

Retroactive First Offender: *A Path to Clearing a Conviction From Your Record*

What is the First Offender Act?

If you have never been sentenced under the First Offender Act and have never been convicted of a felony before, the judge can sentence you under this law. If you successfully complete your First Offender sentence, your case is discharged and **you will not have a conviction on your record**. If asked if you have been convicted of a crime and this case is the only one on your record, you can truthfully answer “no.” First Offender can be used for a misdemeanor or felony, but some charges are ineligible.

Records of a first offender case can be restricted and sealed. **Restriction** hides arrest and case information from employers and landlords who check your official criminal history through the Georgia Crime Information Center (GCIC) or FBI. **Sealing** hides online and court records from public view so private background check companies cannot report the information. Under HB 162 effective July 1, 2026, restriction and sealing of first offender records is mandatory.

What is Retroactive First Offender (RFO)?

If you were not informed about your eligibility to be sentenced under first offender for a prior conviction, you can petition the court to retroactively sentence you under the First Offender Act. A petition is a written request to the court. **The prosecutor must consent to the filing of the petition before it is filed in court**. If the prosecutor gives permission and it is filed, the court will consider whether you were eligible for First Offender at the time of sentencing, and whether “justice” and “society” are served by granting the petition. If the court grants your request for RFO, you will be exonerated from guilt, your criminal history will be restricted and sealed, and the case will no longer be a conviction. See O.C.G.A § 42-8-66.

Is my case eligible for RFO? **YES, if all the following are true:**

- You were never informed about First Offender when you originally resolved your case.
- You have never used First Offender before.
- You were not convicted of a felony before this case.
- The conviction is not an excluded offense (*full list of excluded offenses on back*).

Will my RFO case appear on background checks? **Generally, NO, if you follow these TWO steps:**

- Make sure your official record shows **First Offender Act Discharged**. Request your criminal history to check! You can request a GCIC Purpose Code U from a local arresting agency for a fee, but if you think you may have a warrant, speak with an attorney first. If your record shows **First Offender Act Discharged**, the record is properly restricted. If your record shows **First Offender Discharged as a Matter of Law**, you can contact the clerk’s office where the case occurred and ask them to enter the completion (also known as a discharge). *
- **Make sure the records in your first offender case have been sealed.** After July 1st, 2026, your criminal history must be restricted and sealed once the court grants your request for Retroactive First Offender. If the case is still showing up on background checks, contact the clerk’s office to make sure they sealed their file. **

**Criminal justice agencies can see first offender records even if they are restricted, and some employers can see certain first offender cases even if they are restricted. See O.C.G.A. 42-8-63.1 for more information on employer access to first offender records for employees who work with vulnerable populations.*

***Private background checks often contain errors. You should always ask for and review a background check for housing/jobs if you are denied to make sure a sealed first offender case does not appear. If it does, you can dispute it by following the steps on our [Background Checks and Your Rights](#) handout.*

First Offender Excluded Offenses

(See O.C.G.A § 42-8-60 for code sections)

You cannot use Retroactive First Offender on the following excluded offenses:

- A serious violent felony:
 - Murder or felony murder
 - Armed robbery
 - Kidnapping
 - Rape
 - Aggravated child molestation
 - Aggravated sodomy
 - Aggravated sexual battery
- Certain sexual offenses
 - Aggravated assault with the intent to rape
 - False imprisonment (*limited exceptions*)
 - Sodomy (*limited exceptions*)
 - Statutory rape (*if the person convicted of the crime is 21 years of age or older*)
 - Child molestation (*limited exceptions*)
 - Enticing a child for indecent purposes (*limited exceptions*)
 - Improper sexual contact by employee or agent
 - Incest
 - A second or subsequent conviction for sexual battery
 - Sexual exploitation of children (*limited exceptions*)
- Trafficking of persons for labor or sexual servitude
- Neglecting disabled adults, elder persons, or residents
- Exploitation and intimidation of disabled adults, elder persons, and residents
- Sexual exploitation of a minor
- Electronically furnishing obscene material to a minor
- Computer pornography and child exploitation
- Any of the following offenses when such offense is committed against a law enforcement officer while such officer is engaged in the performance of his or her official duties:
 - Aggravated assault
 - Aggravated battery
 - Obstruction of a law enforcement officer if such violation results in serious physical harm or injury to such officer.
 - As used in this section, the term "law enforcement officer" means:
 - A peace officer as defined in Code Section 35-8-2;
 - A law enforcement officer of the United States government;
 - An individual employed as a campus police officer or school security officer;
 - A game warden; or
 - A jail officer employed at a county or municipal jail
- Driving under the influence

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Georgia Justice Project may be able to assist you with criminal record restriction and sealing. For more information about our Criminal Records Program, call our intake line at **404-827-0027, ext. 238** or visit **www.GJP.org**.