

House Bill 491

By: Representatives Waites of the 60<sup>th</sup>, Thomas of the 56<sup>th</sup>, Dukes of the 154<sup>th</sup>, Bruce of the 61<sup>st</sup>, and Scott of the 76<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to  
2 review of individual's criminal history record information, definitions, privacy  
3 considerations, written application requesting review, and inspection, so as to revise  
4 conditions under which an individual may petition the superior court to restrict access to  
5 criminal history record information for certain misdemeanor offenses; to provide for  
6 conditions under which an individual may petition the superior court to restrict access to  
7 criminal history record information for certain felony offenses; to provide for related matters;  
8 to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of  
12 individual's criminal history record information, definitions, privacy considerations, written  
13 application requesting review, and inspection, is amended by revising paragraph (4) of  
14 subsection (j) as follows:

15 "(4)(A) When an individual was convicted in this state of a misdemeanor or a series of  
16 misdemeanors arising from a single incident, ~~and at the time of such conviction such~~  
17 ~~individual was a youthful offender~~, provided that such individual successfully  
18 completed the terms of his or her sentence and, since completing the terms of his or her  
19 sentence, has not been arrested for at least five years, excluding any arrest for a  
20 nonserious traffic offense, and provided, further, that he or she was not convicted in this  
21 state of a misdemeanor violation or under any other state's law with similar provisions  
22 of one or more of the offenses listed in subparagraph ~~(B)~~ (C) of this paragraph, he or  
23 she may petition the superior court in the county where the conviction occurred to  
24 restrict access to criminal history record information. Such court shall maintain  
25 jurisdiction over the case for this limited purpose and duration. Such petition shall be  
26 served on the prosecuting attorney. If a hearing is requested, such hearing shall be held

27 within 90 days of the filing of the petition. The court shall hear evidence and shall  
 28 determine whether granting an order restricting such criminal history record  
 29 information is appropriate, giving due consideration to the individual's conduct and the  
 30 public's interest in the criminal history record information being publicly available.

31 (B) When an individual was convicted in this state of a felony punishable by  
 32 imprisonment for ten years or less, provided that such individual successfully  
 33 completed the terms of his or her sentence and, since completing the terms of his or her  
 34 sentence, has not been arrested for at least five years, excluding any arrest for a  
 35 nonserious traffic offense, and provided, further, that he or she was not convicted in this  
 36 state of a felony violation or under any other state's law with similar provisions of one  
 37 or more of the offenses listed in subparagraph (C) of this paragraph, he or she may  
 38 petition the superior court in the county where the conviction occurred to restrict access  
 39 to criminal history record information. Such court shall maintain jurisdiction over the  
 40 case for this limited purpose and duration. Such petition shall be served on the  
 41 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90  
 42 days of the filing of the petition. The court shall hear evidence and shall determine  
 43 whether granting an order restricting such criminal history record information is  
 44 appropriate, giving due consideration to the individual's conduct and the public's  
 45 interest in the criminal history record information being publicly available.

46 (C) Record restriction shall not be appropriate if the individual was convicted of:

- 47 (i) Family violence battery in violation of subsection (f) of Code Section 16-5-23;
- 48 (ii) False imprisonment in violation of Code Section 16-5-41 if the victim was a  
 49 person delineated in subsection (f) of Code Section 16-5-23;
- 50 (iii) Stalking in violation of Code Section 16-5-90;
- 51 (iv) Aggravated stalking in violation of Code Section 16-5-91;
- 52 (v) Child molestation in violation of Code Section 16-6-4;
- 53 (vi) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 54 (vii) Sexual assault by persons with supervisory or disciplinary authority in  
 55 violation of Code Section 16-6-5.1;
- 56 (viii) Keeping a place of prostitution in violation of Code Section 16-6-10;
- 57 (ix) Pimping in violation of Code Section 16-6-11;
- 58 (x) Pandering by compulsion in violation of Code Section 16-6-14;
- 59 (xi) Masturbation for hire in violation of Code Section 16-6-16;
- 60 (xii) Giving massages in a place used for lewdness, prostitution, assignation, or  
 61 masturbation for hire in violation of Code Section 16-6-17;
- 62 (xiii) Sexual battery in violation of Code Section 16-6-22.1;

63 ~~(x) Any offense related to minors generally in violation of Part 2 of Article 3 of~~  
64 ~~Chapter 12 of Title 16;~~  
65 ~~(xi)(xiv) Theft in violation of Chapter 8 of Title 16; provided, however, that such~~  
66 ~~prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud~~  
67 ~~in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or respectively;~~  
68 ~~(xv) Any offense related to minors generally in violation of Part 2 of Article 3 of~~  
69 ~~Chapter 12 of Title 16; or~~  
70 ~~(xii)(xvi) Any serious traffic offense in violation of Article 15 of Chapter 6 of~~  
71 ~~Title 40."~~

72 **SECTION 2.**

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