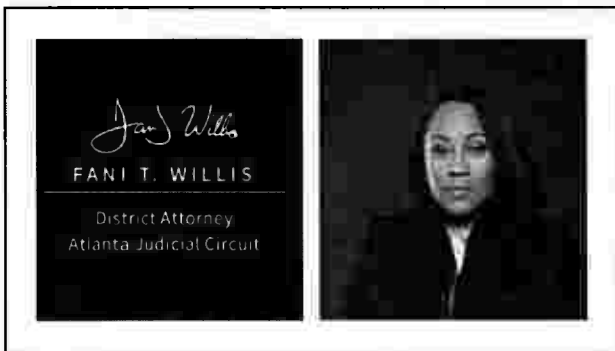


Restricting and Sealing of Criminal Records OCGA 35-3-37

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**RESTRICTING AND SEALING
OF CRIMINAL RECORDS
OCGA 35-3-37**

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DEFINITIONS

RESTRICTION V. EXPUNGEMENT

EXPUNGEMENT – means destruction of arrest records according to former

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DEFINITIONS

RESTRICTION V. EXPUNGEMENT

RESTRICTION - means that the criminal history record information of an individual relating to a particular charge shall be available only to judicial officials and criminal justice agencies and shall not be disclosed or otherwise made available to any private persons or businesses pursuant to OCGA §35-3-34 or governmental agency pursuant to OCGA §35-3-35

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RESTRICTION & SEALING
OCGA § 35-3-37

RESTRICTION (step one)

- GCIC RECORDS
- (a)(4) defined – private except judicial officials & criminal justice agencies
- (h), (j) eligibility – most non-convictions, certain convictions (process differs)

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RESTRICTION & SEALING
OCGA § 35-3-37

SEALING (step two)

- COURT RECORDS (Odyssey)
- (m) – eligibility & process
- Booking photo, fingerprint card, etc
- If sealed not public record (private background companies)

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS RESTRICTED UNDER OCGA §35-3-37
(h)(1)(A) - (C)

Prior to indictment

1. Cases not sent to prosecutor by LEO
2. Cases we dismiss prior to indictment
3. Grand jury returned TWO no bills

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS RESTRICTED UNDER OCGA §35-3-37 (h)(2)

After indictment

1. All charges are dismissed or nolle pros
2. Successful completion of a PTI program, Accountability court
3. Successful completion of 1st offender with an order of discharged signed by Superior Court Judge
4. Successful completion of OCGA 16-13-2
5. Individual was acquitted of all charges

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS NOT RESTRICTED UNDER OCGA §35-3-37 (i)(1)(A)

After indictment

All charges dismissed or nolle pros because of a plea agreement resulting in a conviction of the individual for an offense arising out of the same underlying transaction or occurrence as the conviction

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS NOT RESTRICTED UNDER OCGA §35-3-37 (i)(1)(B)

After indictment

All charges dismissed or nolle pros because prosecutor was barred from introducing material evidence against the individual on legal grounds, without limitation, the granting of a motion to suppress or motion in limine

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS NOT RESTRICTED UNDER OCGA
§35-3-37 (1)(1)(C)

After indictment

All charges dismissed or nolle pros because conduct which resulted in the arrest of the individual was part of a pattern of criminal activity which was prosecuted in another court of Georgia or a foreign nation

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS NOT RESTRICTED UNDER OCGA
§35-3-37 (1)(1)(D)

After indictment

The individual had diplomatic, consular, or similar immunity or inviolability from arrest or prosecution

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS NOT RESTRICTED UNDER
OCGA §35-3-37 (1)(2)

After indictment

The charges were tried and some but not all of the charges resulted in an acquittal

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS NOT RESTRICTED UNDER
OCGA §35-3-37 (i)(3)

After indictment

The individual was acquitted of all charges but it is later determined that the acquittal was the result of jury tampering or judicial misconduct

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**RETROACTIVE FIRST
OFFENDER
OCGA 42-8-66**

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RETROACTIVE FIRST OFFENDER
OCGA 42-8-66

(a)(1) An individual who qualified for sentencing pursuant to this article but who was not informed of his or her eligibility for first offender treatment may, **with the consent of the prosecuting attorney**, petition the court in which he or she was convicted for exoneration of guilt and discharge pursuant to this article.

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RETROACTIVE FIRST OFFENDER
OCGA 42-8-66

(a)(2) An individual who was sentenced between March 18, 1968, and October 31, 1982, to a period of incarceration not exceeding one year but who would otherwise have qualified for sentencing pursuant to this article may, **with the consent of the prosecuting attorney**, petition the court in which he or she was convicted for exoneration of guilt and discharge pursuant to this article.

