, consular, or similar immunity or inviolability from
188 arrest or prosecution;

189 (2) ~~The charges~~ charged offenses were tried and some, but not all, of the ~~charges~~
190 offenses resulted in an acquittal; or

191 (3) The individual was acquitted of all ~~charges~~ charged offenses but it ~~is~~ was later
192 determined that the acquittal was the result of jury tampering or judicial misconduct.

193 (j)(1) When an individual had a felony charge dismissed or nolle prossed or was found
194 not guilty of such charge but was convicted of a misdemeanor offense that was not a
195 lesser included offense of the felony charge, such individual may petition the court in
196 which he or she was accused or convicted, as applicable, or, if such charge was
197 dismissed, the superior court in the county where the arrest occurred to restrict access to
198 criminal history record information for the felony charge within four years of the arrest.
199 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
200 Such petition shall be served on the arresting law enforcement agency and the
201 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days
202 of the filing of the petition. The court shall hear evidence and shall grant an order
203 restricting such criminal history record information if the court determines that the
204 misdemeanor conviction was not a lesser included offense of the felony charge and that
205 the harm otherwise resulting to the individual clearly outweighs the public interest in the
206 criminal history record information being publicly available.

207 (2) When an individual was convicted of an offense and was sentenced to punishment
208 other than the death penalty, but such conviction was vacated by the trial court or
209 reversed by an appellate court or other post-conviction court, the decision of which has
210 become final by the completion of the appellate process, and the prosecuting attorney has

211 not retried the case within two years of the date the order vacating or reversing the
212 conviction became final, such individual may petition the court in which he or she was
213 convicted to restrict access to criminal history record information for such offense. Such
214 court shall maintain jurisdiction over the case for this limited purpose and duration. Such
215 petition shall be served on the prosecuting attorney. If a hearing is requested, such
216 hearing shall be held within 90 days of the filing of the petition. The court shall hear
217 evidence and shall determine whether granting an order restricting such criminal history
218 record information is appropriate, giving due consideration to the reason the judgment
219 was reversed or vacated, the reason the prosecuting attorney has not retried the case, and
220 the public's interest in the criminal history record information being publicly available.

221 (3) When an individual's case charged offense has remained on the dead docket for more
222 than 12 months, such individual may petition the court in which the case charged offense
223 is pending to restrict access to criminal history record information for such charged
224 offense. Such petition shall be served on the prosecuting attorney. If a hearing is
225 requested, such hearing shall be held within 90 days of the filing of the petition. The
226 court shall hear evidence and shall determine whether granting an order restricting such
227 criminal history record information is appropriate, giving due consideration to the reason
228 the case offense was placed on the dead docket; provided, however, that the court shall
229 not grant such motion if an active warrant is pending for such individual.

230 (4)(A) When an individual was convicted in this state of a misdemeanor or a series of
231 misdemeanors arising from a single incident, ~~and at the time of such conviction such~~
232 ~~individual was a youthful offender,~~ provided that such individual ~~successfully~~
233 ~~completed the terms of his or her sentence and, since completing the terms of his or her~~
234 ~~sentence,~~ conviction was not for any offense listed in subparagraph (B) of this
235 paragraph, and such individual has not been arrested for at least five years, excluding
236 any arrest completed the terms of his or her sentence and has not been convicted of any
237 crime in any jurisdiction for at least four years prior to filing a petition under this
238 subparagraph, excluding any conviction for a nonserious traffic offense, and provided,
239 further, that he or she ~~was not convicted in this state of a misdemeanor violation or~~
240 ~~under any other state's law with similar provisions of one or more of the offenses listed~~
241 ~~in subparagraph (B) of this paragraph~~ has no pending charged offenses, he or she may
242 petition the court in which the conviction occurred to restrict access to criminal history
243 record information. Such court shall maintain jurisdiction over the case for this limited
244 purpose and duration. Such petition shall be served on the prosecuting attorney. If a
245 hearing is requested, such hearing shall be held within 90 days of the filing of the
246 petition. The court shall hear evidence and shall ~~determine whether granting~~ grant an
247 order restricting such criminal history record information is ~~appropriate, giving due~~

248 ~~consideration to the individual's conduct and if it determines that the harm otherwise~~
 249 ~~resulting to the individual clearly outweighs~~ the public's interest in the criminal history
 250 record information being publicly available.

