



## Georgia's New Weapons Laws 2014 Legislative Session

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### General Authorizations of OCGA § 16-11-126

- Nothing New - Any person not prohibited may: **(Without a permit)**
  - *“handgun or long gun...on his or her property or inside his or her home, motor vehicle, or place of business.”*
  - *“long gun ...” but if loaded “shall only be carried in an open and fully exposed manner”*
  - *“handgun ...that is enclosed in a case and unloaded”*

## People Eligible for a Permit (but NOT required to have one)

- May transport in a private motor vehicle a handgun or long gun:
  - However; private property owners:  
(person in legal control through a lease, rental agreement, licensing agreement, contract, etc.)

Has the right to forbid possession ... on their property (except parking lot rules of OCGA § 16-11-135.

*O.C.G.A. § 16-11-126 (d)*

## If You Have a License...

- From GA or a state that recognizes our license;
- Can carry everywhere not listed in (1) – (7) below, subject to the rules of employer provided parking outlined in OCGA § 16-11-135;
  - UNLESS : Private property owner (or lawful possessor) excludes or ejects a person from the private property.

*O.C.G.A. § 16-11-127.1(c)*

## Employee's Vehicle in Employer's Parking Lot

- OCGA § 16-11-135 regulates what both public and private employers can and can not prohibit in locked cars in their employee parking lots.

## Recognition From Other States

If another State recognizes our permits we will recognize a permit from that State – same rules of carry apply to out of state license holders that apply to GA license holders.

According to DPS - Alabama, Alaska, Arkansas, Arizona, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming.

*O.C.G.A. § 16-11-126 (e)*

## Hunting & Fishing License

- A valid hunting or fish license, while “hunting, fishing, or engaging in sport shooting” on property that you have permission of the owner to be on does not require a weapons carry permit.
- Parks, historic sites and recreational areas and the publically owned buildings thereon- valid permit - can carry unless prohibited by federal law.

*O.C.G.A. § 16-11-126 (f) & (g)*

## Crime and Punishment

- OCGA § 16-11-126 (h) “No person shall carry a weapon without a valid weapons carry license unless one of the exceptions ... commits the offense of carrying a weapon without a license.”
- 1<sup>st</sup> – misdemeanor.
- 2<sup>nd</sup> within 5 years – felony 2 to 5 years.

## General Prohibitions of OCGA § 16-11-127

- “a person shall be guilty of carrying a weapon or long gun in an unauthorized location ... carries a weapon or long gun”

## Where Prohibited

- (1) Government building;
- (2) Courthouse;
- (3) Jail or Prison;
- (4) Place of Worship – see except;
- (5) State mental health facility
- (6) Nuclear power facility;
- (7) Within 150 feet of a polling place

*O.C.G.A. § 16-11-127(b)*

## COURTHOUSE

- "Courthouse" means a building occupied by judicial courts and containing rooms in which judicial proceedings are held.

NOTE: Look at the definition of "Government building."

*O.C.G.A. § 16-11-127(a)*

## GOVERNMENT BUILDING DEFINED

- 1) a building in which a government entity is housed;
- 2) a building where a government entity meets in its official capacity, but if the building is not a publicly owned building, the building is be considered a government building for the purposes of this Code section only during the time such government entity is meeting at such building; or
- 3) the portion of any building that is not a publicly owned building that is occupied by a government entity.

NOTE: OCGA § 16-11-127.1 treats schools and school safety zones differently and OCGA § 16-11-130.2 deals with commercial airports.

*O.C.G.A. § 16-11-127 (a)*

## GOVERNMENT ENTITY DEFINED

- “an office, agency, authority, department, commission, board, body, division, instrumentality, or institution of the state or any county, municipal corporation, consolidated government, or local board of education within this state.”

*O.C.G.A. § 16-11-127 (a)*

## NEW RIGHTS OF A LICENSE HOLDER OCGA § 16-11-127 (e)

- Exceptions to General Prohibition - Carry in a government building, when open for business where ingress is not restricted or screened by security personnel.
- If a license holder who enters or attempts to enter a government building where ingress is restricted or screened by security personnel, - it's a misdemeanor if one POST certified security personnel is present.

