

House Bill 549

By: Representatives Scott of the 76<sup>th</sup>, Mitchell of the 88<sup>th</sup>, Schofield of the 60<sup>th</sup>, and Dukes of the 154<sup>th</sup>

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 the Georgia Crime Information Center, so as to reduce the fees associated with  
3 filing for record restrictions or the inspection and correction of criminal records; to remove  
4 the prohibition on record restrictions in the event multiple charges were tried and some but  
5 not all of the charges resulted in an acquittal; to remove the offenses of masturbation for hire,  
6 giving massages in a place used for lewdness, prostitution, assignation, and theft from the  
7 list of convictions for which restrictions shall not be appropriate; to allow the restriction of  
8 criminal history records for convictions of certain misdemeanors and felonies after the  
9 completion of the sentence and a conviction-free period of time; to provide for related  
10 matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Article 2 of Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the  
14 Georgia Crime Information Center, is amended by revising Code Section 35-3-37, relating  
15 to review of individual's criminal history record information, definitions, privacy  
16 considerations, written application requesting review, and inspection, as follows:

17 "35-3-37.

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

19 (1) 'Drug court treatment program' means a treatment program operated by a drug court  
20 division in accordance with the provisions of Code Section 15-1-15.

21 (2) 'Entity' means the arresting law enforcement agency, including county and municipal  
22 jails and detention centers.

23 (2.1) 'Felony sexual offense' means any felony offense of a sexual nature as set forth in  
24 Chapter 6 of Title 16.

25 (3) 'Mental health treatment program' means a treatment program operated by a mental  
26 health court division in accordance with the provisions of Code Section 15-1-16.

27 (4) 'Nonserious traffic offense' means any offense in violation of Title 40 which is not  
28 prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the  
29 laws of a state which would not be considered a serious traffic offense under the laws of  
30 this state if committed in this state.

31 (5) 'Prosecuting attorney' means the Attorney General, a district attorney, or the  
32 solicitor-general who had jurisdiction where the criminal history record information is  
33 sought to be modified, corrected, supplemented, amended, or restricted. If the offense  
34 was a violation of a criminal law of this state which, by general law, may be tried by a  
35 municipal, magistrate, probate, or other court that is not a court of record, the term  
36 'prosecuting attorney' shall include the prosecuting officer of such court or, in the absence  
37 of such prosecuting attorney, the district attorney of the judicial circuit in which such  
38 court is located.

39 (6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record  
40 information of an individual relating to a particular charge shall be available only to  
41 judicial officials and criminal justice agencies for law enforcement or criminal  
42 investigative purposes or to criminal justice agencies for purposes of employment in  
43 accordance with procedures established by the center and shall not be disclosed or  
44 otherwise made available to any private persons or businesses pursuant to Code  
45 Section 35-3-34 or to governmental agencies or licensing and regulating agencies  
46 pursuant to Code Section 35-3-35.

47 (7) 'Serious violent felony' shall have the same meaning as set forth in Code  
48 Section 17-10-6.1.

49 (8) 'State' includes any state, the United States or any district, commonwealth, territory,  
50 or insular possession of the United States, and the Trust Territory of the Pacific Islands.

51 (9) 'Veterans treatment program' means a treatment program operated by a veterans court  
52 division in accordance with the provisions of Code Section 15-1-17.

53 (10) 'Youthful offender' means any offender who was less than 21 years of age at the  
54 time of his or her conviction.

55 (b) Nothing in this article shall be construed so as to authorize any person, agency,  
56 corporation, or other legal entity of this state to invade the privacy of any citizen as defined  
57 by the General Assembly or as defined by the courts other than to the extent provided in  
58 this article.

59 (c) The center shall make an individual's criminal history record information available for  
60 review by such individual or his or her designee upon written application to the center.

61 (d) If an individual believes his or her criminal history record information to be inaccurate,  
62 incomplete, or misleading, he or she may request a criminal history record information  
63 inspection at the center. The center at which criminal history record information is sought

64 to be inspected may prescribe reasonable hours and places of inspection and may impose  
65 such additional procedures or restrictions, including fingerprinting, as are reasonably  
66 necessary to assure the security of the criminal history record information, to verify the  
67 identities of those who seek to inspect such information, and to maintain an orderly and  
68 efficient mechanism for inspection of criminal history record information. The fee for  
69 inspection of criminal history record information shall not exceed \$5.00 ~~\$15.00~~; which  
70 shall ~~not~~ include the cost of the fingerprinting.