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

252 (i) Family violence simple assault in violation of subsection (d) of Code
 253 Section 16-5-20, unless the individual was a youthful offender;

254 (ii) Family violence simple battery in violation of subsection (f) of Code
 255 Section 16-5-23, unless the individual was a youthful offender;

256 (iii) Family violence battery in violation of subsection (f) of Code Section 16-5-23.1,
 257 unless the individual was a youthful offender;

258 (iv) Family violence stalking in violation of Code Section 16-5-90;

259 (v) Violating a family violence order in violation of Code Section 16-5-95;

260 ~~(i)~~(vi) Child molestation in violation of Code Section 16-6-4;

261 ~~(ii)~~(vii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

262 ~~(iii)~~(viii) Improper sexual contact by employee or agent in violation of Code
 263 Section 16-6-5.1;

264 (ix) Public indecency in violation of subsection (b) of Code Section 16-6-8;

265 ~~(iv)~~(x) Keeping a place of prostitution in violation of Code Section 16-6-10;

266 ~~(v)~~(xi) Pimping in violation of Code Section 16-6-11;

267 ~~(vi)~~(xii) Pandering by compulsion in violation of Code Section ~~16-6-14~~ 16-6-12;

268 ~~(vii) Masturbation for hire in violation of Code Section 16-6-16;~~

269 ~~(viii) Giving massages in a place used for lewdness, prostitution, assignation, or~~
 270 ~~masturbation for hire in violation of Code Section 16-6-17;~~

271 ~~(ix)~~ (xiii) Sexual battery in violation of Code Section 16-6-22.1;

272 (xiv) Obstructing or hindering persons making emergency telephone call in violation
 273 of Code Section 16-10-24.3;

274 (xv) Peeping Toms in violation of Code Section 16-11-61;

275 ~~(x)~~(xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of
 276 Chapter 12 of Title 16;

277 ~~(xi)~~(xvii) Theft in violation of Chapter 8 of Title 16; provided, however, that such
 278 prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud
 279 in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or

280 ~~(xii)~~(xviii) Any serious traffic offense in violation of Article 15 of Chapter 6 of
 281 Title 40.

282 (C) An individual shall be limited to filing a petition under this paragraph to a lifetime
 283 maximum of requesting record restriction on two convictions for a misdemeanor or a
 284 series of misdemeanors arising from a single incident. For the purposes of this

285 subparagraph, the conviction of two or more offenses charged in separate counts of one
286 or more accusations consolidated for trial shall be deemed to be one conviction. If a
287 petition under this subsection has been denied, an individual may file a subsequent
288 petition on the same conviction for a misdemeanor or series of misdemeanors arising
289 from a single incident after the expiration of two years from the date of the final order
290 from the previous petition.

291 (5) When an individual was arrested on a fugitive from justice warrant as provided in
292 Code Section 17-13-4, such individual may petition the superior court in the county
293 where the arrest occurred to restrict access to criminal history record information for such
294 warrant. Such court shall maintain jurisdiction over the case for this limited purpose and
295 duration. Such petition shall be served on the arresting law enforcement agency and the
296 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days
297 of the filing of the petition. The court shall hear evidence and shall grant an order
298 restricting such criminal history record information if the court determines that
299 circumstances warrant restriction and that the harm otherwise resulting to the individual
300 clearly outweighs the public interest in the criminal history record information being
301 publicly available.

