

House Bill 1469

By: Representatives Santos of the 117th, Reeves of the 99th, Holcomb of the 101st, Leverett of the 123rd, and Hagan of the 156th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to controlled substances, so as to provide for the
3 restriction and seal of certain records upon sentencing of a first conditional discharge for
4 possession of controlled substances and certain nonviolent property crimes until such status
5 is revoked; to provide for exceptions; to amend Chapter 3 of Title 35 of the Official Code of
6 Georgia Annotated, relating to the Georgia Bureau of Investigation, so as to provide for the
7 restriction and seal of a sentence entered upon a first conditional discharge for possession of
8 a controlled substance until such status is revoked; to provide for exceptions; to provide for
9 definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 1 of Chapter 13 of Title 16 of the Official Code of Georgia Annotated, relating to
13 general provisions relative to controlled substances, is amended by revising Code Section
14 16-13-2, relating to conditional discharge for possession of controlled substances as first
15 offense and certain nonviolent property crimes, dismissal of charges and restitution to
16 victims, as follows:

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17 "16-13-2.

18 (a) Whenever any person who has not previously been convicted of any offense under
19 Article 2 or Article 3 of this chapter or of any statute of the United States or of any state
20 relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs,
21 pleads guilty to or is found guilty of possession of a narcotic drug, marijuana, or stimulant,
22 depressant, or hallucinogenic drug, the court may without entering a judgment of guilt and
23 with the consent of such person defer further proceedings and place him or her on
24 probation upon such reasonable terms and conditions as the court may require, preferably
25 terms which require the person to undergo a comprehensive rehabilitation program,
26 including, if necessary, medical treatment, not to exceed three years, designed to acquaint
27 him or her with the ill effects of drug ~~abuse~~ use and to provide him or her with knowledge
28 of the gains and benefits which can be achieved ~~by being a good member of society~~
29 without the use of drugs. Upon violation of a term or condition, the court may enter an
30 adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and
31 conditions, the court shall discharge the person and dismiss the proceedings against him
32 or her. Discharge and dismissal under this Code section shall be without court adjudication
33 of guilt and shall not be deemed a conviction for purposes of this Code section or for
34 purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
35 Discharge and dismissal under this Code section may occur only once with respect to any
36 person.

37 (b) Notwithstanding any law to the contrary, any person who is charged with possession
38 of marijuana, which possession is of one ounce or less, shall be guilty of a misdemeanor
39 and punished by ~~imprisonment~~ confinement for a period not to exceed 12 months or a fine
40 not to exceed \$1,000.00, or both, or public works not to exceed 12 months.

41 (c) Persons charged with an offense ~~enumerated~~ provided for in subsection (a) of this Code
42 section and persons charged for the first time with nonviolent property crimes which, in the
43 judgment of the court exercising jurisdiction over such offenses, were related to the

44 accused's addiction to a controlled substance or alcohol who are eligible for any court
45 approved drug treatment program may, in the discretion of the court and with the consent
46 of the accused, be sentenced in accordance with subsection ~~(a)~~ (b) of this Code section.
47 The probated sentence imposed may be for a period of up to five years. No discharge and
48 dismissal without court adjudication of guilt shall be entered under this subsection until the
49 accused has made full restitution to all victims of the charged offenses. Discharge and
50 dismissal under this Code section shall be without court adjudication of guilt and shall not
51 be deemed a conviction for purposes of this Code section or for purposes of
52 disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and
53 dismissal under this Code section may not be used to disqualify a person in any application
54 for employment or appointment to office in either the public or private sector.

55 (d)(1) As used in this subsection, the term:

56 (A) 'Criminal history record information' shall have the same meaning as set forth in
57 Code Section 35-3-30.

58 (B) 'Restrict' or 'restriction' shall have the same meaning as set forth in Code Section
59 35-3-37.