## RIGHT TO RETREAT

- “*a license holder* who immediately exits or leaves... upon notification ... of failure to clear security ... shall not be guilty”
- However – “A person who is *not a license holder* who attempts to enter a government building carrying a weapon shall be guilty of a misdemeanor”

*O.C.G.A. § 16-11-127 (e)*

## What about the COURTHOUSE?

- Is the courthouse a “government building?”
  - Our Advice:
    - Establish your restricted access at the point of ingress;
    - At least one member must be POST certified;
    - Post the prohibition; and
    - Give the license holder the chance to immediately exit or leave.



## PRIVATE PROPERTY GENERALLY

- “private property owners or persons in legal control of private property through a lease, rental agreement, licensing agreement, contract, or any other agreement to control access to such property shall have the right to ~~forbid~~ exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21,” (Criminal Trespass - Remain).

*O.C.G.A. § 16-11-127 (c)*

## PLACE OF WORSHIP

- Forbidden unless the governing body or authority of the place of worship permits the carrying of weapons or long guns by license holders.
- A license holder shall not be arrested and can only be fined \$100. A non-license holder - punished for a misdemeanor.

*O.C.G.A. § 16-11-127 (b) & (e)*

## BARS, TAVERNS, NIGHTCLUBS

- Treated no differently than any owner/lessor of private property:
- License holder may enter, but owner/lessor has right to “*exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with the criminal trespass statute*” – [remains on the property after being given notice to depart].”
- Under former law, no entry permitted unless bar owner permitted.

*deleted O.C.G.A. § 16-11-127 (a)(1), (b)(6)  
see O.C.G.A. § 16-11-127 (c)*

## OCGA § 16-11-134

### Discharging firearm while under the influence of alcohol or drugs

- a) It shall be unlawful for any person to discharge a firearm while:
  - 1) Under the influence of alcohol or any drug or any combination of alcohol and any drug to the extent that it is unsafe for the person to discharge such firearm except in the defense of life, health, and property;
  - 2) The person's alcohol concentration is 0.08 grams or more at any time while discharging such firearm or within three hours after such discharge of such firearm from alcohol consumed before such discharge ended; or

## OCGA § 16-11-134

### Discharging firearm while under the influence of alcohol or drugs

- 3) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.
- b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of possessing or discharging a firearm safely as a result of using a drug other than alcohol which such person is legally entitled to use.
- c) Any person convicted of violating subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature.

## Nuclear Power Facility

### OCGA § 16-11-127.2

- No Weapons or long guns “on the premises”.
- Punishment:
  - Misdemeanor.
  - If done with “intent to do bodily harm on the premises” – felony, 2 to 20 and \$10,000 fine.

*O.C.G.A. § 16-11-127 (b)(6)*

## General Prohibition at School OCGA § 16-11-127.1

- (b)(1) “ ...it shall be unlawful for any person to carry or possess or have under such person’s control while within a school safety zone ...any firearm or explosive compound, other than fireworks”

NOTE: Differences in HB 826 and HB 60.

## Different Definitions

### “BUS”

- HB 826 concentrated on the purpose the vehicle is being operated for.
- HB 60 concentrated on the owner or who “furnished” the transportation.

## Different Definitions

### “WEAPONS”

- HB 826 adds definitions of “Dangerous weapon”, “Firearm”, “Fireworks”, “Machine gun”, and School.
- HB 826 deleted the definition of “Weapon”.

## SCHOOLS ABILITY TO AUTHORIZE

- A person who has been authorized in writing by a duly authorized official of the school [a school, local board of education, or postsecondary institution] [a public or private elementary or secondary school or a public or private technical school, vocational school, college, university, or other institution of postsecondary education or a local board of education as provided in Code Section 16-11-130.1] to have in such person's possession or use as part of any activity being conducted at a school building, school property, or [within a school safety zone, at a school function, or on a bus or other transportation furnished by a school a weapon] [school function a weapon within a school safety zone or on a bus or other transportation furnished by a school a firearm] which would otherwise be prohibited by this Code section. Such authorization shall specify the ~~weapon or weapons~~ types of firearms which have been authorized and the time period during which the authorization is valid;

## AUTHORIZED BY A TEACHER?

- New Exception to General Prohibition:  
“(5) This subsection shall not apply to any firearm used for classroom work authorized by a teacher.”
- Exception in current law in the definition of a “Weapon” – “excludes any of these instruments used for classroom work authorized by the teacher”.