302 (k)(1) The center shall notify the arresting law enforcement agency of any criminal
303 history record information, access to which has been restricted pursuant to this Code
304 section, within 30 days of the date access to such information is restricted. Upon receipt
305 of notice from the center that access to criminal history record information has been
306 restricted, the arresting law enforcement agency or other law enforcement agency shall,
307 within 30 days, restrict access to all such information maintained by such arresting law
308 enforcement agency or other law enforcement agency for such individual's charge offense
309 that has been restricted.

310 (2) An individual who has had criminal history record information restricted pursuant
311 to this Code section may submit a written request to the appropriate county or municipal
312 jail or detention center to have all records for such individual's charge offense that has
313 been restricted maintained by the appropriate county or municipal jail or detention center
314 restricted. Within 30 days of such request, the appropriate county or municipal jail or
315 detention center shall restrict access to all such criminal history record information
316 maintained by such appropriate county or municipal jail or detention center for such
317 individual's charge offense that has been restricted.

318 (3) The center shall be authorized to unrestrict criminal history record information based
319 on the receipt of a disposition report showing that the individual was convicted of an
320 offense arising out of an arrest of which the information which was restricted pursuant
321 to this Code section.

322 (l) If criminal history record information is restricted pursuant to this Code section and if
323 the entity declines to restrict access to such information, the individual may file a civil
324 action in the superior court where the entity is located. A copy of the civil action shall be
325 served on the entity and prosecuting attorney for the jurisdiction where the civil action is
326 filed, and they may become parties to the action. A decision of the entity shall be upheld
327 only if it is determined by clear and convincing evidence that the individual did not meet
328 the criteria set forth in subsection (h) or (j) of this Code section.

329 (m)(1) For criminal history record information maintained by the clerk of court, an
330 individual who has a record restricted pursuant to this Code section may petition the court
331 with original jurisdiction over the ~~charges~~ offenses in the county where the clerk of court
332 is located for an order to seal all criminal history record information maintained by the
333 clerk of court for such individual's ~~charge~~ charged offense. Notice of such petition shall
334 be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or
335 certified mail or statutory overnight delivery shall be sufficient notice.

336 (2) The court shall order all criminal history record information in the custody of the
337 clerk of court, including within any index, to be restricted and unavailable to the public
338 if the court finds by a preponderance of the evidence that:

339 (A) The criminal history record information has been restricted pursuant to this Code
340 section; and

341 (B) The harm otherwise resulting to the privacy of the individual clearly outweighs the
342 public interest in the criminal history record information being publicly available.

343 (3) Within 60 days of the court's order, the clerk of court shall cause every document,
344 physical or electronic, in its custody, possession, or control to be restricted.

345 ~~(4) The person who is the subject of such sealed criminal history record information may
346 petition the court for inspection of the criminal history record information included in the
347 court order. Such information shall always be available for inspection, copying, and use
348 by criminal justice agencies and the Judicial Qualifications Commission.~~

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

355 (2) Within 30 days of receipt of such written request, the arresting law enforcement
356 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days
357 of receiving the request, the prosecuting attorney shall review the request to determine
358 if the request meets the criteria set forth in subsection (h) of this Code section for record

359 restriction, and the prosecuting attorney shall notify the arresting law enforcement agency
360 of his or her decision within such 90 day period. If the prosecuting attorney denies such
361 request, he or she shall cite with specificity the reason for such denial in writing and
362 attach to such denial any relevant documentation in his or her possession used to make
363 such denial. There shall be a presumption that the prosecuting attorney does not object
364 to the request to restrict the criminal history record information if he or she fails to
365 respond to the request for a determination within the 90 day period set forth in this
366 paragraph. The arresting law enforcement agency shall inform the individual of the
367 prosecuting attorney's decision, and, if record restriction is approved by the prosecuting
368 attorney, the arresting law enforcement agency shall restrict the criminal history record
369 information within 30 days of receipt of the prosecuting attorney's decision.