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CONVICTIONS: RETROACTIVE FIRST OFFENDER

- Petition sentencing court to retroactively sentence as a First Offender if eligible, not informed, and did not receive
- Same eligibility as regular First Offender
- **NOTE: PROSECUTOR MUST CONSENT TO FILING**
- Submit combined motion to resentencing & seal under OCGA §42-8-62.1

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RFO EXCLUDED OFFENSES
OCGA § 42-8-60(l)

- Serious violent felonies – OCGA § 17-10-6.1
- Serious sexual offense – OCGA § 17-10-6.2
- 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

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RFO EXCLUDED OFFENSES

OCGA § 42-8-60(l)

- Sexual exploitation of a minor
- Electronically furnishing obscene material to a minor
- Aggravated assault or aggravated battery committed against a law enforcement officer
- Obstruction of a law enforcement officer if injury
- Driving under the influence*

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**RECORD RESTRICTION SHALL NOT BE
APPROPRIATE IF THE INDIVIDUAL WAS
CONVICTED OF:**



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**PARDON
OCGA 35-3-37 (j)(7)**

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS RESTRICTED UNDER
OCGA §35-3-37 (j)(7) Felony Convictions

- Eligibility – pardoned for felony offense, not convicted since pardoned, eligible offense, no pending charges
- Process – get a pardon, combined petition to restrict & seal, harm to individual outweighs public's interest
- No limit on number

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SB288
OCGA 35-3-37 (j)(4)

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RECORDS RESTRICTION
OCGA §35-3-37

RECORDS RESTRICTED UNDER OCGA
§35-3-37 (j)(4) Misdemeanor Convictions

- Eligibility – no convictions in 4 years prior, eligible offense, no pending charges
- Process – combined petition to restrict & seal, harm to individual outweighs public's interest
- Lifetime limit of 2 incidents

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**Excluded Offenses – Misdemeanor
Restriction & Sealing (j)(4)(B)**

- ♦ Family violence simple assault, family violence simple battery, and family violence battery (unless Youthful Offender – was 21 years or younger at the time of arrest)
- ♦ Excluded for all ages
 - Family violence stalking
 - Violating a family violence order
 - Child molestation
 - Enticing a child for indecent purposes
 - Improper sexual contact by employee or agent

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**Excluded Offenses – Misdemeanor
Restriction & Sealing (j)(4)(B)**

- Public Indecency
- Keeping a place of prostitution
- Pimping
- Pandering by compulsion
- Sexual battery
- Obstructing 911 call

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**Excluded Offenses – Misdemeanor
Restriction & Sealing (j)(4)(B)**

- Peeping Toms
- Certain offenses related to minors
- Certain theft offenses (theft by shoplifting and refund fraud ARE eligible)
- DUI and certain traffic offenses

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**Survivor's First Act –
Human Trafficking**

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**Convictions: Survivor's First Act –
Human Trafficking**
FELONY CONVICTIONS

- OCGA § 17-10-21 – Vacatur if direct result of trafficking
- OCGA § 35-3-37(j)(6) – Restriction & Sealing if convicted while being trafficked

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**Convictions: Survivor's First Act –
Human Trafficking**
MISDEMEANOR CONVICTIONS

- Vacatur if a direct result of trafficking
- Restriction & sealing if conviction occurred while being trafficked

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NOW WHAT???

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IF INFORMATION IS RESTRICTED AND SEALED PURSUANT OCGA 35-3-37, WHO CAN SEE IT???

(v)(1) Information restricted and sealed pursuant to this Code section shall always be available for inspection, copying, and use:

(A) For the purpose of imposing a sentence under Article 3 of Chapter 8 of Title 42;

(B) By the Judicial Qualifications Commission;

(C) By an attorney representing an accused individual who submits a sworn affidavit to the clerk of court attesting that such information is relevant to a criminal proceeding;

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IF INFORMATION IS RESTRICTED AND SEALED PURSUANT OCGA 35-3-37, WHO CAN SEE IT???

(D) By a prosecuting attorney or a public defender;

(E) Pursuant to a court order; and

(F) By an individual who is the subject of restricted criminal history record information or sealed court files.

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Extra Notes... (OCGA 35-3-37)

(l) If criminal history record information is restricted pursuant to this Code section and if the entity declines to restrict access to such information, the individual may file a civil action in the superior court where the entity is located.

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To contact me:

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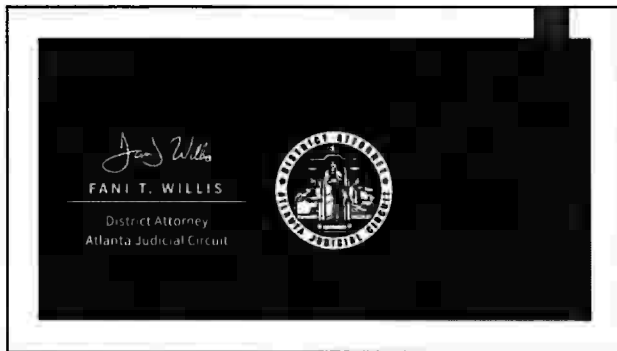
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