

GEORGIA'S FIRST OFFENDER ACT

Under the Georgia First Offender Act, a defendant, at the time of entering a guilty or Nolo plea, can request that the judge sentence him or her under the First Offender Act. If the judge agrees to allow First Offender, then after the defendant completes the terms and conditions of the sentence (including jail time under certain cases), the defendant is deemed to not have a criminal conviction. A primary benefit of the First Offender Act in GA is that the defendant can honestly state that they have not been convicted of a crime. ¹

Many defendants mistakenly believe that if they are eligible for First Offender sentencing they will not be sentenced to jail time. A defendant may be sentenced to jail time under the First Offender Act.

First Offender does not mean that the incident is wiped away or expunged, but it does mean that it should not appear as a conviction on the defendant's criminal history. However, law enforcement and prosecutors still have access to Georgia First Offenders Act information and it can be used in any future proceedings. Additionally, the record may be available through other sources such as records at the court house, criminal justice agency website and third party website or companies that sell this type of information. The First Offender is not automatically put in place at the end of probationary period and an additional step must be taken by the prosecutor to ensure the First Offender is certified and sent to the Georgia Criminal Information Center.

The downside of the Georgia First Offender Act is that any violation of the terms and conditions of the sentence can result in a re-sentencing of the defendant up to the maximum sentence.

¹ O.C.G.A. § 42-8-60 reads: "upon a verdict or plea of guilty or nolo contendere, but before an adjudication of guilt, the court may, in the case of a defendant who has not been previously convicted of a felony, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and place the defendant on probation as a first offender."

In addition, certain jobs such as teaching, child care, elder care and law enforcement are exempt under O.C.G.A. § 42-8-63.1 when the defendant is charged with certain violent, sexual or abuse charges.²

First Offender Sentencing is not available to defendants in the following classes of cases:

(1) A serious violent felony as such term is defined in Code Section 17-10- 6.1;

(2) A sexual offense as such term is defined in Code Section 17-10- 6.2;

(3) Sexual exploitation of a minor as defined in Code Section 16-12- 100;

(4) Electronically furnishing obscene material to a minor as defined in Code Section 16-12-100.1; or

(5) Computer pornography and child exploitation, as defined in Code Section 16-12-100.2. Likewise, DUI and certain violent, sexual and abuse charges are specifically exempt from any First Offender treatment.

² O.C.G.A. § 42-8-63.1 provides that “[a] discharge under this article may be used to disqualify a person for employment if:

(1) The offender was discharged under this article on or after July 1, 2004; and either

(2) The employment is with a public school, private school, child welfare agency, or a person or entity that provides day care for minor children or after school care for minor children and the defendant was discharged under this article after prosecution for the offense of child molestation, sexual battery, enticing a child for indecent purposes, sexual exploitation of a child, pimping, pandering, or incest;

(3) The employment is with a nursing home, personal care home, or a person or entity that offers day care for elderly persons and the defendant was discharged under this article after prosecution for the offense of sexual battery, incest, pimping, pandering, or a violation of Code Section 30-5-8; or

(4) The request for information is an inquiry about a person who has applied for employment with a facility as defined in Code Section 37-3-1 or 37-4- 2 that provides services to persons who are mentally ill as defined in Code Section 37-3-1 or mentally retarded as defined in Code Section 37-4-2, and the person who is the subject of the inquiry to the center was prosecuted for the offense of sexual battery, incest, pimping, or pandering.

(b) Any discharge under this article may be used to disqualify a person from acquiring or maintaining a peace officer certification as provided for in Chapter 8 of Article 35 and also may disqualify a person from employment in a certified position with a law enforcement unit where the discharge under this article pertained to a felony offense or a crime involving moral turpitude.

By definition, the **First Offender Act** can only be used once. However, in some cases, a judge will allow a person with a criminal record of misdemeanors to plea under First Offender Act if they have not previously used it. First Offender can be used either for a misdemeanor or a felony, but not one of each. Also, if handled correctly, multiple pending cases can sometimes be resolved with variations of First Offender and Conditional Discharge.

Attorney Diane Cherry understands the fine details of the First Offender Act in Georgia. If you have questions about Georgia's First Offender Act, call Diane Cherry at 770-444-3399.