

1241 “(g) Suspected child abuse which is required to be reported by any person pursuant to this
 1242 Code section shall be reported notwithstanding that the reasonable cause to believe such
 1243 abuse has occurred or is occurring is based in whole or in part upon any communication to
 1244 that person which is otherwise made privileged or confidential by law; ~~provided, however,~~
 1245 that a member of the clergy shall not be required to report child abuse reported solely
 1246 within the context of confession or other similar communication required to be kept
 1247 confidential under church doctrine or practice. When a clergy member receives
 1248 information about child abuse from any other source, the clergy member shall comply with
 1249 the reporting requirements of this Code section, even though the clergy member may have
 1250 also received a report of child abuse from the confession of the perpetrator.”

1251 **PART VI**
 1252 **RESTRICTING RECORDS**
 1253 **SECTION 6-1.**

1254 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 1255 agencies, is amended by revising paragraph (1) of subsection (a) of Code Section 35-3-34,
 1256 relating to disclosure and dissemination of criminal records to private persons and businesses,
 1257 by deleting "and" at the end of subparagraph (B), by replacing "or" with "and" at the end of
 1258 subparagraph (C), and by adding a new subparagraph to read as follows:

1259 “(D) The center shall not provide records of arrests, charges, or dispositions when
 1260 access has been restricted pursuant to Code Section 35-3-37; or”

1261 **SECTION 6-2.**

1262 Said title is further amended by repealing Code Section 35-3-37, relating to inspection,
 1263 purging, modifying, or supplementing of criminal records, and enacting a new Code
 1264 Section 35-3-37 to read as follows:

1265 “35-3-37.

1266 (a) As used in this Code section, the term:

1267 (1) 'Drug court treatment program' means a treatment program operated by a drug court
 1268 division in accordance with the provisions of Code Section 15-1-15.

1269 (2) 'Entity' means the arresting law enforcement agency, including county and municipal
 1270 jails and detention centers.

1271 (3) 'Mental health treatment program' means a treatment program operated by a mental
 1272 health court division in accordance with the provisions of Code Section 15-1-16.

1273 (4) 'Nonserious traffic offense' means any offense in violation of Title 40 which is not
 1274 prohibited by Article 15 of Chapter 6 of Title 40 and any similar such offense under the

1275 laws of a state which would not be considered a serious traffic offense under the laws of
1276 this state if committed in this state.

1277 (5) 'Prosecuting attorney' means the Attorney General, a district attorney, or the
1278 solicitor-general who had jurisdiction where the criminal history record information is
1279 sought to be modified, corrected, supplemented, amended, or restricted. If the offense
1280 was a violation of a criminal law of this state which, by general law, may be tried by a
1281 municipal, magistrate, probate, or other court that is not a court of record, the term
1282 'prosecuting attorney' shall include the prosecuting officer of such court or, in the absence
1283 of such prosecuting attorney, the district attorney of the judicial circuit in which such
1284 court is located.

1285 (6) 'Restrict,' 'restricted,' or 'restriction' means that the criminal history record information
1286 of an individual relating to a particular charge shall be available only to judicial officials
1287 and criminal justice agencies for law enforcement or criminal investigative purposes or
1288 to criminal justice agencies for purposes of employment in accordance with procedures
1289 established by the center and shall not be disclosed or otherwise made available to any
1290 private persons or businesses pursuant to Code Section 35-3-34.

1291 (7) 'Serious violent felony' shall have the same meaning as set forth in Code Section
1292 17-10-6.1.

1293 (8) 'State' includes any state, the United States or any district, commonwealth, territory,
1294 or insular possession of the United States, and the Trust Territory of the Pacific Islands.

1295 (9) 'Youthful offender' means any offender who was less than 21 years of age at the time
1296 of his or her conviction.

1297 (b) Nothing in this article shall be construed so as to authorize any person, agency,
1298 corporation, or other legal entity of this state to invade the privacy of any citizen as defined
1299 by the General Assembly or as defined by the courts other than to the extent provided in
1300 this article.

