

House Bill 909 (COMMITTEE SUBSTITUTE)

By: Representatives Hagan of the 156th, Smith of the 18th, Werkheiser of the 157th, Leverett of the 123rd, Camp of the 135th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the
2 Georgia Bureau of Investigation, so as to provide for the restriction and seal of First Offender
3 Act sentences until such status is revoked; to amend Code Section 42-8-62.1 of the Official
4 Code of Georgia Annotated, relating to limiting public access to First Offender Act status,
5 petitioning, and sealing record, so as to provide for the restriction and seal of first offender
6 sentences at the time of sentencing; to provide for related matters; to repeal conflicting laws;
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
11 Bureau of Investigation, is amended by revising subparagraph (a)(1)(B) of Code Section
12 35-3-34, relating to disclosure and dissemination of criminal records to private persons and
13 businesses, resulting responsibility and liability of issuing center, and provision of certain
14 information to the FBI in conjunction with the National Instant Criminal Background Check
15 System, as follows:

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16 "(B)(i) The center shall not provide records of arrests, charges, or sentences when an
17 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~and has~~
18 ~~been exonerated and discharged without court adjudication of guilt as a matter of law~~
19 ~~or pursuant to a court order~~ or Code Section 15-1-20, including records relating to
20 such defendant's bench warrants, failure to appear, and probation for such offense,
21 except as specifically authorized by Code Section 42-8-63.1. ~~The center shall not~~
22 ~~provide records of arrests, charges, or sentences when an individual has been~~
23 ~~sentenced as provided in Code Section 15-1-20, including records relating to such~~
24 ~~defendant's bench warrants, failure to appear, and probation for such offense, except~~
25 ~~as specifically authorized by Code Section 42-8-63.1.~~

26 (ii) During the period of time after a defendant; who has been sentenced pursuant to
27 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
28 court adjudication of guilt as a matter of law or pursuant to a court order; has
29 completed active probation supervision through the remainder of such sentence, the
30 center shall not provide records of arrests, charges, or sentences except as specifically
31 authorized by Code Section 42-8-63.1.

32 (iii) The center may provide records of arrests, charges, or sentences when an
33 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has
34 not been exonerated and discharged without court adjudication of guilt as a matter of
35 law or pursuant to a court order, ~~as specifically authorized by Code Section 42-8-63.1,~~
36 ~~while a defendant is under active probation supervision for such offense, or as~~
37 ~~provided in a court order~~ only for the following purposes:

38 (I) As specifically authorized by Code Section 42-8-63.1;

39 (II) To criminal justice agencies for purposes of employment in accordance with
40 procedures established by the center;

41 (III) Pursuant to any disclosure or consideration of criminal history record
42 information required by federal or state law; or

43 (IV) For the purpose of any determination regarding the transfer of a firearm or the
44 issuance of a license pursuant to Code Section 16-11-129;”

45 **SECTION 2.**

46 Said chapter is further amended by revising subparagraph (a)(1)(B) of Code Section 35-3-35,
47 relating to disclosure and dissemination of records to public agencies and political
48 subdivisions and responsibility and liability of issuing center, as follows:

49 “(B)(i) The center shall not provide records of arrests, charges, or sentences when an
50 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~and has~~
51 ~~been exonerated and discharged without court adjudication of guilt as a matter of law~~
52 ~~or pursuant to a court order~~, including records relating to such defendant's bench
53 warrants, failure to appear, and probation for such offense, except as specifically
54 authorized by Code Section 42-8-63.1. The center shall not provide records of arrests,
55 charges, or sentences when an individual has been sentenced as provided in Code
56 Section 15-1-20, including records relating to such defendant's bench warrants, failure
57 to appear, and probation for such offense, except as specifically authorized by Code
58 Section 42-8-63.1.

59 (ii) During the period of time after a defendant, who has been sentenced pursuant to
60 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
61 court adjudication of guilt as a matter of law or pursuant to a court order, has
62 completed active probation supervision through the remainder of such sentence, the
63 center shall not provide records of arrests, charges, or sentences except as specifically
64 authorized by Code Section 42-8-63.1.

65 (iii) The center may provide records of arrests, charges, or sentences when an
66 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has
67 not been exonerated and discharged without court adjudication of guilt as a matter of
68 law or pursuant to a court order, ~~as specifically authorized by Code Section 42-8-63.1,~~

69 ~~while a defendant is under active probation supervision for such offense, or as~~
 70 ~~provided in a court order~~ only for the following purposes:

71 (I) As specifically authorized by Code Section 42-8-63.1;

72 (II) To criminal justice agencies for purposes of employment in accordance with
 73 procedures established by the center;

74 (III) Pursuant to any disclosure or consideration of criminal history record
 75 information required by federal or state law; or

76 (IV) For the purpose of any determination regarding the transfer of a firearm or the
 77 issuance of a license pursuant to Code Section 16-11-129;”

78 **SECTION 3.**

79 Code Section 42-8-62.1 of the Official Code of Georgia Annotated, relating to limiting
 80 public access to first offender status, petitioning, and sealing record, is amended as follows:

81 "42-8-62.1.

