

# **FAQ'S – Record Restriction (Formerly Expungement)**

**(Courtesy of the Georgia Justice Project)**

## **1. What is a record restriction or expungement?**

Georgia's old law used the term "expungement, which implied that criminal records information was deleted or destroyed. In reality, criminal records were not deleted or destroyed; the term "expungement" simply meant that the information was unavailable to be viewed for all purposes except law enforcement and criminal justice.

Georgia's new law, effective July 1, 2013, does not use the word "expungement." Instead, the process is now referred to as "record restriction." Only the name of the process has changed. Record restriction means that eligible records on your official criminal history report are restricted from public view and are only accessible to law enforcement for criminal justice purposes

## **2. What if I was arrested in another county?**

In order to be eligible to participate in the summit hosted by the City of Forest Park and Clayton County you had to be arrested by the Forest Park Police Department, the Clayton County Police Department, or the Clayton County Sheriff Department.

## **3. Does restriction happen automatically?**

Under the new law, if your arrest is not referred for prosecution, it will be restricted from your GCIC criminal history record automatically after a period of two (2) years for misdemeanors, four (4) years for most felonies, and seven (7) years for serious violent and sex-related felonies. These automatic provisions of the law apply to arrests before and after July 1, 2013. If a record is automatically restricted, however, and later a disposition is entered that does not qualify for restriction, the law requires that the record be "unrestricted" by GCIC.

## **4. If I wasn't convicted, why is the charge still on my criminal history?**

*If you were arrested before July 1, 2013*, the record remains on your official criminal history unless the charge(s) qualifies for record restriction and you complete the restriction application process.

*If you are arrested after July 1, 2013* and the charge(s) qualifies for restriction, the arrest(s) will be restricted by GCIC when the disposition is entered into the GCIC database by the prosecutor or clerk of court. The records of the arresting agency will be restricted within thirty (30) days of the entry of the disposition into GCIC's database.

Regardless of the date of your arrest, if your case was placed on the dead docket you will need to wait twelve (12) months from the date the case was placed on the dead docket to file an action in superior court for restriction.

## **5. Can an arrest on my criminal history be restricted?**

Georgia law only allows restriction (expungement) in the following three (3) situations:

### ***1. NON-CONVICTIONS***

Generally, cases that are closed without conviction qualify for restriction. This includes charges that are closed by the arresting agency, dismissed, *nolle prosequi/nolle prossed*, placed on the “dead docket,” and those not presented to the grand jury or twice no billed by the grand jury. Verdicts of not guilty and vacated/reversed convictions are also eligible for restriction.

#### ***Non-Conviction Exceptions:***

#### **Restriction is not available if after indictment:**

##### **A. A charge was dismissed because:**

- You pled guilty to another charge in the case;
- You were involved in a pattern of criminal activity prosecuted in another jurisdiction
- The prosecution could not use important evidence against you (evidence was suppressed)
- You had some form of immunity.

##### **B. You were acquitted, but within ten (10) days of the verdict, the prosecution convinces the court not to restrict, or it is later determined there was jury tampering or judicial misconduct.**

### ***2. YOUTHFUL OFFENDERS***

Certain misdemeanor convictions that occurred before you turned twenty-one (21) years old qualify for restriction. To qualify, you must have successfully completed your sentence, and in the five (5) years before you request restriction, you cannot have been charged with any offense, other than minor traffic offenses.

#### ***Youthful Offender Exceptions:***

Restriction is not available for the following convictions:

- Serious Traffic Offenses including:
  - Driving Under the Influence (DUI)
  - Reckless Driving

- Aggressive Driving
- Fleeing/Attempting to Elude
- Serious Injury by Vehicle
- Vehicular Homicide
- Theft (does not include Shoplifting)
- Child Molestation
- Enticing a Child for Indecent Purposes
- Pimping
- Keeping a Place of Prostitution
- Pandering by Compulsion
- Masturbation for Hire
- Giving Massages in a Place used for Lewd Sexual Acts
- Sexual Battery
- Sexual Assault by Persons with Supervisory or Disciplinary Authority
- Sexual Exploitation of Children
- Electronically Furnishing Obscene Material to Minors
- Obscene Telephone Contact with a Minor
- Computer Pornography

### ***3. Charged With a Felony, but Convicted of an Unrelated Misdemeanor***

You may be able to have a felony charge restricted if it was closed without conviction, and you were only convicted of an unrelated misdemeanor offense in that case. The court will determine whether restriction is appropriate considering the harm the record is causing you (i.e., difficulty getting a job, housing, license, etc.). You are not eligible for restriction if you were convicted of a lesser included offense of the felony charge.