1301 (c) The center shall make an individual's criminal history record information available for
1302 review by such individual or his or her designee upon written application to the center.

1303 (d) If an individual believes his or her criminal history record information to be inaccurate,
1304 incomplete, or misleading, he or she may request a criminal history record information
1305 inspection at the center. The center at which criminal history record information is sought
1306 to be inspected may prescribe reasonable hours and places of inspection and may impose
1307 such additional procedures or restrictions, including fingerprinting, as are reasonably
1308 necessary to assure the security of the criminal history record information, to verify the
1309 identities of those who seek to inspect such information, and to maintain an orderly and
1310 efficient mechanism for inspection of criminal history record information. The fee for

1311 inspection of criminal history record information shall not exceed \$15.00, which shall not
1312 include the cost of the fingerprinting.

1313 (e) If the criminal history record information is believed to be inaccurate, incomplete, or
1314 misleading, the individual may request that the entity having custody or control of the
1315 challenged information modify, correct, supplement, or amend the information and notify
1316 the center of such changes within 60 days of such request. In the case of county and
1317 municipal jails and detention centers, such notice to the center shall not be required. If the
1318 entity declines to act within 60 days of such request or if the individual believes the entity's
1319 decision to be unsatisfactory, within 30 days of the end of the 60 day period or of the
1320 issuance of the unsatisfactory decision, whichever occurs last, the individual shall have the
1321 right to appeal to the court with original jurisdiction of the criminal charges in the county
1322 where the entity is located.

1323 (f) An appeal pursuant to subsection (e) of this Code section shall be to acquire an order
1324 from the court with original jurisdiction of the criminal charges that the subject information
1325 be modified, corrected, supplemented, or amended by the entity with custody of such
1326 information. Notice of the appeal shall be provided to the entity and the prosecuting
1327 attorney. A notice sent by registered or certified mail or statutory overnight delivery shall
1328 be sufficient service on the entity having custody or control of the disputed criminal history
1329 record information. The court shall conduct a de novo review and, if requested by a party,
1330 the proceedings shall be recorded.

1331 (g)(1) Should the court find by a preponderance of the evidence that the criminal history
1332 record information in question is inaccurate, incomplete, or misleading, the court shall
1333 order such information to be appropriately modified, corrected, supplemented, or
1334 amended as the court deems appropriate. Any entity with custody, possession, or control
1335 of any such criminal history record information shall cause each and every copy thereof
1336 in its custody, possession, or control to be altered in accordance with the court's order
1337 within 60 days of the entry of the order.

1338 (2) To the extent that it is known by the requesting individual that an entity has
1339 previously disseminated inaccurate, incomplete, or misleading criminal history record
1340 information, he or she shall, by written request, provide to the entity the name of the
1341 individual, agency, or company to which such information was disseminated. Within 60
1342 days of the written request, the entity shall disseminate the modification, correction,
1343 supplement, or amendment to the individual's criminal history record information to such
1344 individual, agency, or company to which the information in question has been previously
1345 communicated, as well as to the individual whose information has been ordered so
1346 altered.

1347 (h) Access to an individual's criminal history record information, including any
1348 fingerprints or photographs of the individual taken in conjunction with the arrest, shall be
1349 restricted by the center for the following types of dispositions:

1350 (1) Prior to indictment, accusation, or other charging instrument:

1351 (A) The case was never referred for further prosecution to the proper prosecuting
1352 attorney by the arresting law enforcement agency and:

1353 (i) The offense against such individual is closed by the arresting law enforcement
1354 agency. It shall be the duty of the head of the arresting law enforcement agency to
1355 notify the center whenever a record is to be restricted pursuant to this division. A
1356 copy of the notice shall be sent to the accused and the accused's attorney, if any, by
1357 mailing the same by first-class mail; or

1358 (ii) The center does not receive notice from the arresting law enforcement agency that
1359 the offense has been referred to the prosecuting attorney or transferred to another law
1360 enforcement or prosecutorial agency of this state, any other state or a foreign nation,
1361 or any political subdivision thereof for prosecution and the following period of time
1362 has elapsed from the date of the arrest of such individual:

1363 (I) If the offense is a misdemeanor or a misdemeanor of a high and aggravated
1364 nature, two years;

1365 (II) If the offense is a felony, other than a serious violent felony or a felony sexual
1366 offense specified in Code Section 17-3-2.1 involving a victim under 16 years of age,
1367 four years; or

1368 (III) If the offense is a serious violent felony or a felony sexual offense specified
1369 in Code Section 17-3-2.1 involving a victim under 16 years of age, seven years.

1370 If the center receives notice of the filing of an indictment subsequent to the restriction
1371 of a record pursuant to this division, the center shall make such record available in
1372 accordance with Code Section 35-3-34.

1373 (B) The case was referred to the prosecuting attorney but was later dismissed; or

1374 (C) The grand jury returned two no bills; and

1375 (2) After indictment or accusation:

1376 (A) Except as provided in subsection (i) of this Code section, all charges were
1377 dismissed or nolle prossed;

1378 (B) The individual pleaded guilty to or was found guilty of possession of a narcotic
1379 drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in
1380 accordance with the provisions of Code Section 16-13-2, and the individual successfully
1381 completed the terms and conditions of his or her probation;

1382 (C) The individual successfully completed a drug court treatment program or mental
1383 health treatment program, the individual's case has been dismissed or nolle prossed, and

1384 he or she has not been arrested for at least five years, excluding any arrest for a
 1385 nonserious traffic offense; or
 1386 (D) The individual was acquitted of all of the charges by a judge or jury unless, within
 1387 ten days of the verdict, the prosecuting attorney demonstrates to the trial court through
 1388 clear and convincing evidence that the harm otherwise resulting to the individual is
 1389 clearly outweighed by the public interest in the criminal history record information
 1390 being publicly available because either:
 1391 (i) The prosecuting attorney was barred from introducing material evidence against
 1392 the individual on legal grounds, including, without limitation, the granting of a motion
 1393 to suppress or motion in limine; or
 1394 (ii) The individual has been formally charged with the same or similar offense within
 1395 the previous five years.
 1396 (i) After the filing of an indictment or accusation, an individual's criminal history record
 1397 information shall not be restricted if:
 1398 (1) The charges were nolle prossed or otherwise dismissed because:
 1399 (A) Of a plea agreement resulting in a conviction of the individual for an offense
 1400 arising out of the same underlying transaction or occurrence as the conviction;
 1401 (B) The prosecuting attorney was barred from introducing material evidence against
 1402 the individual on legal grounds, including, without limitation, the granting of a motion
 1403 to suppress or motion in limine;
 1404 (C) The conduct which resulted in the arrest of the individual was part of a pattern of
 1405 criminal activity which was prosecuted in another court of the state or a foreign nation;
 1406 or
 1407 (D) The individual had diplomatic, consular, or similar immunity or inviolability from
 1408 arrest or prosecution;
 1409 (2) The charges were tried and some but not all of the charges resulted in an acquittal;
 1410 or
 1411 (3) The individual was acquitted of all charges but it is later determined that the acquittal
 1412 was the result of jury tampering or judicial misconduct.
 1413 (j)(1) When an individual had felony charges dismissed or nolle prossed or was found
 1414 not guilty of felony charges but was convicted of a misdemeanor offense or offenses
 1415 arising out of the same underlying transaction or occurrence, such individual may petition
 1416 the superior court in the county where the arrest occurred to restrict access to criminal
 1417 history record information for such felony charges within four years of the arrest. Such
 1418 court shall maintain jurisdiction over the case for this limited purpose and duration. Such
 1419 petition shall be served on the arresting law enforcement agency and the prosecuting
 1420 attorney. If a hearing is requested, such hearing shall be held within 90 days of the filing

1421 of the petition. The court shall hear evidence and shall grant an order restricting such
1422 criminal history record information if the court determines the charges in question did not
1423 arise out of the same underlying transaction or occurrence.

