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Overview -GEORGIA; _____ Revised Statutes Annotated

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ANNOTATION: This is a 1997 overview of State law pertinent to the
privacy and security of criminal justice information.

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Georgia Code Section
Retention of Information
on
Arrested Persons

17-4-27. Duty to maintain information about persons arrested by law enforcement officers under their supervision; inspection of records.

It shall be the duty of all sheriffs, chiefs of police, and the heads of any other law enforcement agencies of this state to obtain, or cause to be obtained, the name, address, and age of each person arrested by law enforcement officers under the supervision of such sheriffs, chiefs of police, or heads of any other law enforcement agencies of this state, when any such person is charged with an offense against the laws of this state, any other state, or the United States. The information shall be placed on appropriate records which each law enforcement agency shall maintain. The records shall be open for public inspection unless otherwise provided by law.

(Ga. L. 1967, p. 839, 1.)

JUDICIAL DECISIONS

Completion of standard form after invoking right to counsel. - Where a suspect in custody invoked his right to counsel, and the officer proceeded to complete a standard form used by the department as an arrest record, which inquired as to names and addresses of family members, this inquiry was normally attendant to arrest and custody, and had absolutely nothing to do with interrogation regarding the criminal offense under investigation. Thus, the defendant's subsequent, self-initiated statement was not unlawfully obtained. *Hibbert v. State*, 195 Ga. App. 235, 393 S.E.2d 96 (1990).

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ARTICLE 2
GEORGIA CRIME INFORMATION CENTER

35-3-30. Definitions.

As used in this article, the term:

(1) "Career criminal" means any person who has been previously convicted three times under the laws of this state of felonies or under the laws of any other state or the United States of crimes which would be felonies if committed within this state.

(1.1) "Center" means the Georgia Crime Information Center.

(2) "Council" means the Georgia Crime Information Center Council.

(3) "Criminal justice agencies" means those public agencies at all levels of government which perform as their principal function activities relating to the apprehension, prosecution, adjudication, or rehabilitation of criminal offenders.

(4) "Criminal justice information" means the following classes of information:

(A) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, information, or other formal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term does not include identification information, such as fingerprint records, to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(B) "Restricted data" means data which contains information relating to data-gathering techniques, distribution methods, manuals, and forms.

(C) "Secret data" means data which includes information dealing with those operational and programming elements which prevent unlawful intrusion into the Georgia Crime Information Center/Criminal Justice Information System computer system, the communications network, and satellite computer systems handling criminal justice information.

(D) "Sensitive data" means data which contains statistical information in the form of reports, lists, and documentation, which information may identify a group characteristic. It may apply to groups of persons, articles, vehicles, etc., such as white males or stolen guns.

(5) "Criminal justice information system" means all those agencies, procedures, mechanisms, media, and forms, as well as the information itself, which are or which become involved in the origination, transmittal, storage, retrieval, and dissemination of information related to reported offenses, offenders, and the subsequent actions related to such events or persons.

(6) "Law enforcement agency" means a governmental unit of one or more persons employed full time or part time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit

are authorized to make arrests for crimes while acting within the scope of their authority.

(7) "Offense" means an act which is a felony, a misdemeanor, or a violation of a county or municipal ordinance.

35-3-31. Establishment of center; staff and equipment generally; merit system status of personnel.

(a) There is established for the state, within the Georgia Bureau of Investigation, a system for the intrastate communication of vital information relating to crimes, criminals, and criminal activity, to be known as the Georgia Crime Information Center.

(b) Central responsibility for the development, maintenance, and operation of the center shall be vested with the director of the center with the assistance and guidance of the Georgia Crime Information Council, the establishment of which is provided for in Code Section 35-3-32.

(c) The director of the center shall maintain the necessary staff along with support services to be procured within the Georgia state government, such as computer services from the Department of Administrative Services, physical space and logistic support from the Department of Public Safety, and other services or sources as necessary, to enable the effective and efficient performance of the duties and responsibilities ascribed to the center in this article.

(d) All personnel of the center shall be administered according to appropriate special and standard schedules by the State Merit System of Personnel Administration with due recognition to be given by the latter to the special qualifications and availability of the types of individuals required in such an agency.

35-3-32. Establishment of council; composition; duties and responsibilities of council generally.

(a) There is created the Georgia Crime Information Center Council.

(b) The duties and responsibilities of the council are to:

(1) Advise and assist in the establishment of policies under which the center is to be operated;

(2) Ensure that the information obtained pursuant to this article shall be restricted to the items specified in this article and ensure that the center is administered so as not to accumulate any information or distribute any information that is not specifically approved in this article;

(3) Ensure that adequate security safeguards are incorporated so that the data available through this system is used only by properly authorized persons and agencies;

(4) Establish appropriate disciplinary measures to be taken by the center in the instance of violations of data reporting or dissemination of laws, rules, and regulations by criminal justice agencies or members thereof covered by this article; and

(5) Establish other policies which provide for the efficient and effective use and operation of the center under the limitations imposed by the terms of this article.

(c) The members of the board shall serve ex officio as members of the council and shall constitute the council.

35-3-33. Powers and duties of center generally.

The center shall:

(1) Obtain and file fingerprints, descriptions, photographs, and any other pertinent identifying data on persons who:

(A) Have been or are hereafter arrested or taken into custody in this state:

(i) For an offense which is a felony;

(ii) For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks;

(iii) For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under division (ii) of this subparagraph;

(iv) As a fugitive from justice; or

(v) For any other offense designated by the Attorney General;

(B) Are or become career criminals, well-known offenders, or habitual offenders;

(C) Are currently or become confined to any prison, penitentiary, or other penal institution; or

(D) Are unidentified human corpses found in this state;

(2) Compare all fingerprint and other identifying data received with those already on file and, whether or not a criminal record is found for a person, at once inform the requesting agency or arresting officer of such facts as may be disseminated consistent with applicable security and privacy laws and regulations. A log shall be maintained of all disseminations made of each individual criminal history including at least the date and recipient of such information;

(3) Provide a uniform crime reporting system for the periodic collection, analysis, and reporting of crimes reported to and otherwise processed by any and all law enforcement agencies within the state, as defined and provided for in this article;

(4) Develop procedures for periodically auditing crime reporting practices of local law enforcement agencies to ensure compliance with the standards of national and state uniform crime reporting systems;

(5) Develop, operate, and maintain an information system which will support the collection, storage, retrieval, and dissemination of all crime and offender data described in this article consistent with those principles of scope, security, and responsiveness prescribed by this article;

(6) Cooperate with all criminal justice agencies within the state in providing those forms, procedures, standards, and

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related training assistance necessary for the uniform operation of the center;

(7) Offer assistance and, when practicable, instruction to all local law enforcement agencies in establishing efficient local records systems;

(8) Compile statistics on the nature and extent of crime in the state and compile other data related to planning for and operating criminal justice agencies, provided that such statistics do not identify persons, and make available all such statistical information obtained to the Governor, the General Assembly, and any other governmental agencies whose primary responsibilities include the planning, development, or execution of crime reduction programs. Access to such information by the latter governmental agencies will be on an individual, written request basis wherein must be demonstrated a need to know, the intent of any analyses, dissemination of such analyses, and any security provisions deemed necessary by the center;

(9) Periodically publish statistics, no less frequently than annually, that do not identify persons, agencies, corporations, or other legal entities and report such information to the Governor, the General Assembly, state and local criminal justice agencies, and the general public. Such information shall accurately reflect the level and nature of crime in the state and the operations in general of the different types of agencies within the criminal justice system;

(10) Make available, upon request, to all local and state criminal justice agencies, all federal criminal justice agencies, and criminal justice agencies in other states any information in the files of the center which will aid these agencies in the performance of their official duties. For this purpose the center shall operate on a 24 hour basis, seven days a week. Such information when authorized by the council may also be made available to any other agency of the state or political subdivision of the state and to any other federal agency upon assurance by the agency concerned that the information is to be used for official purposes only in the prevention or detection of crime or the apprehension of criminal offenders;

(11) Cooperate with other agencies of the state, the crime information agencies of other states, and the Uniform Crime Reports and National Crime Information Center systems of the Federal Bureau of Investigation in developing and conducting an interstate, national, and international system of criminal identification, records, and statistics;

(12) Provide the administrative mechanisms and procedures necessary to respond to those individuals who file requests to view their own records as provided for in this article and to cooperate in the correction of the central center records and those of contributing agencies when their accuracy has been successfully challenged either through the related contributing agencies or by court order issued on behalf of the individual;

(13) Institute the necessary measures in the design, implementation, and continued operation of the criminal justice

information system to ensure the privacy and security of the system. This will include establishing complete control over use and access of the system and restricting its integral resources and facilities to those either possessed or procured and controlled by criminal justice agencies as defined in this article. Such security measures must meet standards to be set by the council as well as those set by the nationally operated systems for interstate sharing of information;

(14) Provide availability, by means of data processing, to files listing motor vehicle drivers' license numbers, motor vehicle registration numbers, wanted and stolen motor vehicles, outstanding warrants, identifiable stolen property, and such other files as may be of general assistance to law enforcement agencies; and

(15) Criminal justice agencies shall furnish upon written request and without charge to any local fire department in this state a copy, processed under purpose code "J", of the criminal history record information of an applicant for employment.

35-3-34. Dissemination of records to private persons and businesses; disclosure of all information pertinent to an adverse employment decision; responsibility and liability of center; authority to adopt necessary rules, regulations, and forms.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting criminal history records shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed and notarized consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; and

(B) The center may not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by law; or

(2) Make criminal history records available to parties to any criminal action upon receipt of a written request of such party or his attorney. Such request shall contain the style of the action, the name of the person whose records are requested, and a statement that such person is a party or a prospective witness in said case; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with the dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate criminal history records, without fingerprint comparison or prior contact with the center, to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse

such agencies for their direct and indirect costs related to the providing of such disseminations.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section.

35-3-35. Dissemination of records to public agencies and political subdivisions; disclosure of all information pertinent to an adverse employment decision; responsibility and liability of center; authority to adopt necessary rules, regulations, and forms.

(a) The center shall be authorized to:

(1) Make criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, provide the fingerprints of the person whose records are requested or provide a signed and notarized consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth; and

(B) The center may not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by law;

(1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants; and

(2) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue which approximates, as nearly as practicable, the direct and indirect costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose record was obtained pursuant to this Code section, the person will be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the center, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, nor any other claim in connection with any dissemination pursuant to this Code section

and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate criminal history records to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations.

(e) The council is empowered to adopt rules, regulations, and forms necessary to implement this Code section.

35-3-36. Duties of state criminal justice agencies as to submission of fingerprints, photographs, and other identifying data to center.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (A) of paragraph (1) of Code Section 35-3-33 and for persons in the categories enumerated in subparagraphs (B), (C), and (D) of paragraph (1) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation, full-face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of Code Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order and any such dispositions must also be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If

the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all magistrates, and all persons in charge of state and county probation and parole offices shall supply the center with the information described in Code Section 35-3-33 on the basis of the forms and instructions to be supplied by the center.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the "uniform crime report" and shall contain crimes reported and otherwise processed during the period preceding the period of report, including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime. The incident/complaint report forms used by criminal justice agencies shall, when applicable, include the identification of any victim who is a student and the name of the school attended by any such student.

(j) Any governmental agency which is not included within the

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description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

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35-3-37. Inspection of criminal records; purging, modifying, or supplementing of records.

(a) Nothing in this article shall be construed so as to authorize any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly or the courts other than to the extent provided in this article.

(b) The center shall make a person's criminal records available for inspection by him or his attorney upon written application to the center. Should the person or his attorney contest the accuracy of any portion of the records, it shall be mandatory upon the center to make available to the person or his attorney a copy of the contested record upon written application identifying the portion of the record contested and showing the reason for the contest of accuracy. Forms, procedures, identification, and other related aspects pertinent to access to records may be prescribed by the center.

