

# Understanding Your Georgia Criminal History

(And What You Can Do About It)



GEORGIA  
JUSTICE  
PROJECT



# Georgia Justice Project

## Direct Service

- Criminal Defense (Fulton & DeKalb)
- Criminal Records (Georgia)

## Advocacy & Education



# A Note About Language

- “...we are referred to as inmates, convicts, prisoners, and felons. All terms devoid of humanness which identify us as things rather than as people.”

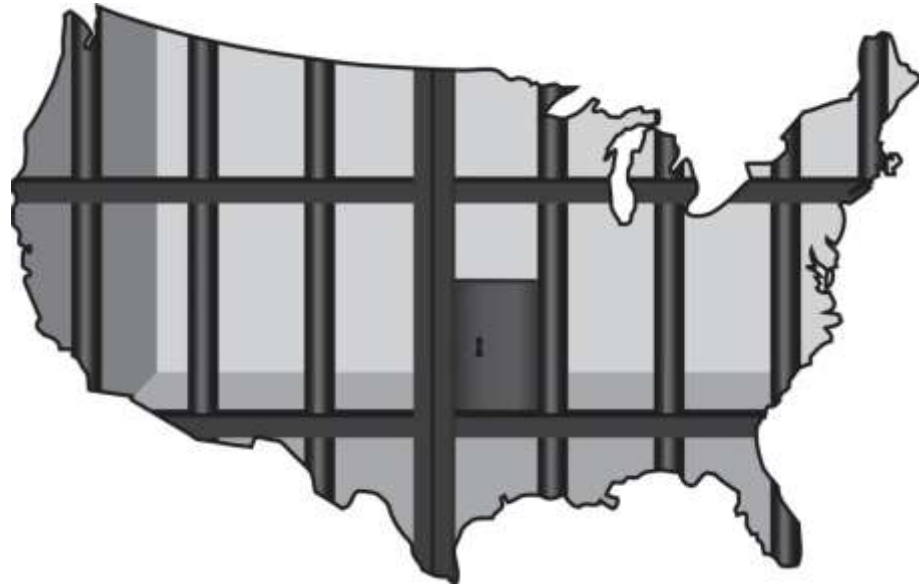
The Center for NuLeadership on Urban Solutions,  
Medgar Evers College, School of Business, CUNY

# Agenda

- Criminal Records Basics in Georgia
- How do I “clean up” my record?
  - Restriction/Expungement
  - Corrections
  - Pardons
- How do I get a job with a record?
- How do I find a place to live?
- Can GJP help me?

# Who has a criminal history?

- In the United States?
- In Georgia?



# Collateral Consequences

## Barriers to...

- Employment
- Housing
- Professional Licensing
- Voting
- Immigration
- Adoption
- Benefits
- Education



# **Criminal Records Basics in Georgia**

# Know Your Record and How to Talk About it





# Severity of Charges

- **Felony**

- Punishment is more than 12 months in prison, life imprisonment, or death

- **Misdemeanor**

- Punishment is 12 months in prison or less

- **Ordinance Violation**

- Law passed by city or county
- Prison up to 6 months, probation, and/or fine
- Do not appear on criminal histories in Georgia

# Common Dispositions

## Non-Convictions

- NPGJ
- No Billed
- Nolle Prossed
- Dismissed
- Dead Docket
- Acquittal
- First Offender

## Convictions

- Nolo Contendere
- Convicted (Pled or convicted at trial)
  - Was there a sentence?  
Probation? Fine?  
Time Served?

