

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
Petitioner/Appellant

vs

\_\_\_\_\_  
POLICE DEPARTMENT, and  
\_\_\_\_\_  
SUPERVISOR, RECORDS &  
IDENTIFICATION SECTION, COUNTY POLICE

DEPARTMENT

Respondents/Appellees

APPEAL TO SUPERIOR COURT PURSUANT TO O.C.G.A. § 35-3-37(c)

Petitioner/Appellant, \_\_\_\_\_, hereby appeals from the decision of \_\_\_\_\_, Supervisor of the Records & Information Section, \_\_\_\_\_ County Police Department, refusing to expunge the records relating to the arrest of Mr./Ms. \_\_\_\_\_ in connection with the case of *State of Georgia v. \_\_\_\_\_*, State Court of \_\_\_\_\_ County, Accusation No. \_\_\_\_\_. A copy of this decision is attached. This appeal is made pursuant to O.C.G.A. § 35-3-37(c).

Mr. \_\_\_\_\_ seeks by way of this appeal a de novo hearing before this Court and an opportunity to file a brief addressing the issues raised by this appeal. See *Strohecker v. Gwinnett County Police Department*, 182 Ga. App. 853, 357 S. E. 2d 305 (1987). Further, Mr./Ms. \_\_\_\_\_ seeks an order directing Respondents/Appellees to return his fingerprint cards and to purge or modify his/her criminal records.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Appellant pro se

Address \_\_\_\_\_

Telephone number \_\_\_\_\_

(See certificate of service)

IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

(STYLE OF CASE) CASE NO. \_\_\_\_\_

\_\_\_\_\_'S BRIEF IN SUPPORT OF HIS/HER APPEAL PURSUANT TO  
O.C.G.A. § 35-3-37

Petitioner/Appellant, \_\_\_\_\_, submits the following brief in support of his appeal from the refusal of the \_\_\_\_\_ County Police Department to purge or modify his/her criminal records:

INTRODUCTION

\_\_\_\_\_ contends that the criminal records maintained by the \_\_\_\_\_ County Police Department and other law enforcement organizations in Georgia should be expunged or modified because the records are inaccurate, incomplete, and misleading pursuant to O.C.G.A. § 35-3-37(c), because the harm to him arising from the records outweighs any legitimate state interest in retaining the records, and because retention of the records violates his/her constitutional rights to privacy and due process. Mr./Ms. \_\_\_\_\_ also seeks an order that upon inquiry s/he may respond that the prosecution that is the subject to this proceeding never occurred. Finally, s/he seeks the return of his/her fingerprint cards pursuant to O.C.G.A. § 35-3-36(c).

The records at issue, which are maintained by the Georgia Crime Information Center ("GCIC") and the \_\_\_\_\_ County Police Department, pertain to a recent prosecution for the offense of \_\_\_\_\_, which allegedly occurred when Mr./Ms.