(c) If an individual believes his criminal records to be inaccurate or incomplete, he may request the original agency having custody or control of the detail records to purge, modify, or supplement them and to notify the center of such changes. Should the agency decline to act or should the individual believe the agency's decision to be unsatisfactory, the individual or his attorney may, within 30 days of such decision, enter an appeal to the superior court of the county of his residence or to the court in the county where the agency exists, with notice to the agency, to acquire an order by the court that the subject information be expunged, modified, or supplemented by the agency of record. The court shall conduct a de novo hearing and may order such relief as it finds to be required by law. Such appeals shall be entered in the same manner as appeals are entered from the probate court, except that the appellant shall not be required to post bond or pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at the first term or in chambers. A notice sent by registered or certified mail shall be sufficient service on the agency having custody or control of disputed record that such appeal has been entered. Should the record in question be found to be inaccurate, incomplete, or misleading, the court shall order it to be appropriately expunged, modified, or supplemented by an explanatory notation. Each agency or individual in the state with custody, possession, or control of any such record shall promptly cause each and every copy thereof in his custody, possession, or control to be altered in accordance with the court's order. Notification of each such deletion, amendment, and supplementary notation shall be promptly disseminated to any individuals or agencies, including the center, to which the records in question have been communicated, as well as to the individual whose records have been ordered so altered.

(d) Agencies, including the center, at which criminal offender records are sought to be inspected may prescribe

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reasonable hours and places of inspection and may impose such additional procedures, fees not to exceed \$3.00, or restrictions including fingerprinting as are reasonably necessary to assure the records' security, to verify the identities of those who seek to inspect them, and to maintain an orderly and efficient mechanism for inspection of records.

(e) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall not apply to proceedings under this Code section.

35-3-38. Unauthorized requests or disclosures of criminal history record information; disclosure of techniques used to ensure security or privacy of criminal history records.

(a) Any person who knowingly requests, obtains, or attempts to obtain criminal history record information under false pretenses, or who knowingly communicates or attempts to communicate criminal history record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the center, the council, or any participating agency who knowingly falsifies criminal history record information or any records relating thereto shall for each such offense, upon conviction thereof, be fined not more than \$5,000.00, or imprisoned for not more than two years, or both.

(b) Any person who communicates or attempts to communicate criminal history record information in a negligent manner not in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than \$100.00, or imprisoned not more than ten days, or both.

(c) Any person who knowingly discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems except in accordance with this article shall for each such offense, upon conviction thereof, be fined not more than \$5,000.00, or imprisoned not more than two years, or both.

(d) Any person who discloses or attempts to disclose the techniques or methods employed to ensure the security and privacy of information or data contained in criminal justice information systems in a manner not permitted by this article shall for each such offense, upon conviction thereof, be fined not more than \$100.00, or imprisoned not more than ten days, or both.

35-3-39. Effect of neglect or refusal of official to act as required by article.

Any officer or official mentioned in this article who shall neglect or refuse to make any report or to do any act required by any provision of this article shall be deemed guilty of nonfeasance in office and subject to removal therefrom.

35-3-40. Construction of article.

(a) In the event of conflict, this article shall to the extent of the conflict supersede all existing statutes which regulate, control, or otherwise relate, directly or by implication, to the collection, storage, and dissemination or usage of fingerprint identification, offender criminal history, uniform crime reporting, and criminal justice activity data records or any existing statutes which relate directly or by implication to any other provisions of this article.

(b) Notwithstanding subsection (a) of this Code section, this article shall not be understood to alter, amend, or supersede the statutes and rules of law governing the collection, storage, dissemination, or usage of records concerning individual juvenile offenders in which they are individually identified by name or by other means.

Article 4

CHAPTER 40-27. INSPECTION OF PUBLIC RECORDS

40-2701 Right of public to inspect records

40-2701 [50-18-70] Right of public to inspect records

(a) All state, county, and municipal records, except those which by order of a court of this state or by law are prohibited from being open to inspection by the general public, shall be open for a personal inspection of any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

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Personnel files

Access to personnel files under Georgia's "Open Records Law." Op. Atty. Gen. 81-71.

School personnel files

Local school boards may lawfully maintain policy of confidentiality with respect to personnel files. Op. Atty. Gen. 77-56.

Student information

University of Georgia has no obligation by law to disclose publicly information concerning students' degrees without having first designated such information to be directory information or having obtained permission from student. Op. Atty. Gen. 81-48.

40-2704 [50-18-73] Actions to enforce provisions

The superior courts of this state shall have jurisdiction to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. The court may award to the prevailing party reasonable attorney's fees and other litigation expenses reasonably incurred in bringing or defending the action to enforce compliance with this article, in addition to such other relief as may be granted by the court.

(Acts 1982, p. 1789.)

40-2705 [50-18-74] Penalties

Any person who willfully refuses to provide access to public records as provided in Code Section 50-18-70 of this article or who refuses to allow the examination and copying of records as provided in Code Section 50-18-71 of this article shall be guilty of a misdemeanor.

(Acts 1982, p. 1789.)

Article 2

Arrest by Law Enforcement Officers Generally

27-220 [17-4-27] Names, addresses and ages of persons arrested to be obtained and recorded by sheriffs, chiefs of police and heads of other State law enforcement agencies

It shall be the duty of all sheriffs, chiefs of police, and the heads of any other law enforcement agencies of this state to obtain, or cause to be obtained, the name, address, and age of each person arrested by law enforcement officers under the supervision of such sheriffs, chiefs or police, or heads of any other law enforcement agencies of this state, when any such person is charged with an offense against the laws of this state, any other state, or the United States. The information shall be placed on appropriate records which each law enforcement agency shall maintain. The records shall be open for public inspection unless otherwise provided by law.

(Acts 1967, pp. 839, 840.)

Article 3

Probation of First Offenders

27-2727 [42-8-60] Probation for first offenders; when applicable; violation of probation

(a) Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication of guilt, in the case of a defendant who has not been previously convicted of a felony, the court may, without entering a judgment of guilt and with the consent of the defendant:

- (1) Defer further proceeding and place the defendant on probation as provided by law; or
- (2) Sentence the defendant to a term of confinement as provided by law.

(b) Upon violation by the defendant of the terms of probation or upon a conviction for another crime, the court may enter an adjudication of guilt and proceed as otherwise provided by law. No person may avail himself of this article on more than one occasion.

(Acts 1968, pp. 324, 325; 1982, p. 1807.)

Editorial Note to Code of 1981

Acts 1982, p. 1807, entirely superseded the former section.

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27-2728 [42-8-62] Same; discharged defendant not to be considered to have criminal conviction; records of probation

Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. The discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. Should a person be placed under probation or in confinement under this article, a record of the same shall be forwarded to the Georgia Crime Information Center. Without request of the defendant a record of discharge and exoneration, as provided in this Code section, shall in every case be forwarded to the Georgia Crime Information Center. In every case in which the record of probation or confinement shall have been previously forwarded to the Department of Offender Rehabilitation, to the Georgia Crime Information Center, and to the Identification Division of the Federal Bureau of Investigation and a record of a subsequent discharge and exoneration of the defendant has not been forwarded as provided in this Code section, upon request of the defendant or his attorney or representative the record of the same shall be forwarded by the clerk of court so as to reflect the discharge and exoneration.

(Acts 1968, pp. 324, 325; 1978, p. 1621; 1982, pp. 1807, 1808.)

27-2728.1 [42-8-63] Same; discharge not to be used to disqualify person for employment or appointment to office

Except as otherwise provided in this article, a discharge under this article is not a conviction of a crime under the laws of this state and may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.

(Acts 1978, pp. 1621, 1622.)

27-2729 [42-8-61] Same; defendant to be informed of terms of law

The defendant shall be informed of the terms of this article at the time of imposition of sentence.

(Acts 1968, pp. 324, 325; 1982, p. 1807, 1808.)

27-2730 [42-8-65] Same; pleading and proof of finding of guilt on subsequent prosecutions; release of record of discharge

(a) If otherwise allowable by law in any subsequent prosecution of the defendant for any other offense, a prior finding of guilt may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted pursuant to this article. Except as provided in subsection (b), the record of discharge shall be released solely to the Attorney General, a district attorney, a solicitor of a state court, the Department of Offender Rehabilitation, the office of a county probation system or of a state or county probation system of another state or of the United States, an office of the State Board of Pardons and Paroles, an office of the pardons and paroles division of another state or of the United States, or a prosecuting attorney of another state or of the United States, upon certification by such probation system or prosecuting attorney that there are pending in a court of competent jurisdiction criminal charges against any person discharged under this article.

(b) Upon certification by the chief executive officer of any law enforcement agency of a pending criminal investigation and the need for the record of discharge of a named person to be released, the record of discharge of such person may be released to such law enforcement agency. For the purposes of this subsection, the term "law enforcement agency" means a

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governmental unit of one or more persons employed full time or part time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.
(Acts 1968, pp. 324, 325; 1978, pp. 1621, 1623; 1982, pp. 1807, 1809.)

27-2731 [42-8-64] Same; right to appeal

A defendant sentenced pursuant to this article shall have the right to appeal in the same manner and with the same scope and same effect as if a judgment of conviction had been entered and appealed from.
(Acts 1968, pp. 324, 326.)

42-8-60. Probation prior to adjudication of guilt; violation of probation; review of criminal record by judge.

(a) Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication of guilt, in the case of a defendant who has not been previously convicted of a felony, the court may, without entering a judgment of guilt and with the consent of the defendant:

(1) Defer further proceeding and place the defendant on probation as provided by law; or

(2) Sentence the defendant to a term of confinement as provided by law.

(b) Upon violation by the defendant of the terms of probation, upon a conviction for another crime during the period of probation, or upon the court determining that the defendant is or was not eligible for sentencing under this article, the court may enter an adjudication of guilt and proceed as otherwise provided by law. No person may avail himself of this article on more than one occasion.

(c) The court shall not sentence a defendant under the provisions of this article and, if sentenced under the provisions of this article, shall not discharge the defendant upon completion of the sentence unless the court has reviewed the defendant's criminal record as such is on file with the Georgia Crime Information Center.

42-8-61. Defendant to be informed of terms of article at time sentence imposed.

The defendant shall be informed of the terms of this article at the time of imposition of sentence.

42-8-62. Discharge of defendant without adjudication of guilt.

(a) Upon fulfillment of the terms of probation, upon release by the court prior to the termination of the period thereof, or upon release from confinement, the defendant shall be discharged without court adjudication of guilt. The discharge shall completely exonerate the defendant of any criminal purpose and shall not affect any of his civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. It shall be the duty of the clerk of court to enter on the criminal docket and all other records of the court pertaining thereto the following:

"Discharge filed completely exonerates the defendant of any criminal purpose and shall not affect any of his civil rights or liberties; and the defendant shall not be considered to have a criminal conviction. O.C.G.A. 42-8-62."

Such entry shall be written or stamped in red ink, dated, and signed by the person making such entry or, if the docket or record is maintained using computer print-outs, microfilm, or similar means, such entry shall be underscored, boldface, or made in a similar conspicuous manner and shall be dated and include the name of the person making such entry. The criminal file, docket books, criminal minutes and final record, and all other records of the court relating to the offense of a defendant who has been discharged without court adjudication of guilt pursuant to this subsection shall not be altered as a result of that discharge, except for the entry of discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of that discharge.

(b) Should a person be placed under probation or in confinement under this article, a record of the same shall be forwarded to the Georgia Crime Information Center. Without request of the defendant a record of discharge and exoneration, as provided in this Code section, shall in every case be forwarded to the Georgia Crime Information Center. In every case in which the record of probation or confinement shall have been previously forwarded to the Department of Corrections, to the Georgia Crime Information Center, and to the Identification Division of the Federal Bureau of Investigation and a record of a subsequent discharge and exoneration of the defendant has not been forwarded as provided in this Code section, upon request of the defendant or his attorney or representative, the record of the same shall be forwarded by the clerk of court so as to reflect the discharge and exoneration.

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The 1990 amendment, effective July 1, 1990, added the language beginning with "or, if the docket" and ending with "such entry" at the end of the first sentence in the undesignated provision following subsection (a), and added the last sentence of the undesignated provision following subsection (a).

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Any probationary sentence entered under this section is preliminary only, and, if completed without violation, permits offender complete rehabilitation without stigma of felony conviction. If, however, such offender does not take advantage of such opportunity for rehabilitation, his trial which, in effect, has been suspended is continued and an adjudication of guilt is made and a sentence entered. *State v. Wiley*, 233 Ga. 316, 210 S.E.2d 790 (1974).