# What about juvenile records?

- If **under 17** years at time of crime prosecuted as a delinquent act in juvenile court
- **Exception** – SB440, 13 years old and up
  - Murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, armed robbery with a gun
- Records are confidential in Georgia, but...
- **Do not** need to be reported as convictions

# Official vs. Unofficial Criminal Histories

## Official

- Law enforcement agencies
- Georgia Crime Information Center
- Federal Bureau of Investigation
- Courthouses

## Unofficial

- Private companies
- Websites
- Online databases

# Official - GCIC and FBI

- Finger-printable offenses
- Over 1500 agencies enter data
- Missing a lot of information
- Different levels of access
  - **Law Enforcement**
  - **Non-Law Enforcement (Purpose Code E)**
  - **Public (felony convictions)**
  - **Certain Employers (vulnerable populations)**

# Unofficial – Private Background Reports

- Governed by the Fair Credit Reporting Act (FCRA)
  - 7 year rule for non-convictions
  - You have a right to know when your record is used against you
  - You have a right to know where the info came from
  - You have a right to dispute incorrect info
- High error rate
- May show expunged/sealed records
- Georgia Fair Business Practices Act provides additional protection (New)

# How can I “clean up” my record?

**Restrictions/First Offender/Corrections**

# Restrict (Expunge) & Seal Eligible Charges

- New law July 1, 2013
- OCGA 35-3-37
- You **do not** need an attorney
- Cycle by Cycle
- Can't deny the arrest
- State by State





# Restricted vs. Sealed

## Restricted (Expunged)

- Doesn't show up on GCIC report for most purposes
- File still available at clerk's office

## Sealed

- File at clerk's office is sealed, indexes removed, no longer public record
- Only accessible to law enforcement or by court order

# What Charges are Eligible?

## Non-Convictions

### Generally eligible

- Not Forwarded for Prosecution
- NPGJ
- No Billed (New)
- Dismissed/Nolle Prossed
- Acquitted (New)
- Dead Docketed\*
- Reversed/Vacated Conviction\* (New)

## Convictions

### Generally not eligible

- Pled Guilty
- Pled Nolo Contendere
- Convicted at trial

\*Discretionary

# Are Non-Convictions Eligible?

- No Formal Charges – **YES**
- Formal Charges – **USUALLY** (4 exceptions)
  - Pled guilty to another charge in the case
  - Material evidence suppressed
  - Pattern of criminal activity prosecuted elsewhere
  - Immunity
- First Offender – **NO**

# Are Convictions Eligible?

- **Felony convictions – NO**
  - **Exception:** Conviction is Reversed/Vacated\* (New)
- **Misdemeanor convictions – NO**
  - **Exception:** Youthful offender convictions\* (New)

\*Discretionary

# Two Kinds of Restriction

- **Regular**

- By application or entry of disposition
- Automatic

Note: Exceptions

- **Special**

# Regular Restrictions

1. No formal charges
2. Formal charges but no conviction (exceptions)
3. Case dismissed after completing drug, mental health, or veterans court program (New)
4. Conditional Discharge (New)
5. Acquittals (prosecutor may object) (New)
6. Time-expired (New)

# Application Process

## Pre-July 2013 Arrest

- Application
- Motion to Seal  
(New)
- Jail Records (New)

## Post-July 2013 Arrest

- Upon Entry of  
Eligible Disposition  
(New)
- Motion to Seal  
(New)
- Jail Records (New)

# Record Restriction Application

GEORGIA BUREAU OF INVESTIGATION  
 GEORGIA CRIME INFORMATION CENTER  
**AGENCY INSTRUCTIONS FOR REQUEST TO RESTRICT (EXPUNGE) ARREST RECORD**  
 For Arrests Prior to 07/01/2013

- O.C.G.A. 35-3-37 provides for the restriction of certain criminal history records for non-criminal justice purposes when approved by the prosecuting attorney.
  - For arrests prior to July 1, 2013 the applicant is required to apply for restriction at the arresting agency. Arresting agencies may require a processing fee not to exceed \$50.00 as authorized per 35-3-37.
  - The REQUEST TO RESTRICT ARREST RECORD is a three section (page) form.
  - Section One is completed by the applicant. Each request form may contain only one (1) Date of Arrest (there may be multiple charges for that arrest).
  - Section Two is completed by the arresting agency. The entire form is forwarded to the prosecutor for approval/denial.
  - Section Three is completed by the prosecutor. If approved, the prosecutor may enter the appropriate disposition restriction code using the GIC CDH User interface and notify the applicant that the restriction is complete. The arresting agency will receive a notification from GIC that the record has been restricted. If the prosecutor enters the restriction in the CDH User interface the application and fee should not be forwarded to GIC.
  - If the prosecutor does not have access to the CDH User interface, the application may be returned to the arresting agency.
  - The arresting agency should advise the applicant to forward the approved application to GIC including the GIC processing fee. Incomplete applications or those missing the required fee will not be processed and will be returned to the applicant. Do not forward the restriction application to GIC if the request is denied by the prosecutor.
  - Applicants may send the approved Request to Restrict Arrest Record form and \$25.00 fee (money order or certified check payable to "Georgia Bureau of Investigation") to:
 