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FACTUAL BACKGROUND

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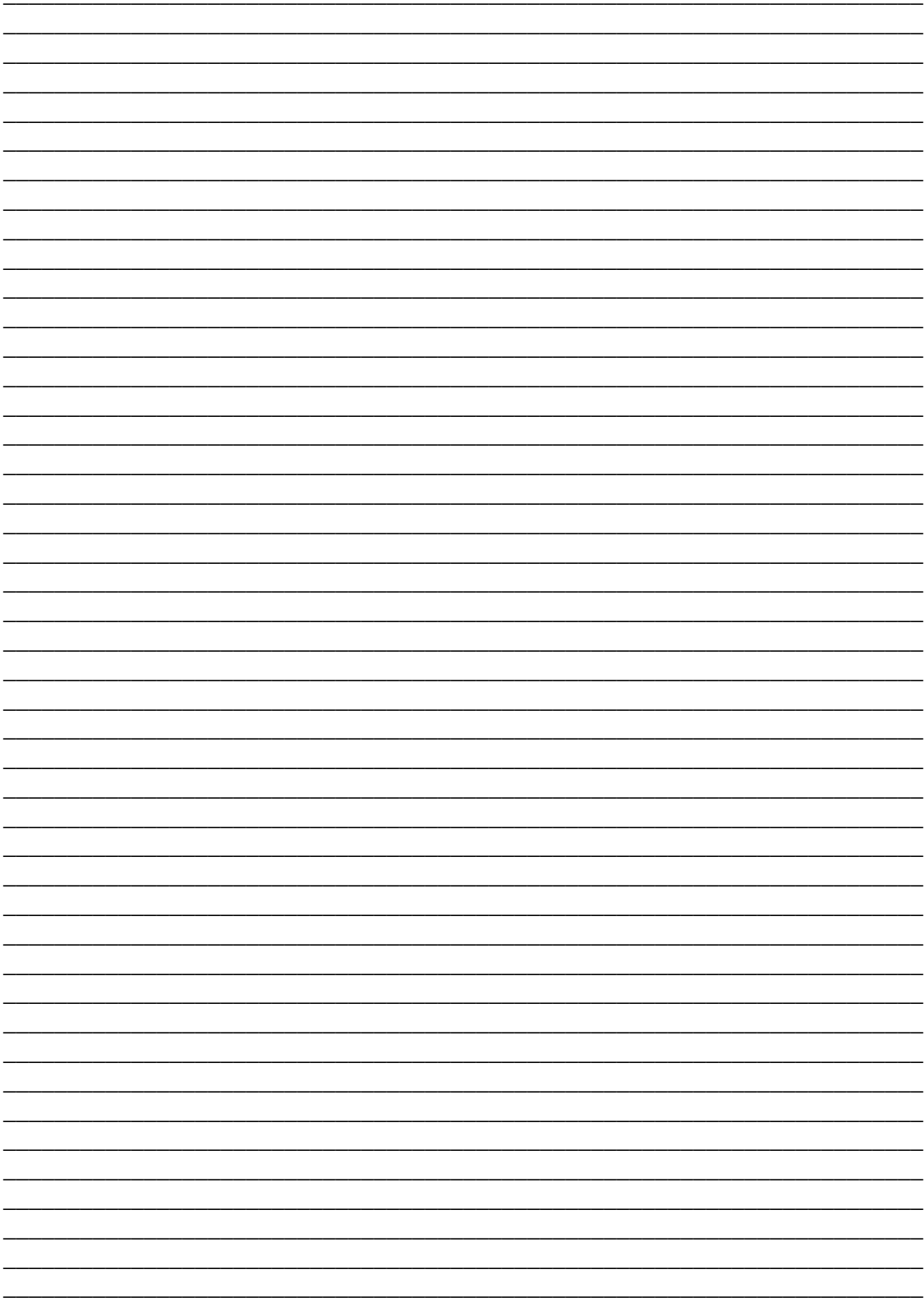
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ARGUMENT AND CITATION OF AUTHORITY

The criminal records relating to Mr./Ms. \_\_\_\_\_, the Petitioner, are inaccurate, incomplete and misleading because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The records, as a result, should be purged pursuant to O.C.G.A. § 35-3- 37(c). Alternatively, the records should be modified by \_\_\_\_\_

Further, the records should be purged because of their potential harm which outweighs the state's interest in keeping them and because retention of the records violates Mr./Ms. \_\_\_\_\_'s rights of privacy and due process. Finally, Mr./Ms. \_\_\_\_\_ is entitled by statute to the return of his/her fingerprint records. Each of these matters is discussed below.

I. Mr./Ms. \_\_\_\_\_'s Criminal Records are Inaccurate, Misleading and Incomplete and Thus Should Be Expunged Pursuant to O.C.G.A. § 35-3-37(c).