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

61 ~~(2)(A) At the time of sentencing, the defendant may seek to~~ court shall limit public
62 access to ~~his or her~~ the defendant's sentencing information, ~~and the court may, in its~~
63 ~~discretion, order~~ by ordering that:

64 ~~(i)(A)~~ (A) The defendant's records shall be restricted in accordance with Code Section
65 35-3-37 and subsection (j) of this Code section;

66 ~~(ii)(B)~~ (B) The criminal file, docket books, criminal minutes, final record, all other records
67 of the court, and the defendant's criminal history record information in the custody of
68 the clerk of court, including within any index, be sealed and unavailable to the public,
69 except as provided in subsection (j) of this Code section; and

70 ~~(iii)(C)~~ The defendant's criminal history record information of arrest, including any
71 fingerprints or photographs taken in conjunction with such arrest, be restricted by law
72 enforcement agencies, jails, or detention centers, except as provided by subsection (j)
73 of this Code section.

74 ~~(B)~~ ~~When considering the defendant's request under this paragraph, the court shall~~
75 ~~weigh the public's interest in the defendant's criminal history record information being~~
76 ~~publicly available and the harm to the defendant's privacy and issue written findings of~~
77 ~~fact thereupon.~~

78 ~~(C)~~ ~~The court shall specify the date that such prohibited dissemination, sealing, and~~
79 ~~restrictions will take effect.~~

80 (e) A person who was sentenced pursuant to this chapter prior to July 1, 2026, and who has
81 not had his or her sentence revoked or adjudicated guilty may petition the court that
82 ordered such sentence for an order to limit public access to his or her criminal history
83 record information pursuant to subsection (j) of this Code section. Notice of such petition
84 shall be sent to the clerk of court and the prosecuting attorney by registered or certified
85 mail or statutory overnight delivery.

86 (f) Within 90 days of the filing of a petition pursuant to subsection (e) of this Code section,
87 the court shall order restriction and sealing of the criminal file, docket books, criminal
88 minutes, final record, all other records of the court, and the defendant's criminal history
89 record information in the custody of the clerk of court, including within any index, to be
90 sealed and made unavailable to the public, except as provided in subsection (j) of this Code
91 section.

92 (g)(1) Within 60 days of the filing of the court's order under subsection (f) of this Code
93 section, the clerk of court shall cause every document in connection with such
94 individual's case, physical or electronic, in its custody, possession, or control to be sealed
95 to the public except as provided in subsection (j) of this Code section.

96 (2) Upon sealing, the clerk of court shall display on the file in bold print on the cover of
97 the file a notice to all court personnel that such file is sealed from the public view and
98 dissemination of the contents of such file to anyone other than those authorized by this
99 Code section is prohibited. Such notice shall be sealed from public view and only
100 available to the parties listed in subsection (j) of this Code section who shall maintain
101 access to the record.

102 (h) When a court order sealing of court records under subsection (f) of this Code section,
103 the court shall also order that records maintained by law enforcement agencies, jails, and
104 detention centers be restricted and unavailable to the public. Such entities shall comply
105 with such order within 30 days of receiving a copy of such order.

106 (i) If a court of competent jurisdiction revokes a sentence upon a first conditional
107 discharge for possession of controlled substances and certain nonviolent property crimes
108 and adjudicates the defendant guilty of the underlying a first conditional discharge for
109 possession of controlled substances and certain nonviolent property crimes offense while
110 such defendant is serving such a sentence, restriction and sealing of such court records shall
111 be removed, and such records may be disseminated by the court, law enforcement agencies,
112 jails, and detention centers.