Georgia Crime Information Center  
 Record Restriction  
 P.O. Box 370808  
 Decatur, Georgia 30037-0808
- GIC will send an email notification to the applicant email address listed on Page 1 of the application when the restriction has been applied to the Georgia criminal history. GIC does not mail notifications or provide copies of an approved Request to Restrict Arrest Record application.
- To check the status of a request, contact the GIC CDH/Identification Services Helpdesk at (404) 244-2628, Option 1 or email [gcicriminfo@dcia.ga.gov](mailto:gcicriminfo@dcia.ga.gov).
- For arrests occurring July 1, 2013 or later, there is no application process. The prosecutor may approve the restriction at the time of sentencing. If restriction is approved upon sentence completion, it should be noted in the sentencing documentation forwarded to the court.
- When the restriction has been applied to the Georgia criminal history, access to that specific arrest cycle is restricted for non-criminal justice purposes ([gcicinfo@dcia.ga.gov](mailto:gcicinfo@dcia.ga.gov)). However, such information may be available through other sources. GIC has no control over information provided by local agencies or private vendors.

**REQUEST TO RESTRICT ARREST RECORD**  
 Prior to 07/01/2013  
 O.C.G.A. 35-3-37

One (1) Date of Arrest per Request

**SECTION ONE - APPLICANT INFORMATION**  
 (Completed by Applicant)

GIC Use Only  
 Money Order \_\_\_\_\_  
 Certified Check \_\_\_\_\_  
 GIC Reference # \_\_\_\_\_

Name: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Race: \_\_\_\_\_ Sex: \_\_\_\_\_  
 Social Security Number: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_ Email: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Arresting Agency: \_\_\_\_\_  
 Date of Arrest: \_\_\_\_\_  
 Offense(s) Arrested For: \_\_\_\_\_

Sections One and Two of this form must be completed in their entirety before request may be submitted to the Prosecuting Attorney's Office.

I request the arrest record information (Date of Arrest and associated charges) described above pertaining to me be restricted from the record(s) of the arresting agency pursuant to the provisions of O.C.G.A. 35-3-37.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# Record Restriction Application Cont.

## SECTION TWO - ARREST INFORMATION (Completed by Arresting Agency)

Date Request Received: \_\_\_\_\_

Applicant's State Identification Number (SID): GA

Offender Tracking Number (OTN): \_\_\_\_\_

Arresting Agency Name: \_\_\_\_\_

Arresting Agency ORI Number: \_\_\_\_\_

Case / Citation / Docket Number: \_\_\_\_\_

Date of Arrest: \_\_\_\_\_

Arrest appears on Georgia and/or FBI criminal history record?  Yes  No

*If arrest does not appear on either state or federal record, the record restriction cannot be processed.*

Arrest Charge Tracking Number(s) and Charges: \_\_\_\_\_

Disposition of Arrest: \_\_\_\_\_

Disposition appears on Georgia criminal history record?  Yes  No

*If No, attach official documentation containing disposition information. If official documentation is not available, please provide explanation and request for exception in Prosecutor's Comments e.g., No Further Action Anticipated. (Without a disposition on file, official documentation, or request for exception, this request cannot be processed.)*