O.C.G.A. § 35-3-37(c) provides a remedy for a person who believes that his criminal records are inaccurate and incomplete and who cannot obtain relief from the law enforcement agency having custody of the records. Such a person is entitled to a de novo hearing before a superior court, which is empowered to "order such relief as it finds to be required by law." If the record in question is found to be "inaccurate, incomplete, or misleading, the court shall order it to be appropriately expunged, modified, or supplemented by an explanatory notation." O.C.G.A. § 35-3-37(c).

Mr./Ms. \_\_\_\_\_ contends that his records are inaccurate, incomplete and misleading:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Alternatively, an explanatory notation should be made, such as "Prosecution dismissed the charges."

It should be emphasized that Mr./Ms. \_\_\_\_\_ is not contending that all records relating to prosecutions which are later dismissed are misleading and thus subject to expungement. Nor is s/he challenging the Attorney General's opinion that expungement should be reserved for the unusual or extreme case. 1982 Op. Atty. Gen. 82-8. Rather, Mr./Ms. \_\_\_\_\_'s position is that his case is unusual because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
the charges against him were made without cause by an angry \_\_\_\_\_  
for the purpose of harassing him/her

II. Regardless of Whether Mr./Ms. \_\_\_\_\_'s Records are Inaccurate or Misleading, this Court Should Order Expungement.

Regardless of whether Mr./Ms. \_\_\_\_\_'s records are "inaccurate, incomplete, or misleading" within the meaning of O.C.G.A. § 35-3-37(c), this Court should order that the records be expunged. The scope of the remedy provided by that section is not limited to inaccurate, incomplete or misleading records. Rather, under the section a court is generally empowered to "order such relief as it finds to be required by law" upon consideration of a request that a criminal record be expunged.

Furthermore, although there is apparently no Georgia law directly on point, courts in other jurisdictions have used their inherent equitable powers to expunge criminal records in unusual cases such as this one. See, e.g., Bradford v. Mahan, 548 P. 2d at 1231; Natwig v. Webster, 562 F. Supp. 225 (D. R.I. 1983); United States v. Bohr, 406 F. Supp. 1218 (E. D. Wis. 1976); see generally O'Neal v. State, 185 Ga. App. 838, 365 S. E. 2d 894 (1988) (superior courts have authority to exercise all powers appertaining to their jurisdiction); Johnson v. State, 177 Ga. 881, 171 S. E. 699 (1933) (superior courts possess "inherent powers" not specifically granted by law). In deciding what constitutes the unusual or extreme case justifying expungement, courts have balanced the government's needs for the records against the harm that results from maintaining the records. Natwig v. Webster, 562 F. Supp. at 228.

There is good reason for this Court to exercise its general authority under O.C.G.A. § 35-3-37(c) and its inherent equitable power to expunge Mr./Ms. \_\_\_\_\_'s records. The impact on Mr./Ms. \_\_\_\_\_ of having a criminal record is enormous. It has been noted that notwithstanding an acquittal, a criminal record often works as a serious impediment and basis of discrimination in the search for employment and in securing certain licenses. E.g., Davidson v. Dill, 180 Colo. 123, 503 P. 2d 157, 159 (1972). Moreover, it is common knowledge that a man with a record is much more apt to be subject to police scrutiny--the first to be questioned and the last eliminated as the suspect in an investigation. If he is subsequently arrested, his previous record may result in denial of bail and influence the prosecutor in deciding how to handle the case. And if the man is convicted, his previous record may be considered in sentencing. E.g., Menard v. Mitchell, 430 F. 2d 486, 490-91 (D. C. Cir. 1970).