Restrictions may be imposed during service of first offender term. - Subsection (a) allows a defendant's slate to be wiped clean for the purposes of recordation of a criminal conviction and its effect on civil rights or liberties after a defendant successfully fulfills the first offender terms. It does not prohibit restrictions on a defendant's civil rights or liberties imposed during service of the first offender term. *Salomon v. Earp*, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, *Pender v. Witcher*, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Defendant's driver's license was properly suspended after she pled guilty to, and received sentences as a first offender for, two counts of homicide by vehicle in the first degree and one count of driving with ability impaired by alcohol. *Salomon v. Earp*, 190 Ga. App. 405, 379 S.E.2d 217 (1989), overruled on other grounds, *Pender v. Witcher*, 196 Ga. App. 856, 397 S.E.2d 193 (1990).

Use of prior prosecution in which defendant given first offender treatment. - As a result of the changes made in 1985 to this section, the use of a prior prosecution in which defendant was given first offender treatment and successfully completed the terms of his probated sentence "is not allowable by law" as provided in 42-8-65. Accordingly, the portion of the case in which defendant was sentenced under subsection (a) of 17-10-7 as a repeat offender had to be reversed and remanded for resentencing. *Queen v. State*, 182 Ga. App. 794, 357 S.E.2d 150 (1987) (holding Op. Att'y Gen. U81-32 incorrectly states present law).

Trial court erred in refusing to allow defendant to impeach

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witness with her first offender record, although she has fulfilled the terms of her probation. *Gilstrap v. State*, 250 Ga. 814, 301 S.E.2d 277 (1983).

Admissibility in civil actions. - Evidence of a first offender's guilty plea is not admissible for the purpose of impeaching a witness by showing him to have been convicted of a crime involving moral turpitude, even though it is admissible in a civil trial to impeach an adverse witness by disproving or contradicting his testimony. *Witcher v. Pender*, 260 Ga. 248, 392 S.E.2d 6 (1990).

Section did not provide for "rehabilitation" within the meaning of Rule 609(c), Fed. R. Evid., which prohibits evidence of a prior conviction for purposes of impeachment if the conviction has been the subject of a "rehabilitation." *Wilson v. Attaway*, 757 F.2d 1227 (11th Cir.), rehearing denied, 764 F.2d 1411 (11th Cir. 1985).

Cited in *Sims v. Fox*, 492 F.2d 1088 (5th Cir. 1974); *Johnson v. GMC*, 144 Ga. App. 305, 241 S.E.2d 30 (1977); *Dominy v. Mays*, 150 Ga. App. 187, 257 S.E.2d 317 (1979); *Moore v. Kemp*, 809 F.2d 702 (11th Cir. 1987); *Romano v. State*, 193 Ga. App. 682, 388 S.E.2d 757 (1989); *Tilley v. State*, 197 Ga. App. 97, 397 S.E.2d 506 (1990).

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Placing of an individual on probation does not by itself result in a conviction and any person serving such a probation has not suffered a conviction which would disfranchise him; he therefore would be eligible to vote. 1974 Op. Att'y Gen. No. 74-26.

Fulfillment of probation terms or early release not criminal conviction. - The fulfillment of the terms of probation under this article or the release by the presiding court prior to termination of a period of probation is not a criminal conviction for purposes of Ch. 4, T. 25. 1976 Op. Att'y Gen. No. 76-130.

Placement or discharge of person from first offender probation is disposition to be accurately recorded, maintained, and reported by Georgia Crime Information Center. 1975 Op. Att'y Gen. No. 75-110.

Confidentiality of first offender records. - The confidentiality provisions of the First Offender Act having been repealed at the 1990 session of the General Assembly, the court records of first offenders are, subject to the requirement in subsection (a) for a red ink marking on the records, public records subject to public inspection and viewing in the same

manner as other records of criminal actions in the office of the clerk of the superior court. Thus, except as otherwise provided by law, these documents are public records which are subject to public viewing and inspection. 1991 Op. Att'y Gen. No. U91-5.

42-8-63. Effect of discharge under article on eligibility for employment or appointment to office.

Except as otherwise provided in this article, a discharge under this article is not a conviction of a crime under the laws of this state and may not be used to disqualify a person in any application for employment or appointment to office in either the public or private sector.

42-8-64. Appeal of sentence imposed under article.

A defendant sentenced pursuant to this article shall have the right to appeal in the same manner and with the same scope and same effect as if a judgment of conviction had been entered and appealed from.

(Ga. L. 1968, p. 324, 5.)

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Need written order or judgment. - The Court of Appeals lacks jurisdiction to entertain an appeal under 5-6-34(a) from a conviction upon imposition of first-offender status absent a written trial court order imposing first offender status upon the defendant or a written judgment of conviction and sentence. *Littlejohn v. State*, 185 Ga. App. 31, 363 S.E.2d 327 (1987).

Direct appeal from conviction. - Section provides defendant direct appeal from conviction upon imposition of first-offender status, notwithstanding the absence of a formal and final "adjudication of guilt." *Dean v. State*, 177 Ga. App. 123, 338 S.E.2d 711 (1985).

Appeal from adjudication of guilt and sentence serving to revoke probationary status granted under the First Offender Act is by discretionary appeal, as provided in 5-6-35(a)(5), rather than direct appeal. *Dean v. State*, 177 Ga. App. 123, 338 S.E.2d 711 (1985); *Anderson v. State*, 177 Ga. App. 130, 338 S.E.2d 716 (1985).

Failure of appeal, initial sentence estops defendant from post appeal. - Where defendant was apparently satisfied with his sentence at time it was entered as he did not appeal from it as was his right, and he also readily accepted benefits of first offender treatment and probation, he will not be heard to complain that the fine was excessive. *Brainard v. State*, 246 Ga. 586, 272 S.E.2d 683 (1980).

Cited in *Sims v. Fox*, 492 F.2d 1088 (5th Cir. 1974); *Johnson v. GMC*, 144 Ga. App. 305, 241 S.E.2d 30 (1977); *Dominy v. Mays*, 150 Ga. App. 187, 257 S.E.2d 317 (1979).

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42-8-65. Use of prior finding of guilt in subsequent prosecutions; release of records of discharge; modification of records to reflect conviction; effect of confinement sentence where guilt not adjudicated.

(a) If otherwise allowable by law in any subsequent prosecution of the defendant for any other offense, a prior finding of guilt may be pleaded and proven as if an adjudication of guilt had been entered and relief had not been granted pursuant to this article.

(b) The records of the Georgia Crime Information Center shall be modified, without a court order, to show a conviction in lieu of treatment as a first offender under this article whenever the conviction of a person for another crime during the term of probation is reported to the Georgia Crime Information Center. If a report is made showing that such person has been afforded first offender treatment under this article on more than one occasion, the Georgia Crime Information Center may report information on first offender treatments subsequent to the first such first offender treatment as if they were convictions. Such records may be disseminated by the Georgia Crime Information Center in the same manner and subject to the same restrictions as any other records of convictions.

(c) Notwithstanding any other provision of this article, any person who is sentenced to a term of confinement pursuant to paragraph (2) of subsection (a) of Code Section 42-8-60 shall be deemed to have been convicted of the offense during such term of confinement for all purposes except that records thereof shall be treated as any other records of first offenders under this article and except that such presumption shall not continue after completion of such person's confinement sentence. Upon completion of the confinement sentence such person shall be treated in the same manner and the procedures to be followed by the court shall be the same as in the case of a person placed on probation under this article.

(Ga. L. 1968, p. 324, 4; Ga. L. 1978, p. 1621, 3; Ga. L. 1982, p. 1807, 4; Ga. L. 1983, p. 3, 31; Ga. L. 1985, p. 283, 1; Ga. L. 1985, p. 380, 2; Ga. L. 1990, p. 735, 2.)

The 1990 amendment, effective July 1, 1990, rewrote subsection (a), deleted former subsection (b), relating to the release of records of discharge, and redesignated subsections (c) and (d) as subsections (b) and (c), respectively.

Code Commission notes. - Ga. L. 1985, p. 380 cited "Code Section 40-8-60" in present subsection (c). Pursuant to 28-9-5, this has been changed to "Code Section 42-8-60."

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Prior first conviction under prior law considered. - Inasmuch as the defendant's first criminal proceeding was not handled under the "first offender" statute, which was not in effect at that time, he was not eligible to claim the benefits which inure to those who are afforded treatment thereunder. Accordingly, the trial court did not err in considering his prior conviction in the sentencing phase of the present trial. *Woods v. State*, 187 Ga. App. 105, 369 S.E.2d 353 (1988).

Prior prosecution in which defendant given first offender treatment. - As a result of the changes made in 1985 to 42-8-60, the use of a prior prosecution in which defendant was given first offender treatment and successfully completed the terms of his probated sentence is not "allowable by law" as provided in this section. Accordingly, this portion of the case in which defendant was sentenced under 17-10-7(a) had to be reversed and remanded for resentencing. *Queen v. State*, 182 Ga. App. 794, 357 S.E.2d 150 (1987) (holding Op. Att'y Gen. U81-32 incorrectly stated present law).

Cited in *Sims v. Fox*, 492 F.2d 1088 (5th Cir. 1974); *Johnson v. GMC*, 144 Ga. App. 305, 241 S.E.2d 30 (1977); *Dominy v. Mays*, 150 Ga. App. 187, 257 S.E.2d 317 (1979); *Miller v. State*, 162 Ga. App. 730, 292 S.E.2d 102 (1982); *Tilley v. State*, 197 Ga. App. 97, 397 S.E.2d 506 (1990).

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Cases to which section applies. - Provision of this section regarding release of record of discharge applies to records in cases where finding of guilt was made, pursuant to conviction or plea. 1981 Op. Att'y Gen. No. U81-32.

Confidentiality of first offender records. - The confidentiality provisions of the First Offender Act having been repealed at the 1990 session of the General Assembly, the court records of first offenders are, subject to the requirement in 42-8-62(a) for a red ink marking on the records, public records subject to public inspection and viewing in the same manner as other records of criminal actions in the office of the clerk of

the superior court. Thus, except as otherwise provided by law, these documents are public records which are subject to public viewing and inspection. 1991 Op. Att'y Gen. No. U91-5.

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GEORGIA PUBLIC RECORDS ACT

50-18-70. (a) As used in this article, the term "public record" shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public records" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure. Provided, further, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. "Agency" as used in this article shall be as defined in paragraph (1) of subsection (a) of Code Section 50-14-1.

(b) All state, county, and municipal records, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

(c) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article. In no event shall this time exceed three business days.

(d) No public officer or agency shall be required to provide access to public records which are to be used for commercial purposes. The requesting party shall sign a statement agreeing not to use information gathered pursuant to said request for commercial purposes. Commercial purposes shall not include news-gathering requests for information or legitimate research for educational, scientific, or public purposes. No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request; provided, however, that parts of records subject to public disclosure should be made available as provided in subsection (g) of Code Section 50-18-72.

(e) In a pending proceeding under Chapter 13 of this title, the "Georgia Administrative Procedure Act," or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by a party in such a proceeding.

50-18-71. (a) In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments

for the purpose of making photographs or reproductions of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs or reproductions of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.

(b) Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply.

(c) Where no fee is otherwise provided by law, the agency may charge and collect a uniform copying fee not to exceed \$.25 per page.

(d) In addition, a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

(e) An agency shall utilize the most economical means available for providing copies of public records.

(f) Where information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in subsection (d) of this Code section.

50-18-71.1. (a) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case or, if no judge has been assigned, approval of the chief judge or, if no judge has been designated chief judge, approval of the judge most senior in length of service on the court.

(b) In the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following representations of the exhibit:

- (1) A photograph;
- (2) A photocopy;

- (3) A facsimile; or
- (4) Another reproduction.

(c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost of materials or supplies and a reasonable charge for time spent producing the photograph, facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section 50-18-71.

50-18-72. (a) Public disclosure shall not be required for records that are:

- (1) Specifically required by the federal government to be kept confidential;
- (2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;
- (3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons; or disclose the existence of a confidential surveillance or investigation;
- (4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports, accident reports, and incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated;
- (5) Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated; provided that this paragraph shall not be interpreted to make such investigatory records privileged;
- (6) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned.

