

House Bill 271 (COMMITTEE SUBSTITUTE)

By: Representatives Neal of the 2nd, Lindsey of the 54th, Meadows of the 5th, Oliver of the 82nd, Abrams of the 89th, and others

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, and privacy
3 considerations, so as to clarify provisions relating to record restriction involving certain
4 felony offenses; to change provisions relating to the application of the Code section to arrests
5 occurring prior to July 1, 2013; to provide for related matters; to repeal conflicting laws; and
6 for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
10 individual's criminal history record information, definitions, and privacy considerations, is
11 amended by revising paragraph (1) of subsection (j) and subsection (n) as follows:

12 "(j)(1) When an individual had a felony ~~charges~~ charge dismissed or nolle prossed or was
13 found not guilty of ~~felony charges~~ such charge but was convicted of a misdemeanor
14 offense or offenses arising out of the same underlying transaction or occurrence that was
15 not a lesser included offense of the felony charge, such individual may petition the
16 superior court in the county where the arrest occurred to restrict access to criminal history
17 record information for ~~such the~~ the ~~felony charges~~ charge within four years of the arrest.
18 Such court shall maintain jurisdiction over the case for this limited purpose and duration.
19 Such petition shall be served on the arresting law enforcement agency and the
20 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90 days
21 of the filing of the petition. The court shall hear evidence and shall grant an order
22 restricting such criminal history record information if the court determines ~~the charges~~
23 in question did not arise out of the same underlying transaction or occurrence that the
24 misdemeanor conviction was not a lesser included offense of the felony charge and that
25 the harm otherwise resulting to the individual is clearly outweighed by the public interest
26 in the criminal history record information being publicly available."

27 “(n)(1) Except as provided in subsection (j) of this Code section, as ~~As~~ to arrests
 28 occurring before July 1, 2013, an individual may, in writing, request the arresting law
 29 enforcement agency to restrict the criminal history record information of an arrest,
 30 including any fingerprints or photographs taken in conjunction with such arrest.
 31 Reasonable fees shall be charged by the arresting law enforcement agency and the center
 32 for the actual costs of restricting such records, provided that such fee shall not exceed
 33 \$50.00.

34 (2) Within 30 days of receipt of such written request, the arresting law enforcement
 35 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days
 36 of receiving the request, the prosecuting attorney shall review the request to determine
 37 ~~if he or she agrees to~~ the request meets the criteria set forth in subsection (h) of this Code
 38 section for record restriction, and the prosecuting attorney shall notify the arresting law
 39 enforcement agency of his or her decision within such 90 day period. If the prosecuting
 40 attorney denies such request, he or she shall cite with specificity the reason for such
 41 denial in writing and attach to such denial any relevant documentation in his or her
 42 possession used to make such denial. There shall be a presumption that the prosecuting
 43 attorney does not object to the request to restrict the criminal history record information
 44 if he or she fails to respond to the request for a determination within the 90 day period set
 45 forth in this paragraph. The arresting law enforcement agency shall inform the individual
 46 of the prosecuting attorney's decision, and, if record restriction is approved by the
 47 prosecuting attorney, the arresting law enforcement agency shall restrict the criminal
 48 history record information within 30 days of receipt of the prosecuting attorney's
 49 decision.

50 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
 51 history record information, such individual may file a civil action in the superior court
 52 where the entity is located. A copy of the civil action shall be served on the entity and
 53 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
 54 become parties to the action. A decision of the prosecuting attorney to decline a request
 55 to restrict access to criminal history record information shall not be upheld if unless the
 56 individual it is determined demonstrates by clear and convincing evidence that the arrest
 57 is eligible for record restriction pursuant to subsection (h) of this Code section and the
 58 harm otherwise resulting to the privacy of the individual clearly outweighs the public
 59 interest in the criminal history record information being publicly available.

60 (4) To restrict criminal history record information at the center, an individual shall
 61 submit a prosecuting attorney's approved record restriction request or a court order issued
 62 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access

63 to such criminal history record information within 30 days ~~from~~ of receiving such
64 information."

65 **SECTION 2.**

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