

HOUSE BILL 2<sup>1</sup>: GEORGIA CONSTITUTIONAL CARRY ACT OF 2019; ENACT

*Amending O.C.G.A. §§§ 16-11-4, 16-12-4, and 40-6-10, and Title 27; and Repealing All Laws in Conflict with the Same*

**First signature:** Representative Matt Gurtler (8<sup>th</sup>)

**Co-Sponsors:** Representative Matt Gurtler (8<sup>th</sup>), Representative Colton Moore (1<sup>st</sup>), Representative Kevin Cooke (18<sup>th</sup>), Representative Emory Dunahoo (30<sup>th</sup>), Representative Michael Caldwell (20<sup>th</sup>), Representative David Stover (71<sup>st</sup>)

**Summary:** “A BILL to be entitled an Act to amend Article 1 of Chapter 3 of Title 12 of the O.C.G.A., relating to general provisions regarding parks, historic areas, memorials, and recreation, so as to revise provisions of law regarding the use or possession of any handgun in a park, historic site, or recreational area; to amend Part 3 of Article 4 of Chapter 11 of Title 16 of the O.C.G.A., relating to carrying and possession of firearms; to amend Part 2 of Article 4 of Chapter 12 of Title 16 of the O.C.G.A., relating to transportation passenger safety, so as to revise provisions of law regarding the carrying of firearms; to amend Title 27 of the O.C.G.A., relating to game and fish, so as to revise certain laws regarding the carrying of firearms; to amend Part 2 of Article 10 of Chapter 6 of Title 40 of the O.C.G.A., relating to parking for persons with disabilities, so as to revise certain laws regarding the carrying of firearms; to provide for related matters; to repeal conflicting laws; and for other purposes.”<sup>2</sup>

**Status:** House Second Readers on February 6, 2019.<sup>3</sup>

TEXT OF HOUSE BILL 2 (COMMITTEE SUBSTITUTE LC 28 8940ER)<sup>4</sup>

## SECTION 1.

This Act shall be known and may be cited as the “Georgia Constitutional Carry Act of 2019.”

## SECTION 2.

The Georgia General Assembly finds that:

- (1) Our founding fathers, in the unanimous Declaration of Independence of the 13 United States of America, acknowledged that the purpose of civil government is to secure God-given rights;
- (2) As such, civil governments are to punish the criminal acts that deprive their citizens of their God-given rights to life, liberty, and property;

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<sup>1</sup> H.B. 2, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), available at <http://www.legis.ga.gov/Legislation/20192020/180158.pdf> (last visited Apr. 3, 2021).

<sup>2</sup> 2019-2020 Regular Session-HB 2, Georgia Constitutional Carry Act of 2019, GA. GEN. ASSEMB., <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/2> (last visited May 13, 2021) [hereinafter H.B. 2 Status Sheet].

<sup>3</sup> *Id.*

<sup>4</sup> H.B. 2.

- (3) The mere potential to deprive someone of life, liberty, or property should never be considered a crime in a free and just society;
- (4) Evil resides in the heart of the individual, not in material objects; and
- (5) Since objects or instrumentalities in and of themselves are not dangerous or evil, in a free and just society, the civil government should not ban or restrict their possession or use.

### SECTION 3.

Article 1 of Chapter 3 of Title 12 of the Official Code of Georgia Annotated, relating to general provisions regarding parks, historic areas, memorials, and recreation, is amended by revising subsection (o) of the Code Section 12-3-10, relating to directing persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules and regulations and prohibited acts generally, as follows:

“(o)(1) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any fireworks, explosives, or firecrackers, unless stored so as not to be readily accessible or unless such use has been approved by prior written permission of the commissioner of natural resources or his or her authorized representative.

~~(2) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any firearms other than a handgun, as such term is defined in Code Section 16-11-125.1.~~

~~(3)(2) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any handgun without a valid weapons carry license issued pursuant to Code Section 16-1-129~~ weapon or long gun unless such person is a lawful weapons carrier. As used in this paragraph, the terms ‘weapon,’ ‘long gun,’ and ‘lawful weapons carrier’ shall have the same meanings as provided for in Code Section 16-11-125.1.

(4)(3) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any bows and arrows, spring guns, air rifles, slingshots, or any other device which discharges projectiles by any means, unless the device is unloaded and stored so as not to be readily accessible or unless such use has been approved within restricted areas by prior written permission of the commissioner of natural resources or his or her authorized representative.”

### SECTION 4.

Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, is amended by revising Code Section 16-11-125.1, relating to definitions as follows:

“16-11-125.1.