370 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
371 history record information, such individual may file a civil action in the superior court
372 where the entity is located. A copy of the civil action shall be served on the entity and
373 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
374 become parties to the action. A decision of the prosecuting attorney to decline a request
375 to restrict access to criminal history record information shall be upheld unless the
376 individual demonstrates by clear and convincing evidence that the arrest is eligible for
377 record restriction pursuant to subsection (h) of this Code section and the harm otherwise
378 resulting to the privacy of the individual clearly outweighs the public interest in the
379 criminal history record information being publicly available.

380 (4) To restrict criminal history record information at the center, an individual shall
381 submit a prosecuting attorney's approved record restriction request or a court order issued
382 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access
383 to such criminal history record information within 30 days of receiving such information.

384 (o) Nothing in this Code section shall give rise to any right which may be asserted as a
385 defense to a criminal prosecution or serve as the basis for any motion that may be filed in
386 any criminal proceeding. The modification, correction, supplementation, amendment, or
387 restriction of criminal history record information shall not abate or serve as the basis for
388 the reversal of any criminal conviction.

389 (p) Any application to the center for access to or restriction of criminal history record
390 information made pursuant to this Code section shall be made in writing on a form
391 approved by the center. The center shall be authorized to develop and publish such
392 procedures as may be necessary to carry out the provisions of this Code section. In
393 adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the 'Georgia
394 Administrative Procedure Act,' shall not apply.

395 (q) It shall be the duty of the entity to take such action as may be reasonable to prevent
396 disclosure of information to the public which would identify any individual whose criminal
397 history record information is restricted pursuant to this Code section.

398 (r) If the center has notified a firearms dealer that an individual is prohibited from
399 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of
400 Title 16 and if the prohibition is the result of such individual being involuntarily
401 hospitalized within the immediately preceding five years, upon such individual or his or
402 her attorney making an application to inspect his or her records, the center shall provide the
403 record of involuntary hospitalization and also inform the individual or attorney of his or her
404 right to a hearing before the judge of the probate court or superior court relative to such
405 individual's eligibility to possess or transport a handgun.

406 (s) The center shall be authorized to provide such individual's criminal history record
407 information to the employers and entities and under the conditions set forth in
408 subsections (u) and (v) of this Code section.

409 (t) Except as otherwise provided by law, in the course of a civil action and upon request,
410 an individual shall reveal criminal history record information that has been restricted or
411 sealed pursuant to this Code section.

412 (u) A restriction or sealing pursuant to this Code section may be used to disqualify an
413 individual for employment or appointment to office in the same manner that a discharge
414 under Article 3 of Chapter 8 of Title 42 may be used to disqualify an individual from
415 employment as set forth in Code Section 42-8-63.1, and such restriction or sealing shall not
416 supersede any disclosure or consideration of criminal history record information required
417 by federal law, including, but not limited to, those disclosures required by financial
418 institutions, as such term is defined in Code Section 7-1-4.

419 (v)(1) Information restricted and sealed pursuant to this Code section shall always be
420 available for inspection, copying, and use:

421 (A) For the purpose of imposing a sentence under Article 3 of Chapter 8 of Title 42;

422 (B) By the Judicial Qualifications Commission;

423 (C) By an attorney representing an accused individual who submits a sworn affidavit
424 to the clerk of court attesting that such information is relevant to a criminal proceeding;

425 (D) By a prosecuting attorney or a public defender;

426 (E) Pursuant to a court order; and

427 (F) By an individual who is the subject of restricted criminal history record information
428 or sealed court files.

429 (2) The confidentiality of such information shall be maintained insofar as practicable.

430 (w) This Code section shall apply to sentences imposed before, on, or after July 1, 2020."

PART TWO.**SECTION 2-1.**

433 Code Section 3-3-23.1 of the Official Code of Georgia Annotated, relating to procedure and
434 penalties upon violation of Code Section 3-3-23, is amended by revising subsection (c) as
435 follows:

436 "(c)(1) As used in this subsection, the term:

437 (A) 'Criminal history record information' shall have the same meaning as set forth in
438 Code Section 35-3-30.

