

The House Committee on Judiciary Non-Civil offers the following substitute to HB 909:

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:

H. B. 909 (SUB)

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.