## Exceptions to School Requirements for Authorizing

- Adopts a policy;
- Certain personnel;
- Training;
- List of approved weapons;
- Mandatory methods of securing weapons;
- Personnel must be a license holder and pass a background check.

*O.C.G.A. § 16-11-130.1*

## Punishment for Violating OCGA § 16-11-127.1

- License holder – misdemeanor.
- Non-License holder – felony 2 to 10 and up to \$10,000 fine.
- If it involves a dangerous weapon or machine gun – felony 5 to 10 and up to \$10,000 fine.

## AIRPORTS OCGA § 16-11-130.2

- Commercial service airport

*“(a) no person shall enter the restricted access area ... in or beyond the airport security checkpoint, ... weapon or long gun.”*

- Non License Holder – misdemeanor.
- License Holder – misdemeanor, but right to retreat .
- With intent to commit a separate felony – 1 to 10 years and \$1000 - \$15,000 fine.

## License Holder's Right to Retreat at an Airport

- Upon notification;
- At the screening check point for the restricted area;
- That they are in possession of a weapon or long gun;
- Immediately leaves the restricted access area and compliance with TSA rules; then
- SHALL NOT BE GUILTY

NOTE: No requirement for POST certified screeners here like other government buildings.

O.C.G.A. § 16-11-130.2

## Where Prohibition does NOT Apply

- An Airport Drive;
- General Parking Area;
- Walkway;
- Shops; or

*"Areas of the terminal that are outside the screening checkpoint and that are normally open to unscreened passengers or visitors to the airport."*

O.C.G.A. § 16-11-130.2



## LOCAL GOVERNMENT ORDINANCES

*“(d) ...shall be null, void, and of no force and effect, and this Code section shall preempt any preempt any such ordinance, resolution, regulation, or policy.”*

O.C.G.A. § 16-11-130.2

## NEW PROVISIONS

### OCGA § 16-11-137

- (a) must carry the permit or proof of exemption ... “failure to do so shall be prima-facie evidence of a violation of ...16-11-126 through 16-11-127.2”

NOTE: (c) can only charge \$10 if they produce in court the permit valid at the time or proof of exemption valid at the time.

- (b) “A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person had a weapon carry license”

## Convicted Felons and Affirmative Defenses

- HB 60 eliminates from OCGA §16-3-24.2 the exception for offenses found under Part 3 of Article 4 of Chapter 11.
- In other words, a defendant's assertion of an affirmative defense of justification under Code Section 16-3-21, 16-3-23, 16-3-23.1, or 16-3-24 may no longer be defeated by the fact that the person was in violation of any of the statutes included within Part 3.
- Since possession of a firearm by a convicted felon is one of those offenses found under Part 3, *the use of deadly force by a defendant, who was a convicted felon and unlawfully in possession of a firearm under OCGA §16-11-131, will not, in and of itself, prevent the defendant from asserting an otherwise lawful justification defense.*

O.C.G.A. § 16-11-138

## Defense of Self or Others

- HB 60 added a new OCGA §16-11-138 which provides as follows: "Defense of self or others, as contemplated by and provided for under Article 2 of Chapter 3 of Title 16 shall be an *absolute defense* to any violation under this part."

## HOUSING PROJECTS OCGA § 8-3-202

It is now unlawful to “require as a condition of tenancy in public housing, any prohibition or restriction of any lawful possession of a firearm within an individual dwelling unless required by federal law or regulation”.

## Regulation of Your Employees OCGA § 16-11-173

The sheriff, chief of police, commanding officer of any law enforcement agency, the district attorney and the solicitor-general:

“shall regulate and determine the possession, carrying, and transporting of firearms and weapons ... so long as ... comport with state and federal law.”