Prosecuting Attorney/Court Case Referred To: \_\_\_\_\_

### Official Completing Form:

Title: \_\_\_\_\_

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Email: \_\_\_\_\_

## SECTION THREE - PROSECUTING ATTORNEY (Completed by Prosecuting Attorney)

Date Request Received: \_\_\_\_\_

Judicial Circuit / County: \_\_\_\_\_

Prosecuting Agency ORI Number: GA

District Attorney / Solicitor General: \_\_\_\_\_

Prosecutor Assigned to Case: \_\_\_\_\_

Case / Citation / Docket Number: \_\_\_\_\_

### Please select one of the following actions:

- Approved - Record Restriction Meets Statutory Requirements
- No Information Available; Record Restriction Forwarded Without Objection
- Approved - No Further Action Anticipated
- No Information Available at Prosecutor's Office; Returned to Arresting Agency for Further Research. **DO NOT FORWARD RESTRICTION FORM TO GCIC.**
- Denied - Restriction Does Not Meet Statutory Requirements **DO NOT FORWARD RESTRICTION FORM TO GCIC.**

*If additional charges from same Arrest Date, other than those identified on Page 1, are also approved for record restriction, list the Arrest Charge Tracking Number(s) and Charges in Prosecutor Comments.*

Prosecutor Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Prosecutor Completing Form:

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Signature: \_\_\_\_\_ Email: \_\_\_\_\_

# Special Restrictions

1. Felony charges when convicted of unrelated misdemeanor(s) (New)
2. Reversed/Vacated conviction (New)
3. Dead docket (New)
4. Youthful offender misdemeanor convictions (under 21 at conviction, exclusions) (New)

# Youthful Offender Convictions

- Misdemeanor conviction
  - **Exceptions:** (partial list)
    - Sexual charges/molestation
    - Pimping/prostitution
    - Pornography
    - Theft (except shoplifting or refund fraud)
    - Serious traffic offenses(including DUI)
- Under 21 at *time of conviction*
- Successfully completed sentence
- No arrests for 5 years

# Time-Expired Restrictions

- Open arrests automatically restricted after a period of time
  - **Misdemeanors – 2 years**
  - **Felonies – 4 years**
  - **Serious Violent Felonies – 7 years**
- Can be entered later
- Will show up on an FBI background check
- May show up on websites
- **Get a regular restriction if eligible**

# What about my Mugshot?

- Law prohibits companies from charging for photo removal when the charge(s) is eligible for restriction (New, 2013)
- Law prohibits arresting agencies from posting mugshots online, only allows access if the person/company certifies photos will not be published online and a fee charged for removal (New, 2014)

# Correct Your Record



# First Offender Issues

## What is it?

- “Second Chance” law
- Discharged upon successful completion
- Won't show up on GCIC
- Employment discrimination not allowed

## Issues

- Discharge not automatic
- Private companies reporting
- Considered for Professional Licenses
- Employment discrimination ban not enforceable

# Other Corrections

## “It wasn’t me”

- Complete a record inspection by GCIC
- GCIC issues a certificate
- Take certificate to agency maintaining record for correction

## “It’s wrong”

- Obtain official record (police report or disposition)
- Request relevant agency correct



# Get a Pardon

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**State Board of Pardons and Paroles**

Board Members | Pardon/Parole Consideration and Guidelines | Field Operations | Victim Services | Reentry | News, Publications, and Events | Employment

**Parole Board Monthly Meetings**

**Offender/Inmate Parole Status**  
Find the parole status of an inmate.

**Latest**

**Brian Keith Terrell Case Summary from the Attorney General**  
December 3, 2015  
The Brian Keith Terrell Case Summary from the Attorney General is available [here](#).  
[Read More](#)

# Pardons

- **Order of official forgiveness** granted to individuals convicted of a felony offense who have maintained a good reputation in their community following the successful completion of their sentence.
- Granted by the State Board of Pardons and Paroles: [www.pap.state.ga.us](http://www.pap.state.ga.us) – Georgia convictions only
- Only option for felony convictions
- Record remains publicly available
- Employers presumed not liable for negligent hiring if employee has a pardon (New)