### **6. Can I have my whole criminal history restricted?**

Georgia law does not allow for the restriction of an entire criminal history. You must apply separately for record restriction of each eligible arrest.

### **7. If I was convicted a long time ago, can I get my record restricted?**

Under current Georgia law, felony convictions are never eligible for restriction. It does not matter how much time has passed since your conviction. If you have been convicted of a felony, you may be eligible for a pardon from the State Board of Pardons and Paroles.

### **8. If I don't remember what happened in my case, how can I find out if it qualifies for restriction?**

The outcome of the case, also referred to as the "final disposition," is filed in the clerk's office of the court in which your case was handled. The final disposition reflects how the case was resolved and should be on your criminal history. If the final disposition is missing from your GCIC criminal history record, go to the clerk's office of the court in

which your case was handled and request a copy. You will have to pay a few dollars for the document. Review the disposition, and determine if the charge is eligible for restriction.

**9. If I never had to go to court or the final disposition cannot be found, can I have the record restricted?**

If you never had to appear in court after you were released from jail, the charge should be restricted automatically after a certain period of time by GCIC and the arresting agency.

A record can also be restricted after the statutorily required periods if the final disposition no longer exists or cannot be located.

**10. Can my record be restricted if I plead guilty under the Conditional Discharge Act?**

Under the Conditional Discharge Act (O.C.G.A § 16-13-2) certain first time drug offenders can plead guilty, but if they successfully complete their sentence, they are discharged without conviction. Beginning on July 1, 2013, those individuals who have been discharged under the Conditional Discharge Act qualify for record restriction. If you were arrested and sentenced under the Conditional Discharge Act before July 1, 2013, you must complete an application for restriction. If you are arrested and sentenced after July 1, 2013, your charges are restricted upon successful completion of your sentence as soon as the appropriate disposition is entered by the clerk of court or prosecutor.

**11. Can I have a record restricted if I completed a drug court or mental health court program?**

If you are arrested after July 1, 2013, and successfully complete a drug court or mental health court treatment program, the charges handled in that court will be restricted five (5) years after you complete the program. To qualify you must have no arrests within that five (5) year period, other than minor traffic offenses. You or your attorney should make sure the clerk of court or prosecutor enters the restriction into the GCIC database after the five (5) years have elapsed.

If you successfully completed a drug court or mental health court program before July 1, 2013, you need to apply for restriction with the arresting agency. To qualify you must have no arrests, other than minor traffic offenses, within the last five (5) years.

**12. Can I get a record restricted if I received “time-served” and was released?**

“Time-served” is a sentence. If you received a sentence of “time-served,” you were convicted of an offense. Convictions are not eligible for restriction unless you meet the criteria for “Youthful Offender” restriction. For more information about “Youthful Offender” Restriction see Question 5: “Can an arrest on my criminal history be restricted?”

**13. Can I get a record restricted if I did an Alford Plea?**

An Alford Plea is a conviction even though you do not acknowledge guilt or fault. Convictions are not eligible for restriction unless you meet the criteria for “Youthful Offender” restriction. For more information about “Youthful Offender” Restriction see Question 5: “Can an arrest on my criminal history be restricted?”

**14. Can I get a record restricted if I plead *nolo contendere* (no contest)?**

A plea of *nolo contendere* (no contest) is a conviction even though you do not acknowledge guilt or fault. Convictions are not eligible for restriction unless you meet the criteria for “Youthful Offender” restriction. For more information about “Youthful Offender” Restriction see Question 5: “Can an arrest on my criminal history be restricted?”

**15. Can I have a record restricted if the case was dismissed after I completed a pretrial intervention (PTI) or pretrial diversion program (PTD)?**

Charges dismissed after you successfully complete a pretrial intervention/diversion (PTI/PTD) program qualify for restriction.

