



Record Restriction for Misdemeanor Violations in Georgia

Presented by Attorney Corey Washington

Special Thanks!

- **Curtis W. Miller, Chief Judge of the Municipal Court of Stonecrest, GA**
- **Mallory Minor – Court Administrator of the Municipal Court of Stonecrest, GA**



What we will cover today

- What is the purpose of record restriction and why it is needed?
- Interesting Facts.
- History of Record Restriction in Georgia with various laws including the First Offender Act.
- Important Terms and Definitions.
- What is the difference between a Restriction and a Correction in your criminal record?
- What are the types of criminal records that can get a Record Restriction?
- What are the types of criminal records that can't get a Record Restriction?
- What is the process of getting your criminal record restricted for an arrest before or after July 1, 2013, for misdemeanors that resulted as a non-conviction?
- What is the process of getting your criminal record restricted for an arrest before or after July 1, 2013, for misdemeanors that resulted as a conviction?
- What is the process of correcting an incorrect GCIC record?
- Introduction to Second Chance Law.
- Additional Resources.



THE WASHINGTON PROCESS
LAW FIRM

What is the purpose of record restriction and why it is needed?

- The purpose of a record restriction is to give adults who have been arrested or convicted of certain crimes, to have those arrest or crimes restricted from the public. Criminal records are proven to hinder the ability to secure employment and occupational licensing. Criminal records can also inhibit access to housing or scholarships, preventing opportunities that people need to improve their lives and the lives of their family.
- People with criminal records have an unemployment rate that is five times higher than people without criminal records which can cause additional pressures to people to commit another form of recidivism.





Interesting facts



- Currently, approximately 4.5 million people have a criminal record on file with the state of Georgia. Georgia's 2023 estimated population was 11,029,227, according to the U.S. Census Bureau. That's approximately 40% of the state population that has been affected by arrest records.
- As of December 31, 2020, Georgia community corrections population was 341,434 under probation and 19,447 under parole.
- Georgia has the highest rate of probation in the United States as provided by the Prison Policy Institute.
- Georgia has the 26th highest crime rate but the 4th highest incarceration rate in the United States.

History of Record Restriction - O.C.G.A. § 35-3-37

O.C.G.A. § 35-3-37 allows for the restriction of your criminal records by a local law enforcement agency when certain conditions are met. If the restriction is approved by the local arresting agency and the appropriate prosecutor; the criminal record is restricted on the Georgia criminal history report by GCIC. The restricted arrest information is only open to criminal justice agencies and not the public.

On May 2, 2012, the former Governor of Georgia, Nathan Deal, signed House Bill 1176, which altered the law governing criminal record restrictions in Georgia. House Bill 1176 allowed criminal records to be restricted or hidden from employers or licensing background checks. The law became effective on July 1, 2013. It also changed the term expungement that was in the statute to record restriction.



History of Record Restriction - O.C.G.A. § 35-3-37

On August 5, 2020, current Georgia Governor Brian Kemp signed Senate Bill 288 also known as “The Second Chance Act”. Senate Bill 288 expanded criminal records that can be restricted and sealed in Georgia. Senate Bill 288 amended O.C.G.A. § 35-3-37 and provided for restriction and sealing of certain misdemeanor and felony convictions. Also, Senate Bill 288 removed the age limitation for most offenses by allowing an individual to petition the court to restrict and seal up to two misdemeanor convictions from their record and any offense that has been pardoned (as long as it was not a serious violent felony or sexual offense) from their criminal history. SB 288 also includes liability protections for employers who hire individuals with a criminal history to encourage employers to engage in second chance hiring.



THE WASHINGTON PROCESS
LAW FIRM

History of Record Restriction – First Offender Act

The First Offender* Act (FOA) is Georgia's first law that allows individuals the opportunity to not have a conviction on their record. It was enacted in 1968. It was codified under O.C.G.A. § 42-8-60(a). It states that if a guilty verdict or plea of guilty or nolo contendere is entered against a first-time offender, the State will delay entering a judgment and place the first-time offender on probation or in confinement. It can only be used one time in the lifetime of the individual.

Because a large population of individuals who were eligible for First Offender treatment in the past, but, for various reasons, were not sentenced under the Act; In 2015, the Georgia legislature passed reform allowing for the retroactive application of the First Offender sentencing. The law was further clarified in 2017 to make the retroactive provisions applicable to any case sentenced on or after March 18, 1968.



Important Terms and Definitions regarding Record Restrictions



Expungement – Expungement means that the information containing criminal records was deleted or destroyed. For the State of Georgia, “expungement” simply meant that the information was unavailable to be viewed for all purposes except law enforcement and criminal justice.

Record Restriction - Record restriction means that eligible records on the official criminal history report are restricted from public view and are only accessible to law enforcement for criminal justice purposes.

Sealing- A process that restricts the public from viewing court documents.

Misdemeanor - A misdemeanor is a type of offense that is punishable by less than 12 months in jail. Community service, probation, fines, and imprisonment for less than a year are commonly issued punishments for misdemeanors.

GCIC Report – A report that contains your criminal history. In the report it would show your name, dob, state identification number, social security number, and each time you were arrested or charge. Each arrest or charge will be listed in sections called “cycles” on your report.

What is the difference between a restriction and a correction?

