

The House Committee on Judiciary Non-Civil offers the following substitute to SB 512:

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 Article 3 of Chapter 8 of Title 42 of the
4 Official Code of Georgia Annotated, relating to first offenders relative to probation, so as to
5 provide for the restriction and seal of first offender sentences at the time of sentencing; to
6 provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

15 "(B)(i) The center shall not provide records of arrests, charges, or sentences when an
16 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~and has~~

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

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

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

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

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

40 (III) Pursuant to any disclosure or consideration of criminal history record
41 information required by federal or state law including, but not limited to, those
42 disclosures required for federally insured financial institutions; 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 including, but not limited to, those
 76 disclosures required for federally insured financial institutions;

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

79 (V) To criminal justice agencies, as such term is defined in Code Section 35-3-30;”

80

SECTION 3.

81 Article 3 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to first
 82 offenders relative to probation, is amended by revising Code Section 42-8-62.1, relating to
 83 limiting public access to first offender status, petitioning, and sealing record, as follows:

84 "42-8-62.1.

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

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

88 (2) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section
 89 35-3-37.

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

92 (4) 'Victim' shall have the same meaning as set forth in Code Section 17-17-3.

93 (b)(1) ~~At the time of sentencing, or during the term of a sentence that was imposed~~
 94 ~~before July 1, 2016, the defendant may seek to~~ the court shall limit public access to his

95 or her first offender sentencing information, ~~and the court may, in its discretion, order any~~
96 ~~of by ordering~~ the following:

97 (A) Restrict dissemination of the defendant's first offender records, except as provided
98 in subsection (h) of this Code section;

99 (B) The criminal file, docket books, criminal minutes, final record, all other records of
100 the court, and the defendant's criminal history record information in the custody of the
101 clerk of court, including within any index, be sealed and unavailable to the public,
102 except as provided in subsection (h) of this Code section; and

103 (C) Law enforcement agencies, jails, or detention centers to restrict the defendant's
104 criminal history record information of arrest, including any fingerprints or photographs
105 taken in conjunction with such arrest, except as provided in subsection (h) of this Code
106 section.

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

111 (3) ~~The court shall specify the date that such prohibited dissemination, sealing, and~~
112 ~~restrictions will take effect.~~

113 (c) An individual who has been exonerated of guilt and discharged pursuant to this article,
114 including those individuals exonerated of guilt and discharged prior to July 1, 2016, was
115 sentenced pursuant to this article prior to July 1, 2024, and has not had their sentence
116 revoked and adjudicated guilty, may petition the court that ~~granted~~ ordered such discharge
117 sentence for an order to seal and make unavailable to the public the criminal file, docket
118 books, criminal minutes, final record, all other records of the court, and the defendant's
119 criminal history record information in the custody of the clerk of court, including within
120 any index limit public access to his or her case information pursuant to subsection (b) of
121 this Code section. Notice of such petition shall be sent to the clerk of court and the

122 prosecuting attorney. A notice sent by registered or certified mail or statutory overnight
123 delivery shall be sufficient notice.

124 (d) Within 90 days of the filing of a petition pursuant to subsection (c) of this Code
125 section, the court shall order restriction and sealing of the criminal file, docket books,
126 criminal minutes, final record, all other records of the court, and the defendant's criminal
127 history record information in the custody of the clerk of court, including within any index,
128 to be sealed and made unavailable to the public, except as provided in subsection (h) of this
129 Code section if the court finds by a preponderance of the evidence that:

130 ~~(1) An exoneration of guilt and discharge has been granted pursuant to this article; and~~
131 ~~(2) The harm otherwise resulting to the privacy of the individual outweighs the public~~
132 ~~interest in the criminal history record information being publicly available.~~

133 (e)(1) Within 60 days of the filing of the court's order under subsection (b) or (d) of this
134 Code section, the clerk of court shall cause every document in connection with such
135 individual's case, physical or electronic, in its custody, possession, or control to be sealed
136 to the public except as provided in subsection (h) of this Code section.

137 (2) Upon sealing and making unavailable to the public, the clerk of court shall display
138 on the file in bold print on the cover of the file a notice to all court personnel that such
139 file is sealed from the public view and dissemination of the contents to anyone other than
140 those authorized by this Code section is prohibited. Such notice shall be sealed from
141 public view and only available to the parties listed in subsection (h) of this Code section.
142 Parties provided for in subsection (h) of this Code section shall maintain access to the
143 record.