113 (j)(1) The following entities shall be entitled to access the criminal file, docket books,
114 criminal minutes, final record, and all other records of the court during the period of time
115 a defendant has been sentenced pursuant to this chapter but has not been exonerated and
116 discharged without court adjudication of guilt as a matter of law or pursuant to a court
117 order. No court order or affidavit shall be required for the following entities to access
118 such records unless otherwise provided:

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

120 (B) To any prosecuting attorney who shall be authorized to share relevant case
121 information with the victim of the underlying first offender offense pursuant to the
122 'Crime Victims' Bill of Rights,' as provided in Code Section 17-17-1;

- 123 (C) To any judge or court personnel;
 124 (D) To any public defender;
 125 (E) To a person who is the subject of sealed court files or restricted criminal history
 126 record information;
 127 (F) To the Judicial Qualifications Commission;
 128 (G) To the Department of Community Supervision;
 129 (H) To the State Board of Pardons and Paroles;
 130 (I) Pursuant to any disclosure or consideration of criminal history record information
 131 required by federal or state law, including, but not limited to, those disclosures required
 132 for federally insured financial institutions;
 133 (J) For the purpose of any determination regarding the transfer of a firearm or the
 134 issuance of a license pursuant to Code Section 16-11-129; or
 135 (K) When such records are made available for inspection, copying, and use pursuant
 136 to a court order.
 137 (2) The confidentiality of such information shall be maintained insofar as practical."

138 **SECTION 2.**

139 Chapter 3 of Title 35 of the Official Code of Georgia Annotated, relating to the Georgia
 140 Bureau of Investigation, is amended by revising subparagraph (a)(1)(B) of Code Section
 141 35-3-34, relating to disclosure and dissemination of criminal records to private persons and
 142 businesses, resulting responsibility and liability of issuing center, and provision of certain
 143 information to the FBI in conjunction with the National Instant Criminal Background Check
 144 System, as follows:

145 "(B)(i) The center shall not provide records of arrests, charges, or sentences when an
 146 individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~and has~~
 147 ~~been exonerated and discharged without court adjudication of guilt as a matter of law~~
 148 ~~or pursuant to a court order~~ or Code Section 15-1-20, including records relating to

149 such defendant's bench warrants, failure to appear, and probation for such offense,
150 except as specifically authorized by Code Section 42-8-63.1 and Code Section
151 16-13-2. ~~The center shall not provide records of arrests, charges, or sentences when~~
152 ~~an individual has been sentenced as provided in Code Section 15-1-20, including~~
153 ~~records relating to such defendant's bench warrants, failure to appear, and probation~~
154 ~~for such offense, except as specifically authorized by Code Section 42-8-63.1.~~

155 (ii) During the period of time after a defendant; who has been sentenced pursuant to
156 Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without
157 court adjudication of guilt as a matter of law or pursuant to a court order; has
158 completed active probation supervision through the remainder of such sentence, the
159 center shall not provide records of arrests, charges, or sentences except as specifically
160 authorized by Code Section 42-8-63.1 or Code Section 16-13-2.

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

167 (I) As specifically authorized by Code Section 16-13-2;

168 (II) To criminal justice agencies, as such term is defined in Code Section 35-3-30,
169 for purposes of employment in accordance with procedures established by the
170 center;

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

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

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SECTION 3.

Said chapter is further amended by revising subparagraph (a)(1)(B) of Code Section 35-3-35, relating to disclosure and dissemination of records to public agencies and political subdivisions and responsibility and liability of issuing center, as follows:

"(B)(i) The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 ~~and has been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order~~, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1 and Code Section 16-13-2. The center shall not provide records of arrests, charges, or sentences when an individual has been sentenced as provided in Code Section 15-1-20, including records relating to such defendant's bench warrants, failure to appear, and probation for such offense, except as specifically authorized by Code Section 42-8-63.1 and Code Section 16-13-2.

(ii) During the period of time after a defendant, who has been sentenced pursuant to Article 3 of Chapter 8 of Title 42 but has not been exonerated and discharged without court adjudication of guilt as a matter of law or pursuant to a court order, has completed active probation supervision through the remainder of such sentence, the center shall not provide records of arrests, charges, or sentences except as specifically authorized by Code Section 42-8-63.1 or Code Section 16-13-2.

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

(I) As specifically authorized by Code Section 16-13-2;

203 (II) To criminal justice agencies, as such term is defined in Code Section 35-3-30,
204 for purposes of employment in accordance with procedures established by the
205 center;

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

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

211 **SECTION 4.**

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