Senate Bill 22

By: Senators Butler of the 55th, Squires of the 5th, Reed of the 35th, Adelman of the 42nd and Brown of the 26th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 3 of Title 35 and Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating, respectively, to the Georgia Bureau of Investigation and probation, so as to authorize the Georgia Crime Information Center to provide records related to prosecution of certain first offenders if the person who is the subject of the inquiry has applied for employment caring for minor children or elderly, mentally ill, or mentally retarded persons and was prosecuted for one of a list of specified offenses; to provide that certain persons discharged without adjudication of guilt after probation or confinement may be denied employment caring for minor children or elderly, mentally ill, or mentally retarded persons if prosecuted for one of a list of specified offenses; to change provisions relating to records submitted to the center; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia Bureau of Investigation, is amended in Code Section 35-3-34, relating to disclosure of criminal records to private persons and businesses by the Georgia Crime Information Center, by striking subparagraph (a)(1)(B) and inserting in lieu thereof the following:

"(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; and".

SECTION 2.

Said chapter is further amended in Code Section 35-3-35, relating to disclosure of criminal records to public agencies or political subdivisions by the Georgia Crime Information Center, by striking subparagraph (a)(1)(B) and inserting in lieu thereof the following:

″(B) The center may not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; and″.

SECTION 3.

Said chapter is further amended by inserting a new Code section to be designated Code Section 35-3-34.1 to read as follows:

″35-3-34.1.

Where an offender has been exonerated and discharged without court adjudication of guilt pursuant to Article 3 of Chapter 8 of Title 42, the center is authorized to provide the first offender´s record of arrests, charges, or sentences if:

(1) The offender was exonerated and discharged without a court adjudication of guilt on or after July 1, 2004; and either

(2) The request for information is an inquiry about a person who has applied for employment with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the person who is the subject of the inquiry to the center was prosecuted for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

(3) The request for information is an inquiry about a person who has applied for employment with a nursing home, personal care home, or a person or entity that offers day care for elderly persons and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, pandering, or a violation of Code Section 30-5-8; or

(4) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-3-1 or mentally retarded as defined in Code Section 37-4-2, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering.″

SECTION 3A.

Said chapter is further amended in Code Section 33-3-36, relating to duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to the Georgia Crime Information Center, by striking subsection (e) in its entirety and inserting in lieu thereof the following:

"(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data for all felonies and for the misdemeanors and violations designated in subparagraph (a)(1)(A) of Code Section 35-3-33 immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If ~~the~~ any such warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all such arrest warrants of this type which continue to be outstanding."

SECTION 4.

Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to probation, is amended in Code Section 42-8-62, relating to discharge without adjudication of guilt for certain offenders confined or placed on probation as first offenders, by striking subsection (a) and inserting in lieu thereof the following:

"(a) Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. Except for the registration requirements under the state sexual offender registry and except as otherwise provided in Code Section 42-8-63.1, the discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. It shall be the duty of the clerk of court to enter on the criminal docket and all other records of the court pertaining thereto the following:

'Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties, except for registration requirements under the state sexual offender registry and except with regard to employment providing care for minor children or elderly persons as specified in Code Section 42-8-63.1; and the defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-62.'

Such entry shall be written or stamped in red ink, dated, and signed by the person making such entry or, if the docket or record is maintained using computer print-outs, microfilm, or similar means, such entry shall be underscored, boldface, or made in a similar conspicuous manner and shall be dated and include the name of the person making such entry. The criminal file, docket books, criminal minutes and final record, and all other records of the court relating to the offense of a defendant who has been discharged without court adjudication of guilt pursuant to this subsection shall not be altered as a result of that discharge, except for the entry of discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of that discharge."

SECTION 5.

Said chapter is further amended by inserting a new Code section to read as follows:

"42-8-63.1.

A discharge under this article may be used to disqualify a person for employment if:

(1) The offender was discharged under this article on or after July 1, 2004; and either

(2) The employment is with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the defendant was discharged under this article after prosecution for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

(3) The employment is with a nursing home, personal care home, or a person or entity that offers day care for elderly persons and the defendant was discharged under this article after prosecution for the offense of sexual battery, incest, pimping, pandering, or a violation of Code Section 30-5-8; or

(4) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4-2 that provides services to persons who are mentally ill as defined in Code Section 37-3-1 or mentally retarded as defined in Code Section 37-4-2, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering."

SECTION 6.

This Act shall become effective on July 1, 2004, except that Section 3A shall become effective on July 1, 2003.

SECTION 7.

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