

SECOND CHANCES FOR PEOPLE WITH RECORDS **BENEFIT ALL GEORGIANS**



THE PROBLEM

CRIMINAL RECORDS CREATE
LIFETIME BARRIERS UNDER
GEORGIA'S NARROW LAW

Unlike in most states, in Georgia, almost all convictions stay on your record forever. Only some misdemeanors an individual was convicted of before they turned 21 years old can be expunged. Criminal records create barriers to employment, housing, higher education, and other opportunities, long after the sentence is over.



THE SOLUTION

EXPUNGE CERTAIN
CONVICTIONS FOR
REHABILITATED INDIVIDUALS

The Georgia Council on Criminal Justice Reform recommended the expansion of restriction and sealing for certain convictions. Research clearly shows that enabling individuals to remove old convictions from their record, while maintaining law enforcement access, benefits families and public safety.

Georgia Justice Project is a 32-year-old nonprofit that represents individuals who are or were involved with the criminal justice system. We have worked closely with the Georgia legislature and Council on Criminal Justice Reform. We have successfully advocated for 19 changes in the law to remove barriers to reentry and increase access to employment and other opportunities for people with criminal records.

SECOND CHANCES FOR PEOPLE WITH RECORDS

WHY THIS MATTERS

INCREASES PUBLIC SAFETY

The financial stability, structure, and social networks gained from employment help people with a record **rehabilitate and reduce their likelihood of re-offending**, increasing the safety of all.



In Illinois, steady employment led to a **62%** reduction in recidivism among individuals with a record.¹

According to the University of Michigan, fewer than

2%

of people were re-convicted within five years of clearing their records.²



IMPROVES EMPLOYMENT OPPORTUNITIES

A University of Michigan study found that a cleared record **increased likelihood of employment by**

11%

and wages by

22%

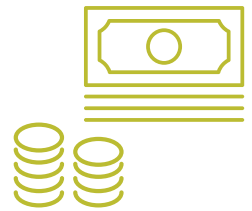
within the first year.³



A Stanford University study found that record expungement led to **an average increase of**

\$6,190

in yearly income per individual.⁴



STRENGTHENS THE ECONOMY

Qualified job candidates with a record are often passed over, leaving **employers unable to fill open positions** in a tight labor market.

The national economy would regain the

\$87 billion and **1.9 million** in GDP workers

that are lost when people with a criminal history are excluded from the labor market.⁵

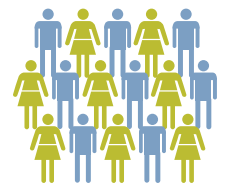
A Stanford University study found that the benefits of expungement outweighed costs by

\$5,760

per individual.⁶



Georgia should join the 38 states, including its neighbors North Carolina, Louisiana, and Arkansas, that allow expungement of certain convictions. Communities will be safer and Georgia's economy will improve when rehabilitated individuals get a second chance.



¹Safer Foundation (2008). Safer Foundation three-year recidivism study 2008. Retrieved from <http://saferfoundation.jellcreative.com/files/documents/>

²Collateral Consequences Resource Center (2018). Michigan set-asides found to increase wages and reduce recidivism. Federal Sentencing Reporter, 3, 361-362. doi: 10.1525/fsr.2018.30.4-5.361

³Collateral Consequences Resource Center (2018). Michigan set-asides found to increase wages and reduce recidivism. Federal Sentencing Reporter, 3, 361-362. doi: 10.1525/fsr.2018.30.4-5.361

⁴Chapin, M., Elhanan, A., Rillera, M., Solomon, A.K., & Woods, T.L. (2014). A cost-benefit analysis of criminal record expungement in Santa Clara County. Stanford Public Policy.

⁵Bucknor, C. and Barber, A. (2016). The price we pay: economic costs of barriers to employment for former prisoners and people convicted of felonies. Center for Economic and Policy Research.

⁶Chapin, M., Elhanan, A., Rillera, M., Solomon, A.K., & Woods, T.L. (2014). A cost-benefit analysis of criminal record expungement in Santa Clara County. Stanford Public Policy.

SB 288: Expanding Restriction & Sealing of Convictions in Georgia (effective January 1, 2021)

On August 5, 2020, Gov. Brian Kemp signed Senate Bill 288, which expands access to restriction and sealing of convictions in Georgia – a process most states refer to as expungement. Georgia finally joins 41 other states that allow an individual an opportunity to expunge certain convictions after a period of time, removing barriers to employment, housing, and other opportunities for rehabilitated individuals.

Summary

SB 288 amends O.C.G.A. § 35-3-37 to provide for restriction and sealing of certain misdemeanor and felony convictions. Under the prior version of the law, only charges that did not result in a conviction and certain misdemeanors that an individual was convicted of before they turned 21 years old, were eligible. SB 288 removes the age limitation for most offenses by allowing an individual to petition the court to restrict and seal up to two misdemeanor convictions from their record and any offense that has been pardoned (as long as it was not a serious violent felony or sexual offense) from their criminal history. Law enforcement retains access to the records. SB 288 also includes liability protections for employers who hire individuals with a criminal history to encourage employers to engage in second chance hiring.