71 (e) If the criminal history record information is believed to be inaccurate, incomplete, or  
72 misleading, the individual may request that the entity having custody or control of the  
73 challenged information modify, correct, supplement, or amend the information and notify  
74 the center of such changes within 60 days of such request. In the case of county and  
75 municipal jails and detention centers, such notice to the center shall not be required. If the  
76 entity declines to act within 60 days of such request or if the individual believes the entity's  
77 decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the  
78 issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the  
79 right to appeal to the court with original jurisdiction of the criminal charges in the county  
80 where the entity is located.

81 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order  
82 from the court with original jurisdiction of the criminal charges that the subject information  
83 be modified, corrected, supplemented, or amended by the entity with custody of such  
84 information. Notice of the appeal shall be provided to the entity and the prosecuting  
85 attorney. A notice sent by registered or certified mail or statutory overnight delivery shall  
86 be sufficient service on the entity having custody or control of the disputed criminal history  
87 record information. The court shall conduct a de novo review and, if requested by a party,  
88 the proceedings shall be recorded.

89 (g)(1) Should the court find by a preponderance of the evidence that the criminal history  
90 record information in question is inaccurate, incomplete, or misleading, the court shall  
91 order such information to be appropriately modified, corrected, supplemented, or  
92 amended as the court deems appropriate. Any entity with custody, possession, or control  
93 of any such criminal history record information shall cause each and every copy thereof  
94 in its custody, possession, or control to be altered in accordance with the court's order  
95 within 60 days of the entry of the order.

96 (2) To the extent that it is known by the requesting individual that an entity has  
97 previously disseminated inaccurate, incomplete, or misleading criminal history record  
98 information, he or she shall, by written request, provide to the entity the name of the  
99 individual, agency, or company to which such information was disseminated. Within 60  
100 days of the written request, the entity shall disseminate the modification, correction,

101 supplement, or amendment to the individual's criminal history record information to such  
 102 individual, agency, or company to which the information in question has been previously  
 103 communicated, as well as to the individual whose information has been ordered so  
 104 altered.

105 (h) Access to an individual's criminal history record information, including any  
 106 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be  
 107 restricted by the center for the following types of dispositions:

108 (1) Prior to indictment, accusation, or other charging instrument:

109 (A) The case was never referred for further prosecution to the proper prosecuting  
 110 attorney by the arresting law enforcement agency and:

111 (i) The offense against such individual is closed by the arresting law enforcement  
 112 agency. It shall be the duty of the head of the arresting law enforcement agency to  
 113 notify the center whenever a record is to be restricted pursuant to this division within  
 114 30 days of such decision. A copy of the notice shall be sent to the accused and the  
 115 accused's attorney, if any, by mailing the same by first-class mail within seven days  
 116 of notifying the center; or

117 (ii) The center does not receive notice from the arresting law enforcement agency that  
 118 the offense has been referred to the prosecuting attorney or transferred to another law  
 119 enforcement or prosecutorial agency of this state, any other state or a foreign nation,  
 120 or any political subdivision thereof for prosecution and the following period of time  
 121 has elapsed from the date of the arrest of such individual:

122 (I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated  
 123 nature, two years;

124 (II) If the offense is a felony, other than a serious violent felony or a felony sexual  
 125 offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age,  
 126 four years; or

127 (III) If the offense is a serious violent felony or a felony sexual offense specified  
 128 in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

129 If the center receives notice of the filing of an indictment subsequent to the restriction  
 130 of a record pursuant to this division, the center shall make such record available in  
 131 accordance with Code Section 35-3-34 or 35-3-35. If the center does not receive  
 132 notice of a charging instrument within 30 days of the applicable time periods set forth  
 133 in this division, such record shall be restricted by the center for noncriminal justice  
 134 purposes and shall be considered sealed.

