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## CRIMINAL JUSTICE REFORM

# Bill seals criminals' files

Legislation that exonerates many first offenders, purges records awaits vote.

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In the volatile, crime-saturated year of 1968, lawmakers took a bold step to reform Georgia's justice system. A state known for punitive treatment of criminal defendants offered first offenders a second chance.

Now the General Assembly is considering an even more benevolent gesture — one that may also block public access to thousands of government records.

Legislation awaiting a final vote would not only exonerate many first-time offenders, it also could do away with any public record of their cases. Defendants convicted of many nonviolent crimes could ask a judge to seal court files, arrest reports, mug shots — anything revealing that a criminal conviction or even an accusation ever existed.

The legislation could “conceal criminal wrongdoing in sealed records and closed police files,” Hollie Manheimer, executive director of the Georgia First Amendment Foundation, said in a letter this week to Gov. Nathan Deal and legislative leaders.

“We are concerned that it will permit such widespread sealing of court records, it will alter the public's confidence in the workings of the justice system and undermine the public's faith that the criminal justice system is protecting the interests of law abiding citizens,” Manheimer wrote.

Advocates say the records should be kept secret because a criminal history, even for one relatively minor offense, disqualifies applicants from many jobs. They point to a proliferation of private companies that scour court records and criminal-justice databases for information that can make many one-time criminals all but unemployable.

The proposal came in a large bill comprising the work of the Criminal Justice Reform Council. The panel, made up mostly of judges, prosecutors, defense lawyers and law-enforcement officials, looked at ways to ameliorate two decades of mass incarceration of people convicted of drug offenses and other non-violent crimes.

The bill received the Senate's unanimous approval on Feb. 25. A House committee will take up the measure Monday.

The proposal, council members say, follows the original intent of the First Offender Act, adopted nearly half a century ago.

“This is not mandating any sort of new records restrictions,” said Thomas Worthy, the council's co-chair. “It leaves it entirely in the discretion of the judge. ... This really isn't some sort of revolutionary grab.”

The proposal won support across the justice system: prosecutors and public defenders, sheriffs and civil-rights activists. At first, though, some viewed the idea with skepticism.

“I do believe these changes will see a large number of records sealed sooner in the process than they are now,” said Chuck Spahos, executive director of the Prosecuting Attorneys' Council of Georgia. “However, they ultimately would have been sealed under the current law.”

That is not necessarily correct.

The existing law does not explicitly allow first offenders' files to be sealed. It says first offenders who complete their sentences, including probation, without committing additional crimes will receive a “discharge” of their convictions. Those defendants “shall not be considered to have a criminal conviction,” the statute says, and the discharge is to be prominently noted on their court records.

In some jurisdictions, those files are readily available for public inspection, and Manheimer said the law “explicitly requires that court records... remain open to the public.”

Regardless, some judges and court clerks restrict access to first offender files, sometimes obscuring docket entries that would identify defendants.

Like existing law, the proposed legislation would withhold first-offender status from defendants charged with more

serious crimes, such as murder, rape, armed robbery and driving while intoxicated, among others. It adds two crimes — human trafficking and abuse of the elderly — to the list of exclusions.

But any defendant who qualifies as a first offender could ask a judge to seal all court records, police and jail documents, and information in the Georgia Crime Information Center's database. Only law enforcement agencies, judges and a few other entities would have access to the records.

Judges would have to weigh the public's interest in a defendant's criminal history against the harm to that defendant's privacy.

"One of the most important factors is the public's right to know," Worthy said. "It took us a year to strike this balance. We've heard every viewpoint."

Files could be sealed when defendants complete their sentences, or judges could "go ahead and give them the benefit of the doubt" when imposing sentences, said Marissa Dodson, an American Civil Liberties Union lawyer who worked on the first offender issue at the Georgia Justice Project.

For defendants, Dodson said, immediately sealing their records "improves their ability to move past it and maintain their work history."

Last year lawmakers approved another council recommendation: to allow some defendants to retroactively seek first-offender status. Robert Hyden, an attorney in Marietta, recently represented a Cobb County man who was the first to be retroactively declared a first offender.

The man was 19 years old when he was convicted on drug charges in 1994. "He had gone all these years without any infractions," Hyden said. "He had become a successful businessman, but this continued to hold him back."

Being declared a first offender, even so long after the fact, "goes back and clears things," Hyden said. "I think first offender is a great thing."

Employers, though, will lose the ability to screen many job applicants if the proposed legislation passes. Even under the current law, some criminal records go undetected.

Karen Geiger, chief executive of InterContinental Marble Corp. in Marietta, learned this after she hired Angela Lynn Williamson to keep the company's books. Williamson had pleaded guilty in Cobb County to stealing about \$135,000 from her previous employer, a medical practice. A judge sentenced her to probation as a first offender.

The conviction did not appear on a background check that Geiger ordered when she received Williamson's application. Over the next several years, according to court documents, Williamson stole more than \$1.3 million from Geiger's company. Williamson is serving a 15-year prison sentence on a racketeering charge.

"If we had found that information (about the earlier charge), she would not have been hired," Geiger said.



Angela Williamson stole from an employer who didn't know of her first conviction.

## HOW THE FIRST OFFENDER ACT WORKS

### CURRENT LAW:

- › Nonviolent criminals never before convicted of a crime may be sentenced as first offenders.
- › If they complete their sentences, including probation, without committing additional crimes, their conviction may be discharged.
- › Court records continue to be available for public inspection, but carry a notice that the conviction was discharged.

### PROPOSED LEGISLATION:

› First offenders may ask a judge to seal all records, including court files, arrest reports and mug shots, related to their crime.

› The documents could be removed from public view as soon as the day of sentencing.

› Background checks for employment and other purposes would no longer report on first-offender convictions.

#### CRIMES NOT ELIGIBLE FOR FIRST OFFENDER STATUS:

› Violent felonies, such as murder, armed robbery, rape or kidnapping.

› Sexual offenses, including aggravated assault with intent to rape, statutory rape, sodomy, child molestation, incest and sexual assault against persons in custody.

› Human trafficking.

› Sexual exploitation of a minor.

› Electronically furnishing obscene material to a minor.

› Computer pornography and child exploitation.

› Aggravated assault or battery against a law enforcement officer.

› Obstruction of a law enforcement officer causing a serious injury.

› Driving under the influence.