Eligibility

- An individual may petition their original sentencing court to restrict and seal the record of a misdemeanor offense four years after they have completed their sentence as long as they have not been convicted of a new offense in those four years and do not have any pending charges.
- Certain misdemeanor offenses are excluded: sex crimes against children and by persons with supervisory authority; other sexual offenses, including pimping and pandering; crimes against minors; sexual battery; and peeping tom (full list of excluded misdemeanor offenses on back).
- All family violence convictions are excluded from consideration for misdemeanor expungement, unless the individual was under 21 years old at the time of the arrest.
- If an individual has been granted a pardon by the State Board of Pardons & Paroles, they may petition the original sentencing court to restrict and seal the record of that conviction. Pardons are generally for felony convictions, but misdemeanors can be pardoned if certain criteria are met.
- An individual can apply for a pardon five years after they have completed their sentence as long as they have lived a law-abiding life in those five years. The State Board has broad discretion to approve or deny the pardon application.
- If the individual received a pardon for a serious violent felony or sexual offense, they are not eligible for restriction and sealing (full list of excluded felony offenses on back).

Process

- For misdemeanors, a petition must be filed in the court that originally handled the case.
- For felonies, the individual must first obtain a pardon and then file a petition in the original court.
- In deciding whether or not to grant the petition, the court will consider the harm to the individual vs. the public's interest in knowing about the conviction.

Georgia Justice Project provides free legal representation to individuals facing barriers due to their criminal history who cannot afford a private attorney. To apply for assistance call (404) 827-0027, ext. 238. See GJP.org for more details.

Excluded Misdemeanor Offenses – O.C.G.A. § 35-3-37(j)(4)

- Family violence simple assault, family violence simple battery, and family violence battery (unless you were under 21 years old at the time of the arrest), OCGA 16-5-20(d); 16-5-23(f); 16-5-23.1(f)
- Family violence stalking, OCGA 16-5-90
- Violating a family violence order, OCGA 16-5-95
- Child molestation, OCGA 16-6-4
- Enticing a child for indecent purposes, OCGA 16-6-5
- Improper sexual contact by employee or agent, OCGA 16-6-5.1
- Public indecency, OCGA 16-6-8
- Keeping a place of prostitution, OCGA 16-6-10
- Pimping, OCGA 16-6-11
- Pandering by compulsion, OCGA 16-6-12
- Sexual battery, OCGA 16-6-22.1
- Obstructing or hindering persons making emergency telephone call, OCGA 16-10-24.3
- Peeping Toms, OCGA 16-11-61
- All offenses related to minors in violation of OCGA 16-12-100 through 16-12-100.3
- Theft in violation of Chapter 8 of Title 16 (unless you were convicted of shoplifting or refund fraud)
- DUI and all other traffic offenses in violation of OCGA 40-6-390 through 40-6-397

Excluded Pardoned Felony Offenses – O.C.G.A. § 35-3-37(j)(7)

- Murder or felony murder, OCGA 16-5-1
- Armed robbery, OCGA 16-8-41
- Kidnapping, OCGA 16-5-40
- Rape, OCGA 16-6-1
- Aggravated child molestation, OCGA 16-6-4 (unless subject to OCGA 16-6-4(d)(2))
- Aggravated sodomy, OCGA 16-6-2
- Aggravated sexual battery, OCGA 16-6-22.2
- Aggravated assault with the intent to rape, OCGA 16-5-21
- False imprisonment, OCGA 16-5-41 (victim is not the child of the defendant and the victim is less than 14 years of age)
- Sodomy, OCGA 16-6-2, unless subject to (d) of 16-6-2
- Statutory rape, if the person convicted is 21 years of age or older, OCGA 16-6-3
- Child molestation, OCGA 16-6-4, unless subject to (b)(2)
- Enticing a child for indecent purposes, OCGA 16-6-5, unless subject to (c)
- Sexual assault against persons in custody, OCGA 16-6-5.1
- Incest, OCGA 16-6-22
- Sexual exploitation of children, OCGA 16-12-100, unless subject to (f)(2) or (3)

FAQs - Can I clean up my Georgia criminal record?

Can I get a FELONY conviction off my record? Maybe. There are 3 ways to restrict and seal (expunge) a Georgia felony conviction [Note: see back for definitions of terms].

1. Retroactive First Offender: O.C.G.A. § 42-8-66

- Eligibility – If you were eligible for First Offender at the time of sentencing, but were not aware of your eligibility and did not receive it, you may be retroactively sentenced as a First Offender if the prosecutor consents to filing and the judge grants your petition.
- Impact – No longer a conviction, can be sealed.

