

Memo Regarding Restricting Conviction Records in Georgia

From Georgia Justice Project (GJP)

Record Restriction of Convictions

Despite its leadership in criminal justice reform, Georgia lags behind many states, including its southeastern peers, in not providing a mechanism to restrict records of convictions. To continue to lead in the criminal justice space and to reduce recidivism by providing its citizens a real chance at successful reentry, Georgia must enact legislation to provide for the record restriction of some types of convictions after a certain period of time has passed.

Recommendation: Expand Mechanisms for Restricting and Sealing of Conviction information.

Georgia (O.C.G.A. § 35-3-37(j)(4))

Georgia law provides for only minimal restriction of conviction records. Only misdemeanor convictions of “youthful offenders”—those under 21 at the time of conviction—may be restricted. Such an individual must show 5 years without criminal activity after sentence completion to be eligible. Certain convictions, including certain serious traffic offenses and certain sexual offenses, are ineligible.

Other States: A Focus on the Southeast

Most of the states in the south allow for convictions, even felony convictions, to be restricted / expunged. A quick comparison with Georgia’s southern neighbors,

- Southern States that allow some felonies to be restricted:
 - Arkansas
 - Kentucky
 - Louisiana
 - Missouri
 - Mississippi
 - North Carolina
 - Tennessee
 - West Virginia
- Southern States that allow for some misdemeanors to be restricted:
 - Georgia
 - Maryland
- Southern States that do NOT allow for restriction of ANY convictions:
 - Virginia
 - South Carolina

Currently, 23 states and the District of Columbia allow some form of restriction for at least some types of convictions. They are: Mississippi (Miss. Code Ann. 99-19-71), Louisiana (La. R.S. 44:9), Kentucky (KRS 431.078), North Carolina (N.C. Gen. Stat. 15A-145.5), Tennessee (Tenn. Code. Ann. 40-32-101), Arkansas (A.C.A. 16-90-1405), Oklahoma (22 Okl. St. 18), Texas (Tex. Code Crim. Proc. Art. 55.01), Utah (Utah Code Ann. 77-40-105), Ohio (ORC Ann. 2953.32), Indiana (Ind. Code Ann. 35-38-9-2), South Dakota (S.D. Codified Laws 23-6-8.1), Wyoming (Wyo. Stat. 7-13-1501), Maine (16 M.R.S. 703-705), Minnesota (Minn.

Stat. 609A.03), Connecticut (Conn. Gen. Stat. 54-142(a)), New Jersey (N.J. Stat. 2C:52-2, Oregon (ORS 137.225), Delaware (11 Del. C. I;4375), Pennsylvania (18 Pa. C.S. 9122), Illinois (20 ICLS 2630/5.2), Vermont (13 V.S.A. 7602), Washington D.C. (D.C. Code 16-803), California (Cal. Penal Code § 1203.4).

Below is an exploration of the laws in the 5 southeastern states that have significant and fairly inclusive (i.e. include convictions other than first offender cases and pardons) expungement mechanisms.¹

Arkansas (A.C.A. 16-90-1405)

In Arkansas, for individuals with no more than one prior felony, minor felonies and drug convictions may be sealed 5 years after sentence completion. Misdemeanors are also eligible. Serious violent and sexual felonies are ineligible. Pardons may be granted to those ineligible for sealing; pardoned convictions are automatically sealed (except for certain “serious offenses”).

Kentucky (KRS 431.078)

Misdemeanors are eligible to be expunged 5 years after sentence completion. The county attorney and victim must be notified for a mandatory hearing, at which the applicant must show that he or she has not been convicted of a felony or misdemeanor within 5 years has no pending cases. Sex offenses and offenses against children are ineligible. Multiple convictions may be expunged.

2016 HR/HB 40 adds class D felonies (per above NACDL chart)? This says it passed/was signed (<http://www.lrc.ky.gov/record/16RS/HB40.htm>), but can't find it in code here (<http://www.lrc.ky.gov/statutes/statute.aspx?id=45221>), despite code having 2016 updates?

Also via HR 40: pardons are eligible.

Louisiana (La. R.S. 44:9)

Most misdemeanors may be expunged 5 years after sentence completion. Most felonies may be expunged 10 years after sentence completion. For both misdemeanors, the individual cannot have been convicted of a felony or misdemeanor during the 5/10 year waiting period or have a pending case. The prosecutor can object, which triggers a hearing where the prosecutor must show by a preponderance of the evidence why the motion should not be granted. Multiple convictions may be expunged.

North Carolina (N.C. Gen. Stat. 15A-145.5)

Most non-violent misdemeanors and minor nonviolent felonies are eligible for expungement after 15 years after sentence completion. Individuals convicted of these offenses are also eligible for a “Certificate of Relief” that should remove collateral sanctions and receive favorable consideration in a decision regarding state employment or licensure. For expungement, the individual must request a hearing via a petition including an affidavit stating that he or she has been “of good moral character” since the conviction, affidavits from two non-relatives verifying the individual’s good character, and a recent criminal background check. The individual must show that he or she has no other criminal history.

Tennessee (Tenn. Code. Ann. 40-32-101)

¹ : <http://ccresourcecenter.org/resources-2/restoration-of-rights/50-state-comparisonjudicial-expungement-sealing-and-set-aside/>

Most misdemeanors and certain “less serious nonviolent felonies” are eligible for expungement 5 years after sentence completion. There is no hearing, but both the individual petitioning for expungement and the prosecutor may file evidence. The court will consider will weigh the interests of the individual against the best interests of justice and public safety. Pardoned convictions are also eligible for expungement.

Next Steps for Georgia

Georgia Justice Project has proposed legislation that would bring Georgia in line with smart on crime states in the region and the nation, and would further its reputation as a leader in criminal justice reform. The proposed legislation would revise O.C.G.A. § 35-3-37(j)(4) so that it mirror the policies of Georgia’s southeastern peers discussed above. The legislation allows both misdemeanor and felony convictions to be restricted after a reasonable period without arrest: 5 years from the end of the sentence. Serious violent and sexual offenses would be exempt from this provision, for example: 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.

Revising O.C.G.A. § 35-3-37(j)(4) to provide for the restriction of convictions would bring Georgia closer to its goal of reducing recidivism and enhancing public safety by making easier for individuals who have demonstrated rehabilitation to become contributing members of society and lead productive lives. To remain a leader in criminal justice reform, Georgia must join Arkansas, North Carolina, Kentucky, Louisiana, and Tennessee in providing a mechanism for the record restriction of convictions.