

## **SB 288: Expanding Restriction & Sealing of Convictions in Georgia (effective January 1, 2021)**

On August 5, 2020, Gov. Brian Kemp signed Senate Bill 288, which expands access to restriction and sealing of convictions in Georgia – a process most states refer to as expungement. Georgia finally joins 41 other states that allow an individual an opportunity to expunge certain convictions after a period of time, removing barriers to employment, housing, and other opportunities for rehabilitated individuals.

### **Summary**

SB 288 amends O.C.G.A. § 35-3-37 to provide for restriction and sealing of certain misdemeanor and felony convictions. Under the prior version of the law, only charges that did not result in a conviction and certain misdemeanors that an individual was convicted of before they turned 21 years old, were eligible. SB 288 removes 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. Law enforcement retains access to the records. SB 288 also includes liability protections for employers who hire individuals with a criminal history to encourage employers to engage in second chance hiring.

### **Eligibility**

- An individual may petition their original sentencing court to restrict and seal the record of a misdemeanor offense four years after they have completed their sentence as long as they have not been convicted of a new offense in those four years and do not have any pending charges.
- Certain misdemeanor offenses are excluded: sex crimes against children and by persons with supervisory authority; other sexual offenses, including pimping and pandering; crimes against minors; sexual battery; and peeping tom (full list of excluded misdemeanor offenses on back).
- All family violence battery convictions are excluded from consideration for misdemeanor expungement, unless the individual was under 21 years old at the time of the arrest.
- If an individual has been granted a pardon by the State Board of Pardons & Paroles, they may petition the original sentencing court to restrict and seal the record of that conviction. Pardons are generally for felony convictions, but misdemeanors can be pardoned if certain criteria are met.
- An individual can apply for a pardon five years after they have completed their sentence as long as they have lived a law-abiding life in those five years. The State Board has broad discretion to approve or deny the pardon application.
- If the individual received a pardon for a serious violent felony or sexual offense, they are not eligible for restriction and sealing (full list of excluded felony offenses on back).

### **Process**

- For misdemeanors, a petition must be filed in the court that originally handled the case.
- For felonies, the individual must first obtain a pardon and then file a petition in in the original court.
- In deciding whether or not to grant the petition, the court will consider the harm to the individual vs. the public's interest in knowing about the conviction.

**Georgia Justice Project provides free legal representation to individuals facing barriers due to their criminal history who cannot afford a private attorney. To apply for assistance call (404) 827-0027, ext. 238. See GJP.org for more details.**

## **Excluded Misdemeanor Offenses – O.C.G.A. § 35-3-37(j)(4)**

- Family violence simple assault, family violence simple battery, and family violence battery (unless you were under 21 years old at the time of the arrest), OCGA 16-5-20(d); 16-5-23(f); 16-5-23.1(f)
- Family violence stalking, OCGA 16-5-90
- Violating a family violence order, OCGA 16-5-95
- Child molestation, OCGA 16-6-4
- Enticing a child for indecent purposes, OCGA 16-6-5
- Improper sexual contact by employee or agent, OCGA 16-6-5.1
- Public indecency, OCGA 16-6-8
- Keeping a place of prostitution, OCGA 16-6-10
- Pimping, OCGA 16-6-11
- Pandering by compulsion, OCGA 16-6-12
- Sexual battery, OCGA 16-6-22.1
- Obstructing or hindering persons making emergency telephone call, OCGA 16-10-24.3
- Peeping Toms, OCGA 16-11-61
- 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

## **Excluded Pardoned Felony Offenses – O.C.G.A. § 35-3-37(j)(4)**

- 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, OCGA 16-5-41 (victim is not the child of the defendant and the victim is less than 14 years of age)
- 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)