As used in this part, the term:

- (1) ‘Handgun’ means a firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged by an action of an explosive where the length of the barrel, not including any revolving, detachable, or magazine breech, does not exceed 12 inches; provided, however, that the term ‘handgun’ shall not include a gun which discharges a single shot of 0.46 centimeter or less in diameter.

(2) 'Knife' means a cutting instrument designed for the purpose of offense and defense consisting of a blade that is greater than 12 inches in length which is fastened to a handle. (2.1) 'Lawful weapons carrier' means any person who is not prohibited by law from possessing a weapon or long gun, any person who is licensed pursuant to Code section 16-11-129, or any person licensed to carry a weapon in any other state whose laws recognize and give effect to a licensed issued pursuant to this part.

(3) 'License holder' means a person who holds a valid weapons carry license.

(4) 'Long gun' means a firearm with a barrel length of at least 18 inches and overall length of at least 26 inches designed or made and intended to be fired from the shoulder and designed or made to use the energy of the explosive in a fixed:

(A) Shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger or from which any shot, bullet, or other missile can be discharged; or

(B) Metallic cartridge to fire only a single projectile through a rifle before each single pull of the trigger; provided, however, that the term 'long gun' shall not include a gun which discharges a single shot of 0.46 centimeter or less in diameter.

(5) 'Weapon' means a knife or handgun.

(6) 'Weapons carry license' or 'license' means a license issued pursuant to Code Section 16-11-129."

## SECTION 5.

Said part is further amended by revising Code Section 16-11-126, relating to having or carrying handguns, long guns, or other weapons, license requirement, and exceptions for homes, motor vehicles, private property, and other locations and conditions, as follows:

~~"16-11-126.~~

~~(a) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a weapon or long gun on his or her property or inside his or her home, motor vehicle, or place of business without a valid weapons carry license.~~

~~(b) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry on his or her person a long gun without a valid weapons carry license, provided that if the long gun is loaded, it shall only be carried in an open and fully exposed manner.~~

~~(c) Any person who is not prohibited by law from possessing a handgun or long gun may have or carry any handgun provided that it is enclosed in a case and unloaded.~~

~~(d) Any person who is not prohibited by law from possessing a handgun or long gun who is eligible for a weapons carry license may transport a handgun or long gun in any private passenger motor vehicle; provided, however, that 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 private property shall have the right to 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, except as provided in Code Section 16-11-135.~~

~~(c)(1)(A) Any person licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state, but only while the licensee is not a resident of this state; provided, however, that:~~

~~(i) Such licensee licensed to carry a weapon in any other state shall carry the weapon in compliance with the laws of this state; and~~

~~(ii) No other state shall be required to recognize and give effect to a license issued pursuant to this part that is held by a person who is younger than 21 years of age.~~

~~(B) The Attorney General shall create and maintain on the Department of Law's website a list of states whose laws recognize and give effect to a license issued pursuant to this part.~~

~~(2) Any person who is not a weapons carry license holder in this state and who is licensed to carry a weapon in any other state whose laws recognize and give effect to a license issued pursuant to this part shall be authorized to carry a weapon in this state for 90 days after he or she becomes a resident of this state; provided, however, that such person shall carry the weapon in compliance with the laws of this state, shall as soon as practicable submit a weapons carry license application as provided for under Code Section 16-11-129, and shall remain licensed in such other state for the duration of time that he or she is a resident of this state but not a weapons carry license holder in this state.~~

~~(f)(1) Any person with a valid hunting or fishing license on his or her person, or any person not required by law to have a hunting or fishing license, who is engaged in legal hunting, fishing, or sport shooting when the person has the permission of the owner of the land on which the activities are being conducted may have or carry on his or her person a weapon or long gun without a valid carry license while hunting, fishing, or engaging in sport shooting.~~

~~(2) Any person with a valid hunting or fishing license on his or her person, or any person not required by law to have a hunting or fishing license, who is otherwise engaged in legal hunting, fishing, or sport shooting on recreational or wildlife management areas owned by this state may have or carry on his or her person a knife without a valid weapons carry license while engaging in such hunting, fishing, or sport shooting.~~

~~(g) Notwithstanding Code Sections 12-3-10, 27-3-1.1, 27-3-6, and 16-12-122 through 16-12-127, any person with a valid weapons carry license may carry a weapon in all parks, historic sites, or recreational areas, as such term is defined in Code Section 12-3-10, including all publicly owned buildings located in such parks, historic sites, and recreational areas, in wildlife management areas, and on public transportation; provided, however, that a person shall not carry a handgun into a place where it is prohibited by federal law.~~

~~(h)(1) No person shall carry a weapon without a valid weapons carry license unless he or she meets one of the exceptions to having such license as provided in subsections (a) through (g) of this Code section.~~

