

Retroactive First Offender: *A Path to Clearing A Conviction From Your Record*

(O.C.G.A § 42-8-66)

What is the First Offender Act?

A court has discretion to sentence you under the First Offender Act in Georgia for an eligible misdemeanor or felony offense. Once you successfully complete the terms of your sentence, you will be exonerated (discharged) from guilt and the criminal history will be restricted. A successfully completed first offender case is NOT a conviction and can be sealed from your record. **Note:** *first offender can only be used ONE time.*

What is Retroactive First Offender (RFO)?

If you were not informed about your eligibility to be sentenced as a first offender for a prior conviction, you can ask the court to retroactively sentence you under the First Offender Act. **The prosecutor must consent to the filing of the petition BEFORE it is filed in court.** The court will then consider whether you were eligible for First Offender at the time of sentencing, and whether justice and society are served by granting the petition. If the court grants your request for RFO, you will be automatically exonerated from guilt, the criminal history will be restricted, and it is no longer a conviction.

Is my case eligible for RFO?

YES, if all of the following are true:

- You were never informed about First Offender when you originally resolved your case.
- You have never used First Offender before.
- You were not convicted of a felony before this case.
- The conviction is not an excluded offense (*full list of excluded offenses on back*).

If I am granted RFO, is the case still a conviction?

NO. When you receive RFO, the criminal history is no longer considered a conviction. If you are asked if you have ever been convicted of a crime, you can truthfully answer “no.”

Can I prevent employers/housing providers from seeing my RFO case:

Generally, YES, if you follow both of these steps:

- **Request a new criminal history report (GCIC) to make sure your RFO case has been restricted.** You can request a new GCIC Purpose Code E* from your local law enforcement agency for a fee. If your RFO case is still showing up, contact the clerk of court in the jurisdiction of your case and ask them to "enter the First Offender disposition." **Please note:** Criminal justice agencies and certain employers working with vulnerable populations (elderly, children, individuals with a mental health diagnosis) can sometimes still see successfully completed first offender cases.
- **File a motion to have your RFO case sealed (if not already ordered).** Even though RFO will remove a case from your GCIC Purpose Code E*, many employers/housing providers rely on private background check reports that pull information directly from court records. Usually, RFO already includes a request to seal. If your RFO case did not include sealing, you should file a motion with the court to have the case sealed to prevent employers/housing providers from seeing it. If the RFO case still shows up on a private background check report even after it has been sealed, dispute the results in writing and provide a copy of the RFO and/or sealing order. (For more information on private background checks and how to dispute them, please see www.GJP.org.)

**Purpose Code E: the version of your GCIC that employers and landlords may see, which does not include information on restricted and sealed cases.*

First Offender Excluded Offenses

(See O.C.G.A § 42-8-60 for code sections)

You cannot use Retroactive First Offender on the following excluded offenses:

- A serious violent felony:
 - Murder or felony murder
 - Armed robbery
 - Kidnapping
 - Rape
 - Aggravated child molestation
 - Aggravated sodomy
 - Aggravated sexual battery
- Certain sexual offenses
 - Aggravated assault with the intent to rape
 - False imprisonment (*limited exceptions*)
 - Sodomy (*limited exceptions*)
 - Statutory rape (*if the person convicted of the crime is 21 years of age or older*)
 - Child molestation (*limited exceptions*)
 - Enticing a child for indecent purposes (*limited exceptions*)
 - Improper sexual contact by employee or agent
 - Incest
 - A second or subsequent conviction for sexual battery
 - Sexual exploitation of children (*limited exceptions*)
- Trafficking of persons for labor or sexual servitude
- Neglecting disabled adults, elder persons, or residents
- Exploitation and intimidation of disabled adults, elder persons, and residents
- Sexual exploitation of a minor
- Electronically furnishing obscene material to a minor
- Computer pornography and child exploitation
- Any of the following offenses when such offense is committed against a law enforcement officer while such officer is engaged in the performance of his or her official duties:
 - Aggravated assault
 - Aggravated battery
 - Obstruction of a law enforcement officer if such violation results in serious physical harm or injury to such officer.
 - As used in this section, the term "law enforcement officer" means:
 - A peace officer as defined in Code Section 35-8-2;
 - A law enforcement officer of the United States government;
 - An individual employed as a campus police officer or school security officer;
 - A game warden; or
 - A jail officer employed at a county or municipal jail
- Driving under the influence

Last Updated 8/1/2023

Georgia Justice Project may be able to assist you with criminal record restriction and sealing. For more information about our Criminal Records Program, call our intake line at **404-827-0027, ext. 238** or visit **www.GJP.org**.