1424 (2) When an individual was convicted of an offense and was sentenced to punishment
1425 other than the death penalty, but such conviction was vacated by the trial court or
1426 reversed by an appellate court or other post-conviction court, the decision of which has
1427 become final by the completion of the appellate process, and the prosecuting attorney has
1428 not retried the case within two years of the date the order vacating or reversing the
1429 conviction became final, such individual may petition the superior court in the county
1430 where the conviction occurred to restrict access to criminal history record information for
1431 such offense. Such court shall maintain jurisdiction over the case for this limited purpose
1432 and duration. Such petition shall be served on the prosecuting attorney. If a hearing is
1433 requested, such hearing shall be held within 90 days of the filing of the petition. The
1434 court shall hear evidence and shall determine whether granting an order restricting such
1435 criminal history record information is appropriate, giving due consideration to the reason
1436 the judgment was reversed or vacated, the reason the prosecuting attorney has not retried
1437 the case, and the public's interest in the criminal history record information being publicly
1438 available.

1439 (3) When an individual's case has remained on the dead docket for more than 12 months,
1440 such individual may petition the superior court in the county where the case is pending
1441 to restrict access to criminal history record information for such offense. Such petition
1442 shall be served on the prosecuting attorney. If a hearing is requested, such hearing shall
1443 be held within 90 days of the filing of the petition. The court shall hear evidence and
1444 shall determine whether granting an order restricting such criminal history record
1445 information is appropriate, giving due consideration to the reason the case was placed on
1446 the dead docket; provided, however, that the court shall not grant such motion if an active
1447 warrant is pending for such individual

1448 (4)(A) When an individual was convicted in this state of a misdemeanor or a series of
1449 misdemeanors arising from a single incident, and at the time of such conviction such
1450 individual was a youthful offender, provided that such individual successfully
1451 completed the terms of his or her sentence and, since completing the terms of his or her
1452 sentence, has not been arrested for at least five years, excluding any arrest for a
1453 nonserious traffic offense, and provided, further, that he or she was not convicted in this
1454 state of a misdemeanor violation or under any other state's law with similar provisions
1455 of one or more of the offenses listed in subparagraph (B) of this paragraph, he or she
1456 may petition the superior court in the county where the conviction occurred to restrict
1457 access to criminal history record information. Such court shall maintain jurisdiction

1458 over the case for this limited purpose and duration. Such petition shall be served on the
1459 prosecuting attorney. If a hearing is requested, such hearing shall be held within 90
1460 days of the filing of the petition. The court shall hear evidence and shall determine
1461 whether granting an order restricting such criminal history record information is
1462 appropriate, giving due consideration to the individual's conduct and the public's
1463 interest in the criminal history record information being publicly available.
1464 (B) Record restriction shall not be appropriate if the individual was convicted of:
1465 (i) Child molestation in violation of Code Section 16-6-4;
1466 (ii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
1467 (iii) Sexual assault by persons with supervisory or disciplinary authority in violation
1468 of Code Section 16-6-5.1;
1469 (iv) Keeping a place of prostitution in violation of Code Section 16-6-10;
1470 (v) Pimping in violation of Code Section 16-6-11;
1471 (vi) Pandering by compulsion in violation of Code Section 16-6-14;
1472 (vii) Masturbation for hire in violation of Code Section 16-6-16;
1473 (viii) Giving massages in a place used for lewdness, prostitution, assignation, or
1474 masturbation for hire in violation of Code Section 16-6-17;
1475 (ix) Sexual battery in violation of Code Section 16-6-22.1;
1476 (x) Any offense related to minors generally in violation of Part 2 of Article 3 of
1477 Chapter 12 of Title 16;
1478 (xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such
1479 prohibition shall not apply to a misdemeanor conviction of shoplifting in violation of
1480 Code Section 16-8-14; or
1481 (xii) Any serious traffic offense in violation of Article 15 of Chapter 6 of Title 40.
1482 (5) Any party may file an appeal of an order entered pursuant to this subsection as
1483 provided in Code Section 5-6-34.
1484 (k)(1) The center shall notify the arresting law enforcement agency of any criminal
1485 history record information, access to which has been restricted pursuant to this Code
1486 section, within 30 days of the date access to such information is restricted. Upon receipt
1487 of notice from the center that access to criminal history record information has been
1488 restricted, the arresting law enforcement agency or other law enforcement agency shall,
1489 within 30 days, restrict access to all such information maintained by such arresting law
1490 enforcement agency or other law enforcement agency for such individual's charge.
1491 (2) An individual who has had criminal history record information restricted pursuant to
1492 this Code section may submit a written request to the appropriate county or municipal jail
1493 or detention center to have all records for such individual's charge maintained by the
1494 appropriate county or municipal jail or detention center restricted. Within 30 days of such

