

RESTRICTION OF ACCESS TO CRIMINAL RECORDS

The State of Georgia no longer “expunges” records. The State of Georgia allows you to restrict access to your criminal records under some rare circumstances.

1. Can I have my records restricted/expunged if I have been convicted of the crime?

No. Georgia law does not allow for restriction/expungement of any criminal conviction regardless of how long ago the conviction occurred. If you have entered a plea of guilty or a plea of nolo contendere to a criminal charge, or if a judge or jury has found you guilty of a criminal charge, you have been “convicted” of that charge and the record of that charge may never be restricted/expunged.

2. I entered a plea of guilty under the provisions of the First Offender Act. Can my record be restricted/expunged?

No. Georgia law does not allow a First Offender plea to be restricted/expunged.

3. I received a pardon. Can that record be restricted/expunged?

No. Georgia law does not allow a record to be restricted/expunged after a pardon has been granted.

4. What if I was arrested for one charge, but I was convicted of another charge. Can I have the arrest charge restricted/expunged?

No. The original charge for which you were arrested will remain on your criminal history and may not be restricted/expunged if you have been convicted of any criminal charge arising out of the incident for which you were arrested.

5. Can I have my record restricted/expunged if the Grand Jury returns a “No Bill”?

No. At this time, Georgia law does not permit the restriction/expungement of an arrest that results in a “No Bill” from the Grand Jury.

6. Can I have my record restricted/expunged if I have been acquitted after either a trial by a judge or a trial by jury?

No. Under current Georgia law, an arrest resulting in an acquittal after trial is not eligible for record restriction/expungement.

7. When is record restriction/expungement allowed under Georgia law?

Record restriction/expungement is allowed only in a few specific situations. Please read this section carefully before you apply for a restriction/expungement. Your application will be DENIED unless the circumstances of your arrest fall within one of the specific situations outlined below.

A. Arrests that do NOT result in the individual being formally charged either by accusation or indictment.

If an individual is arrested for a criminal offense and either the arresting agency does not refer the arrest to the District Attorney’s Office OR the District Attorney’s Office dismisses the charge after the arresting agency refers the charge, but before the filing of an accusation or indictment, the arrest will be eligible for record restriction/expungement.

There are two (2) other criteria that must be met before the law allows the arrest to be restricted/expunged:

1. The individual requesting the restriction/expungement does not have any other charges pending; AND
2. The individual has not been convicted of the same crime within the last five (5) years.

If the above criteria are met, Georgia law allows the record of that arrest to be restricted/expunged.

B. Arrests that result in the individual being formally accused or indicted, but the accusation or indictment is subsequently nolle prossed, dead docketed, or dismissed, will be eligible for restriction/expungement, UNLESS the nolle pros, dead docket, or dismissal was the result of:

- a) A plea agreement resulting in a conviction for an offense arising out of the same transaction or occurrence;
- b) The prosecution being prevented from introducing material evidence against the individual;
- c) A material witness either refusing to testify, or being unavailable to testify;
- d) The individual being incarcerated on other criminal charges and the prosecuting attorney electing not to prosecute for reasons of judicial economy;
- e) The individual completed a pretrial diversion program which did not specifically provide for expungement;
- f) The conduct being part of a pattern of criminal activity that was prosecuted in another jurisdiction; OR
- g) The individual having some form of immunity from arrest or prosecution.

If an accusation or indictment was dismissed for ANY of the above reasons, the record may NOT be expunged because the law requires that the application be denied.

8. I read the description of the types of arrests that are eligible for record expungement. I believe that my arrest is eligible for expungement. What do I need to do to have my record expunged?

Record restriction/expungement does NOT occur automatically. An individual who wants to have the record of an arrest restricted/expunged must fill out a "Request to Restrict (Expunge) Arrest Record" form.

9. Where do I obtain this form to "Request to Restrict (Expunge) Arrest Record"?

You can obtain the form either from the police agency that arrested you, or from the Georgia Bureau of Investigation website. The District Attorney's Office does NOT supply these forms. If an individual has multiple arrests that he or she wants restricted/expunged, the individual must submit a SEPARATE "Request to Restrict Arrest Record" form for each arrest to be considered for restriction/expungement.

10. What do I do once I obtain the form?

An individual who wants to have an arrest record restricted/expunged, must complete Section One of the "Request to Restrict Arrest Record" form. All information must be true, accurate, and complete. Failure to provide true, accurate, and complete information may result in a denial of the request. In addition to completing Section One of the form, the Solicitor's Office requires applicants to include a copy of the arrest disposition along with the form. Failure to include a copy of the arrest disposition may result in a denial of the request.

11. Who do I submit the “Request” to?

Once you fill out Section One of the Request and include a copy of the arrest disposition, you will need to submit all three pages of the Request and a copy of the arrest disposition to the law enforcement agency that arrested you.

12. Is there a fee for submitting a Request?

Under O.C.G.A. § 35-3-37(d)(1)(B), a law enforcement agency is entitled to charge up to \$25.00 for each application. You should contact the agency that arrested you to find out what that agency charges.

13. What happens after I have submitted my request to the appropriate law enforcement agency?

The law enforcement agency will complete Section Two of the Request and then forward the Request to the appropriate prosecutor’s office. If you have been arrested for a felony offense and your case was handled by the District Attorney’s Office, then the Request will be forwarded to the District Attorney’s Office. The District Attorney’s Office also handles Requests for Record Restriction/Expungement of citations or arrests which were handled in the Recorders’ Court. If you have been arrested for a misdemeanor offense OR your case was transferred to the Solicitor General’s Office after your arrest, the Request will be forwarded to the Solicitor General’s Office. If the case was handled by the Solicitor General’s Office, the District Attorney’s Office

14. Who makes the decision whether to approve or deny the Request for Record Restriction/Expungement?

The appropriate prosecutor’s office will review your Request and make a decision whether to approve the Request based upon the provisions of O.C.G.A. § 35-3-37, as described above under question 6.

15. How will I know whether my Request has been approved or denied?

The prosecutor’s office that reviews your Request will return the completed Request form to the arresting agency. The arresting agency will then either contact you, the applicant, or mail the completed Request to you.

16. If the prosecutor’s office approves my Request, is the arrest automatically taken off my record?

No. The prosecutor’s office does not remove the arrest from your record. It is the duty of the Georgia Crime Information Center to remove the arrest from your record. Once you have received your approved Request form from the arresting agency, you must then submit the approved Request to the Georgia Crime Information Center. You must also enclose with the Request a \$25.00 fee in the form of a money order or cashiers check made payable to the “Georgia Bureau of Investigation”. Additional information about Georgia Bureau of Investigation (GBI) services you can find here: <http://gbi.georgia.gov/node/250>.

17. What can I do if the Solicitor’s Office denies my Request?

If you believe that the District Attorney’s Office has denied your Request in error, you may submit an appeal of the denial to the Superior Court in the county where you were arrested, or in the county where you reside. The appeal must be filed with the Clerk of the Superior Court of that county. The law does not require a specific form for your appeal, but O.C.G.A. § 5-3-21(a) gives a sample form for an appeal, which is displayed at the end of this answer. There may be a cost associated with the filing of your appeal, but under O.C.G.A. § 35-3-37, the cost does not have to be paid in advance. Contact the Superior Court Clerk in the county where you are filing

to determine the cost of the appeal. You must serve the prosecutor and the arresting agency with a copy of your appeal. You have 30 days from the date of the denial of your record restriction/expungement to file your appeal with the Superior Court Clerk.