



**GEORGIA FIRST
AMENDMENT
FOUNDATION**

your right to know

March 8, 2016

The Honorable Nathan Deal
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

The Honorable John Kennedy
The Honorable Butch Miller
The Honorable Mike Dugan
The Honorable Burt Jones
The Honorable Greg Kirk
The Honorable Hunter Hill
Georgia State Senate
Atlanta, Georgia 30334

Re: Section 6 of Senate Bill 367

Dear Governor Deal and Senators Kennedy, Miller, Dugan, Jones, Kirk
and Hill:

On behalf of the Georgia First Amendment Foundation, I am writing to raise our concerns about Section 6 of Senate Bill 367, which will allow the systematic sealing of records regarding "first offender" pleas entered by individuals who have pled guilty to crimes.

Unless Section 6 is removed from the bill, we are concerned that it will permit such widespread sealing of court records, it will alter the public's confidence in the workings of the justice system and undermine the public's faith that the criminal justice system is protecting the interests of law abiding citizens.

We note that this legislation arises out of work of the Georgia Council on Criminal Justice Reform, including its February 2016 Report.

150 E. Ponce de Leon Ave., Suite 230, Decatur, Georgia 30030 • (404) 525-3646 • (404) 377-0486 (fax)
info@gfaf.org • www.gfaf.org

"Because public men and women are amenable 'at all times' to the people, they must conduct the public's business out in the open."

The late Charles L. Weltner Sr., Chief Justice, Georgia Supreme Court

Board of Directors

Derek Bauer, Esq.
McKenna Long & Aldridge LLP

Stephanie Benfield
Director, Office of Sustainability
City of Atlanta

Tom Budlong
Georgia Library Association

Otis Brumby, III
Publisher
Marietta Daily Journal,
Cherokee Tribute & Neighbor
Newspapers

Jon Burton, Esq.
Government Affairs
LexisNexis

Peter C. Canfield, Esq.
Jones Day

Carolyn Carlson
Kennesaw State University

Tom Clyde, Esq.
Kilpatrick Townsend & Stockton LLP

Cynthia Counts, Esq.
Counts Law Group

Charles Davis
Grady College of Journalism
and Mass Communication,
University of Georgia

F.T. Davis, Jr., Esq.
McKenna Long & Aldridge LLP

Carolyn Y. Forrest
VP Legal Affairs
FOX Television Stations

Ken Foskett
Senior Editor/Investigations
Atlanta Journal-Constitution

David Hudson, Esq.
Hull Barrett Attorneys

Tywanda Lord, Esq.
Kilpatrick Townsend & Stockton LLP

Shawn McIntosh
Deputy Managing Editor
Atlanta Journal-Constitution

Maryann Mrowca

Alan NeSmith
Community Newspapers, Inc.

DuBose Porter
Executive Editor
The Courier - Herald

Hyde Post
Hyde.Post Communications, Inc.

Robin Rhodes
Executive Director
Georgia Press Association

Dale Russell
I-Team Investigative Reporter
WAGA-TV Channel 5

Gerry Weber, Esq.
Law Offices of Gerry Weber LLC
Senior Counsel,
Southern Center for Human Rights

Neely Young
Publisher
Georgia Trend

Jim Zachary
Editor
Valdosta Daily Times

*Affiliations appear for purposes of
identification only*

The Council's Report asserted that "the First Offender Act was enacted in 1968 to allow certain first-time offenders to avoid both a conviction and a public record if they successfully complete their court sentence." See Report at p. 7. The Report then concluded that "[m]any offenders are not receiving the benefits they are entitled to under the law – the confidentiality of the records and the protection from employment discrimination." Report at p. 20.

However, this is a significant misstatement of the First Offender Act's purpose and history. It has never authorized the sealing of court records. That was never its intent. In fact, the First Offender Act authorizes "a discharge without a court adjudication of guilt," but *then explicitly requires that court records relating to a first offender plea remain open to the public.*

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 the discharge thereon required by this subsection, nor shall the contents thereof be expunged or destroyed as a result of the discharge.

O.C.G.A. § 42-8-62(a).

Section 6 of Senate Bill 367 would, thus, dramatically alter the current legal landscape. Following a plea under the First Offender Act, Section 6 would authorize the sealing of all of the following:

- All records relating to the crime in the possession of the court;
- All records relating to the crime in the possession of law enforcement agencies, jails and detention centers; and
- All records relating to the crime at the Georgia Crime Information Center.

Such sweeping sealing, which could occur even before the offender has completed probation and been discharged, creates the very real possibility that crimes will rapidly "disappear," making it impossible for the public to make informed decisions in reliance on the records of our criminal justice system.

Past legislative measures relating to sealing court and law enforcement records in connection with the Criminal Justice Reform Council have had very troubling consequences. News organizations have recently reported that a bill promulgated by the Criminal Justice Reform Council in 2013 led to the sealing of 5 million police records despite the fact that the outcome of millions of those cases was unknown. Subsequent investigation of case files from Fulton County revealed 45% of those cases in that county had ended in convictions. See ***“Law crafted to protect Georgians also protects criminals,”*** WSB-TV, Feb. 29, 2016, online at <http://www.wsbtv.com/news/news/local/gbi-hires-vendor-retrieve-missing-felony-records/nqYtQ/>. Additionally, recent appellate decisions in Georgia have emphasized the importance of allowing employers to consider first offender pleas while offenders are serving probated sentences – which, of course, requires public access to such first offender case files. See *City of Albany v. Pait*, 355 Ga. App. 215 (Georgia Court of Appeals, Nov. 18, 2015) (reinstating the City of Albany Fire Department’s termination of a firefighter who asserted he could not be terminated for theft of private property because he had entered first offender pleas to the criminal counts against him).

We applaud many of the measures taken pursuant to the Governor’s Criminal Justice Reform Program, including many of the measures contained in the current bill. However, Section 6 is antithetical to the presumption of public access to the records of our criminal justice system that is at the core of the First Amendment to the United States Constitution.

While the bill is still pending in the House, we urge you to remove Section 6 from the bill in order to protect the public’s right to know how its government is addressing criminal wrongdoing. The Governor’s Criminal Justice Reform Program should not enact an era in which it becomes common in Georgia to conceal criminal wrongdoing in sealed records and closed police files. Given the success of the other programs established by the Governor’s Criminal Justice Reform, Section 6 of Senate Bill 367 is not a worthy legacy.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hollie Manheimer", written in a cursive style.

Hollie Manheimer

cc: GFAF Board of Directors