439 (B) 'Restrict' or 'restriction' shall have the same meaning as set forth in Code
440 Section 35-3-37.

441 (2) Whenever any person who has not been previously convicted of any offense under
442 this Code section or under any other law of the United States or this or any other state
443 relating to alcoholic beverages pleads guilty to or is found guilty of a violation of
444 paragraph (2) or (3) of subsection (a) of Code Section 3-3-23, the court, without entering
445 a judgment of guilt and with the consent of such person, may defer further proceedings
446 and place such person on probation upon such reasonable terms and conditions as the
447 court may require. The terms of probation shall preferably be such as require the person
448 to undergo a comprehensive rehabilitation program (including, if necessary, medical
449 treatment), not to exceed three years, designed to acquaint such person with the ill effects
450 of alcohol abuse and with knowledge of the gains and benefits which can be achieved by
451 being a good member of society. Upon violation of a term or condition of probation, the
452 court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of
453 the terms and conditions of probation, the court shall discharge such person and dismiss
454 the proceedings against him or her. Discharge and dismissal under this subsection shall
455 be without court adjudication of guilt and shall not be deemed a conviction for purposes
456 of this subsection or for purposes of disqualifications or disabilities imposed by law upon
457 conviction of a crime. Discharge and dismissal under this subsection may occur only
458 once with respect to any person.

459 (3)(A) At the time of sentencing, a defendant may seek to limit public access to his or
460 her sentencing information, and the court may, in its discretion, order that:

461 (i) The defendant's records be restricted from dissemination;

462 (ii) The criminal file, docket books, criminal minutes, final record, all other records
463 of the court, and the defendant's criminal history record information in the custody of
464 the clerk of court, including within any index, be sealed and unavailable to the public;
465 and

466 (iii) The defendant's criminal history record information of arrest, including any
 467 fingerprints or photographs taken in conjunction with such arrest, be restricted by law
 468 enforcement agencies, jails, or detention centers.

469 (B) When considering the defendant's request under this paragraph, the court shall
 470 weigh the public's interest in the defendant's criminal history record information being
 471 publicly available and the harm to the defendant's privacy and issue written findings of
 472 fact thereupon.

473 (C) The court shall specify the date that such prohibited dissemination, sealing, and
 474 restrictions will take effect."

475 **SECTION 2-2.**

476 Code Section 10-1-393.5 of the Official Code of Georgia Annotated, relating to prohibited
 477 telemarketing, Internet activities, or home repair, is amended by revising
 478 division (b.1)(1)(B)(i) as follows:

479 "(i) Access to his or her case or charges was restricted pursuant to Code
 480 Section 3-3-23.1, 15-1-20, 16-13-2, 35-3-37, or 42-8-62.1;"

481 **SECTION 2-3.**

482 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
 483 general provisions regarding controlled substances, is amended by adding a new subsection
 484 to Code Section 16-13-2, relating to conditional discharge for possession of controlled
 485 substances as first offense and certain nonviolent property crimes, dismissal of charges, and
 486 restitution to victims, to read as follows:

487 "(d)(1) As used in this subsection, the term:

488 (A) 'Criminal history record information' shall have the same meaning as set forth in
 489 Code Section 35-3-30.

490 (B) 'Restrict' or 'restriction' shall have the same meaning as set forth in Code
 491 Section 35-3-37.

492 (2)(A) At the time of sentencing, the defendant may seek to limit public access to his
 493 or her sentencing information, and the court may, in its discretion, order that:

494 (i) The defendant's records be restricted from dissemination;

495 (ii) The criminal file, docket books, criminal minutes, final record, all other records
 496 of the court, and the defendant's criminal history record information in the custody of
 497 the clerk of court, including within any index, be sealed and unavailable to the public;
 498 and

499 (iii) The defendant's criminal history record information of arrest, including any
 500 fingerprints or photographs taken in conjunction with such arrest, be restricted by law
 501 enforcement agencies, jails, or detention centers.

