

SB 288 (as passed General Assembly): Restricting & Sealing Certain Convictions and Protecting Employers

Problem

41 states allow a rehabilitated individual an opportunity to restrict and seal (expunge) some convictions after a period of time. Currently, in Georgia, the only convictions that can be restricted and sealed are certain misdemeanors an individual was convicted of before they turned 21 years old. Expanding expungement will improve public safety, strengthen our economy, and remove barriers to employment and housing for families.

Proposal

Amend O.C.G.A. § 35-3-37 to provide for restriction and sealing of certain misdemeanor convictions from an individual's official Georgia criminal history if they have remained crime-free for 4 years, no matter how old they were when the conviction occurred. Allow an individual who has received a pardon from the State Board of Pardons and Paroles for certain felony offenses to petition a court to restrict and seal their record.

Employer Protections

SB 288 includes significant liability protections for employers who hire individuals with a criminal history who have had their record restricted and sealed and protects employers in a civil proceeding if criminal record information is not relevant to the underlying proceeding.

Eligibility

May petition the court to restrict certain misdemeanor convictions 4 years after sentence completion, provided no pending charges and no convictions 4 years prior to petitioning. May petition the court to restrict certain felony convictions if the individual has been pardoned for the offense and has no convictions since receiving the pardon; an individual may apply for a pardon 5 years after completion of a sentence.

Limitations

- Misdemeanors - Certain offenses excluded, including sex crimes against children and by persons with supervisory authority; other sexual offenses including pimping and pandering; crimes against minors; sexual battery; peeping tom. (full list of excluded misdemeanor offenses on back).
- Misdemeanors - All family violence battery convictions excluded from consideration, unless the individual was under 21 years old at the time of the conviction and all other criteria are met.
- Lifetime limit of 2 misdemeanors.
- Pardoned Felonies – The individual must first go through the rigorous application process and be granted a pardon before they can petition the court for restriction and sealing.
- Pardoned Felonies – If the individual received a pardon for a serious violent felony or sexual offense they would not be eligible for restriction and sealing (full list of excluded offenses on back).
- Certain restricted charges would remain available for employers who serve vulnerable populations, including children, the mentally ill, and the elderly (see O.C.G.A. § 42-8-63.1 for list).
- Information about conviction remains available for use by law enforcement.

Process

- **Restriction:** Petition based, not automatic; use same process in place since 2013 for Youthful Offender.
- **Sealing:** Petition based, not automatic; prosecutor may object; judge reviews and decides. Court considers harm to the individual vs public's interest in knowing.

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Excluded Misdemeanor Offenses

- Family violence simple assault, family violence simple battery, and family violence battery (unless individual was a youthful offender)
- Family violence stalking
- Violating a family violence order
- 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
- 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 (however shall not apply to a misdemeanor conviction of shoplifting or refund fraud)
- DUI and all other traffic offenses in violation of OCGA 40-6-390 through 40-6-397

Excluded Pardoned Felony Offenses

- Murder or felony murder, OCGA 16-5-1
- Armed robbery, OCGA 16-8-41
- Kidnapping, OCGA 16-5-40
- Rape, OCGA 16-6-1
- Aggravated child molestation, OCGA 16-6-4 (unless subject to OCGA 16-6-4(d)(2))
- Aggravated sodomy, OCGA 16-6-2
- Aggravated sexual battery, OCGA 16-6-22.2
- Aggravated assault with the intent to rape, OCGA 16-5-21
- False imprisonment, victim is not the child of the defendant and the victim is less than 14 years of age, OCGA 16-5-41
- Sodomy, OCGA 16-6-2, unless subject to (d) of 16-6-2
- Statutory rape, if the person convicted is 21 years of age or older, OCGA 16-6-3
- Child molestation, OCGA 16-6-4, unless subject to (b)(2)
- Enticing a child for indecent purposes, OCGA 16-6-5, unless subject to (c)
- Sexual assault against persons in custody, OCGA 16-6-5.1
- Incest, OCGA 16-6-22
- Sexual exploitation of children, OCGA 16-12-100, unless subject to (f)(2) or (3)