

## Revisions to O.C.G.A. § 35-3-37

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### Record Restriction of Convictions in Georgia

Since 2012, changes to the Georgia statute governing restriction of criminal records, O.C.G.A 35-3-37, have greatly expanded the circumstances in which Georgians are able to have their criminal records restricted. These changes have allowed many returning citizens to move forward and seek employment without the burden of a publicly available criminal record. While 35-3-37 has been largely successful, a few years of experience under the law have demonstrated the need for some changes to ensure that Georgia law continues to meet its purpose.

Georgia law provides only minimal restriction of convictions records. Currently, only “Youthful Offender” misdemeanor convictions, for those under the age of 21 at the time of conviction, are eligible for record restriction. Outside of the Youthful Offender Provision, the vast majority of offenses, including many non-DUI-related traffic and nonviolent drug offenses, are ineligible for record restriction. In order to ensure that those most affected by our criminal justice system are able to meet their basic needs, including access to employment and housing opportunities, the sealing or restriction of certain conviction information from criminal records is essential. This change has the potential to incentivize compliance with rehabilitative efforts and reduce recidivism.

### Record Restriction of Convictions in Other Southeastern States

Despite the overwhelming number of people with criminal histories in Georgia<sup>1</sup>, Georgia remains in the minority of southern states that does not provide for the restriction of convictions from criminal records.<sup>2</sup> Southern states allowing for the expungement of convictions include: Arkansas, Kentucky, Louisiana, Maryland, Missouri, Mississippi, North Carolina, South Carolina, Tennessee, Virginia<sup>3</sup>, and West Virginia. An analysis of southern state statutes that allow the expungement of convictions provides more tailored guidance for Georgia policy makers in their effort to expand criminal justice reforms.

### Recommended Revisions to Georgia’s Record Restriction Law

1. **Revise O.C.G.A. § 35-3-37(j)(4):** This legislation would allow both misdemeanor convictions to be restricted after a reasonable period without arrest: 5 years from the end of the sentence. Serious violent and sexual offenses, sexual exploitation of a minor, electronically furnishing obscene material to a minor, computer pornography and child exploitation, and offenses committed against law enforcement officers engaged in the performance of official duties would be excluded.
2. **Expand the Georgia’s Youthful Offender criteria<sup>4</sup>** to persons convicted of certain offenses “misdemeanor offense or offenses arising from the same transaction committed while he or she was between the ages of eighteen and twenty-six.”<sup>5</sup> Here, like West Virginia’s Youthful Misdemeanant provision, a person would be able to petition the court for the expungement of their former conviction.<sup>6</sup>

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<sup>1</sup> Nearly one-third of individuals in Georgia have a criminal record. (get citation)

<sup>2</sup> Alabama and Florida are the other southern states that do not allow conviction information to be restricted.

<sup>3</sup> However, Virginia only allows expungement when one has been granted an absolute pardon by the state. See Va. Code Ann. 19.2-392.2.

<sup>4</sup> Get Youthful Offender Statute

<sup>5</sup> West Virginia. W. Va. Code 61-11-26(a)

<sup>6</sup> Adopting a similar policy would be a significant, considering the vast majority of criminal activity and convictions occur between the ages of \_\_\_ and \_\_\_\_\_. (Get a citation for this information.)