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

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

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

152 ~~(B) By the Judicial Qualifications Commission;~~

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

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

156 ~~(E) By an individual who is the subject of sealed court files or restricted criminal~~
157 ~~history record information upon court order.~~

158 ~~(2) The confidentiality of such information shall be maintained insofar as practical.~~

159 (g) If a court of competent jurisdiction revokes the First Offender Act sentence and
160 adjudicates the defendant guilty of the underlying First Offender Act offense while such
161 defendant is serving a first offender sentence, restriction and sealing of such court records
162 shall be removed, and such records may be disseminated by the court, law enforcement
163 agencies, jails, and detention centers.

164 (h)(1) The following entities shall be entitled to access the criminal file, docket books,
165 criminal minutes, final record, and all other records of the court during the period of time
166 a defendant has been sentenced pursuant to this article but has not been exonerated and
167 discharged without court adjudication of guilt as a matter of law or pursuant to a court
168 order. No court order or affidavit shall be required for the following entities to access
169 such records unless otherwise provided:

170 (A) As authorized by Code Section 42-8-63.1;

171 (B) To criminal justice agencies, as such term is defined in Code Section 35-3-30;

172 (C) As authorized by subsection (c) of Code Section 42-8-65;

173 (D) Any prosecuting attorney. Prosecuting attorneys shall be authorized to share
174 relevant case information with the victim of the underlying first offender offense
175 pursuant to the Crime Victims' Bill of Rights, as provided in Code Section 17-17-1;

- 176 (E) Any judge or court personnel;
177 (F) Any public defender;
178 (G) An individual who is the subject of sealed court files or restricted criminal history
179 record information;
180 (H) The Judicial Qualifications Commission;
181 (I) The Department of Community Supervision;
182 (J) Pursuant to any disclosure or consideration of criminal history record information
183 required by federal or state law including, but not limited to, those disclosures required
184 for federally insured financial institutions;
185 (K) For the purpose of any determination regarding the transfer of a firearm or the
186 issuance of a license pursuant to Code Section 16-11-129; or
187 (L) When such records are made available for inspection, copying, and use pursuant
188 to a court order.
189 (2) The confidentiality of such information shall be maintained insofar as practical."

190 **SECTION 4.**

191 Said article is further amended by adding a new Code section to read as follows:

192 "42-8-62.2.

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

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

196 (2) 'Prosecuting attorney' shall have the same meaning as set forth in Code Section
197 35-3-37.

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

200 (b) At the time a defendant who has been sentenced pursuant to this article has been
201 exonerated and discharged without court adjudication of guilt as a matter of law or

202 pursuant to a court order, the criminal file, docket books, criminal minutes, final record,
203 and all other records of the court shall be restricted except as provided in subsection (g) of
204 this Code section.

205 (c) An individual who has been exonerated of guilt and discharged without court
206 adjudication of guilt as a matter of law or pursuant to a court order pursuant to this article
207 prior to July 1, 2024, may petition the court that granted such discharge for an order to seal
208 and make unavailable to the public the criminal file, docket books, criminal minutes, final
209 record, all other records of the court, and the defendant's criminal history record
210 information in the custody of the clerk of court, including within any index. Notice of such
211 petition shall be sent to the clerk of court and the prosecuting attorney. A notice sent by
212 registered or certified mail or statutory overnight delivery shall be sufficient notice.

213 (d) Within 90 days of the filing of a petition pursuant to subsection (c) of this Code
214 section, the court shall order the criminal file, docket books, criminal minutes, final record,
215 all other records of the court, and the defendant's criminal history record information in the
216 custody of the clerk of court, including within any index, to be sealed and made unavailable
217 to the public.

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

222 (f) When a court orders sealing of court records under this Code section, the court shall
223 also order that records maintained by law enforcement agencies, jails, and detention centers
224 be restricted and unavailable to the public. Such entities shall comply with such restriction
225 within 30 days of receiving a copy of such order.

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

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

- 229 (B) By the Judicial Qualifications Commission;
230 (C) By judges of courts of competent jurisdiction in the State of Georgia;
231 (D) By a prosecuting attorney or public defender who submits a sworn affidavit to the
232 clerk of court that attests that such information is relevant to a criminal proceeding. No
233 prosecuting attorney or public defender shall be required to obtain a court order to
234 obtain such information that is relevant to a criminal proceeding;
235 (E) Pursuant to a court order; and
236 (F) By an individual who is the subject of sealed court files or restricted criminal
237 history record information.
238 (2) The confidentiality of such information shall be maintained insofar as practical."

239 **SECTION 5.**

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