~~(2) A person commits the offense of carrying a weapon without a license when he or she violates the provisions of paragraph (1) of the subsection.~~

~~(i) Upon conviction of the offense of carrying a weapon without a valid weapons carry license, a person shall be punished as follows:~~

~~(1) For the first offense, he or she shall be guilty of a misdemeanor; and~~

~~(2) For the second offense within five years, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, and for any subsequent offense, he or she shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than two years and not more than five years.~~

~~(j) Nothing in this Code section shall in any way operate to be construed to affect, repeal, or limit the exemptions provided for under Code Section 16-11-130 Reserved.”~~

## SECTION 6.

Said part is further amended by revising Code Section 16-11-127, relating to carrying weapons in unauthorized locations, as follows:

“16-11-127.

(a) As used in this Code section, the term:

(1) ‘Courtthouse’ means a building occupied by judicial courts and containing rooms in which judicial proceedings are held.

(2) ‘Government building’ means:

(A) The building in which a government entity is housed;

(B) The building where a government entity meets in its official capacity; provided, however, that if such building is not a publicly owned building, such building shall 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

(C) The portion of any building that is not a publicly owned building that is occupied by a government entity.

(3) ‘Government entity’ means 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.

(4) ‘Parking facility’ means real property owned or leased by a government entity, courthouse, jail, prison, or place of worship that has been designated by such government entity, courthouse, jail, prison, or place of worship for the parking of motor vehicles at a government building or at such courthouse, jail, prison, or place of worship.

(b) Except as provided in Code Section 16-11-127.1 and subsection (d) or (e) of this Code section, a person shall be guilty of carrying a weapon or long gun in an unauthorized location and punished as for a misdemeanor when he or she carries a weapon or long gun while:

(1) In a government building ~~as a nonlicense holder~~ without being a lawful weapons carrier;

(2) In a courthouse;

(3) In a jail or prison;

(4) In a place of worship, unless the governing body or authority of the place of worship permits the carrying of weapons or long guns by ~~license holders~~ persons who are lawful weapons carriers;

(5) In a state mental health facility as defined in Code Section 37-1-1 which admits individuals on an involuntary basis for treatment of mental illness, developmental disability, or addictive disease; provided, however, that carrying a weapon or long gun in such location in a manner in compliance with paragraph (3) of subsection (d) of this Code section shall not constitute a violation of this subsection;

(6) On the premises of a nuclear power facility, except as provided in Code Section 16-11-127.2, and the punishment provisions of Code Section 16-11-127.2 shall supersede the punishment provisions of this Code section; or

(7) Within 150 feet of any polling place when elections are being conducted and such polling place is being used as a polling place as provided for in paragraph (27) of Code Section 21-2-2, except as provided in subsection (i) of Code Section 21-2-413.

(c) ~~A license holder or person recognized under subsection (e) of Code Section 16-11-126~~ Any lawful weapons carrier shall be authorized to carry a weapon as provided in Code Section 16-11-135 and in every location in this state not listed in subsection (b) or prohibited by subsection (e) of this Code section; provided, however, that 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 private property shall have the right to exclude or eject a person who is in possession of a weapon or long gun on ~~their~~ his or her private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21, except as provided in Code Section 16-11-135. A violation of subsection (b) of this Code section shall not create or give rise to a civil action for damages.

(d) Subsection (b) of this Code section shall not apply:

(1) To the use of weapons or long guns as exhibits in a legal proceeding, provided that such weapons or long guns are secured and handled as directed by the personnel providing courtroom security or the judge hearing the case;

(2) To a ~~license holder~~ lawful weapons carrier who approaches security or management personnel upon arrival at a location described in subsection (b) of this Code section and notifies such security or management personnel of the presence of the weapon or long gun and explicitly follows the security or management personnel's direction for removing, securing, storing, or temporarily surrendering such weapon or long gun; and

(3) To a weapon or long gun possessed by a ~~license holder~~ lawful weapons carrier which is under the possessor's control in a motor vehicle or is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle and such vehicle is parked in a parking facility.

(e)(1) A ~~license holder~~ lawful weapons carrier shall be authorized to carry a weapon in a government building when the government building is open for business and where ingress into such building is not restricted or screened by security personnel. A license holder lawful weapons carrier who enters or attempts to enter a government building carrying a weapon where ingress is restricted or screened by security personnel shall be guilty of a misdemeanor if at least one member of such security personnel is certified as a peace officer pursuant to Chapter 8 of Title 35; provided, however, that a ~~license holder~~ lawful weapons carrier who immediately exits such building or immediately leaves such location

upon notification of his or her failure to clear security due to the carrying of a weapon shall not be guilty of violating this subsection or paragraph (1) of subsection (b) of this Code section. A person who is not a ~~license holder~~ lawful weapons carrier and who attempts to enter a government building carrying a weapon shall be guilty of a misdemeanor.