(7) Notwithstanding any other provision of this article, an agency shall not be required to release those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of an agency as that term is defined in paragraph (1) of subsection (a) of Code Section 50-14-1, or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position, the agency shall release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to the person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process open to the public, it shall not be required to delay 14 days to take final action on the position. The agency shall not be required to release such records with respect to other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. Provided, further, the agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process; or

(8) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, provided that this exception shall not have any application with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are to have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly.

(b) This article shall not be applicable to any trade secrets obtained from a person or business entity which are of a privileged or confidential nature and required by law to be submitted to a government agency or to data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented. This limitation shall not be interpreted by any court

of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics.

(c) (1) All public records of hospital authorities shall be subject to this article except for those otherwise excepted by this article or any other provision of law.

(2) All state officers and employees shall have a privilege to refuse to disclose the identify of any person who has furnished medical or similar information which has or will become incorporated into any medical or public health investigation, study, or report of the Department of Human Resources. The identify of such informant shall not be admissible in evidence in any court of the state unless the court finds that the identify of the informant already has been disclosed otherwise.

(d) This article shall not be applicable to any application submitted to or any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. This subsection shall not preclude law enforcement agencies from obtaining records relating to licensing and possession of firearms as provided by law.

(e) This article shall not be construed to repeal:

(1) The attorney-client privilege recognized by state law to the extent that a record pertains to the requesting or giving of legal advice or the disclosure of facts concerning or pertaining to pending or potential litigations, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; provided, however, attorney-client information may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which said proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue;

(2) The confidentiality of attorney work product; or

(3) State laws making certain tax matters confidential.

(f) (1) As used in this article, the term:

(A) "Computer program" means a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(B) "Computer software" means one or more computer programs, existing in any form, or any associated operational procedures, manuals, or other documentation.

(2) This article shall not be applicable to any computer program or computer software used or maintained in the course of operation of a public office or agency.

(g) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

50-18-73. (a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information.

50-18-74. Reserved.

50-18-75. Communications between the Office of Legislative Counsel and the following persons shall be privileged and confidential: members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of such public officers; and such communications, and records and work product relating to such communications, shall not be subject to inspection or disclosure under this article or any other law or under judicial process; provided, however, that this privilege shall not apply where it is waived by the affected public officer or officers. The privilege established under this Code section is in addition to any other constitutional, statutory, or common law privilege.

50-18-76. No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Human Resources shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection.

Note: O.C.G.A. 35-10-25 (referred to above) relates to data on weddings, divorces, annulments, and illegitimacy.

THIS COMPILATION OF THE GEORGIA PUBLIC RECORDS ACT IS ACCURATE AS OF 7-1-92.

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**RULES
OF
GEORGIA CRIME INFORMATION CENTER
COUNCIL**

**CHAPTER 140-1
ORGANIZATION**

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140-1-.01 Organization. Amended.

(1) There is a Director responsible for development, maintenance and operation of the Georgia Crime Information Center (GCIC).

(2) There is a Council responsible for providing assistance and guidance. The GCIC Director shall attend all Council meetings and shall maintain records of the proceedings.

(3) All legal notices and correspondence regarding administrative proceedings shall be directed to the GCIC Director.

(4) The GCIC mailing address is Box 370748, Decatur, Georgia 30037-0748.

(5) The GBI shall function as the State Control Terminal Agency (SCTA) for Georgia as per the service agreement between Georgia and the National Crime Information Center. The GCIC Director shall be the State Control Terminal Officer (SCTO).

(6) The GBI shall provide the Georgia representative to the governing body of the National Law Enforcement Telecommunications System, as per the service agreement between Georgia and the National Law Enforcement Telecommunications System.

(7) The Rules of the GCIC Council rest on the authority of federal law and rules as well as on state law.

Authority O.C.G.A. Secs. 35-3-30; 35-3-31; 35-3-32; 42 U.S.C. 3701, et seq; 28 CFR 20. Administrative History. Original Rule entitled "Organization" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency

140-1.02 General Definitions. Amended.

(1) All words defined in O.C.G.A. 35-3-30 shall have the same meaning for these Rules.

(2) The following definitions shall apply generally to all Rules of the GCIC Council:

(a) "GCIC" — The Georgia Crime Information Center as created by O.C.G.A. 35-3-31.

(b) "CJIS" — The Criminal Justice Information System as defined by O.C.G.A. 35-3-30.

(c) "Criminal Justice Information" — Includes the following classes:

1. "Secret" — Information involving elements of the operation, programming, and security constraints of the GCIC/CJIS and satellite computer systems.

2. "Restricted" — Information involving data gathering techniques, CJIS network operational procedures, manuals and forms.

3. "Criminal History Record Information" — Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, accusations, informations or other formal criminal charges, and any dispositions arising therefrom, including sentences, correctional supervision, and releases.

(d) "Dispositions" — The results of criminal proceedings including information disclosing that arresting agencies elected not to refer a matter to a prosecutor or that a prosecutor elected not to commence criminal proceedings and also disclosing the nature of the termination in proceedings; or, information disclosing the reason for such postponement. "Dispositions" may also include: acquittal; acquittal due to incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo

contendere plea, guilty, guilty but insane, youthful offender, determination, deceased, deferred disposition, dismissed-civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial-defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(e) "Hearings" — A right of GCIC and parties affected by any action of GCIC to formally or informally present relevant information, testimony, documents, evidence and arguments as to why specified actions should or should not be taken.

(f) "Designated Representative" — the person specifically named to receive criminal history record information from GCIC on behalf of any private person, business, commercial establishment, or authorized public agency eligible to request such information.

(g) "Law Enforcement Agency" — a governmental unit of one or more persons employed full time or part-time by the state, a state agency or department, or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(h) "Criminal Justice Agencies" — those public agencies, at all levels of government, statutorily responsible for the the performance of tasks relating to the investigation, arrest, prosecution, adjudication, surveillance, or custody/supervision of criminal offenders.

(i) "Government Dispatch Center" — a non-criminal justice agency established by act of local government to provide communications support services to agencies of the local government, including criminal justice agencies.

(j) "Governmental Regional Dispatch Center" — a non-criminal justice agency established by act(s) of local government(s) to provide multi-jurisdictional communications support services to public service agencies, including criminal justice agencies.

(k) "Terminal Agency Coordinator" (TAC) — The employee in a CJIS network terminal agency who is designated by the agency head to be responsible for ensuring compliance with Georgia, NCIC, and NLETS policies and regulations, including the GCIC/NCIC validation program.

(l) "Terminal Operator" — A full-time or part-time employee hired by a CJIS network terminal agency to perform communications services duties which include the operation of a CJIS network terminal.

(m) The terms "data" and "information" are used interchangeably through the Rules.

Authority O.C.G.A. Sec. 35-3-30; 28 CFR 20.3. Administrative History. Original Rule entitled "General Definitions" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. Amended: Filed January 6, 1988; effective January 27, 1988, as specified by the Agency. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

Chapter 140-1-.03 Administrative Declaratory Rulings. Amended.

(1) Availability of declaratory ruling. Any person whose legal rights are impaired by the application of any statutory provision, or by any GCIC Rule or order, may petition GCIC and request a declaratory ruling. GCIC will not render advisory opinions, resolve questions which are moot or hypothetical, or otherwise act hereunder except in actual controversies or in other cases upon which a superior court would be required to act under the Georgia declaratory judgement statutes as construed by the appellate courts of Georgia.

(2) Form of petition. Each petition filed with GCIC shall be in writing and shall include:

- (a) The names and post office address of the petitioner;
- (b) The full text of the statute, rule or order upon which a ruling is requested;
- (c) A detailed statement of all pertinent facts necessary for a determination;
- (d) The petitioner's contention, if any, as to the applicability of cited legal authorities which authorize, support or require a decision in accordance therewith; and
- (e) A statement setting forth in detail the petitioner's interest in the matter. The statement shall be verified under oath by, or in behalf of, the petitioner.

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(3) Proceedings on petition. If GCIC determines that a decision can be rendered on the petition without further proceedings, a summary decision shall be rendered. Otherwise, parties shall be notified and the matter shall be reviewed in an informal hearing.

(4) Informal interpretations and rulings.

(a) Any person may request GCIC to interpret or otherwise rule informally upon the applicability of any pertinent statute or Rule by personal appearance at GCIC, or by letter or telegram addressed to GCIC.

(b) GCIC may respond to such requests at its own discretion, or may issue interpretive rulings on its own initiative.

(5) Requests presented in any manner other than in accordance with the provision of 140-1-.03(2) above shall be answered with an informal interpretation.

Authority O.C.G.A. Sec. 50-13-9. Administrative History. Original Rule entitled "Administrative Declaratory Rulings" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-1-.04 Petition for Adoption of Rules. Amended.

(1) Form of petition. Each petition for adoption of Rules made pursuant to the Georgia Administrative Procedure Act shall be filed with GCIC in writing, under oath, and shall include:

(a) The name and post office of the petitioner;

(b) The full text of the Rule(s) requested to be amended, repealed or promulgated;

(c) A detailed statement of the reason such Rule should be amended, repealed or promulgated, including a statement of the petitioner's interest in the matter; and

(d) Citations of legal authorities, if any, which authorize, support or require the action requested by the petitioner.

(2) Proceedings on petition. The GCIC Council shall consider each petition at regularly scheduled meetings. The Council may decline to

take action or may initiate rule-making or rule-changing proceedings in accordance with the Georgia Administrative Procedure Act. The Council shall notify the petitioner by certified mail of its decision and shall state its reasons if it declines to act.

Authority O.C.G.A. Sec. 50-13-9. Administrative History. Original Rule entitled "Petition for Adoption of Rules" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-1-.05 Approval and Disciplinary Procedures. Amended.

(1) Information exchange and service from GCIC. Persons and agencies shall exchange information and receive service from GCIC only when approved by the Director. GCIC shall not provide any service or exchange any information unless the Director finds that:

(a) The person or agency is permitted by Georgia law, and these Rules to exchange information or receive service; and

(b) There is no significant danger that the person or agency will use the information or service in a manner which would violate Georgia law or these Rules.

(2) Notification and resolution of violations. Whenever the Director determines that any law concerning criminal justice information, or any Rule, regulation or policy of the GCIC Council has been violated, is being violated, or is about to be violated, he shall immediately advise the person or head of the responsible agency of the existence and nature of such violation. If possible, the Director and concerned parties shall agree on a mutually satisfactory solution. If a solution is determined, it shall be documented and signed by the Director and the person or the agency head. When any such agreement is reviewed and approved by the GCIC Council, it shall be the final disposition of the matter. If the GCIC Council requires modification of the agreement and the modification is accepted by concerned parties, it shall be the final disposition of the matter. If no agreement can be reached which is satisfactory to the GCIC Council and to the concerned parties, suspension proceedings may be initiated.

(3) Suspension. If an agreement satisfactory to the Director and concerned parties cannot be reached within ten days after the initial notification of violation, the Director may, at his discretion, cause any or

all services rendered by GCIC to be suspended. In such cases, the Director shall notify the Chairman of the GCIC Council.

(4) Reinstatement. Upon petition of concerned parties which have had any service suspended, the Director, at his discretion, may reinstate full or partial service, pending a final decision by the Council, if he finds that reinstatement will not create a significant danger of future violations.

(5) Contested Cases. Hearings and appeals regarding refusals by the Director to exchange information or provide services, or regarding any disciplinary measure taken by the Director or the GCIC Council pursuant to this Rule, shall be conducted pursuant to the Georgia Administrative Procedure Act and the following:

(a) Initiating a contested case. Any person or agency legally entitled to contest a refusal to exchange information, or provide services, or entitled to contest any disciplinary measure under this Rule, may do so by filing a request for hearing with the Director which shall include:

1. The complete name and post office address of the party filing the request;
2. The name and post office address of all other interested parties;
3. A detailed statement of the facts upon which the GCIC action is contested;
4. A statement describing the relief sought; and
5. The name and post office address of counsel, if the party filing the request is represented by counsel.

(b) Limitations on right to a hearing. A hearing to contest the imposition of a disciplinary measure will be granted as a matter of right only if it is filed within 30 days of the imposition of the action. A hearing upon a refusal to exchange information or provide services upon a request for reinstatement of suspended services shall be granted as a matter of right at any time while service is partially or wholly suspended. A petition for such a hearing may be denied only when the petition presents no substantial grounds which have not been previously presented. The Council may, at its discretion, allow extensions of time and amendment of requests for good cause.