135 (B) The case was referred to the prosecuting attorney but was later dismissed;

136 (C) The grand jury returned two no bills; or

- 137 (D) The grand jury returned one no bill and the applicable time period set forth in  
138 division (ii) of subparagraph (A) of this paragraph has expired; and
- 139 (2) After indictment or accusation:
- 140 (A) Except as provided in subsection (i) of this Code section, all charges were  
141 dismissed or nolle prossed;
- 142 (B) The individual was sentenced in accordance with the provisions of subsection (a)  
143 or (c) of Code Section 16-13-2, and the individual successfully completed the terms and  
144 conditions of his or her probation;
- 145 (C) The individual pleaded guilty to or was found guilty of a violation of paragraph (2)  
146 or (3) of subsection (a) of Code Section 3-3-23 and was sentenced in accordance with  
147 the provisions of subsection (c) of Code Section 3-3-23.1, and the individual  
148 successfully completed the terms and conditions of his or her probation;
- 149 (D) The individual successfully completed a drug court treatment program, mental  
150 health treatment program, or veterans treatment program, the individual's case has been  
151 dismissed or nolle prossed, and he or she has not been arrested during such program,  
152 excluding any arrest for a nonserious traffic offense; or
- 153 (E) The individual was acquitted of all of the charges by a judge or jury unless, within  
154 ten days of the verdict, the prosecuting attorney demonstrates to the trial court through  
155 clear and convincing evidence that the harm otherwise resulting to the individual is  
156 clearly outweighed by the public interest in the criminal history record information  
157 being publicly available because either:
- 158 (i) The prosecuting attorney was barred from introducing material evidence against  
159 the individual on legal grounds, including, without limitation, the granting of a motion  
160 to suppress or motion in limine; or
- 161 (ii) The individual has been formally charged with the same or similar offense within  
162 the previous five years.
- 163 (i) After the filing of an indictment or accusation, an individual's criminal history record  
164 information shall not be restricted if:
- 165 (1) The charges were nolle prossed or otherwise dismissed because:
- 166 (A) Of a plea agreement resulting in a conviction of the individual for an offense  
167 arising out of the same underlying transaction or occurrence as the conviction;
- 168 (B) The prosecuting attorney was barred from introducing material evidence against  
169 the individual on legal grounds, including, without limitation, the granting of a motion  
170 to suppress or motion in limine;
- 171 (C) The conduct which resulted in the arrest of the individual was part of a pattern of  
172 criminal activity which was prosecuted in another court of the state or a foreign nation;  
173 or

174 (D) The individual had diplomatic, consular, or similar immunity or inviolability from  
175 arrest or prosecution; or

176 ~~(2) The charges were tried and some but not all of the charges resulted in an acquittal;~~  
177 ~~or~~

178 ~~(3)~~(2) The individual was acquitted of all charges but it is later determined that the  
179 acquittal was the result of jury tampering or judicial misconduct.

180 (j)(1) When an individual had a felony charge dismissed or nolle prossed or was found  
181 not guilty of such charge but was convicted of a misdemeanor offense that was not a  
182 lesser included offense of the felony charge, such individual may petition the court in  
183 which he or she was accused or convicted, as applicable, or, if such charge was  
184 dismissed, the superior court in the county where the arrest occurred to restrict access to  
185 criminal history record information for the felony charge within four years of the arrest.  
186 Such court shall maintain jurisdiction over the case for this limited purpose and duration.  
187 Such petition shall be served on the arresting law enforcement agency and the  
188 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days  
189 of the filing of the petition. The court shall hear evidence and shall grant an order  
190 restricting such criminal history record information if the court determines that the  
191 misdemeanor conviction was not a lesser included offense of the felony charge and that  
192 the harm otherwise resulting to the individual clearly outweighs the public interest in the  
193 criminal history record information being publicly available.

194 (2) When an individual was convicted of an offense and was sentenced to punishment  
195 other than the death penalty, but such conviction was vacated by the trial court or  
196 reversed by an appellate court or other post-conviction court, the decision of which has  
197 become final by the completion of the appellate process, and the prosecuting attorney has  
198 not retried the case within two years of the date the order vacating or reversing the  
199 conviction became final, such individual may petition the court in which he or she was  
200 convicted to restrict access to criminal history record information for such offense. Such  
201 court shall maintain jurisdiction over the case for this limited purpose and duration. Such  
202 petition shall be served on the prosecuting attorney. If a hearing is requested, such  
203 hearing shall be held within 90 days of the filing of the petition. The court shall hear  
204 evidence and shall determine whether granting an order restricting such criminal history  
205 record information is appropriate, giving due consideration to the reason the judgment  
206 was reversed or vacated, the reason the prosecuting attorney has not retried the case, and  
207 the public's interest in the criminal history record information being publicly available.