(2) Any ~~license holder~~ lawful weapons carrier who violates subsection (b) of this Code section in a place of worship shall not be arrested but shall be fined not more than \$100.00. Any person who is not a license holder lawful weapons carrier who violates subsection (b) of this Code section in a place of worship shall be punished as for a misdemeanor.

(f) Nothing in this Code section shall in any way operate or be construed to affect, repeal, or limit the exemptions provided for under Code Section 16-11-130.”

## SECTION 7.

Said part is further amended by revising paragraph (2) of subsection (b) and paragraphs (7), (8), and (20) of subsection (c) of Code Section 16-11-127.1, relating to carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school, as follows:

“(2) Except as provided for in paragraph (20) of subsection (c) of this Code section, any ~~license holder~~ lawful weapons carrier who violates this subsection shall be guilty of a misdemeanor. Any person who is not a ~~license holder~~ lawful weapons carrier who violates this subsection shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not more than \$10,000.00, by imprisonment for not less than two nor more than ten years, or both.”

“(7) A ~~person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10,~~ lawful weapons carrier when such person carries or picks up a student within a school safety zone, at a school function, or on a bus or other transportation furnished by a school or a ~~person who is licensed in accordance with Code Section 16-11-129 or issued a permit pursuant to Code Section 43-38-10~~ lawful weapons carrier when he or she has any weapon legally kept within a vehicle when such vehicle is parked within a school safety zone or is in transit through a designated school safety zone;

(8) A weapon possessed by a ~~license holder~~ lawful weapons carrier which is under the possessor’s control in a motor vehicle or which is in a locked compartment of a motor vehicle or one which is in a locked container in or a locked firearms rack which is on a motor vehicle which is being used by an adult over 21 years of age to bring to or pick up a student within a school safety zone, at a school function, or on a bus or other transportation furnished by a school, or when such vehicle is used to transport someone to an activity being conducted within a school safety zone which has been authorized by a duly authorized official or local board of education as provided by paragraph (6) of this subsection; provided, however, that this exception shall not apply to a student attending a public or private elementary or secondary school;”

“(20)(A) Any ~~weapons carry license holder~~ lawful weapons carrier when he or she is in any building or on real property owned by or leased to any public technical school, vocational school, college, or university, or other public institution of postsecondary education; provided, however, that such exception shall:

(i) Not apply to buildings or property used for athletic sporting events or student housing, including, but not limited to, fraternity and sorority houses;

- (ii) Not apply to any preschool or childcare space located within such buildings or real property;
- (iii) Not apply to any room or space being used for classes related to a college and career academy or other specialized school as provided for under Code Section 20-4-37;
- (iv) Not apply to any room or space being used for classes in which high school students are enrolled through a dual enrollment program, including, but not limited to, classes related to the ‘Move on When Ready Act’ as provided for under Code Section 20-2-161.3;
- (v) Not apply to faculty, staff, or administrative offices or rooms where disciplinary proceedings are conducted; and
- (vi) ~~Only apply to the carrying of handguns which a licensee is licensed to carry pursuant to subsection (e) of Code Section 16-11-126 and pursuant to Code Section 16-11-129; and~~
- (vii) Only apply to the carrying of handguns which are concealed.

(B) Any ~~weapons carry license holder~~ lawful weapons carrier who carries a handgun in a manner or in a building, property, room, or space in violation of this paragraph shall be guilty of a misdemeanor; provided, however, that for a conviction of a first offense, such ~~weapons carry license holder~~ lawful weapons carrier shall be punished by a fine of \$25.00 and not be sentenced to serve any term of confinement.

(C) As used in this paragraph, the term:

- (i) ‘Concealed’ means carried in such a fashion that does not actively solicit the attention of others and is not prominently, openly, and intentionally displayed except for purposes of defense of self or others. Such term shall include, but not be limited to, carrying on one’s person while such handgun is substantially, but not necessarily completely, covered by an article of clothing which is worn by such person, carrying within a bag of a nondescript nature which is being carried about by such person, or carrying in any other fashion as to not be clearly discernible by the passive observation of others.
- (ii) ‘Preschool or childcare space’ means any room or continuous collection of rooms or any enclosed outdoor facilities which are separated from other spaces by an electronic mechanism or human-staffed point of controlled access and designated for the provision of preschool or childcare services, including, but not limited to, preschool or childcare services licensed or regulated under Article 1 of Chapter 1A of Title 20.”