502 (B) When considering the defendant's request under this paragraph, the court shall
 503 weigh the public's interest in the defendant's criminal history record information being
 504 publicly available and the harm to the defendant's privacy and issue written findings of
 505 fact thereupon.

506 (C) The court shall specify the date that such prohibited dissemination, sealing, and
 507 restrictions will take effect."

508 **SECTION 2-4.**

509 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
 510 Georgia Crime Information Center, is amended by revising subparagraph (a)(1)(D) and
 511 subsection (d.2) of Code Section 35-3-34, relating to disclosure and dissemination of
 512 criminal records to private persons and businesses, resulting responsibility and liability of
 513 issuing center, and provision of certain information to the FBI in conjunction with the
 514 National Instant Criminal Background Check System, as follows:

515 "(D) The center shall not provide records of arrests, charges, or dispositions when
 516 access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2,
 517 35-3-37, or 42-8-62.1; or"

518 "(d.2) When identifying information provided is sufficient to identify persons whose
 519 records are requested, local criminal justice agencies may disseminate criminal history
 520 records of in-state felony convictions, pleas, and sentences unless such records are
 521 restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code
 522 Section 42-8-63.1, without:

- 523 (1) Fingerprint comparison;
 524 (2) Prior contact with the center; or
 525 (3) Consent of the person whose records are requested.

526 Such information may be disseminated to private individuals and businesses under the
 527 conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the
 528 fee for the request and when the request is made upon a form prescribed by the center.
 529 Such agencies may charge and retain fees as needed to reimburse such agencies for the
 530 direct and indirect costs of providing such information and shall have the same immunity
 531 therefor as provided in subsection (c) of this Code section."

532

SECTION 2-5.

533 Said article is further amended by revising subparagraph (a)(1)(D) and (d.1) of Code
 534 Section 35-3-35, relating to disclosure and dissemination of records to public agencies and
 535 political subdivisions and responsibility and liability of issuing center, as follows:

536 "(D) The center shall not provide records of arrests, charges, or dispositions when
 537 access has been restricted pursuant to Code Section 3-3-23.1, 15-1-20, 16-13-2,
 538 35-3-37, or 42-8-62.1;"

539 "(d.1) When identifying information provided is sufficient to identify persons whose
 540 records are requested, local criminal justice agencies may disseminate criminal history
 541 records of in-state felony convictions, pleas, and sentences unless such records are
 542 restricted pursuant to Code Section 35-3-37, except as specifically authorized by Code
 543 Section 42-8-63.1, without:

- 544 (1) Fingerprint comparison;
- 545 (2) Prior contact with the center; or
- 546 (3) Consent of the person whose records are requested.

547 Such information may be disseminated to entities to which such records may be made
 548 available under subsection (d) of this Code section under the conditions specified in
 549 subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and
 550 when the request is made upon a form prescribed by the center. Such agencies may charge
 551 and retain fees as needed to reimburse such agencies for the direct and indirect costs of
 552 providing such information and shall have the same immunity therefor as provided in
 553 subsection (c) of this Code section."

554

PART THREE.

555

SECTION 3-1.

556 Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to relevant evidence
 557 and its limits, is amended by adding a new Code section to read as follows:

558 "24-4-419.

559 (a) As used in this Code section, the term 'criminal history record information' shall have
 560 the same meaning as set forth in Code Section 35-3-30.

561 (b) In a civil proceeding against an employer, its employees, or its agents based on the
 562 conduct of an employee or former employee, criminal history record information shall not
 563 be admissible if:

- 564 (1) The nature of such criminal history record information does not bear a direct
 565 relationship to the facts underlying such proceeding;

566 (2) Prior to the act giving rise to such proceedings, criminal history record information
567 was restricted or sealed as provided in Code Section 35-3-37, or a pardon for such
568 conduct was granted; or
569 (3) Such criminal history information is for an arrest or charge that did not result in a
570 conviction."

571 **PART FOUR.**
572 **SECTION 4-1.**

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