(c) Responses to requests for hearing. The GCIC Council will respond to all requests for hearings with scheduling notices or with orders denying requests and reasons for denials.

(d) Motions. Any application to the Director or the GCIC Council to enter any order or to take any action, after filing a request for hearing, shall be made by motion which, unless made during the hearing, shall be made in writing, stating the specific grounds therefor, and shall set forth the action or order sought. No motion shall be ruled upon except when the case-in-chief is ruled upon, unless the moving party specifically requests a ruling at some other time and the Council deems such ruling appropriate.

(e) Hearings. Hearings in contested cases shall be conducted by three members of the GCIC Council appointed by the Chairman or by their designees. Following each hearing, Council members shall notify the Director and each interested party of their findings. Each party shall have 20 days following the notification to file written exceptions and briefs. At the next scheduled meeting of the GCIC Council, the Director and all concerned parties shall have an opportunity to present oral arguments. The Council shall then render a final decision.

(6) Notwithstanding anything previously stated, if it appears that O.C.G.A. 35-3-38 has been violated, the Director or the GCIC Council may refer the matter to the appropriate prosecuting authority.

Authority: O.C.G.A. Secs. 35-3-32, 35-3-33; 42 U.S.C. 3771; 28 CFR 20.21. Administrative History. Original Rule entitled "Approval and Disciplinary Procedures" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed July 2, 1986; effective July 22, 1986. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-1-.06 Contested Cases Governed by Express Statutory Provisions. Amended. Contested cases concerning an individual's right to access and make corrections to his criminal record which arise under O.C.G.A. 35-3-37 are governed by provisions contained therein rather than by the Administrative Procedure Act. Contested cases thereunder shall be processed in accordance with the provisions of the cited statute.

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**CHAPTER 140-2
PRACTICE AND PROCEDURE**

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140-2-.01 Scope. Amended.

(1) These Rules shall apply to all criminal justice agencies within the State and to all other agencies or persons with access to criminal justice information.

(2) These Rules do not restrict any criminal justice agency from publicly disclosing certain factual information. Such information includes:

(a) The status of a current investigation;

(b) The recent arrest, release or prosecution of an individual.

(3) A criminal justice agency is not prohibited from releasing prior criminal record information to members of the news media or any other person if the criminal record information is based on data contained in:

(a) Posters, announcements, flyers, or computerized data bases created to aid in the identifications or arrests of fugitives, wanted persons, habitual offenders, career criminals, or dangerous prior offenders;

(b) Incident reports, accident reports and arrest/booking reports prepared by law enforcement agencies and defined by law as public records;

(c) Official records of public judicial proceedings.

(4) The names of living victims of sexual offenses, and the names of living juveniles involved in police investigations are not to be released.

(5) Nothing in these Rules shall close any record that is now or hereafter made public by law.

(6) Nothing in these Rules shall mandate the exchange of criminal justice information except where specifically required by these Rules.

Authority O.C.G.A. Secs. 16-6-23; 35-3-34; 35-3-35; 50-18-72; 42 U.S.C. 3371; 28 CFR 20.21. History. Original Rule entitled "Scope" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of same title adopted. Filed January 7, 1983; effective February 1, 1983; as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed July 2, 1986; effective July 22, 1986. Amended: Rule repealed and a new Rule of same title adopted. Filed July 7, 1988; effective July 27, 1988. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990. Amended: F. Dec. 2, 1992; eff. Dec. 22, 1992.

**140-2-.02 Security Policy for Criminal Justice Information.
Amended.**

(1) Handling Procedures.

(a) Secret Information:

1. When not in use, it shall be stored in locking, fire-resistant vaults or safes. Duplicate computer files and program tapes should be similarly secured in a separate location.

2. Areas in which the information is processed and handled shall be restricted to authorized personnel in the performance of their official duties.

3. The information shall be under the absolute control of criminal justice agencies, with access regulated by agency heads or their designees.

4. A log or other record shall be maintained when information is removed from or returned to the vault.

(b) Criminal History Record Information:

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1. Shall be stored in a secure location when not controlled by authorized criminal justice agency employees.

2. Areas in which the information is processed and handled shall be restricted to authorized personnel in the performance of their official duties;.

3. It shall be under the absolute control of criminal justice agencies except as exempted by these Rules.

(c) Restricted information shall be used and stored in a controlled access area.

(2) Any secret information, criminal history record information, or restricted information is a "Secret of State" which is required by State policy, the interest of the community, and the right of privacy of the citizens of this State to be confidential. Such information shall not be divulged except as permitted by Georgia law and these Rules. When documents containing secret information, criminal history record information, or restricted information are no longer required for criminal justice agency operations, such documents shall be destroyed in a manner which precludes access to the information by unauthorized persons.

(3) Criminal justice agencies shall disseminate criminal justice information only to agencies and persons requiring such information to perform duties serving the administration of criminal justice or as otherwise provided by statute, executive order or these Rules. Under no circumstances will criminal history record information be transmitted via the CJIS network to terminals not authorized to access the GCIC criminal history record information data base.

(4) Heads of criminal justice agencies shall provide the GCIC Director with written notifications of violations of the security policy for criminal justice information committed by employees of these agencies.

Authority O.C.G.A. Secs. 35-3-30, 35-3-32; 28 C.F.R. 20.21. Administrative History. Original Rule entitled "Data Security Requirements for Criminal Justice Information" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of the same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of the same title adopted. Filed September 6, 1984, effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule entitled "Security Policy for Criminal Justice Information" adopted. Filed July 2, 1986; effective July 22, 1986. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.03 Completeness and Accuracy of Criminal History Record Information. Amended.

(1) Each law enforcement agency arresting persons charged with those criminal offenses described in O.C.G.A. 35-3-33 is responsible for obtaining fingerprints of the arrested persons, each time they are arrested, on fingerprint cards reflecting the arresting agency's assigned Originating Agency Identifier (ORI). The fingerprint cards used by all Georgia law enforcement agencies shall be the criminal fingerprint cards provided gratis by the FBI or other criminal fingerprint cards which are procured at the expense of submitting agencies and approved by GCIC prior to their use. Fingerprints shall be rolled using black printer's ink or an alternative medium authorized by the FBI; GCIC approval should be obtained before buying/using any alternative medium or system.

(a) All data fields on the fingerprint cards shall be completed for each arrested person. Fingerprint cards of persons under 18 years of age who are being treated as adults should be annotated on the reverse side in the Additional Information Block with the following phrase: Treat as Adult.

(b) Fully-rolled fingerprint impressions shall be obtained and data fields completed only by criminal justice agency employees. Under no circumstances shall arrested persons themselves, or inmates of jails or correctional institutions, be permitted to assist in obtaining fingerprints or completing the data fields.

(c) Two original criminal fingerprint cards, taken for each arrested person, shall be forwarded to GCIC within 24 hours, but the period of 24 hours may be extended to cover any intervening holiday or weekend. GCIC will retain one fingerprint card and forward the second card to the FBI Identification Division after entering the arrested person's State Identification (SID) number on the card.

(2) At the same time and place that fingerprints are obtained, two-part disposition reports (OBTS forms) shall be initiated by arresting or booking agencies. Original OBTS forms are to be enclosed with the fingerprint cards forwarded to GCIC. Copies of OBTS forms are to be forwarded with warrants/citations/charges to appropriate prosecutors/courts. GCIC will return original OBTS forms to originating agencies after annotating the forms with SID numbers. Copies of OBTS forms forwarded to prosecutors/courts are to be used for reporting post-arrest dispositions of charges to GCIC.

(a) When dispositions are determined by law enforcement agencies prior to referral of arrested persons to prosecuting officials or to the courts, it shall be the duty of these law enforcement agencies to forward completed OBTS forms to GCIC.

(b) When dispositions are determined by prosecuting officials prior to referral of arrested persons to the courts, it shall be the duty of prosecuting officials to forward completed OBTS forms to GCIC.

(c) When dispositions, or modifications of earlier dispositions, are determined by the courts, it shall be the duty of clerks of court, probate and municipal judges where no clerks exist, and magistrates to forward disposition reports or reports of their modifications of earlier dispositions to GCIC.

(d) When the sentences of convicted persons are modified by the State Board of Pardons and Parole, when paroles are revoked, or when parolees are discharged from parole status, it shall be the duty of the Board to forward disposition reports of sentence modifications to GCIC.

(e) When conditions of probation are imposed on convicted persons, or when probationary sentences are revoked, or when terms of probation are completed, it shall be the duty of all persons in charge of probation offices to forward disposition reports to GCIC.

(f) When decisions or orders of the Court of Appeals or the Supreme Court of Georgia modify or suspend the findings or sentences of trial courts regarding individual defendants, it shall be the duty of the clerks of the Court of Appeals and the Supreme Court of Georgia to forward reports of such modifications or suspensions to GCIC.

(3) GCIC will provide OBTS forms to criminal justice agencies and officials responsible for reporting dispositions. Alternatively, responsible officials are encouraged to develop plans for automated reporting of dispositions using computer tape or diskette media; plans for automated disposition reporting must be approved by GCIC prior to implementation.

(4) Completed OBTS forms shall be forwarded to GCIC not more than 30 days after disposition decisions.

(5) GCIC will prepare a list of fingerprintable criminal offenses and will revise the list when necessary. Copies will be provided by GCIC to all law enforcement agencies which arrest persons charged with criminal offenses.

Authority O.C.G.A. Secs. 35-3-33; 35-3-36; 42 U.S.C. 3771; 28 C.F.R. 20.21. History. Original Rule entitled

140-2-.04 Criminal Justice Information Exchange and Dissemination. Amended.

(1) Exchange and dissemination of criminal justice information by criminal justice agencies:

(a) Criminal justice agencies shall exchange criminal justice information with other bona-fide criminal justice agencies to facilitate the administration of criminal justice and criminal justice employment. Bona-fide status of Georgia agencies shall be determined by the Director. Disseminations of criminal justice information to such agencies shall be made in accordance with the provisions of user agreements executed between GCIC and all bona-fide agencies. Bona-fide status can be presumed when criminal justice agencies in Georgia and in other states have unrestricted ORIs assigned by the National Crime Information Center (NCIC).

1. Requests for CHRI by defense attorneys for use in pending criminal cases should be referred to GCIC when fingerprints and/or signed notarized consent forms are not furnished.

2. Criminal records containing information on charges disposed of under the provisions of the First Offender Act may be disseminated by state and local criminal justice agencies in the same circumstances and under the same conditions described in Subparagraph (2)(a)3. of this Rule.

(b) Criminal justice agencies may disseminate criminal history records to private persons, businesses, public agencies, political subdivisions, authorities and instrumentalities, including state or federal licensing and regulatory agencies, or to their designated representatives. For dissemination purposes, criminal history records include all available State of Georgia or local agency criminal history record information; except: information relating to any arrest on charges disposed of under the provisions of the Georgia First Offender Act shall not be provided after the person has been discharged from First Offender status and exonerated of the charges.

1. At the time of each request, requestors shall provide the fingerprints or the signed and notarized consent of the person whose record is requested.

The signed and notarized consent must be in a format approved by GCIC and must include the person's full name, address, social security number, race, sex, and date of birth. Except: neither the fingerprints nor the signed and notarized consent of the person whose record is requested shall be required when the requestor is the county board of voter registrars or the county board of voter registration and elections, and when the criminal history records check is requested for the sole purpose of verification of information provided on a voter registration card by a voter registration applicant.

2. Criminal justice agencies may charge fees for disseminating criminal history records or "No Record" reports to private individuals, to public and private agencies, or to their designated representatives. When fees are charged, they should approximate, as nearly as possible, the agencies' direct and indirect costs associated with providing such disseminations.

3. Criminal justice agencies which disseminate criminal history records to private individuals and to public and private agencies shall advise all requestors that, if an employment or licensing decision adverse to the record subject is made, the record subject must be informed by the individual or agency making the adverse decision of all information pertinent to that decision. This disclosure must include information that a criminal history record check was made, the specific contents of the record, and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision is a misdemeanor. This disclosure requirement applies to criminal justice agencies when such agencies make employment or licensing decisions adverse to record subjects.