## SECTION 8.

Said part is further amended by revising subparagraph (b)(2)(H) of Code Section 16-11-129, relating to weapons carry license, gun safety information, temporary renewal permit, mandamus, and verification of license, as follows:

“(H) Any person who has been convicted of ~~any of the following~~:

- (i) ~~Carrying a weapon without a weapon carry license in violation of Code Section 16-11-126; or~~
- (ii) ~~Carrying~~ carrying a weapon or long gun in an unauthorized location in violation of Code Section 16-11-127 and has not been free of all restraint or supervision in



connection therewith and free of any other conviction for at least five years immediately preceding the date of the application;”.

### SECTION 9.

Said part is further amended by revising Code Section 16-11-130, relating to exemptions from Code Sections 16-11-126 through 16-11-127.2, as follows:

“16-11-130.

(a) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections ~~16-11-126~~ 16-11-127 through 16-11-127.2 shall not apply to or affect any of the following persons if such persons are employed in the offices listed below or when authorized by federal or state law, regulations, or order:

- (1) Peace officers, as such term is defined in paragraph (11) of Code Section 16-1-3, and retired peace officers so long as they remain certified whether employed by the state or a political subdivision of the state or another state or a political subdivision of another state but only if such other state provides a similar privilege for the peace officers of this state;
- (2) Wardens, superintendents, and keepers of correctional institutions, jails, or other institutions for the detention of persons accused or convicted of an offense;
- (3) Persons in the military service of the state or of the United States;
- (4) Persons employed in fulfilling defense contracts with the government of the United States or agencies thereof when possession of the weapon or long guns is necessary for manufacture, transport, installation, and testing under the requirements of such contract;
- (5) District attorneys, investigators employed by and assigned to a district attorney’s office, assistant district attorneys, attorneys or investigators employed by the Prosecuting Attorneys’ Council of the State of Georgia, and any retired district attorney, assistant district attorney, district attorney’s investigator, or attorney or investigator retired from the Prosecuting Attorneys’ Council of the State of Georgia, if such employee is retired in good standing and is receiving benefits under Title 47 or is retired in good standing and receiving benefits from a county or municipal retirement system;
- (6) State court solicitors-general; investigators employed by and assigned to a state court solicitor-general’s office; assistant state court solicitors-general; the corresponding personnel of any city court expressly continued in existence as a city court pursuant to Article VI, Section X, Paragraph I, subparagraph (5) of the Constitution; and the corresponding personnel of any civil court expressly continued as a civil court pursuant to said provision of the Constitution;
- (7) Those employees of the State Board of Pardons and Paroles when specifically designated and authorized in writing by the members of the State Board of Pardons and Paroles to carry a weapon or long gun;
- (8) The Attorney General and those members of his or her staff whom he or she specifically authorizes in writing to carry a weapon or long gun;
- (9) Community supervision officers employed by and under the authority of the Department of Community Supervision when specifically designated and authorized in writing by the commissioner of community supervision;

- (10) Public safety directors of municipal corporations;
  - (11) Explosive ordnance disposal technicians, as such term is defined by Code Section 16-7-80, and persons certified as provided in Code Section ~~35-8-13~~ 35-8-25 to handle animals trained to detect explosives, while in the performance of their duties;
  - (12) Federal judges, Justices of the Supreme Court, Judges of the Court of Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, permanent part-time judges of municipal and city courts, and administrative law judges;
  - (12.1) Former federal judges, Justices of the Supreme Court, Judges of the Court of Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, permanent part-time judges of municipal courts, and administrative law judges who are retired from their respective offices, provided that such judge or Justice would otherwise be qualified to be issued a weapons carry license;
  - (12.2) Former federal judges, Justices of the Supreme Court, Judges of the Court of Appeals, judges of superior, state, probate, juvenile, and magistrate courts, full-time judges of municipal and city courts, permanent part-time judges of municipal courts, and administrative law judges who are no longer serving in their respective office, provided that he or she served as such judge or Justice for more than 24 months; and provided, further, that such judge or Justice would otherwise be qualified to be issued a weapons carry license;
  - (13) United States Attorneys and Assistant United States Attorneys;
  - (14) County medical examiners and coroners and their sworn officers employed by county government;
  - (15) Clerks of the superior courts; and
  - (16) Constables employed by a magistrate court of this state.
- (b) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections ~~16-11-126~~ 16-11-127 through 16-11-127.2 shall not apply to or affect persons who at the time of their retirement from service with the Department of Community Supervision were community supervision officers, when specifically designated and authorized in writing by the commissioner of community supervision.
- (c)(1) As used in this subsection, the term ‘courthouse’ means a building or annex occupied by judicial courts and containing rooms in which judicial proceedings are held.
- (2) Except to the extent provided for in subsection (c.1) of this Code section, Code Sections ~~16-11-126~~ 16-11-127 through 16-11-127.2 shall not apply to or affect any:
- (A) Sheriff, retired sheriff, deputy sheriff, or retired deputy sheriff if such retired sheriff or deputy sheriff is eligible to receive or is receiving benefits under the Peace Officers’ Annuity and Benefit Fund provided under Chapter 17 of Title 47, the Sheriffs’ Retirement Fund of Georgia provided under Chapter 16 of Title 47, or any other public retirement system established under the laws of this state for service as a law enforcement officer;
  - (B) Member of the Georgia State Patrol, agent of the Georgia Bureau of Investigation, retired member of the Georgia State Patrol, or retired agent

