The House Committee on Public Safety and Homeland Security offers the following substitute to SB 257:

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to Georgia Crime Information Center, so as to provide for criminal history record information restrictions for certain persons cited with or convicted of certain criminal offenses; to provide that restricted criminal history record information shall be available to criminal justice agencies; to provide for criminal history record information restriction for persons granted a pardon for certain offenses; to amend Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first offenders, so as to revise the procedure for petitioning for exoneration and discharge when an individual has qualified for sentencing as a first offender; to provide for exceptions to retroactively granting first offender treatment; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to Georgia Crime Information Center, is amended in Code Section 35-3-37, relating to review of individual's criminal history record information, definitions, privacy considerations,

written application requesting review, and inspection, by revising divisions (j)(4)(B)(xvi), (j)(4)(B)(xvii), and (j)(4)(B)(xviii), paragraph (7) of subsection (j), and subsections (m) and (v) as follows:

"(xvi) Any offense related to minors generally in violation of Part 2 of Article 3 of Chapter 12 of Title 16; or

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

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

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

"(m)(1) For criminal history record information maintained by the clerk of court, an individual who has a record restricted pursuant to Code Section 17-10-21 or this Code section or an individual who has been cited for a criminal offense but was not arrested and the charged offense was subsequently dismissed, nolle prossed, or reduced to a violation of a local ordinance may petition the court with original jurisdiction over the offenses in the county where the clerk of court is located for an order to seal all criminal history record information maintained by the clerk of court for such individual's charged offense. Notice of such petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail or statutory overnight delivery shall be sufficient notice.

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

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

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

(3) Notwithstanding paragraph (2) of this subsection, the court shall order all criminal history record information in the custody of the clerk of court, including within any index, to be restricted and unavailable to the public if the criminal history record has been restricted pursuant to paragraph (7) of subsection (j) of this Code section.

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

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

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

(B) By the Judicial Qualifications Commission;

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

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

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

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

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

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

SECTION 2.

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

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

"(d) The court may issue an order retroactively granting first offender treatment and discharge the defendant pursuant to this article if the court finds by a preponderance of the evidence that the defendant was eligible for sentencing under the terms of this article at the time he or she was originally sentenced or that he or she qualifies for sentencing under paragraph (2) of subsection (a) of this Code section and the ends of justice and the welfare of society are served by granting such petition; provided, however, that no relief pursuant to this subsection may be given on a conviction that was used as the underlying conviction

for a conviction for violating Code Section 16-11-131 or if the conviction was used to enhance a sentence pursuant to Code Section 17-10-7.″

SECTION 3.

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