208 (3) When an individual's case has remained on the dead docket for more than 12 months,  
209 such individual may petition the court in which the case is pending to restrict access to  
210 criminal history record information for such offense. Such petition shall be served on the

211 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days  
 212 of the filing of the petition. The court shall hear evidence and shall determine whether  
 213 granting an order restricting such criminal history record information is appropriate,  
 214 giving due consideration to the reason the case was placed on the dead docket; provided,  
 215 however, that the court shall not grant such motion if an active warrant is pending for  
 216 such individual.

217 (4)(A) When an individual was convicted in this state of a misdemeanor or a series of  
 218 misdemeanors arising from a single incident, and at the time of such conviction such  
 219 individual was a youthful offender, provided that such individual successfully  
 220 completed the terms of his or her sentence and, since completing the terms of his or her  
 221 sentence, has not been arrested convicted for at least five years a period of time  
 222 identified in subparagraph (C) of this paragraph, excluding any arrest or conviction for  
 223 a nonserious traffic offense, and provided, further, that he or she was not convicted in  
 224 this state of a misdemeanor violation or under any other state's law with similar  
 225 provisions of one or more of the offenses listed in subparagraph (B) of this paragraph,  
 226 he or she may petition the court in which the conviction occurred to restrict access to  
 227 criminal history record information. Such court shall maintain jurisdiction over the  
 228 case for this limited purpose and duration. Such petition shall be served on the  
 229 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90  
 230 days of the filing of the petition. The court shall hear evidence and shall determine  
 231 whether granting an order restricting such criminal history record information is  
 232 appropriate, giving due consideration to the individual's conduct and the public's  
 233 interest in the criminal history record information being publicly available.

234 (B) Record restriction shall not be appropriate if the individual was convicted of a  
 235 serious violent felony or felony sexual offense, as well as any of the following offenses:

- 236 (i) Child molestation in violation of Code Section 16-6-4;
- 237 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 238 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation  
 239 of Code Section 16-6-5.1;
- 240 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;
- 241 (v) Pimping in violation of Code Section 16-6-11;
- 242 (vi) Pandering by compulsion in violation of Code Section 16-6-14;
- 243 (vii) ~~Masturbation for hire in violation of Code Section 16-6-16~~ Reserved;
- 244 (viii) ~~Giving massages in a place used for lewdness, prostitution, assignation, or~~  
 245 ~~masturbation for hire in violation of Code Section 16-6-17~~ Reserved;
- 246 (ix) Sexual battery in violation of Code Section 16-6-22.1;

247 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of  
 248 Chapter 12 of Title 16;

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

252 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.

253 (C) Criminal record history for convictions will be eligible for restriction after a  
 254 conviction-free period of time following the completion of a sentence, based upon the  
 255 original offense, as follows:

256 (i) Two years if the offense is a misdemeanor; or

257 (ii) Four years if the offense is a felony.

258 (5) When an individual was arrested on a fugitive from justice warrant as provided in  
 259 Code Section 17-13-4, such individual may petition the superior court in the county  
 260 where the arrest occurred to restrict access to criminal history record information for such  
 261 warrant. Such court shall maintain jurisdiction over the case for this limited purpose and  
 262 duration. Such petition shall be served on the arresting law enforcement agency and the  
 263 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days  
 264 of the filing of the petition. The court shall hear evidence and shall grant an order  
 265 restricting such criminal history record information if the court determines that  
 266 circumstances warrant restriction and that the harm otherwise resulting to the individual  
 267 clearly outweighs the public interest in the criminal history record information being  
 268 publicly available.