(c) Federal law exempts the FBI, State Department, Defense Investigative Service, Central Intelligence Agency, and Office of Personnel Management from these provisions of Georgia law. Authorized representatives of these agencies are not required to provide the fingerprints or signed/notarized consents of the persons for whom they request criminal record checks. All criminal justice agencies are obliged by federal law to provide these agencies with criminal history record information, as described in Subparagraph (1)(b) of this Rule, on security clearance applicants and persons being considered for employment in sensitive national security jobs. Established fees may be charged.

(d) Criminal justice agencies may allow access to information by individuals and agencies, pursuant to specific GCIC user agreements, to provide for the development of and operation of computerized information systems or for the operation of consolidated radio dispatch centers related to the administration of criminal justice. These agreements shall authorize

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specific access to information, limit the use of information to purposes for which it was disseminated, require the signing of Awareness Statements, and ensure the security and confidentiality of the data consistent with these Rules.

(e) Criminal justice agencies are required by law to conduct criminal history record checks on applicants for employment with Georgia fire departments, without payment of any fees, and to disseminate criminal history records or no-record reports to such fire departments. The criminal history records to be disseminated are the same as described in subparagraph (1)(b) of this Rule. The procedures described in Subparagraph (1)(b)1. of this Rule apply.

(f) Criminal justice agencies may disseminate information to individuals and agencies for the express purpose of research when the projects have been approved in advance by the Director. In each case, GCIC shall execute a special user agreement with the requestor prior to any dissemination of criminal justice information. The agreement shall provide for nonidentification of specific individuals in published research reports and shall provide that information furnished by criminal justice agencies shall be immune from legal process and shall not, without the consent of any criminal justice agency providing the information, be admitted as evidence for any purpose in any action, suit, or other judicial or administrative proceedings.

(g) Use of information disseminated shall be limited to the purposes for which it was disseminated. It may not be disseminated further. Recipients must be so advised.

(h) Criminal justice agencies are authorized to access the FBI's Interstate Identification Index (III) for criminal justice administration and criminal justice employment purposes. Criminal justice agencies may not utilize CJIS network terminals to access III for information on license/permit applicants or on applicants for non-criminal justice employment.

(i) When necessary to alert law enforcement officers before they confront potentially violent individuals, coded warnings based on review or knowledge of relevant criminal history record information may be broadcast.

(j) No criminal justice information shall be disseminated except as provided by law and these Rules.

(2) Exchange and dissemination of criminal justice information by GCIC.

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(a) GCIC shall exchange criminal justice information with bona-fide criminal justice agencies to serve the administration of criminal justice and to facilitate criminal justice employment, based on the following criteria:

1. GCIC shall execute appropriate user agreements with all bona-fide criminal justice agencies.

2. GCIC shall provide any information in its files or in files available to GCIC which may aid these agencies in the performance of their duties.

3. Information relating to any arrest on charges disposed of under the provisions of the Georgia First Offender Act shall neither be requested, provided by GCIC, nor used by any criminal justice agency for licensing or employment purposes after record subjects have been discharged from First Offender status and exonerated of the charges; except: GCIC shall disseminate records of discharge of First Offenders when violations of the Georgia Controlled Substances Act were charged, to those public officials specifically authorized by Georgia statutes to receive and use such records.

(b) GCIC shall exchange criminal justice information with:

1. The Governor, when acting in his capacity as the Chief Law Enforcement Officer of the State;

2. The Attorney General, when performing activities relating to the apprehension or prosecution of criminal offenders;

3. The Supreme Court, when the Court's administrative arm is evaluating candidates for admission to the Georgia Bar.

(c) Because GCIC's Automated Fingerprint Identification System (AFIS) technology assures positive identifications of individuals with criminal records on file, GCIC will accept and process criminal history record check requests only when such requests are accompanied by two sets of the fingerprints of each person for whom a criminal history record check is requested. Fingerprints shall be submitted on cards comparable to the standard FBI Applicant Card. GCIC will supply suitable cards at a cost of \$.50 per card, upon request. Criminal history records provided by GCIC shall be identical in content and scope to the records described in Subparagraph (1)(b) of this Rule.

1. If criminal records provided by GCIC are to be used to make employment or licensing decisions, GCIC shall provide the guidance to requestors which is contained in Subparagraph (1)(b)3. of this Rule.

2. Public agencies and officials requesting criminal history record checks shall be subject to periodic audits by GCIC to assure their compliance with the relevant provisions of Georgia law and these Rules.

3. Public agencies, private individuals, and businesses requesting such record checks, except individuals requesting checks of their own criminal history records, shall sign special user agreements prepared by GCIC. Requestors shall pay a \$15.00 fee for each criminal history record or "No Record" report disseminated by GCIC. Out-of-state requestors shall pay fees in advance.

4. Georgia law authorizes GCIC to conduct certain criminal history record checks, for criminal defense purposes, on the basis of personal identifiers supplied by authorized requestors. All such record checks shall be conducted by the GCIC Security Officer. Criminal history records provided by the GCIC Security officer shall be identical in content and scope to the records described in Subparagraph (1)(b) of this Rule. Authorized requestors shall pay the prescribed fees.

(d) All criminal history record checks for other than criminal justice purposes will be made by GCIC only after GCIC has fulfilled its duties and obligations to criminal justice agencies as required by law.

(e) GCIC may allow access to the CJIS network and to computerized files containing criminal justice information, pursuant to special user agreements with governmental computerized information systems, with governmental dispatch centers, and with governmental regional dispatch centers, in order to provide for the development and operation of such systems and centers in support of criminal justice agencies.

(f) Use of information disseminated by GCIC shall be limited to the purposes for which it was disseminated. Recipients shall be so advised.

(g) No information shall be disseminated by GCIC except as provided by these Rules.

140-2-.05 Integrity of Criminal Justice Information. Documents containing criminal justice information, regardless of its source, shall not be altered, obtained, copied, destroyed, delayed, misplaced, misfiled, given, bought, or sold when the intent of such action is to obstruct justice or to facilitate the violation of any law or these Rules.

Authority O.C.G.A. Secs. 35-3-35, 35-3-38; 42 U.S.C. 3771; 28 C.F.R. 20.21. History. Original Rule entitled "Security and Privacy of Criminal Justice Information" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of same title adopted. Filed January 7, 1983; effective February 1, 1983; as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed July 2, 1986; effective July 22, 1986. Repealed: New Rule entitled "Integrity of Criminal Justice Information" adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990.

140-2-.06 Criminal History Logs.

(1) GCIC will maintain computer system logs of all criminal history record inquiries and record requests transmitted to GCIC via CJIS network terminals or NCIC/NLETS data lines.

(2) The following minimum information shall be maintained in GCIC's computer system logs:

- (a) Date, time, and purpose of each inquiry or request;
- (b) Identification of each requestor;
- (c) Identification of each person inquired upon in record inquiry messages;
- (d) Each record subject's GCIC-assigned state identification (SID) and/or FBI number(s) in record request messages;
- (e) Agency reference numbers for all Purpose Code C and/or F record inquiries and record requests. Reference numbers may be incident or case numbers, docket numbers, inmate numbers, or similar numbers which link record requests to specific files.

(3) For their own purposes, CJIS network terminal agencies may maintain paper or computer system logs to routinely control and document criminal history record inquiries, record requests, and/or secondary disseminations within their agencies. CJIS network terminal agencies may request printouts of GCIC computer system logs when required in internal investigations or other special operational situations.

Authority O.C.G.A. Secs. 35-3-33, 35-3-35; 42 U.S.C. 3771; 28 C.F.R. 20.21. History. Original Rule entitled "Criminal History Logs" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of same title adopted. Filed January 7, 1983; effective February 1, 1983; as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed July 2, 1986; effective July 22, 1986.

140-2-.07 Audit Procedures. Amended.

(1) The Director shall appoint auditors to conduct performance audits of criminal justice agencies to enforce compliance with these Rules, relevant Georgia Code Sections, and pertinent federal statutes and regulations.

(a) The GCIC audit program shall be designed and conducted so as to meet the performance audit standards and practices set out in the GAO publication "Government Auditing Standards," which are recommended by the Georgia Department of Audits and employed by the FBI-NCIC audit staff.

(b) CJIS network terminal agencies will be audited at least once every two years. A representative sample of non-terminal agencies will also be audited.

(c) Heads of agencies to be audited shall be notified at least 15 days in advance of on-site visits by GCIC performance auditors. Written notifications will identify all areas of audit interest and the performance standards to be applied.

(d) Upon completion of each performance audit visit, GCIC auditors shall discuss their findings with agency heads or their designees.

(e) Auditors shall report the results of audits to the Director. The Director shall provide draft audit reports to heads of audited agencies for their comments; when comments are received at GCIC within 30 days, they shall be included in final audit reports.

1. The final audit report shall be mailed to the head of the audited agency not more than 45 days after the on-site audit.

2. When a final audit report identifies any unresolved performance deficiencies, the Director's transmittal letter will contain a request for a written response, within 60 days, detailing the remedial actions planned or taken to correct such performance deficiencies. Written responses from heads of audited agencies shall be filed at GCIC with final audit reports and auditors' working papers; all files shall be available for review by GCIC Council members and for reference by GCIC auditors before subsequent biennial audits.

(f) The GCIC Council may approve imposition of sanctions by the Director for audited agencies with serious performance deficiencies or for audited agencies with other performance deficiencies not corrected prior to subsequent biennial audits. It shall be the duty of the Director to recommend appropriate sanctions to the GCIC Council.

(2) The following shall be made available for GCIC audits:

(a) Facility access policy;

(b) Personnel records, including records of relevant training and signed Awareness Statements;

(c) Criminal history record files;

(d) Criminal history record information handling procedures;

(e) Standard operating procedures governing the access, use, security, and dissemination of criminal justice information;

(f) Case file documents supporting GCIC/NCIC computerized file entries.

1. Case file documents include copies of LEDS/NCIC worksheets or their equivalent; blank worksheet forms are provided by GCIC upon request.

2. Documents supporting GCIC/NCIC wanted person entries must include original arrest warrants or copies thereof.

(g) Computer system hardware, when requested;

(h) Computer system software, when requested;

(i) Computer system documentation, when requested.

(3) The GCIC Security Officer shall check a representative sample of non-criminal justice recipients of criminal history record information annually, as authorized by Rule 140-2-.04.

Authority O.C.G.A. Secs. 35-3-31, 35-3-32, 35-3-34, 35-3-38; 42 U.S.C. 3771; 28 C.F.R. 20.21. History. Original Rule entitled "Audit Procedures" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of same title adopted. Filed January 7, 1983; effective February 1, 1983; as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed July 2, 1986; effective July 22, 1986. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990. Repealed: New Rule of same title adopted. F. Dec. 2, 1992; eff. Dec. 22, 1992. Amended: F. Apr. 16, 1993; eff. May 6, 1993.

140-2-.08 Physical Security Standards. Amended.

(1) Criminal justice agencies shall provide secure area(s), out of public view, in which criminal justice information is handled.

(2) Criminal justice agencies with CJIS network terminals shall place those terminals in secure area(s).

(3) Criminal justice agencies shall institute reasonable procedures to protect any central depository of criminal history record information from an unauthorized access, theft, sabotage, fire, wind, flood, power failure or other natural or man-made disasters.

(4) Criminal justice agencies which operate computer systems connected to the CJIS network, and non-criminal justice agencies which operate such computer systems in support of criminal justice agencies shall provide:

(a) Heavy duty non-exposed walls; fire, smoke and intrusion detectors; emergency power systems, and electronic or manually-guarded access;

(b) An off-site fire resistant vault or safe for storage of auxiliary programming software and duplicate files, when appropriate.

(5) These standards are applicable to governmental dispatch centers and to governmental regional dispatch centers which handle criminal justice information.

Authority O.C.G.A. Secs. 35-3-32, 35-3-33; 28 C.F.R. 20.21. History. Original Rule entitled "Physical Security Standards for Criminal Justice Agencies" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule

140-2-.09 Personnel Security Standards. Amended.

(1) Public agency employees who handle criminal justice information shall consent to investigations of their moral character, reputation and honesty. All applicants shall submit to fingerprint identification checks. Investigations should produce sufficient information to determine applicants' suitability and fitness for employment.