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

83 (1) 'Criminal history record information' shall have the same meaning as set forth in
 84 Code Section 35-3-30.

85 (2) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section
 86 35-3-37.

87 (3) 'Restrict,' 'restricted,' or 'restriction' shall have the same meaning as set forth in Code
 88 Section 35-3-37.

89 (b)(1) ~~At the time of sentencing, or during the term of a sentence that was imposed~~
 90 ~~before July 1, 2016, the defendant may seek to~~ the court shall limit public access to his
 91 or her first offender sentencing information, ~~and the court may, in its discretion, order any~~
 92 ~~of by ordering~~ the following:

93 (A) Restrict dissemination of the defendant's first offender records, except as provided
 94 in Code Section 42-8-63.1;

95 (B) The criminal file, docket books, criminal minutes, final record, all other records of
96 the court, and the defendant's criminal history record information in the custody of the
97 clerk of court, including within any index, be sealed and unavailable to the public; and
98 (C) Law enforcement agencies, jails, or detention centers to restrict the defendant's
99 criminal history record information of arrest, including any fingerprints or photographs
100 taken in conjunction with such arrest.

101 ~~(2) When considering the defendant's request under this subsection, the court shall weigh~~
102 ~~the public's interest in the defendant's criminal history record information being publicly~~
103 ~~available and the harm to the defendant's privacy and issue written findings of fact~~
104 ~~thereupon.~~

105 ~~(3) The court shall specify the date that such prohibited dissemination, sealing, and~~
106 ~~restrictions will take effect. If a court of competent jurisdiction revokes the First Offender~~
107 ~~Act sentence and adjudicates the defendant guilty of the underlying First Offender Act~~
108 ~~offense while such defendant is serving a first offender sentence, sealing of such court~~
109 ~~records shall be removed, and such records may be disseminated by the court, law~~
110 ~~enforcement agencies, jails, and detention centers.~~

111 (c) An individual who has been exonerated of guilt and discharged, or who was sentenced
112 and has not had their sentence revoked and adjudicated guilty, pursuant to this article;
113 ~~including those individuals exonerated of guilt and discharged~~ prior to July 1, ~~2016~~ 2024,
114 may petition the court that granted such discharge for an order to seal and make unavailable
115 to the public the criminal file, docket books, criminal minutes, final record, all other
116 records of the court, and the defendant's criminal history record information in the custody
117 of the clerk of court, including within any index. Notice of such petition shall be sent to
118 the clerk of court and the prosecuting attorney. A notice sent by registered or certified mail
119 or statutory overnight delivery shall be sufficient notice.

120 (d) Within 90 days of the filing of a petition pursuant to subsection (c) of this Code
121 section, the court shall order the criminal file, docket books, criminal minutes, final record,

122 all other records of the court, and the defendant's criminal history record information in the
 123 custody of the clerk of court, including within any index, to be sealed and made unavailable
 124 to the public if ~~the court finds by a preponderance of the evidence that:~~

125 ~~(1) An exoneration of guilt and discharge has been granted pursuant to this article; and~~

126 ~~(2) The harm otherwise resulting to the privacy of the individual outweighs the public~~
 127 ~~interest in the criminal history record information being publicly available.~~

128 (e) Within 60 days of the filing of the court's order under subsection (b) or (d) of this Code
 129 section, the clerk of court shall cause every document in connection with such individual's
 130 case, physical or electronic, in its custody, possession, or control to be sealed.

131 (f) When a court orders sealing of court records under subsection (b) or (d) of this Code
 132 section, the court ~~may~~ shall also order that records maintained by law enforcement
 133 agencies, jails, and detention centers be restricted and unavailable to the public. Such
 134 entities shall comply with such restriction within 30 days of receiving a copy of such order.

135 (g)(1) Information sealed or restricted pursuant to this Code section shall always be
 136 available for inspection, copying, and use:

137 (A) As provided in subsection (c) of Code Section 42-8-65;

138 (B) By the Judicial Qualifications Commission;

139 (C) By a prosecuting attorney or public defender who submits a sworn affidavit to the
 140 clerk of court that attests that such information is relevant to a criminal proceeding;

141 (D) Pursuant to a court order; ~~and~~

142 (E) By an individual who is the subject of sealed court files or restricted criminal
 143 history record information ~~upon court order; and~~

144 (F) By the Department of Community Supervision.

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

146 **SECTION 4.**

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