1495 request, the appropriate county or municipal jail or detention center shall restrict access
1496 to all such criminal history record information maintained by such appropriate county or
1497 municipal jail or detention center for such individual's charge.

1498 (3) The center shall be authorized to unrestrict criminal history record information based
1499 on the receipt of a disposition report showing that the individual was convicted of an
1500 offense arising out of an arrest of which the information was restricted pursuant to this
1501 Code section.

1502 (l) If criminal history record information is restricted pursuant to this Code section and if
1503 the entity declines to restrict access to such information, the individual may file a civil
1504 action in the superior court where the entity is located. A copy of the civil action shall be
1505 served on the entity and prosecuting attorney for the jurisdiction where the civil action is
1506 filed, and they may become parties to the action. A decision of the entity shall be upheld
1507 only if it is determined by clear and convincing evidence that the individual did not meet
1508 the criteria set forth in subsection (h) or (j) of this Code section.

1509 (m)(1) For criminal history record information maintained by the clerk of court, an
1510 individual who has a record restricted pursuant to this Code section may petition the court
1511 with original jurisdiction over the charges in the county where the clerk of court is located
1512 for an order to seal all criminal history record information maintained by the clerk of
1513 court for such individual's charge. Notice of such petition shall be sent to the clerk of
1514 court and the prosecuting attorney. A notice sent by registered or certified mail or
1515 statutory overnight delivery shall be sufficient notice.

1516 (2) The court shall order all criminal history record information in the custody of the
1517 clerk of court, including within any index, to be restricted and unavailable to the public
1518 if the court finds by a preponderance of the evidence that:

1519 (A) The criminal history record information has been restricted pursuant to this Code
1520 section; and

1521 (B) The harm otherwise resulting to the privacy of the individual clearly outweighs the
1522 public interest in the criminal history record information being publicly available.

1523 (3) Within 60 days of the court's order, the clerk of court shall cause every document,
1524 physical or electronic, in its custody, possession, or control to be restricted.

1525 (4) The person who is the subject of such sealed criminal history record information may
1526 petition the court for inspection of the criminal history record information included in the
1527 court order. Such information shall always be available for inspection, copying, and use
1528 by criminal justice agencies and the Judicial Qualifications Commission.

1529 (n)(1) As to arrests occurring before July 1, 2013, an individual may, in writing, request
1530 the arresting law enforcement agency to restrict the criminal history record information
1531 of an arrest, including any fingerprints or photographs taken in conjunction with such

1532 arrest. Reasonable fees shall be charged by the arresting law enforcement agency and the
1533 center for the actual costs of restricting such records, provided that such fee shall not
1534 exceed \$50.00.

1535 (2) Within 30 days of receipt of such written request, the arresting law enforcement
1536 agency shall provide a copy of the request to the prosecuting attorney. Within 90 days
1537 of receiving the request, the prosecuting attorney shall review the request to determine
1538 if he or she agrees to record restriction, and the prosecuting attorney shall notify the
1539 arresting law enforcement agency of his or her decision within such 90 day period. The
1540 arresting law enforcement agency shall inform the individual of the prosecuting attorney's
1541 decision, and, if record restriction is approved by the prosecuting attorney, the arresting
1542 law enforcement agency shall restrict the criminal history record information within 30
1543 days of receipt of the prosecuting attorney's decision.