(2) Criminal justice agencies shall disqualify applicants for employment who have been convicted by any state or the federal government of any felony or who have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law.

(3) Giving false information shall disqualify applicants and be cause for employee dismissals.

(4) All personnel directly associated with the maintenance, processing, or dissemination of criminal history record information shall be specially trained. The training shall provide employees with a working knowledge of federal and state regulations and laws governing the security and processing of criminal history information. Employers are responsible for ensuring that their personnel receive such training.

(5) Criminal justice agencies shall establish security constraints for all personnel who work in secure areas where criminal justice information is stored, collected or disseminated.

(6) Within their political subdivisions, law enforcement agencies must monitor the selection, utilization, and retention of non-criminal justice personnel who are authorized direct access to criminal justice information in support of criminal justice operations.

(7) All personnel whose jobs require them to access or process criminal justice information shall sign Awareness Statements. Awareness Statements signed by employees shall be filed permanently in their personnel records. Awareness Statements shall read as follows:

AWARENESS STATEMENT

Access to Criminal Justice Information, as defined in GCIC Council Rule

140-1-.02 (amended), and dissemination of such information are governed by state and federal laws and by GCIC Council Rules. Criminal Justice Information cannot be accessed or disseminated by any employee except as directed by superiors and as authorized by approved standard operating procedures which are based on controlling state and federal laws, relevant federal regulations, and the Rules of the GCIC Council.

O.C.G.A. 35-3-38 establishes criminal penalties for specific offenses involving obtaining, using, or disseminating criminal history record information except as permitted by law. The same statute establishes criminal penalties for disclosing or attempting to disclose techniques or methods employed to ensure the security and privacy of information or data contained in Georgia criminal justice information systems.

The Georgia Computer Systems Protection Act (O.C.G.A. 16-9-90 et seq.) was enacted to provide statutory protection for public sector and private sector computer systems, including communications links to such computer systems. The Act establishes major felony penalties for four criminal offenses: Computer Theft, Computer Trespass, Computer Invasion of Privacy, and Computer Forgery. The act defines each of the felonies in broad terms. The criminal penalties for each offense include maximum sentences to confinement for 15 years, fines up to \$50,000, and civil penalties. The Act also establishes Computer Password Disclosure as a misdemeanor, with the first violation punishable by a fine not exceeding \$5,000, or imprisonment for not more than one year, or both.

These above-cited statutes have broad application in Georgia, to private citizens, to public officials, and to employees of governmental agencies. The Georgia Criminal Justice Information System Network, operated by the Georgia Crime Information Center in compliance with O.C.G.A. 35-3-31, and all of the data bases accessible via Network terminals, are protected by the Computer Systems Protection Act. Similar communications and computer systems operated by municipal/county governments are also protected by the Act.

By my signature below, I acknowledge that I have read this Awareness Statement.

Signed: _____ Date: _____

Witnessed: _____
Authority O.C.G.A. Secs. 16-9-90 et seq., 35-3-32, 35-3-33; 28 C.F.R. 20.21. History. Original Rule entitled "Personnel Security Standards for Criminal Justice Agencies" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of same title adopted. Filed January 7, 1983; effective February 1, 1983; as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed September 6, 1984; effective October

140-2-.10 Procedures for an Individual to Inspect His Criminal History Record File. Amended.

(1) GCIC processing procedures:

(a) All applications must be accompanied by a current set of the individual's fingerprints taken by a GCIC or local law enforcement agency employee.

(b) A \$3.00 money order payable to the GBI, or \$3.00 cash must accompany each application. Receipts will be issued for cash payments.

1. Money orders shall be made payable to the Georgia Bureau of Investigation.

2. Receipts shall be issued by GCIC.

(c) Applications will be accepted at GCIC between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. No applications shall be accepted on legal State holidays.

(2) An attorney may inspect and obtain a copy of his client's criminal history record at GCIC if he presents written authorization from his client.

(3) General processing procedures:

(a) Pursuant to these Rules, agencies other than GCIC which maintain criminal history record information may prescribe their own applicable forms and procedures for an individual or his attorney to review and obtain a copy of the individual's local file.

(b) The fee for record inspections shall not exceed \$3.00.

(c) All agencies shall impose only such procedures and restrictions as are reasonably necessary to:

1. Ensure the integrity of their records;

2. Verify the identities of those who seek to inspect their records; verification procedures may include fingerprinting;

3. Establish orderly and efficient procedures for inspections.

(4) Records determined by GCIC, or by other criminal justice agencies, to be in error shall be corrected without delay; the individual, or his attorney, shall be notified when record corrections have been made.

(5) When the record in question is judged to be accurate by GCIC, or by any criminal justice agency processing record inspections, the individual may initiate further actions under the provisions of Georgia law.

Authority O.C.G.A. Secs. 35-3-33; 35-3-37, 42 U.S.C. 3771; 28 C.F.R. 20.21. History. Original Rule entitled "Procedures Whereby An Individual May Access His Criminal History Record File" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule entitled "Procedures for an Individual to Inspect His Criminal History Record File" adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed July 2, 1986; effective July 27, 1988. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990. Amended: F. Dec. 2, 1992; eff. Dec. 22, 1992.

140-2-.11 Security Requirements for Criminal Justice Information in a Data Processing Environment. Amended.

(1) Where criminal history record information is collected, stored or disseminated by computers, it shall be protected from access by unauthorized persons by means of software or hardware control systems which include the logging of all access attempts by unauthorized terminals or persons.

(2) Where criminal history record information is transmitted from one point to another by computers, such transmissions shall be protected from access by unauthorized persons by means of software or hardware control systems.

(a) Message switching computers other than the GCIC computers shall be programmed to prevent unauthorized copying or retention of the text of messages containing criminal history record information.

(b) Message switching computers may log any message traffic and record such data elements as date, time, message number, origin, and destination.

(3) Computers storing or disseminating criminal history record information may perform logging activities pursuant to Rule 140-2-.06.

(4) Computers and the agencies operating or administratively responsible for the operation of computers utilized in whole or part for the collection, storage, dissemination or message switching of criminal history record information shall be subject to GCIC audits pursuant to Rule 140-2-.07.

(5) Physical security standards for these computers shall be maintained pursuant to Rule 140-2-.08.

(6) Personnel security standards for persons employed to operate, program or maintain these computers shall be established pursuant to Rule 140-2-.09 as follows:

(a) The criminal justice agency responsible for the collection, storage, dissemination or transmission of criminal history record information by computers under the direct administrative control of that criminal justice agency shall not employ any person who has been convicted by any state or the federal government of any felony nor shall said person have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law.

(b) The law enforcement agency responsible for the collection, storage, dissemination or transmission of criminal history record information by means of a computer center not under the direct administrative control of the law enforcement agency shall have the right and responsibility to investigate computer center job applicants and employees and to disqualify any applicant or employee who has been convicted by any state or the federal government of any felony or of sufficient misdemeanors to establish a pattern of disregard for the law.

(7) Secret data or criminal history record information contained in a computer system, whether dedicated or shared, shall be kept under maximum security conditions. Destruction of documents containing secret data or criminal history record information, when no longer required to support criminal justice operations, must be accomplished in a secure manner which precludes access to the information by unauthorized persons.

(8) Liability for misuse of secret data or criminal history record information stored in a shared computer environment shall be the responsibility of the agency administratively responsible for the direct supervision of the person or computer hardware or software involved in the misuse.

Authority O.C.G.A. Secs. 35-3-32, 35-3-33, 35-3-34, 35-3-35, 35-3-38; 42 U.S.C. 3771; 28 C.F.R. 20.21. History. Original Rule entitled "Security Requirements for Criminal Justice Information in a Data Processing Environment" was filed on February 25, 1976; effective March 16, 1976. Amended: Rule repealed and a new Rule of same title adopted. Filed January 7, 1983; effective February 1, 1983, as specified by the Agency. Amended: Rule repealed and a new Rule of

140-2-.12 Uniform Crime Reporting. Amended.

(1) Each law enforcement agency is required by law to participate in the Uniform Crime Reporting (UCR) program. GCIC is required by law to manage Georgia's UCR program and to cooperate with the FBI in implementing the national UCR program. UCR reports include:

(a) Reports of criminal offenses reported to or investigated by law enforcement agencies (Return A Reports).

(b) Reports of juvenile arrests or administrative dispositions of juvenile offenders (Age, Sex and Race of Persons Arrested under 18 Years of Age).

(c) Reports of adult arrests (Age, Sex, and Race of Persons Arrested 18 Years of Age).

(d) Reports of Index Crime offenses cleared by arrest, cleared by exceptional means and the number of clearances involving only persons under 18 years of age (Return A Reports).

(e) Reports of family violence reported to or investigated by law enforcement agencies (Family Violence Incident Reports). Reports are to be submitted as required by Georgia law, using special reporting formats prescribed by GCIC.

(f) Special reports on all criminal homicides (Supplementary Homicide Reports).

(g) Special reports on law enforcement officers killed or assaulted in the line of duty (LEOKA Reports).

(h) Special reports on juvenile arrests or administrative dispositions of juvenile offenders (Police Disposition of Juveniles Reports). This report is to be submitted only by automated law enforcement agencies.

(i) Special reports on known or suspected arsons (Arson Reports).

(j) Special reports on the number and types of law enforcement agency employees (Law Enforcement Employees Reports).

(2) Law enforcement agencies are required to submit UCR reports to GCIC.

(a) The following monthly reports are to be submitted not later than the fifth working day of the following month: Return A; Age, Sex and Race of Persons Arrested Under 18 Years of Age; Age, Sex and Race of Persons 18 years of Age and Older; Supplementary Homicide Reports; LEOKA Reports; Arson Reports, and Family Violence Incident Reports. Negative reports are required when no reportable incidents/arrests have occurred.

(b) Law Enforcement Employees Reports are to be submitted to GCIC in November each year.

(c) Agencies with manual records-keeping systems shall submit UCR reports on FBI-UCR Summary Based Reporting System forms; automated agencies shall submit UCR data as per their individual agreements with GCIC.

(3) GCIC will provide Georgia-standard Incident, Arrest/Booking, and Family Violence Incident Report forms to state and local law enforcement agencies at no cost. To the extent permitted by available funding, GCIC will also provide law enforcement agencies with other operational forms needed for the Georgia law enforcement records management system. The forms provided by GCIC, when used properly, will enable law enforcement agencies to create and maintain manual and/or automated records-keeping systems and the data bases needed for participating in state and national UCR programs.

(4) Law enforcement agencies are encouraged to automate their records-keeping systems and to submit UCR reports via magnetic tape, computer diskettes, or computer-generated forms. Contact GCIC before buying/developing UCR software, to ensure the UCR submissions will include the data contained in the reports described in Paragraph (1) above.

(5) Crime and offender data derived from UCR reports will be made available by GCIC to agencies, officials, and individuals who are authorized by law to request and receive such data. However, no data will be released in formats that permit identification of submitting agencies without the prior approval of these agencies.

(6) Law enforcement agencies will maintain copies of all Incident Reports, Family Violence Incident Reports and Arrest/Booking Reports prepared during the entire calendar year preceding the current calendar year. Retain case file copies of Incident Reports, and Family Violence Incident Reports which support active wanted/missing person and/or stolen property records entered in GCIC/NCIC computerized files until the record entries are cleared, canceled, or purged.

(7) UCR program procedures, records, and supporting documents are subject to GCIC audits.

140-2.13 Wanted/Missing Persons and Stolen/Abandoned Property. Amended. Responsible agencies shall enter (or cause the entry of) information in GCIC and/or NCIC computerized files pertaining to wanted and missing persons, unidentified dead bodies, and serial-numbered property reported as stolen when required data elements become available. The computerized files maintained by GCIC comprise the Georgia Law Enforcement Data System (LEDS), commonly referred to as the "Georgia Hot Files". Record entry forms (LEDS and NCIC work sheets) shall be provided without cost by GCIC upon request.

(a) LEDS and NCIC work sheets and CJIS network codes, formats, and procedures established by GCIC and NCIC shall be used when making entries. GCIC will provide manuals, bulletins, and notices containing the prescribed codes, formats, and procedures and will provide revisions and updates as necessary.

1. Heads of criminal justice agencies are responsible for ensuring that GCIC manuals, bulletins, and notices are maintained and used as the authoritative CJIS network operational directives within their agencies.