# New Pardon Applications

- New process
- Four different kinds
  - **Restoration of Civil & Political Rights**
  - **General Pardon**
  - **Restoration of Right to Receive, Possess or Transport in Commerce of a Firearm**
  - **Registered Sex Offender Pardon (New)**

# Restoration of Civil & Political Rights

- Restores the civil rights lost in Georgia upon conviction
  - Right to run for and hold office
  - Right to serve on a jury
  - Right to serve as a notary
- Requirements
  - Application and GCIC
  - Completed all sentences at least 2 years ago
  - Lived a law abiding life during last 2 years
- **\*NOT NECESSARY FOR VOTING\***

# General Pardon

- Order of official forgiveness, official statement attached to criminal record
  - Also restores civil & political rights
- Requirements
  - Application (and criminal history, missing dispositions, self-addressed stamped envelope)
  - Completed all sentences at least 5 years ago
  - Lived a law abiding life during last 5 years
  - No pending charges, fines, or restitution

# Restoration of Firearms Rights

- Must meet all of the requirements for a general pardon
- Can be obtained for out of state offenses
- Additional requirements
  - **3 letters of reference (non-family, notarized)**
  - **Personal interview**

# Pardon Application

- Demographic info (includes child support info)
- Education
- Military service
- Employment history since conviction (explanation if fired or left following misconduct)
- Substance abuse and mental health history (and treatment info)
- Civil and financial information (debt info, info on civil lawsuits or pending admin proceedings)
- Charitable and community activities
- Your version of offenses
- Justification for pardon consideration

# Pardon Exceptions

- Waiver of the 2 or 5 year requirements if necessary for your profession
- Requirements
  - 3 letters of reference (notarized)
  - Documentation from employer
- Criteria (supporting docs required)
  - **Adoption/Custody/Foster care/Daycare**
  - **Section VIII**
  - **Truck driver into Canada**
  - **Education**
  - **Employment**
  - **Immigration**
  - **Peace Officer Standards and Training Council**



# Registered Sex Offender Pardon

- Separate application
- Completed all sentences for sex offenses requiring registration 10 years ago
- Must have a psychosexual evaluation
- Must submit to a polygraph
- Must provide most recent risk level evaluation
- Lived a law abiding life for the last 10 years
- All fines and restitution paid

How do I get a job with a record?



# What can employers see on my record?

- Employers must tell you they are checking your background, what they found and the effect upon their decision
- Without signed consent – felony convictions (adult offenses)
- With signed consent
  - **GCIC** – adult arrests for fingerprintable offenses that have not been restricted, convictions (unless sealed Youthful Offender), no time limit
  - **Private Companies** – arrests that didn't lead to conviction in last 7 years (unless sealed), convictions (unless sealed Youthful Offender), no time limit

# What can employers ask?

- No restrictions on asking about arrests or convictions in Georgia
- No restriction on asking about First Offender
- **Don't leave question blank or say "will discuss at interview"**
- Employers treat as honesty test
- What about "Ban the Box"?

# What is “Ban the Box” ?

- A Fair Hiring Policy that:

1. **Postpones questions** about criminal history until after interview
2. Gives applicants a **chance to explain** criminal history
3. Allows only **relevant convictions** to be used to deny



# How long can employers hold my record against me?

Federal protection from discrimination

# Title VII of the Civil Rights Act of 1964

- No general prohibition on the use of arrest and conviction records by employers
- Title VII prohibits discrimination against employees and applicants based on race, color, sex, religion or national origin
- Prohibits discriminatory practices or practices that have a disparate impact
- **How does that get us to criminal records?**

# Records and Race

## Who Gets a Record?

- Disparate arrest and conviction rates
- Particularly for non-violent drug offenses

## What is the Impact?

- A record reduces chance of callback by more than 50%
- Negative effect greater for African-Americans and Latinos



# How does Title VII protect me?

- ▣ Must be a business necessity for policy
- ▣ Blanket policies against arrests and/or convictions violate Title VII
- ▣ EEOC Guidelines: Employers must consider
  - **Nature and gravity of offense(s)**
  - **Time that has passed**
  - **Nature of the job held or sought**

