

Senate Bill 257

By: Senator Anderson of the 43rd

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 criminal history record
3 restrictions for certain persons cited with or convicted of certain criminal offenses; to provide
4 that restricted criminal history record information shall be available to criminal justice
5 agencies; to amend Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia
6 Annotated, relating to first offenders, so as to revise the procedure for petitioning for
7 exoneration and discharge when an individual has qualified for sentencing as a first offender;
8 to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to
12 Georgia Crime Information Center, is amended by revising division (j)(4)(B)(xvii),
13 paragraph (7) of subsection (j), paragraph (1) of subsection (m), and subsection (v) of Code
14 Section 35-3-37, relating to review of individual's criminal history record information,
15 definitions, privacy considerations, written application requesting review, and inspection, as
16 follows:

S. B. 257

- 1 -

17 “(xvii) Theft in violation of Chapter 8 of Title 16; provided, however, that such
18 prohibition shall not apply to a misdemeanor conviction of shoplifting, ~~or~~ refund
19 fraud, ~~theft by taking, or theft of services~~ in violation of Code Section 16-8-2, 16-8-5,
20 16-8-14, or 16-8-14.1, as applicable; or”

21 “(7) When an individual was convicted in this state of an offense for which that
22 individual has been granted a pardon from the State Board of Pardons and Paroles as
23 provided in the Constitution and Code Section 42-9-42, provided that the offense was not
24 a serious violent felony as such term is defined in Code Section 17-10-6.1 or a sexual
25 offense as such term is defined in Code Section 17-10-6.2, and provided, further, that
26 such individual has not been convicted of any crime in any jurisdiction, excluding any
27 conviction for a nonserious traffic offense, since the pardon was granted, and provided,
28 further, that he or she has no pending charged offenses, ~~he or she may petition the court~~
29 ~~in which the conviction occurred to restrict access to criminal history record information.~~
30 ~~Such court shall maintain jurisdiction over the case for this limited purpose and duration.~~
31 ~~Such petition shall be served on the prosecuting attorney. If a hearing is requested, such~~
32 ~~hearing shall be held within 90 days of the filing of the petition. The court shall hear~~
33 ~~evidence and shall grant an order restricting such criminal history record information if~~
34 ~~it determines that the harm otherwise resulting to the individual clearly outweighs the~~
35 ~~public's interest in the criminal history record information being publicly available the~~
36 ~~criminal history record information for his or her conviction shall be restricted by the~~
37 ~~center.”~~

38 “(m)(1) For criminal history record information maintained by the clerk of court, an
39 individual who has a record restricted pursuant to Code Section 17-10-21 or this Code
40 section or an individual who has been cited for a criminal offense but was not arrested
41 and the charged offense was subsequently dismissed, nolle prossed, or reduced to a
42 violation of a local ordinance may petition the court with original jurisdiction over the
43 offenses in the county where the clerk of court is located for an order to seal all criminal

44 history record information maintained by the clerk of court for such individual's charged
45 offense. Notice of such petition shall be sent to the clerk of court and the prosecuting
46 attorney. A notice sent by registered or certified mail or statutory overnight delivery shall
47 be sufficient notice.

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

51 (A) The criminal history record has been restricted pursuant to paragraph (7) of
52 subsection (j) of this Code section; or

53 (B) The criminal history record information has been restricted pursuant to this Code
54 section; and

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

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

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

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

62 (B) By the Judicial Qualifications Commission;

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

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

66 (E) Pursuant to a court order; ~~and~~

67 (F) By an individual who is the subject of restricted criminal history record information
68 or sealed court files; and

69 (G) By criminal justice agencies for law enforcement or criminal investigative
70 purposes.

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

72 **SECTION 2.**

73 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first
74 offenders, is amended by revising paragraph (1) of subsection (a) of Code Section 42-8-66,
75 relating to petition for exoneration and discharge, hearing, retroactive grant of first offender
76 status, and no filing fee, as follows:

77 "(a)(1) An individual who qualified for sentencing pursuant to this article but who was
78 not informed of his or her eligibility for first offender treatment may, ~~with the consent of~~
79 ~~the prosecuting attorney,~~ petition the court in which he or she was convicted for
80 exoneration of guilt and discharge pursuant to this article."

81 **SECTION 3.**

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