- A restriction allows for your criminal record to not be viewed by the public except if you are applying for employment with a public school, childcare center, nursing home, other facilities that have vulnerable populations or trying to get a license with licensing agencies.
- A correction is when there is inaccurate information on your criminal record in the GCIC report. An example is the wrong charge, the wrong disposition, or even the wrong person on your criminal record. Even though you are correcting the record, the record will not be restricted from public review.



What are the types of criminal records that can get a Record Restriction?

Non-convictions – Is any case or arrest that did not result in a conviction such as charges that are dismissed, nolle prosequere, acquitted, not prosecuted, the First Offender Act, and Retroactive First Offender. These records should get restricted automatically but you may have to check to make sure.

Convictions - You may petition the court to restrict and seal up to 2 eligible misdemeanor convictions 4 years after your last conviction. The Conviction will be restricted on GCIC and sealed from public record.

Time-Expired Restrictions – When you get arrested or charged with a crime, and there is no disposition that is entered on your GCIC report, a restriction is automatically entered after 2 years.

Dead dockets – A pending case on hold by the prosecutor or court. It can be restricted 12 months from the date the case was placed on a dead docket.



What are the types of criminal records that can't get a Record Restriction?

Convictions for the following crimes:

Family violence crimes - Family violence simple battery, and family violence battery, Family violence stalking, Violating a family violence order (Note: these charges apply if you are over 21 years old at the time of the arrest)

Sex crimes - Child molestation, Enticing a child for indecent purposes, Improper sexual contact by employee or agent, Public indecency, Keeping a place of prostitution, Pimping, Pandering by compulsion, Sexual battery

Other crimes - Obstructing or hindering persons making emergency telephone call, Peeping Toms, All offenses related to minors in violation of OCGA 16-12-100 through 16-12-100.3, Theft in violation of Chapter 8 of Title 16 (unless you were convicted of shoplifting or refund fraud), DUI and all other traffic offenses in violation of OCGA 40-6-390 through 40-6-397



What is the process of getting your criminal record restricted for an arrest before or after July 1, 2013 for misdemeanors that resulted as a non-conviction?

1. Go to your local law enforcement agency and request your full criminal history (GCIC report).
2. Go to the court that has the case and request an official disposition of the case from the clerk of that court.
3. If you have an arrest/record that was before 07/01/2013, Fill out a Request to Restrict Arrest Record Instructions and Request Form and submit it to the agency that arrested you with the court's disposition (if needed). If you have an arrest/record that was after 07/01/2013, contact the prosecutor's office that you were arrested at to initiate the process with them.
4. If your record restriction is approved, you should get notification from the agency or prosecutor that they updated your GCIC record. If the agency/prosecutor cannot update it, you will get your form and submit it to GCIC with a fee.
5. Next file a Motion to Seal with the court to seal your court record.



What is the process of getting your criminal record restricted for an arrest before or after July 1, 2013 for misdemeanor that resulted as a conviction?

1. Go to the court that has the case and request an official disposition of the case from the clerk of that court.
2. Prepare and file a Motion to Restrict and Seal Records.
3. Attach the final disposition and attach any additional documentation showing that the presence of the record on your GCIC criminal history record is causing you harm (such as letters of employment or housing denials based on their background).
4. Deliver or send a copy of your Motion to Restrict and Seal Records to the office of the prosecuting attorney in the original case and to the clerk of court.



What is the process of correcting an incorrect GCIC record?

1. Go to the agency that the arrest is under and ask them to correct the record and they should do it electronically.
2. If the agency cant do it electronically you must get a written requests submitted by the law enforcement agency to GCIC that is on their official agency letterhead, with the following information: your name, date of birth, social security number, race, sex, and date of arrest; or State Identification Number (SID) and date of arrest or Offender Tracking Number (OTN) for that date of arrest; and the requested changes.
3. The agency then mails it to GCIC.
4. Once the agency mails the form, make an appointment with GCIC. They will help you complete the process, including fingerprinting.



Second Chance Law

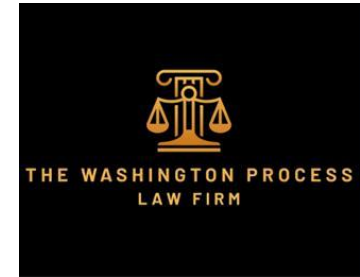


- Second Chance Law with Corey is a YouTube channel that will provides information to the public
- Second Chance Law with Corey contains information on topics like what was discussed today that will help the public understand tools and opportunities that will give them or someone they know a second chance
- It is a free channel and anyone can subscribe
- Any questions or assistance you can contact thewashingtonprocesslawfirm@gmail.com or restrictmyrecords@gmail.com

Resources

- Georgia Justice Project – www.gjp.org or email them at Intake@GJP.org
- Athens-Clarke County Second Chance Desk - <https://www.accgov.com/8429/Second-Chance-Desk> or email secondchanceathens@gjp.org
- Georgia Legal Aid - <https://www.georgialegalaid.org>
- Georgia Bureau of Investigations - <https://gbi.georgia.gov/services/georgia-criminal-history-record-restrictions>
- Fulton County Record Restrictions - (404) 612-4827 or email restrictions.solicitor@fultoncountyga.gov.





Questions & Answers