1544 (3) If a prosecuting attorney declines an individual's request to restrict access to criminal
1545 history record information, such individual may file a civil action in the superior court
1546 where the entity is located. A copy of the civil action shall be served on the entity and
1547 prosecuting attorney for the jurisdiction where the civil action is filed, and they may
1548 become parties to the action. A decision of the prosecuting attorney shall not be upheld
1549 if it is determined by clear and convincing evidence that the harm otherwise resulting to
1550 the privacy of the individual clearly outweighs the public interest in the criminal history
1551 record information being publicly available.

1552 (4) To restrict criminal history record information at the center, an individual shall
1553 submit a prosecuting attorney's approved record restriction request or a court order issued
1554 pursuant to paragraph (3) of this subsection to the center. The center shall restrict access
1555 to such criminal history record information within 30 days from receiving such
1556 information.

1557 (o) Nothing in this Code section shall give rise to any right which may be asserted as a
1558 defense to a criminal prosecution or serve as the basis for any motion that may be filed in
1559 any criminal proceeding. The modification, correction, supplementation, amendment, or
1560 restriction of criminal history record information shall not abate or serve as the basis for
1561 the reversal of any criminal conviction.

1562 (p) Any application to the center for access to or restriction of criminal history record
1563 information made pursuant to this Code section shall be made in writing on a form
1564 approved by the center. The center shall be authorized to develop and publish such
1565 procedures as may be necessary to carry out the provisions of this Code section. In
1566 adopting such procedures and forms, the provisions of Chapter 13 of Title 50, the 'Georgia
1567 Administrative Procedure Act,' shall not apply.

1568 (q) It shall be the duty of the entity to take such action as may be reasonable to prevent
 1569 disclosure of information to the public which would identify any individual whose criminal
 1570 history record information is restricted pursuant to this Code section:

1571 (r) If the center has notified a firearms dealer that an individual is prohibited from
 1572 purchasing or possessing a handgun pursuant to Part 5 of Article 4 of Chapter 11 of Title
 1573 16 and if the prohibition is the result of such individual being involuntarily hospitalized
 1574 within the immediately preceding five years, upon such individual or his or her attorney
 1575 making an application to inspect his or her records, the center shall provide the record of
 1576 involuntary hospitalization and also inform the individual or attorney of his or her right to
 1577 a hearing before the judge of the probate court or superior court relative to such individual's
 1578 eligibility to possess or transport a handgun."

1579 **PART VII**
 1580 **PENAL INSTITUTIONS**
 1581 **SECTION 7-1.**

1582 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 1583 by revising Code Section 42-1-1, relating to giving information to or receiving money from
 1584 an inmate in a penal institution, as follows:

1585 "42-1-1.

1586 Except as specifically provided otherwise, as used in this title, the term:

1587 (1) 'Active supervision' means the period of a probated sentence in which a probationer
 1588 actively reports to his or her probation supervisor or is otherwise under the direct
 1589 supervision of a probation supervisor.

1590 (2) 'Administrative supervision' means the period of probation supervision that has
 1591 reduced supervision and reporting requirements commensurate with and that follows
 1592 active supervision but that is prior to the termination of a sentence.

1593 (3) 'Board' means the Board of Corrections.

1594 (4) 'Case plan' means an individualized accountability and behavior change strategy for
 1595 a probationer, as applicable.

1596 (5) 'Commissioner' means the commissioner of corrections.

1597 (6) 'Criminal risk factors' means characteristics and behaviors that affect a person's risk
 1598 for committing future crimes and include, but are not limited to, antisocial behavior,
 1599 antisocial personality, criminal thinking, criminal associates, having a dysfunctional
 1600 family, having low levels of employment or education, poor use of leisure and recreation
 1601 time, and substance abuse.

1602 (7) 'Department' means the Department of Corrections.