In contrast to the potential harm to Mr./Ms. \_\_\_\_\_, there is no legitimate law enforcement purpose that justifies retention of his records. The value of a person's criminal records to law enforcement agencies depends on two assumptions: (1) that the person in fact committed the crime for which he was accused and (2) that commission of the crime indicates a likelihood that he will commit other crimes. See Eddie v. Moore, 5 Wash. App. 334, 487 P. 2d 211 (1971), rev. denied, 79 Wash. 2d 1012 (1971). Neither of these assumptions has any validity in a case such as this one where the prosecution was based entirely upon an unfounded complaint by a disgruntled employee attempting to harass his employer. See Commonwealth v. Malone, 244 Pa. Super. 62, 366 A. 2d 584, 589 n. 9 (1976) (if "the testimony of the complainant was so insubstantial so that the [State] could not even make out a prima facie case, its interest [in retaining records] would seem relatively insignificant").

Expungement of Mr./Ms. \_\_\_\_\_'s records is thus appropriate. In addition, to provide full relief to Mr./Ms. \_\_\_\_\_, this Court should enter an order directing that in the future Mr./Ms. \_\_\_\_\_ may answer in the

negative to any inquiry regarding whether he was ever prosecuted for the offense of simple battery as alleged by Mr./Ms. \_\_\_\_\_. See *Natwig v. Webster*, 562 F. Supp. at 232 (entering such an order).

III. Expungement of Mr./Ms. \_\_\_\_\_'s Records is Necessary to Protect his Constitutional Rights of Privacy and Due Process.

Courts have also found a basis for ordering expungement of criminal records in the constitutional rights of privacy, see e.g., *Davidson v. Dill*, 503 P. 2d at 161; *Eddie v. Moore*, 487 P. 2d at 217, and of due process, e.g., *Commonwealth v. Malone*, 366 A. 2d at 587. Under the rationale of these decisions, expungement is appropriate whenever the government is not able to show that its interest in retaining the records outweighs the resulting potential harm to the person whose records are being retained. E.g., *Eddy v. Moore*, supra. Since, as set forth above, the potential harm to Mr./Ms. \_\_\_\_\_ exceeds the State's interest in retaining his records, expungement is necessary to protect his rights of due process.

IV. Mr./Ms. \_\_\_\_\_ is Entitled to the Return of his/her Fingerprint Cards Pursuant to O.C.G.A. § 35-3-36(c).

O.C.G.A. § 35-3-36(c) provides in part as follows:

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....

Since Mr./Ms. \_\_\_\_\_ was cleared of the offense of simple battery through \_\_\_\_\_, the State has no legitimate reason to keep the fingerprint records. Consequently, it is appropriate for this Court to enter an order requiring that his fingerprint records taken in connection therewith be returned to him. This conclusion follows regardless of whether his records are inaccurate, incomplete, or misleading or whether he is otherwise entitled to an order of expungement.

## CONCLUSION

For the reasons stated in this brief, Mr./Ms. \_\_\_\_\_ requests that this Court enter an order expunging all criminal records relating to his prosecution for the offense of simple battery and directing that all agencies to which these records have been disseminated be informed of the order. Further, the order should provide that if asked, Mr. \_\_\_\_\_ can respond that the prosecution never took place. Alternatively, Mr./Ms. \_\_\_\_\_ seeks an order striking the words " \_\_\_\_\_ " from his/her records maintained by \_\_\_\_\_ and adding an explanatory notation to the records such as " \_\_\_\_\_ ". Finally, Mr./Ms. \_\_\_\_\_ is entitled to the return of his fingerprint records.

\_\_\_\_\_  
Petitioner *pro se*

Address \_\_\_\_\_

Phone number \_\_\_\_\_

(See certificate of service)



IN THE SUPERIOR COURT OF \_\_\_\_\_ COUNTY

STATE OF GEORGIA

(STYLE OF CASE) CASE NO. \_\_\_\_\_

ORDER AND JUDGMENT

This matter came before the Court on \_\_\_\_ (138) \_\_\_\_, 20\_\_, for consideration of \_\_\_\_ (139) \_\_\_\_'s request for expungement of the criminal records relating to his recent prosecution and acquittal of the offense of \_\_\_\_ (140) \_\_\_\_\_. Upon consideration of the brief filed by Mr. \_\_\_\_ (141) \_\_\_\_, the affidavits and other materials submitted with the brief (which the Court accepted in evidence by stipulation and consent of the parties), and the arguments of counsel for the parties, the Court finds as follows:

(a) The records maintained by the Georgia Crime Information Center are inaccurate and misleading within the meaning of O.C.G.A. § 35-3-37(c) because the records contain the words "amended sentence." These words falsely suggest that Mr. \_\_\_\_ (142) \_\_\_\_ was initially convicted and sentenced of the offense and that he was only later exonerated. In fact, a directed verdict of acquittal was entered by the court at the conclusion of the state's evidence. Mr. \_\_\_\_ (143) \_\_\_\_ was never convicted or sentenced.

(b) The records maintained by the Georgia Crime Information Center and the \_\_\_\_ (144) \_\_\_\_ County Police Department are incomplete and misleading within the meaning of O.C.G.A. § 35-3-37(c) because the records do not reflect that the prosecution of Mr. \_\_\_\_ (145) \_\_\_\_ was totally lacking in substance and that it was based entirely upon a criminal complaint sworn out by a disgruntled employee under Mr. \_\_\_\_ (146) \_\_\_\_'s supervision as part of a campaign to harass his superiors at work in retaliation for having been terminated. While the records do state that Mr. \_\_\_\_ (147) \_\_\_\_ was exonerated, exoneration of a criminal charge implies only that the government has not proven guilt beyond a reasonable doubt. The statement that Mr. \_\_\_\_ (148) \_\_\_\_ was exonerated thus does not dispel the notion that he was involved in criminal activity.

Based upon these findings, it is ORDERED, ADJUDGED and DECREED as follows:

(1) The criminal records pertaining to the prosecution of Mr. \_\_\_\_ (149) \_\_\_\_ for the offense of \_\_\_\_ (150) \_\_\_\_ in the State Court of \_\_\_\_ (151) \_\_\_\_ County (Amended Accusation No. \_\_\_\_ (152) \_\_\_\_ ) shall be expunged. Pursuant to O.C.G.A. § 35-3-37(c), this Order shall apply to each agency in the state with custody, possession or control of such records, including without limitation the complaint upon which the prosecution was based, the records of the \_\_\_\_ (153) \_\_\_\_ County Police Department and the records of the Georgia Crime Information Center.

(2) Notification of this Order of expungement shall be promptly disseminated by respondents to any individuals or companies to which the records have been communicated, including the Federal Bureau of Investigation. Further, respondents shall notify counsel for Mr. \_\_\_\_ (154) \_\_\_\_ when the records have been expunged. Such notices shall be given within thirty days of the date of this Order.

(3) Pursuant to O.C.G.A. § 35-3-36(c), respondents are ordered to return to counsel for Mr. \_\_\_\_ (155) \_\_\_\_ any fingerprint records taken by respondents in connection with the criminal prosecution of Mr. \_\_\_\_ (156) \_\_\_\_ described above. Respondents are further

ordered to obtain and return to Mr. \_\_\_\_ (157) \_\_\_\_'s counsel all such fingerprint records in the possession of any individuals or agencies to whom such records have been disseminated, including the Georgia Crime Information Center and the Federal Bureau of Investigation. All fingerprint records shall be returned within thirty days of the date of this Order.

(4) It is further ordered that the "prosecution" referred to herein shall not, in the future, prevent Mr. \_\_\_\_ (158) \_\_\_\_ from answering in the negative to any inquiry regarding whether he has ever been arrested or prosecuted for any criminal offense.

This the \_\_\_\_ (159) \_\_\_\_ day of \_\_\_\_ (160) \_\_\_\_, 20\_\_.

\_\_\_\_ (161) \_\_\_\_

Judge

\_\_\_\_ (162) \_\_\_\_ County Superior Court

(Name of attorney presenting order)

(Attorney's address & phone number)

(Attorney's State Bar number)