

Record Restriction

Georgia's old law used the term "expungement, which implied that criminal records information was deleted or destroyed. In reality, criminal records were not deleted or destroyed; the term "expungement" simply meant that the information was unavailable to be viewed for all purposes except law enforcement and criminal justice.

Georgia's new law, effective July 1, 2013, does not use the word "expungement." Instead, the process is now referred to as "record restriction." Only the name of the process has changed. Record restriction means that eligible records on your official criminal history report are restricted from public view and are only accessible to law enforcement for criminal justice purposes.

Under the new law, if your arrest is not referred for prosecution, it will be restricted from your GCIC criminal history record automatically after a period of two (2) years for misdemeanors, four (4) years for most felonies, and seven (7) years for serious violent and sex-related felonies. These automatic provisions of the law apply to arrests before and after July 1, 2013. If a record is automatically restricted, however, and later a disposition is entered that does not qualify for restriction, the law requires that the record be "unrestricted" by GCIC.

If you were convicted of certain misdemeanor charges when you were under the age of twenty-one (21), you can petition to have the record(s) restricted (expunged). See O.C.G.A. §35-3-37(j)(4).

ELIGIBILITY:

1. You were convicted of a misdemeanor or a series of misdemeanors arising from a single incident.
2. You were under the age of twenty-one (21) when convicted;
3. You successfully completed the sentence; and
4. You have not been charged with a criminal offense in the last five (5) years before you are petitioning for restriction (excluding non-serious traffic offenses).

The following misdemeanor offenses are not eligible for restriction:

- Serious Traffic Offenses including:
- Driving Under the Influence (DUI)
- Reckless Driving
- Aggressive Driving
- Theft (does not include Shoplifting)
- Child Molestation
- Enticing a Child for Indecent Purposes
- Pimping
- Keeping a Place of Prostitution

- Pandering by Compulsion
- Masturbation for Hire
- Giving Massages in a Place used for Lewd Sexual Acts
- Sexual Battery
- Sexual Assault by Persons with Supervisory or Disciplinary Authority
- Sexual Exploitation of Children
- Electronically Furnishing Obscene Material to Minors
- Obscene Telephone Contact with a Minor
- Computer Pornography

PROCESS:

1. File a petition in the superior court in the county where the case occurred for an order to restrict the records. See “How to Restrict (Expunge) Charges NOT handled in Superior Court” on page 103.
2. Deliver a copy of the petition to the prosecuting attorney’s office.
3. If requested, hearing must occur within ninety (90) days of filing the petition.
4. The court will grant restriction if appropriate, considering your conduct since conviction and the public’s interest in the record being available.
5. If the court orders the records restricted, you can submit a written request for restriction to the jail/detention center and the law requires the records be restricted within thirty (30) days of your request.

If your charges were originally handled in Superior Court you can simply file a motion under the original case number for the judge to consider your request, but if the charges were originally handled in a court other than Superior Court, you must file a civil petition in the Superior Court in the county in which your case was handled. Filing a civil petition opens a case in Superior Court so a judge can consider your petition to restrict the record.

If a criminal record is restricted but you tell an employer that you were never arrested, you run the risk of not being hired or being fired for lying on your application. If asked about arrests, even if they have been restricted, it may be in your best interest to inform potential employers, licensing agencies or housing providers about the case. Make sure they are aware you were not convicted and the restriction process is complete. Keep a copy of your official criminal history and a copy of any paperwork you have regarding the restriction. Make a copy available for a potential employer or current employer who is interested in confirming the information.