2. Restrict & seal pardoned convictions: O.C.G.A. § 35-3-37 (2021 change!)

- Eligibility – If you received a pardon for an eligible offense(s), you may petition the court to restrict and seal the record(s) if you have not been convicted of anything since you were pardoned.
- Impact – Conviction restricted on GCIC and sealed from public record.

3. Vacate, restrict, & seal under the Survivors First Act: O.C.G.A. §§ 17-10-21, 35-3-37 (2020 change!)

- Eligibility – If you are a survivor of sex or labor trafficking, you can petition the court to vacate OR restrict and seal convictions that were the direct result of being trafficked or were committed while you were being trafficked. (1 year waiting period after sentence completion for vacatur).
- Impact – No longer a conviction if vacated OR conviction is restricted on GCIC and sealed from public record.

Can I get a MISDEMEANOR conviction off my record? Maybe. The same 3 remedies are available to restrict and seal (expunge) misdemeanor convictions.

1. Retroactive First Offender: O.C.G.A. § 42-8-66 (see above)

2. Restrict & seal TWO misdemeanor convictions: O.C.G.A. § 35-3-37 (2021 change!)

- Eligibility – You may petition the court to restrict and seal up to 2 eligible misdemeanor convictions if you completed all sentences at least 4 years ago and haven't been convicted of anything else in those 4 years.
- Impact – Conviction is restricted on GCIC and sealed from public record.

3. Vacate, restrict, & seal under the Survivors First Act: O.C.G.A. §§ 17-10-21, 35-3-37 (2020 change!)

- 6 month waiting period after sentencing for vacatur. (see above)

Can I get a NON-CONVICTION off my record? Yes. You can restrict and seal most charges that did not result in a conviction (dismissal, nolle prosequere, acquittal, etc.)

- **Arrests before July 1, 2013** – Apply for restriction through the arresting agency and pay any required fees. The clerk's file may need to be sealed.
- **Arrests on or after July 1, 2013** – Should be automatically restricted when the clerk of court or prosecutor enters the appropriate disposition into the GCIC database. The clerk's file may need to be sealed.

Can I get a PENDING case off my record? Maybe. You may be able to restrict and seal cases on the dead docket for more than 12 months.

Can I fix my GCIC record if it is WRONG? Yes. Criminal history reports are frequently wrong and the procedure to fix it depends on the type of error.

- Inaccurate, incomplete, or misleading information – You need to request the agency who entered the information to correct it. If the agency does not fix it, you can file an appeal.
- Identity theft – Complete a record inspection through the GCIC.

Terms to Know

- ❖ **Expungement** – Term used in some states for record clearing. Georgia law does not use the word expungement because records are not destroyed, but access to the records is limited for employers, housing providers, and others (law enforcement maintains access).
- ❖ **Restriction & Sealing** – Two-step process required in Georgia to limit public view of criminal history information.
 - Restriction – Limits access to official Georgia criminal history report maintained by the Georgia Crime Information Center (GCIC).
 - Sealing – Limits access to court records.
- ❖ **Background checks** – There are two types of criminal history reports in Georgia:
 - GCIC Reports – Official record that can be obtained from most law enforcement agencies for a fee.
 - Private Background Checks – Criminal history reports often used by employers and landlords, which pull data from court records.
- ❖ **Petition** – A written request filed with the court asking the judge to take a specific action in a case (For example: a petition to seal the record of your case)
- ❖ **Pardon** – Certificate of forgiveness for a Georgia conviction issued by the State Board of Pardons and Paroles (usually felonies). A pardon does not clear your record, but may be the basis for restriction and sealing.
- ❖ **First Offender** – The First Offender Act in Georgia is a deferred adjudication statute, which means if you successfully complete your sentence you will not have a conviction and your record will be restricted on your GCIC report and may be sealed. It can be used only once, for either a misdemeanor or felony, and the judge must agree.
 - Similar remedies: conditional discharge; minor in possession of alcohol.
- ❖ **Non-convictions** – Case resolutions that do not result in a conviction.
 - Common examples: charges that are dismissed/nolle prossed/acquitted, charges that are not prosecuted, and charges that were not presented to the Grand Jury or were No Billed.
- ❖ **Vacatur** – An order setting aside the judgment or conviction in a case.
- ❖ **Final Disposition** – The disposition is the outcome of a case. The official final disposition is maintained by the clerk's office of the court in which your case was handled.
- ❖ **Time-Expired Restrictions** – When no disposition is entered on your GCIC report, a restriction is automatically entered after a certain period of time (Note: This is not a real restriction because the offense may still appear on private background checks and FBI background checks if not properly sealed).
- ❖ **Dead dockets** – A pending case that has been placed on hold by the court.

Georgia Justice Project is a non-profit organization that provides free legal representation to individuals facing barriers due to their criminal history who cannot afford an attorney. To apply for criminal records assistance email intake@GJP.org or call (404) 827-0027, ext. 238. See GJP.org for more details about all of the services we provide.