[http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)



**How do I find a place to  
live with a record?**

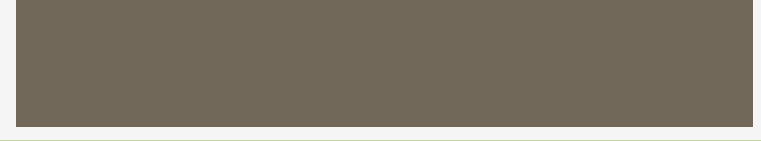
# Public Housing

- Federal law requires background checks on applicants
- Must have opportunity to dispute accuracy of records
- **Mandatory exclusions**
  - Required registration under a state sex offender program
  - Manufacturing meth on public housing grounds
- **Discretionary exclusions** – Local PHAs have broad discretion
  - Drug related or violent criminal activity – a “reasonable” time before application
  - Illegal drug use – may consider evidence of rehabilitation
  - Drug related criminal activity in the last three years – based on previous evictions from public housing, rehabilitation may be considered
  - “One Strike” for Criminal activity that threatens health, safety and enjoyment or drug-related activity – tenants or guests

# Private Housing

- 98% of housing is private
- Many landlords unfairly discriminate against potential tenants because of irrelevant criminal histories
- Landlords must comply with the **Fair Housing Act** (also under Title VII)
- Prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status and disability.
- Several current challenges, recent Supreme Court decision (Texas Department of Community Affairs v. The Inclusive Communities Project, No. 13-1371)

**Is it getting any better in  
Georgia?**



## Gov. Nathan Deal



- “If [people with felony convictions] can find employment...I believe many of them will work hard to earn their place in society.” (April 2013)
- “Just imagine how difficult it is for people who do not have a criminal record to get a job. Try getting a job when you have a felony on your record.” (April 2013)
- “For someone who has a felony record...they probably never even get a job interview” (June 2013)
- “I want folk with prior [criminal] history to be able to get jobs” (June 2013).

# Recent Improvements to Georgia Laws

- **2012** - New record restriction law
- **2013** - Require mugshot companies to remove photo when charge(s) are eligible for restriction within 30 days of request for free
- **2014**
  - Eliminate of automatic license suspension for some drug offenses
  - Prohibit law enforcement from publishing mugshots online
  - Shield employer from liability if they hire people with pardons or certificates issued by Dept. of Corrections
- **2015**
  - Ban the Box by executive order
  - Notice of eligibility for FOA & retroactive remedy (w/DA consent)
  - State remedy for violations of the federal Fair Credit Reporting ACT (FCRA) when reporting information to employers
  - Create Office of Transition, Support & Reentry
  - Create Board of Community Supervision
  - Create Department of Community Supervision

# GJP's Call to "Enhance the Chance"

- Prevent third party unofficial sources from reporting restricted (expunged) or sealed cases
- Encourage employers to fairly consider applicants with criminal histories ("ban the box")
- Give first offenders the second chance they deserve
- Make the pardon a valuable tool
- Create sentence completion certificates to ease concerns of decision-makers



# What Can I Do?

- Assist in improving understanding of criminal records issues
- Share experiences with lawmakers and officials
- Encourage networks to engage political process
- Sign up for legislative updates at [www.GJP.org](http://www.GJP.org)
- Attend GJP's Annual Lobby Day
- **Register to vote**
- **Vote** in local, state and national elections



**Can GJP Help Me?**

# Application Process

Intake 9:30am to 4:30pm, Mon-Thurs

- Can mail application
- Recent GCIC report or \$10 fee (waived with documentation of homelessness)
- Take a limited number of clients
- If selected as a client, next step is appointment with staff or volunteer attorney
- Complete employment assessment/meet with social services
- Do not charge for legal assistance, but some fees

# Contact Information

Criminal Records Program  
Georgia Justice Project  
438 Edgewood Avenue  
Atlanta, GA 30312

Intake:

(404) 827-0027 ext. 238

Website:

<http://www.gjp.org/programs/criminal-records/>



**Brenda J. Smeeton**

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