of the Georgia Bureau of Investigation if such retired member or agent is receiving benefits under the Employees' Retirement System;

(C) Full-time law enforcement chief executive engaging in the management of a county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university law enforcement chief executive who is registered or certified by the Georgia Peace Officer Standards and Training Council; or retired law enforcement chief executive who formerly managed a county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university law enforcement chief executive who was registered or certified at the time of his or her retirement by the Georgia Peace Officer Standards and Training Council, if such retired law enforcement chief executive is receiving benefits under the Peace Officers' Annuity and Benefit Fund provided under Chapter 17 of Title 47 or is retired in good standing and receiving benefits from a county, municipal, State of Georgia, state authority, or federal retirement system;

(D) Police officer of any county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university police officer who is registered or certified by the Georgia Peace Officer Standards and Training Council, or retired police officer of any county, municipal, state, state authority, or federal law enforcement agency in the State of Georgia, including any college or university police officer who was registered or certified at the time of his or her retirement by the Georgia Peace Officer Standards and Training Council, if such retired police officer is receiving benefits under the Peace Officers' Annuity and Benefit Fund provided under Chapter 17 of Title 47 or is retired in good standing and receiving benefits from a county, municipal, State of Georgia, state authority, or federal retirement system; or

(E) Person who is a citizen of this state and:

(i) Has retired with at least ten years of aggregate service as a law enforcement officer with powers of arrest under the laws of any state of the United States or of the United States;

(ii) Separated from service in good standing, as determined by criteria established by the Georgia Peace Officer Standards and Training Council, from employment with his or her most recent law enforcement agency; and

(iii) Possesses on his or her person an identification card for retired law enforcement officers as issued by the Georgia Peace Officer Standards and Training Council; provided, however, that such person meets the standards for the issuance of such card as provided for by the council, including, but not limited to maintenance of qualification in firearms training.

In addition, any such sheriff, retired sheriff, deputy sheriff, retired deputy sheriff, member or retired member of the Georgia State Patrol, agent or retired agent of the Georgia Bureau of Investigation, officer or retired officer of the Department of Natural Resources, active or retired law enforcement chief executive, person who is a retired law enforcement officer

as provided for in paragraph (2) of this subsection, or other law enforcement officer referred to in this subsection shall be authorized to carry a handgun on or off duty anywhere within this state, including, but not limited to, in a courthouse except to the extent provided for in subsection (c.1) of this Code section, and Code Sections ~~16-11-126~~ 16-11-127 through 16-11-127.2 shall not apply to the carrying of such firearms.

(c.1)(1) As used in the subsection, the term:

(A) 'Active' means nonretired.

(B) 'Courthouse' means a building or annex occupied by judicial courts and containing rooms in which judicial proceedings are held.

(C) 'Law enforcement agency' means sheriffs or any unit, organ, or department of this state, or a subdivision or municipality thereof, whose functions by law include the enforcement of criminal or traffic laws; the preservation of public order; the protection of life and property; the prevention, detection, or investigation of crime; or court security that is providing security for a courthouse.

(D) 'Law enforcement personnel' means sheriffs or deputy sheriffs or peace officers employed by a law enforcement agency.

(2)(A) Pursuant to a security plan implemented by law enforcement personnel, including as provided for under a comprehensive plan as provided for in subsection (a) of Code Section 15-16-10, the law enforcement agency with jurisdiction over a courthouse may provide for facilities or the means for the holding of weapons carried by persons enumerated under this Code section, except as provided for in paragraph (3) of this subsection, provided that ingress to such courthouse is actively restricted or screened by law enforcement personnel and such facilities or means are located in the immediate proximity of the area which is restricted or screened by such law enforcement personnel.

(B) If the requirements of this paragraph are met, the persons enumerated under this Code section shall, except as provided for in paragraph (3) of this subsection, upon request of law enforcement personnel place his or her weapons in such holding with law enforcement personnel while such persons are within the restricted or screened area. Upon request of any person enumerated under this Code section, in preparation for his or her exit from the restricted or screened area, law enforcement personnel shall immediately provide for the return of the person's weapons which are in holding.

