

# CRIMINAL RECORD RESTRICTION refers to

the restriction of information regarding a particular offense(s) from being seen on an individual's criminal history by the public. Such information remains available to judicial officials and criminal justice agencies. Restrictions apply to one's criminal background and police records, only. A written request must be sent to the applicable detention center(s) and court clerk to restrict those records. OCGA §35-3-37 governs when a record restriction is applicable, and is *summarized* below.

| <i>Automatic Restriction occurs if...</i>  |   |
|--|---|
| <i>Prior to Indictment / Accusation</i>  | <i>After Indictment / Accusation</i>  |
| <ul style="list-style-type: none"> <li>• <b>Case closed by law enforcement</b></li> </ul>  | <ul style="list-style-type: none"> <li>• <b>All charges dismissed</b></li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Prosecutor dismisses the case (all charges)</b></li> </ul>   | <ul style="list-style-type: none"> <li>• <b>Completed Drug-1<sup>st</sup> offender under OCGA§16-13-2</b><br/>*NOT for "First Offender" typically used for 1<sup>st</sup> felony</li> </ul> |
| <ul style="list-style-type: none"> <li>• <b>Grand jury no-bills the case (twice)</b></li> </ul>  | <ul style="list-style-type: none"> <li>• <b>Completed drug, veteran or mental health court and no subsequent non-traffic arrests for 5 yrs after conviction</b></li> </ul>                  |
| <ul style="list-style-type: none"> <li>• <b>Acquitted of all charges after trial</b></li> </ul>  |   |
| <p><i>Note: Those convicted of a felony prior to July 2013 must obtain and submit an application for restriction from the law enforcement agency. The approval process takes approximately 6 months.</i></p> |   |

| <i>Non-Automatic Restriction (Able to Petition Court to Obtain) if...</i>   |
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| <ul style="list-style-type: none"> <li>• <b>Felony charge results in Misdemeanor Conviction (no restriction if misdemeanor is lesser included offense)</b></li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Conviction overturned and after 2 years State does not re-prosecute</b></li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Charges dead-docketed over 12 months</b></li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Misdemeanor convictions by persons under 21 (no subsequent arrests for 5 years)</b><br/><i>Note: Excludes many sexual offenses and crimes involving children and theft</i></li> </ul> |
| <ul style="list-style-type: none"> <li>• <b>Something inaccurately reflected on criminal background</b></li> </ul>  |

| <i>NO Restriction Allowed if...</i>  |
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| <ul style="list-style-type: none"> <li>• <b>Charges dismissed because of plea agreement</b></li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Charges dismissed because evidence inadmissible at trial (i.e. Def. wins motion to suppress)</b></li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Charges based on pattern of activity prosecuted in different jurisdiction(s)</b></li> </ul>  |
| <ul style="list-style-type: none"> <li>• <b>Defendant had immunity from prosecution</b></li> </ul>   |
| <ul style="list-style-type: none"> <li>• <b>Defendant convicted and sentenced under First Offender Sentencing Act* under OCGA§42-8-62.</b><br/>There is a misconception that pleading guilty or being sentenced as a "First Offender" will allow for the correlating charges to be expunged/restricted. This is not true!<br/>"First Offender" is merely a status applied to the disposition which allows for the disposition not to be defined as a conviction. Indeed, once a "First Offender" sentence is fully completed, the individual will not be considered a "convicted felon" for purposes of employment and subsequent sentencing. However, the arrest and disposition will remain accessible to the public.</li> </ul> |

*Presented by:*  
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