269 (6)(A) When an individual was convicted in this state of a misdemeanor or a series of  
 270 misdemeanors arising from a single incident, of certain felony charges or a series of  
 271 felonies arising from a single incident, provided that such individual successfully  
 272 completed the terms of his or her sentence and, since completing the terms of his or her  
 273 sentence, has not been convicted of any crime, excluding any nonserious traffic  
 274 offenses, for a period of time determined by the original offense, as listed in  
 275 subparagraph (C) of this paragraph, and provided, further, that he or she was not  
 276 convicted in this state of a misdemeanor or felony violation or under any other state's  
 277 law with similar provisions of one or more of the offenses listed in subparagraph (B)  
 278 of this paragraph, he or she may petition the superior court in the county where the  
 279 conviction occurred to restrict access to criminal history record information. Such court  
 280 shall maintain jurisdiction over the case for this limited purpose and duration. Except  
 281 when the charge is a misdemeanor of a high and aggravated nature, if the statutory  
 282 requirements of this subparagraph have been met, restriction must be granted and the  
 283 position of the prosecutor or of any victim cannot be considered by the court. If the



284 charge is a misdemeanor of a high and aggravated nature, or if an individual requests  
 285 the restriction of his or her record prior to the conclusion of the period of nonconviction  
 286 defined in subparagraph (C) of this paragraph, such petition shall be served on the  
 287 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90  
 288 days of the filing of the petition and the position of the prosecutor or of any victim may  
 289 be considered by the court. The court shall hear evidence and shall determine whether  
 290 granting an order restricting such criminal history record information is appropriate,  
 291 giving due consideration to the individual's conduct and the public's interest in the  
 292 criminal history record information being publicly available.

293 (B) Record restriction shall not be appropriate if the individual was convicted of a  
 294 serious violent felony or felony sexual offense, as well as any of the following offenses:

295 (i) Child molestation in violation of Code Section 16-6-4;

296 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;

297 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation  
 298 of Code Section 16-6-5.1;

299 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;

300 (v) Pimping in violation of Code Section 16-6-11;

301 (vi) Pandering by compulsion in violation of Code Section 16-6-14;

302 (vii) Sexual battery in violation of Code Section 16-6-22.1;

303 (viii) Any offense related to minors generally in violation of Part 2 of Article 3 of  
 304 Chapter 12 of Title 16;

305 (ix) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40; or

306 (x) Any felony sexual offense specified in Code Section 17-3-2.1 involving a victim  
 307 under 16 years of age.

308 (C) Criminal record history for convictions will be eligible for restriction after a  
 309 conviction-free period of time following the completion of a sentence, based upon the  
 310 original offense, as follows:

311 (i) Two years if the offense is a misdemeanor; or

312 (ii) Four years if the offense is a felony.

313 (k)(1) The center shall notify the arresting law enforcement agency of any criminal  
 314 history record information, access to which has been restricted pursuant to this Code  
 315 section, within 30 days of the date access to such information is restricted. Upon receipt  
 316 of notice from the center that access to criminal history record information has been  
 317 restricted, the arresting law enforcement agency or other law enforcement agency shall,  
 318 within 30 days, restrict access to all such information maintained by such arresting law  
 319 enforcement agency or other law enforcement agency for such individual's charge.

320 (2) An individual who has had criminal history record information restricted pursuant  
321 to this Code section may submit a written request to the appropriate county or municipal  
322 jail or detention center to have all records for such individual's charge maintained by the  
323 appropriate county or municipal jail or detention center restricted. Within 30 days of  
324 such request, the appropriate county or municipal jail or detention center shall restrict  
325 access to all such criminal history record information maintained by such appropriate  
326 county or municipal jail or detention center for such individual's charge.

327 (3) The center shall be authorized to unrestrict criminal history record information based  
328 on the receipt of a disposition report showing that the individual was convicted of an  
329 offense arising out of an arrest of which the information was restricted pursuant to this  
330 Code section.

331 (l) If criminal history record information is restricted pursuant to this Code section and if  
332 the entity declines to restrict access to such information, the individual may file a civil  
333 action in the superior court where the entity is located. A copy of the civil action shall be  
334 served on the entity and prosecuting attorney for the jurisdiction where the civil action is  
335 filed, and they may become parties to the action. A decision of the entity shall be upheld  
336 only if it is determined by clear and convincing evidence that the individual did not meet  
337 the criteria set forth in subsection (h) or (j) of this Code section.

338 (m)(1) For criminal history record information maintained by the clerk of court, an  
339 individual who has a record restricted pursuant to this Code section may petition the court  
340 with original jurisdiction over the charges in the county where the clerk of court is  
341 located for an order to seal all criminal history record information maintained by the clerk  
342 of court for such individual's charge. Notice of such petition shall be sent to the clerk of  
343 court and the prosecuting attorney. A notice sent by registered or certified mail or  
344 statutory overnight delivery shall be sufficient notice.

