

House Bill 404

By: Representatives Kennard of the 102nd, Werkheiser of the 157th, McLaurin of the 51st, Kendrick of the 93rd, Holcomb of the 81st, and others

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 revise the
4 handling of arrest-only criminal history record information; to provide for the automatic
5 restriction of an individual's criminal history record information upon arrest; to provide that
6 such criminal history record information shall be made publicly available only upon the
7 issuance of an indictment, accusation, or other charging instrument; to provide for related
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

15 "(g.1)(1) Access to an individual's criminal history record information, including any
16 fingerprints or photographs of the individual taken in conjunction with the arrest, shall

17 be restricted by the center unless the case is referred for further prosecution to the proper
18 prosecuting attorney by the arresting law enforcement agency and such prosecuting
19 attorney issues or secures an indictment, accusation, or other charging instrument relating
20 to such case. No criminal history record information shall be made publicly available
21 until the center has received notice from the prosecuting attorney of such indictment,
22 accusation, or other charging instrument or, for criminal history record information which
23 was obtained in conjunction with an arrest on or before June 30, 2021, the center has
24 sufficient basis in such criminal history record information to believe that an indictment,
25 accusation, or other charging instrument has been issued or secured.

26 (2) For criminal history record information obtained on and after July 1, 2021, a copy of
27 the notice provided for under paragraph (1) of this subsection shall be sent by the
28 prosecuting attorney to the accused or the accused's attorney, if represented, by mailing
29 such copy of the notice by first-class mail within seven days of notifying the center.

30 (h) Access to an individual's criminal history record information, including any
31 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
32 restricted by the center ~~for the following types of dispositions~~ when, after an indictment,
33 accusation, or other charging instrument:

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

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

37 ~~(i) The offense against such individual is closed by the arresting law enforcement~~
38 ~~agency. It shall be the duty of the head of the arresting law enforcement agency to~~
39 ~~notify the center whenever a record is to be restricted pursuant to this division within~~
40 ~~30 days of such decision. A copy of the notice shall be sent to the accused and the~~
41 ~~accused's attorney, if any, by mailing the same by first-class mail within seven days~~
42 ~~of notifying the center; or~~

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

48 ~~(I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated~~
 49 ~~nature, two years;~~

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

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

55 ~~If the center receives notice of the filing of an indictment subsequent to the restriction~~
 56 ~~of a record pursuant to this division, the center shall make such record available in~~
 57 ~~accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive~~
 58 ~~notice of a charging instrument within 30 days of the applicable time periods set forth~~
 59 ~~in this division, such record shall be restricted by the center for noncriminal justice~~
 60 ~~purposes;~~

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

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

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

65 ~~(2) After indictment or accusation:~~

66 ~~(A)(1) Except as provided in subsection (i) of this Code section, all charged offenses~~
 67 ~~were dismissed, nolle prossed, or reduced to a violation of a local ordinance;~~

68 ~~(B)(2) The individual was sentenced in accordance with the provisions of subsection (a)~~
 69 ~~or subsection (c) of Code Section 16-13-2, and either the court ordered restriction upon~~

70 sentencing as permitted in Code Section 16-13-2, or the individual successfully
71 completed the terms and conditions of his or her probation;

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

77 ~~(D)~~(4) The individual successfully completed a drug court treatment program, mental
78 health treatment program, or veterans treatment program, the individual's offense has
79 been dismissed or nolle prossed, and he or she has not been arrested during such program,
80 excluding any arrest for a nonserious traffic offense; or

81 ~~(E)~~(5) The individual was acquitted of all of the charged offenses by a judge or jury
82 unless, within ten days of the verdict, the prosecuting attorney demonstrates to the trial
83 court through clear and convincing evidence that the harm otherwise resulting to the
84 individual is clearly outweighed by the public interest in the criminal history record
85 information being publicly available because either:

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

89 ~~(ii)~~(B) The individual has been formally charged with the same or similar offense
90 within the previous five years."

91 **SECTION 2.**

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