## WHO CAN GET A PERMIT NOW?

- General prohibition for under 21, except:
  - (i) Is at least 18 years of age;
  - (ii) Provides proof that he or she has completed basic training in the armed forces of the United States; and
  - (iii) Provides proof that he or she is actively serving in the armed forces of the United States or has been honorably discharged from such service;

*O.C.G.A. § 16-11-129*

## NO LONGER PREVENTS THE ISSUANCE OF A PERMIT

- ~~(i) Pointing a gun or a pistol at another in violation of Code Section 16-11-102;~~

*deletes O.C.G.A. § 16-11-129 (b)(2)(H)*

## MENTAL ILLNESS PREVENTS PERMITTING

### CURRENT LAW:

- “(J) ... hospitalized as an inpatient in any mental hospital or alcohol drug treatment center within the five years immediately preceding the application”.

### NEW:

- “(K) ... any person who has been adjudicated mentally incompetent to stand trial; or
- ... any person who has been adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of Article 6 of Chapter 7 of Title 17.

*O.C.G.A. § 16-11-129*

## Petitions for Relief from License Exceptions

- New paragraph (b.1) applies to an individual denied a license because of mental health.
- In the Court of original adjudication after notice to the civil party or the prosecuting attorney.
- Establishes procedures for a hearing.

*O.C.G.A. § 16-11-129*

## PROCEDURE FOR GETTING A PERMIT ANYWAY

- “(3) The court shall grant the petition for relief if such court finds by a preponderance of the evidence that the person will not likely act in a manner dangerous to public safety in carrying a weapon and that granting the relief will not be contrary to the public interest.”
- “(5) ...petition for relief once every two years...”
- No petition prior to discharge from treatment.

*O.C.G.A. § 16-11-129 (b.1)(3,5)*

## Creates New Cause of Action

- Superior Court - Action in Mandamus or “other legal proceedings in order to obtain such license”. This is following a denial.
- Probate Court – “relative to the applicant’s fitness to be issued such license.
- Duty upon denial of a license to inform the applicant of their remedies under these provisions.

*O.C.G.A. § 16-11-129 (j)*

## FINGERPRINTING

- Fingerprinting shall not be required for applicants seeking temporary renewal licenses or renewal license.

*O.C.G.A. § 16-11-129 (c)*

## BIG BROTHER

- (k) Data base prohibition. A person or entity shall not create or maintain a multijurisdictional data base of information regarding persons issued weapons carry licenses.
- (l) Verification of license. "...shall not be authorized to provide any further information regarding license holders.

NOTE: exception for subpoena or court order, or for public safety purposes – can verify legitimacy and validity.

*O.C.G.A. § 16-11-129 (k) & (l)*

## Silencers or Suppressors

### OCGA § 27-3-4

- Generally prohibited from hunting, however; if...
  - You are on your private property, or
  - You have “verifiable permission” of the property owner; or
  - Public land in areas designated by DNR; then  
You may hunt.

Violation is a misdemeanor with a 3-year hunting privilege suspension.

## State of Emergency Declaration

### OCGA § 38-3-37

- Can't change the Rules by declaring a state of emergency.
- Any person from the government, including the National Guard is prohibited from:
  - Seizing any firearm or ammunition.
  - Prohibit possessing.
  - Prohibit a license holder from carrying



## Effective Date of Changes

- HB 60 signed by Governor on 4/23/14  
– *Effective 7/1/14*
- HB 826 signed by Governor on 4/21/14  
– *Effective 7/1/14*

**HB 60 will control if inconsistent.**

## SB 340

### Statutory Construction

“legislation enacted at the same session of the General Assembly and amending the same statutory provision shall be considered *in pari materia*, and full effect shall be given to each if that is possible; Acts enacted during the same session shall be treated as *conflicting with each other only to the extent that they cannot be given effect simultaneously*; in the event of such a conflict, *the latest enactment, as determined by the order in which bills became law* with or without the approval of the Governor, shall control to the extent of the conflict unless the latest enactment contains a provision expressly ceding control in such an event; and language carried forward unchanged in one amendatory Act shall not be read as conflicting with changed language contained in another Act passed during the same session.”

(*In pari materia* – upon the same subject matter; Statutes *in pari materia* are to be construed together – Black’s Law Dictionary)

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