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

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

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

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

354 (4) The person who is the subject of such sealed criminal history record information may  
355 petition the court for inspection of the criminal history record information included in the

356 court order. Such information shall always be available for inspection, copying, and use  
357 by criminal justice agencies and the Judicial Qualifications Commission.

358 (n)(1) Except as provided in subsection (j) of this Code section, as to arrests occurring  
359 before July 1, 2013, an individual may, in writing, request the arresting law enforcement  
360 agency to restrict the criminal history record information of an arrest, including any  
361 fingerprints or photographs taken in conjunction with such arrest. ~~The Reasonable~~ fees  
362 ~~shall be~~ charged by the arresting law enforcement agency and the center for the actual  
363 costs of restricting such records, ~~provided that such fee shall not exceed \$50.00~~ \$5.00.

364 (2) Within 30 days of receipt of such written request, the arresting law enforcement  
365 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days  
366 of receiving the request, the prosecuting attorney shall review the request to determine  
367 if the request meets the criteria set forth in subsection (h) of this Code section for record  
368 restriction, and the prosecuting attorney shall notify the arresting law enforcement agency  
369 of his or her decision within such 90 day period. If the prosecuting attorney denies such  
370 request, he or she shall cite with specificity the reason for such denial in writing and  
371 attach to such denial any relevant documentation in his or her possession used to make  
372 such denial. There shall be a presumption that the prosecuting attorney does not object  
373 to the request to restrict the criminal history record information if he or she fails to  
374 respond to the request for a determination within the 90 day period set forth in this  
375 paragraph. The arresting law enforcement agency shall inform the individual of the  
376 prosecuting attorney's decision, and, if record restriction is approved by the prosecuting  
377 attorney, the arresting law enforcement agency shall restrict the criminal history record  
378 information within 30 days of receipt of the prosecuting attorney's decision.

379 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal  
380 history record information, such individual may file a civil action in the superior court  
381 where the entity is located. A copy of the civil action shall be served on the entity and  
382 prosecuting attorney for the jurisdiction where the civil action is filed, and they may  
383 become parties to the action. A decision of the prosecuting attorney to decline a request  
384 to restrict access to criminal history record information shall be upheld unless the  
385 individual demonstrates by clear and convincing evidence that the arrest is eligible for  
386 record restriction pursuant to subsection (h) of this Code section and the harm otherwise  
387 resulting to the privacy of the individual clearly outweighs the public interest in the  
388 criminal history record information being publicly available.

389 (4) To restrict criminal history record information at the center, an individual shall  
390 submit a prosecuting attorney's approved record restriction request or a court order issued  
391 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access  
392 to such criminal history record information within 30 days of receiving such information.

393 (o) Nothing in this Code section shall give rise to any right which may be asserted as a  
394 defense to a criminal prosecution or serve as the basis for any motion that may be filed in  
395 any criminal proceeding. The modification, correction, supplementation, amendment, or  
396 restriction of criminal history record information shall not abate or serve as the basis for  
397 the reversal of any criminal conviction.

398 (p) Any application to the center for access to or restriction of criminal history record  
399 information made pursuant to this Code section shall be made in writing on a form  
400 approved by the center. The center shall be authorized to develop and publish such  
401 procedures as may be necessary to carry out the provisions of this Code section. In  
402 adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the 'Georgia  
403 Administrative Procedure Act,' shall not apply.

404 (q) It shall be the duty of the entity to take such action as may be reasonable to prevent  
405 disclosure of information to the public which would identify any individual whose criminal  
406 history record information is restricted pursuant to this Code section.

407 (r) If the center has notified a firearms dealer that an individual is prohibited from  
408 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title  
409 16 and if the prohibition is the result of such individual being involuntarily hospitalized  
410 within the immediately preceding five years, upon such individual or his or her attorney  
411 making an application to inspect his or her records, the center shall provide the record of  
412 involuntary hospitalization and also inform the individual or attorney of his or her right to  
413 a hearing before the judge of the probate court or superior court relative to such individual's  
414 eligibility to possess or transport a handgun."

415 **SECTION 2.**

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