(3) Notwithstanding a security plan implemented by law enforcement personnel, including as provided for under a comprehensive plan as provided for in subsection (a) of Code Section 15-16-10, active law enforcement officers referred to in subsection (c) of this Code section shall be authorized to carry their service handguns and weapons in any courthouse if they are wearing the assigned uniform of their law enforcement office or have the official badge and identification credentials issued to them by their law enforcement office displayed and plainly visible on their person while in the performance of their official duties.

(d) A prosecution based upon a violation of Code Section ~~16-11-126~~ or 16-11-127 need not negative any exemptions."

## SECTION 10.

Said part is further amended by revising subsection (b) of Code Section 16-11-135, relating to public or private employer's parking lots, right of privacy in vehicles in employer's parking lot or invited guests on lot, severability, and rights of action, as follows:

“(b) Except as provided in this Code section, no private or public employer, including the state and its political subdivisions, shall condition employment upon any agreement by a prospective employee that prohibits an employee from entering the parking lot and access thereto when the employee's privately owned motor vehicle contains a firearm or ammunition, or both, that is locked out of sight within the trunk, glove box, or other enclosed compartment or area within such privately owned motor vehicle, provided that any applicable employees possess a Georgia weapons carry license such prospective employee is a lawful weapons carrier.”

### SECTION 11.

Said part is further amended by revising Code Section 16-11-137, relating to required possession of weapons carry license or proof of exemption when carrying a weapon and detention for investigation of carrying permit, as follows:

“16-11-137.

(a) ~~Every license holder shall have his or her valid weapons carry license in his or her immediate possession at all times when carrying a weapon, or if such person is exempt from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (c) of Code Section 16-11-127.1, he or she shall have proof of his or her exemption in his or her immediate possession at all times when carrying a weapon, and his or her failure to do so shall be prima facie evidence of a violation of the applicable provision of Code Sections 16-11-126 through 16-11-127.2.~~

(b) A person carrying a weapon shall not be subject to detention for the sole purpose of investigating whether such person has a weapons carry license, whether such person is exempt from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (c) of Code Section 16-11-127.1, or whether such person is a lawful weapons carrier as defined in Code Section 16-11-125.1.

(c) ~~A person convicted of a violation of this Code section shall be fined not more than \$10.00 if he or she produces in court his or her weapons carry license, provided that it was valid at the time of his or her arrest, or produces proof of his or her exemption.~~”

### SECTION 12.

Part 2 of Article 4 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to transportation passenger safety, is amended by revising subsection(b) of Code Section 16-12-123, relating to bus or rail vehicle hijacking, boarding with concealed weapon, and company use of reasonable security measures, as follows:

“(b) Any person who boards or attempts to board an aircraft, bus, or rail vehicle with any explosive, destructive device, or hoax device as such ~~term is~~ terms are defined in Code Section 16-7-80; ~~firearm for which~~ weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person ~~does not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law~~ is not a lawful weapons carrier as defined in Code Section 16-

11-125.1; hazardous substance as defined by Code Section 12-8-92; ~~or knife~~ or other device designed or modified for the purpose of offense and defense concealed on or about his or her person or property which is or would be accessible to such person while on the aircraft, bus, or rail vehicle shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years. The prohibition of this subsection shall not apply to any law enforcement officer, peace officer retired from a state or federal law enforcement agency, person in the military service of the state or of the United States, or commercial security personnel employed by the transportation company who is in possession of weapons used within the course and scope of employment; nor shall the prohibition apply to persons transporting weapons contained in baggage which is not accessible to passengers if the presence of such weapons has been declared to the transportation company and such weapons have been secured in a manner prescribed by state or federal law or regulation for the purpose of transportation or shipment. The provisions of this subsection shall not apply to any privately owned aircraft, bus, or rail vehicle if the owner of such aircraft or vehicle has given his or her express permission to board the aircraft or vehicle with the item.”

### SECTION 13.

Said part is further amended by revising subsection (a) of Code Section 16-12-127, relating to prohibition on firearms, hazardous substances, knives, or other devices, penalty, and affirmative defenses, as follows:

“(a) It shall be unlawful for any person, with the intention of avoiding or interfering with a security measure or of introducing into a terminal any explosive, destructive device, or hoax device as such terms are defined in Code Section 16-7-80; ~~firearm for which such person does not have on his or her person a valid weapons carry license issued pursuant to Code Section 16-11-129 unless possessing such firearm is prohibited by federal law~~ weapon or long gun as such terms are defined in Code Section 16-11-125.1 if such person is not a lawful weapons carrier as defined in Code Section 16-11-125.1; hazardous substance as defined by Code Section 12-8-92; ~~or knife~~ or other device designed or modified for the purpose of offense and defense, to:

- (1) Have any such item on or about his or her person; or
- (2) Place or cause to be placed or attempt to place or cause to be placed any such item:
  - (A) In a container or freight of a transportation company;
  - (B) In the baggage or possessions of any person or any transportation company without the knowledge of the passenger or transportation company; or
  - (C) Aboard such aircraft, bus, or rail vehicle.”