2. Heads of agencies are also responsible for training employees involved in entering, modifying, clearing, canceling, and validating record entries. Training shall emphasize that a second employee must verify each record entry for completeness and accuracy.

(b) Agencies operating CJIS network terminals are required to assist criminal justice agencies which do not have direct CJIS network access by providing controlled and monitored opportunities for such access.

(c) Each record entered in GCIC/NCIC computerized file must contain the valid identifier (ORI) of the criminal justice agency responsible for the entry record.

1. Any law enforcement terminal agency, governmental dispatch center, or governmental regional dispatch center may act as holder of the record on behalf of another agency and may place its own ORI in the wanted person or stolen property record entry only when a written service agreement exists between the entering agency and agency on whose behalf the record

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is entered. The agreement must state each agency's legal responsibilities for records entered in the computerized files.

2. Responsibilities for the record include entering and updating the record, confirming a hit on the record, and removing the record when it is no longer active or valid.

(d) Record entries shall be made within 12 hours after a determination by the investigating law enforcement agency that a wanted person should be arrested or that a vehicle or other property identifiable by serial number or owner-applied number was stolen.

(e) All record entries must be supported by the official documents which reflect initial and continuing efforts to apprehend wanted persons or to recover identifiable, serial-numbered stolen property. Arrest warrants must be available to support GCIC/NCIC wanted person record entries.

1. Agencies with terminals on the Georgia CJIS network shall maintain these supporting documents in their files until such time as wanted/missing persons are located, stolen property is recovered, or the record entries are removed from the computerized files.

2. Agencies with terminals on the Georgia CJIS network shall further require copies of such supporting documents to be provided by nonterminal agencies prior to making record entries on behalf of such agencies. If emergencies arise in which the speed of record entry is critical to the quick apprehension of wanted persons or recovery of stolen property, supporting documents may be provided after entry of the record.

3. If supporting documents are not provided within 48 hours of record entry, record entries shall be removed from GCIC and NCIC computerized files. Whenever record entries authorized by non-terminal agencies are removed by servicing terminal agencies, terminal agencies must notify the non-terminal agencies.

(f) Any agency which causes records to be entered in GCIC/NCIC computerized files must respond to other agencies' hit confirmation request messages. A response may be a notification that a specific period of time will be required for record verification or a response may be the requested record verification.

1. In all cases, responses must be transmitted within 10 minutes of receipt of hit confirmation request messages.

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2. Record entry verification must be provided to the agency originating the request for hit confirmation. Verification messages must include the status of record entries for wanted or missing persons or for stolen property.

(g) When records are no longer valid, they must be removed from GCIC and NCIC computerized files immediately.

1. Agencies operating Georgia CJIS network terminals are responsible for the timely removal of their own record entries when they are no longer valid.

2. Non-terminal agencies are responsible for the prompt removal of their records from GCIC and NCIC computerized files when the records are no longer valid, by furnishing requests for cancellation to the terminal agencies which made the record entries on behalf of the nonterminal agencies.

(h) When non-terminal agencies do not maintain 24-hour operations, they may not cause the entry of records under their ORIs. Record entries required by law should be made using the ORIs of their designated terminal agencies as per service agreements executed in compliance with the provisions of Subparagraph (c)1. of this Rule.

(i) GCIC provides a computerized file for the entry of records describing abandoned motor vehicles which have been recovered by law enforcement agencies and/or reported to them by operators of wrecker services or vehicle storage facilities. Georgia law requires law enforcement agencies to make record entries and to furnish operators of wrecker services and vehicle storage facilities, upon request, with the names and addresses of last known registered owners and title/lienholder information. Names and addresses of Georgia owners and title/lienholder information can be obtained from Department of Revenue files via CJIS network terminals. Names and addresses of last known owners, of abandoned vehicles registered in other states, can be obtained from the other states' motor vehicle files via the Georgia CJIS network and NLETS. Owners of abandoned motor vehicles, later determined to be stolen, are required by law to be notified of recoveries by law enforcement agencies after they receive notice that such abandoned vehicles have been stolen. Records entered in GCIC's abandoned vehicle file are automatically purged, if not removed earlier by entering agencies, after 90 days. NCIC does not maintain an abandoned vehicle file.

Authority O.C.G.A. Secs. 35-3-33, 35-3-36, 40-11-2. History. Original Rule entitled "Wanted/Missing Persons and Stolen Property" was filed on September 8, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule entitled "Wanted/Missing Persons and Stolen Property" adopted. Filed July 2, 1986; effective July 22, 1986. Amended: Filed January 6, 1988; effective January 27, 1988, as specified by the Agency. Amended: Rule repealed and a new Rule entitled "Wanted/Missing Persons and Stolen/Abandoned Property" adopted. Filed July

140-2-.14 Validation Procedures for Wanted/Missing Person and Stolen Property Records. Amended.

(1) All law enforcement and criminal justice agencies with wanted/missing persons and/or stolen property record entries in GCIC and NCIC computerized files are required to participate in the record validation program established and administered by GCIC and NCIC.

(a) Record entries subject to validation are: wanted/missing persons, unknown deceased, stolen vehicles, stolen guns, stolen boats and stolen securities.

(b) GCIC will produce listings of record entries to be validated and will send them to agencies of record each month.

(c) Agencies of record shall review the listings; compare them to LEDS and NCIC work sheets and to other departmental case file documents on which the record entries were based, including available criminal history records; determine the current validity of record entries by checking for changes in extradition limits, by determining from owners of stolen property if recoveries have been made or if ownership has changed, by verifying that arrest warrants are still active and that persons reported missing have not returned; and take appropriate action(s).

1. Cancel record entries which are no longer valid.

2. Modify record entries which contain erroneous information or which are incomplete. Create supplemental record entries as required.

3. When record entries have been verified as accurate and current or have been modified or canceled, complete the validation certification form, and mail it so as to ensure its arrival at GCIC prior to the cited suspense date. Alternatively, agencies may elect to certify their validations via the CJIS network, using procedures prescribed by GCIC.

(d) Non-receipt of validation certification forms (or, non-receipt of valid certification messages via the CJIS Network) at GCIC by the cited suspense date will result in automatic removal from GCIC and NCIC computerized files of all record entries contained in the listing.

(2) Validation procedures, records, and supporting documents are subject to GCIC and NCIC audits.

140-2-.15 Special Handling Provisions for Missing and Unidentified Deceased Persons. Amended.

(1) All law enforcement agencies shall collect information about each person reported missing by a parent, guardian or next of kin. Information about unknown deceased persons shall also be collected and preserved, for identification purposes. Information to be collected includes physical descriptions, descriptions of clothing, dental charts and other personal data useful in identifying missing persons or unknown deceased persons.

(2) Agencies receiving missing person reports, or conducting investigations of unknown deceased cases, shall enter appropriate records in GCIC and NCIC computerized files. In compliance with federal law (42 USC 5779, Section 3701), GCIC will advise the Georgia missing person clearinghouse of all such record entries.

(a) With respect to missing minors, including juveniles reported as runaways, record entries shall be made immediately.

(b) GCIC shall provide assistance in making record entries for agencies handling missing person and unknown deceased cases. GCIC assistance will include the entry and any subsequent modifications of dental chart information in the computerized files following the receipt of this information from the law enforcement agencies handling the cases. Copies of the record entries made by GCIC will be provided to the agencies handling the cases. Thirty days after missing person records are entered in the NCIC computerized file, NCIC will check all records for completeness. Messages to agencies of record will be sent by NCIC when records are found to be incomplete.

(c) Non-terminal agencies may request assistance in making missing person and/or unknown deceased record entries from the terminal agencies which provide CJIS network service for them.

(d) Agencies which make or authorize the entry of missing person and unknown deceased records in GCIC and NCIC computerized files shall respond within 10 minutes to messages from other agencies reference possible identifications.

(3) Agencies authorizing record entries for missing persons or unknown deceased persons shall cause these records to be removed from GCIC and NCIC computerized files immediately upon the location of missing persons or the identifications of unknown deceased persons.

Authority O.C.G.A. Secs. 35-1-8, 35-3-4, 35-3-33, 35-3-36, 45-16-1; 42 U.S.C. 5779, Sec. 37.01. History. Original Rule entitled "Special Handling Provisions for Missing and Unidentified Deceased Persons" was filed on September 6, 1984; effective October 8, 1984, as specified by the Agency. Amended: Rule repealed and a new Rule of same title adopted. Filed July 2, 1986; effective July 22, 1986. Amended: Rule repealed and a new Rule of same title adopted. Filed July 7, 1988; effective July 27, 1988. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990. Amended: F. Dec. 4, 1991; eff. Dec. 24, 1991.

140-2-.16 Training. Amended.

(1) Criminal justice officials and agency heads shall provide for training to ensure their employees' effective performance of job-specific tasks relating to:

(a) The use of the Georgia CJIS network and the Georgia Law Enforcement Data System, including CJIS network terminal operations;

(b) The use of the National Crime Information Center;

(c) The use of the National Law Enforcement Telecommunications System;

(d) The dissemination and use of criminal history record information;

(e) State and national UCR programs;

(f) Fingerprinting of arrested persons and the initiation of OBTS forms;

(g) The preparation and submission of reports of final dispositions of charges.

(2) Computer center managers, managers of governmental dispatch centers, and managers of governmental regional dispatch centers shall ensure that employees who support criminal justice operations are trained to perform job-specific tasks relating to the functions described in Paragraph (1) above.

(3) The head of each CJIS network terminal agency shall appoint a Terminal Agency Coordinator (TAC) to serve as the agency point of contact on record validations, hit confirmations, training, and all other NCIC/CJIS network related matters. GCIC shall provide job-specific training for TACs and any assistant TACs who may be appointed.

(4) TACs shall be subject to certification testing within 60 days of their

appointments.

(5) TACs shall be responsible, within their agencies, for the administration of terminal operator training and certification testing programs developed by GCIC.

(6) Terminal operators shall be subject to certification testing within six months of their employment or assignments to terminal operator duties and subject to re-certification testing every two years thereafter for the duration of their employment as terminal operators. Employees who use CJIS network terminals occasionally other than dispatchers and radio operators, are not required to participate in the certification/recertification testing programs, however, on-the-job training by TACs must be provided to ensure occasional users are competent to execute all terminal functions they are authorized to perform.

(7) During December each year, TACs will report to GCIC the certification/recertification status of all terminal operators employed by their agencies. Terminal operators assigned additional duties as TACs shall be trained, tested, and certified as both terminal operators and TACs.

(8) The appointment of a TAC, the immediate appointment of a new TAC when required to fill a TAC vacancy, the training, testing, and certification of the TAC, and the training, testing, certification, and recertification of terminal operators are mandatory for terminal agency status on the Georgia CJIS network.

Authority O.C.G.A. Secs. 35-3-33. History. Original Rule entitled "Training" was filed on July 2, 1986; effective July 22, 1986. Amended: Rule repealed and a new Rule of same title adopted. Filed July 7, 1988; effective July 27, 1988. Repealed: New Rule of same title adopted. F. Nov. 7, 1990; eff. Nov. 27, 1990. Amended: F. Dec. 2, 1992; eff. Dec. 22, 1992.

140-2-.17 Sanctions.

(1) Criminal justice agencies, governmental dispatch centers, and governmental regional dispatch centers are subject to GCIC administrative sanctions for violation of the laws governing the operation of the CJIS network, of these Rules, or of the CJIS network policies published by GCIC pursuant to O.C.G.A. 35-3-33(13). Administrative sanctions for terminal agencies may include, but are not limited to: purging of wanted/missing person and stolen property records entered in GCIC/NCIC computerized files by the agencies, restricting the CJIS network access of the agencies' terminals, and suspension/revocation of the agencies' terminal access to the CJIS network.

(2) Administrative sanctions may be imposed on individual violators.

Such sanctions may include mandatory re-training and/or re-certification of TACs and/or terminal operators.

(3) Individual violators are also subject to criminal prosecution when their actions constitute violations of applicable state or federal statutes.

Authority O.C.G.A. Secs. 35-3-32, 35-3-38; 16-9-90 et seq. History. Original Rule entitled "Sanctions" adopted. F. Dec. 4, 1991; eff. Dec. 24, 1991.