If the court placed your case on the dead docket at the time you were ordered to complete a PTI/PTD program you will need to file an action in superior court for restriction.

**16. Can I get a record restricted if the case was placed on the dead docket?**

Placing a case on the “dead docket” means the prosecution suspends the case indefinitely. The case can be reinstated any time by the court. The case, therefore, is still pending while on the dead docket and some employers may not hire you for this reason. If your case was placed on the dead docket and the state has not moved forward with prosecution after twelve (12) months, you can ask the court to restrict the record.

**17. Can I get a record restriction if some of the charges in the case qualify for restriction?**

All of the charges in the case must qualify for restriction under one of the three situations described in Question 5: “Can an arrest on my record be restricted?”

**18. If I have been denied restriction in the past, can I reapply?**

Yes, your application will be reconsidered under the criteria in the new law. If your application was denied in the past and the charge(s) now qualify under the new law, you should reapply.

### **19. Do I need an attorney to apply for restriction?**

No, you can get a record restricted on your own, without an attorney.

### **20. How do I get my record restricted?**

The process for restriction depends on when you were arrested and how the case was resolved. Some arrests are restricted automatically after a certain period of time if the arrest has not been referred for prosecution.

If you were arrested before July 1, 2013, and your charge(s) was not indicted or accused, the case against you was dismissed (and none of the exceptions apply), or you were acquitted at trial, you will need to apply for restriction through the arresting agency and pay any required fees. The new law requires that the application process be completed within 150 days.

If you are arrested after July 1, 2013, and your charge(s) is not indicted or accused, the case against you is dismissed (and none of the exceptions apply), or you are acquitted at trial, the charge(s) will be restricted when the clerk of court or prosecutor enters the appropriate disposition into the GCIC database. You do not need to apply for restriction or pay a fee.

The new law requires you file an action in superior court to restrict certain types of records. A court order is necessary to restrict the following types of cases: 1) charges placed on the dead docket, 2) felony charge(s) when you are convicted of an unrelated misdemeanor, 3) convictions that are vacated/reversed and 4) youthful offender convictions.

### **21. What if I was arrested before the effective date of the new law but my case was resolved after July 1, 2013?**

The new restriction law states that if you were arrested before July 1, 2013 you are to apply for restriction at the arresting agency. GCIC's database, however, will be programmed on July 1, 2013 to allow restriction upon the entry of an eligible outcome/final disposition. That means it is possible that if you were arrested before July 1, 2013 but your case is resolved after July 1, 2013, the record will be restricted by GCIC upon the entry of an eligible outcome/final disposition. When your case is resolved you should ask the prosecutor how the disposition will be entered on your GCIC criminal history record and whether you will need to apply for restriction. If the prosecutor advises that you apply for the restriction of the record, you should contact the arresting agency and complete the application process for restriction.

If you are unsure of how the disposition was entered into the GCIC database, you should get a copy of your GCIC criminal history record at least thirty (30) days after the case is resolved to see if it has been restricted from your criminal history. If the arrest and/or

disposition still appear after thirty (30) days, you should contact the arresting agency and complete the application process for restriction.

**22. Why does an arrest/case show up on background checks after it has been restricted?**

The old restriction process in Georgia covered only the criminal history information maintained by the Georgia Crime Information Center (GCIC) and the arresting law enforcement agency. Private background companies, therefore, still had access to information about your case in their records because the information remained public at the courthouse and the jail/detention center. Beginning on July 1, 2013, Georgia's new law allows the restriction of these records. Once the record is no longer publicly available, federal law requires that private background companies remove the information about the case from the databases if the information cannot be verified.

**23. If my case was restricted, do I have to report it to an employer?**

If a criminal record is restricted but you tell an employer that you were never arrested, you run the risk of not being hired or being fired for lying on your application. If asked about arrests, even if they have been restricted, it may be in your best interest to inform potential employers, licensing agencies or housing providers about the case. Make sure they are aware you were not convicted and the restriction process is complete. Keep a copy of your official criminal history and a copy of any paperwork you have regarding the restriction. Make a copy available for a potential employer or current employer who is interested in confirming the information.

For more information visit: [Georgia Justice Project](#)