### SECTION 14.

Title 27 of the Official Code of Georgia Annotated, relating to game and fish, is amended by revising paragraphs (1) and (2) of Code Section 27-3-1.1, relating to acts prohibited on wildlife management areas, as follows:

“(1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible or to possess a handgun during a closed hunting season for that area unless such person ~~possesses a valid weapons carry license issued pursuant to Code Section 16-11-129~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1;

(2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person ~~possesses a valid weapons carry license issued pursuant to Code Section 16-11-129~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1;”

#### SECTION 15.

Said title is further amended by revising Code Section 27-3-6, relating to possession of firearm while hunting with bow and arrow, as follows:

“27-3-6.

It shall be unlawful for any person to possess any center-fire or rimfire firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzle loading firearm during a primitive weapons season for deer or to possess a loaded handgun while hunting with a bow and arrow during archery or primitive weapons season for deer or while hunting with a muzzle loading firearm during primitive weapons season for deer unless such person ~~possesses a valid weapons carry license issued pursuant to Code Section 16-11-129~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1.”

#### SECTION 16.

Said title is further amended by revising paragraphs (1) and (2) of subsection (a) of Code Section 27-4-11.1, relating to possession of firearms and intoxication on public fishing areas, fishing in closed fishing areas, and other restrictions in public fishing areas, as follows:

“(1) To possess a firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, during a closed hunting season for that area unless such firearm is unloaded and stored in a motor vehicle so as not to be readily accessible or to possess a handgun during a closed hunting season for that area unless such person ~~possesses a valid weapons carry license issued pursuant to Code Section 16-11-129~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1;

(2) To possess a loaded firearm other than a handgun, as such term is defined in Code Section 16-11-125.1, in a motor vehicle during a legal open hunting season for that area or to possess a loaded handgun in a motor vehicle during a legal open hunting season for that area unless such person ~~possesses a valid weapons carry license issued pursuant to Code Section 16-11-129~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1; or”.

#### SECTION 17.

Part 2 of Article 10 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to parking for persons with disabilities, is amended by revising paragraph (4) of subsection (b) of Code Section 40-6-228, relating to enforcement of parking for persons with disabilities, as follows:

“(4) Have the power to possess and carry firearms and other weapons for the purpose of enforcing the parking laws for persons with disabilities; provided, however, that a person who ~~possesses a valid weapons carry license issued under Code Section 16-11-129 and who carries such weapon in a manner permitted under Code Section 16-11-126~~ is a lawful weapons carrier as defined in Code Section 16-11-125.1 shall not be in violation of this paragraph; or”.

### SECTION 18.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

### SECTION 19.

All laws and parts of laws in conflict with this Act are repealed.

#### SPONSOR’S RATIONALE

Georgia Representative Matt Gurtler, a “staunch gun rights conservative,” sponsored the Georgia Constitutional Carry Act.<sup>5</sup> Representative Gurtler’s primary argument is that making citizens pay for a carry permit infringes upon their constitutional right to bear arms.<sup>6</sup> According to Gurtler, the Second Amendment “says shall not be infringed, and we believe that is a no-compromise statement.”<sup>7</sup> Under Gurtler’s interpretation of the Second Amendment, there should be no limitations or restrictions on an individual’s ability to carry a weapon.<sup>8</sup> He expressed his opinion that “law abiding citizens in Georgia shouldn’t have to pay the government a tax or a fee to exercise their natural right to self defense.”<sup>9</sup> Representative Gutler contends that the expenditures for obtaining a permit total around 15 million dollars in Georgia alone.<sup>10</sup>

One major concern with waiving mandatory carry permits is the possibility of children having access to firearms.<sup>11</sup> This concern stems from the fear that discarding the permit

<sup>5</sup> Jeremy Spencer, *Bill would end Georgia gun carry permits, called ‘Constitutional Carry,’* ALLONGEORGIA (Nov. 21, 2018), <https://allongeorgia.com/georgia-state-politics/bill-would-end-gun-georgia-carry-permits-called-constitutional-carry/#:~:text=House%20Bill%202%2C%20otherwise%20known,the%20purchasing%20of%20a%20firearm> (last visited May 13, 2021).

<sup>6</sup> Tiffany Thompson, *House Bill 2 would end Georgia gun carry permits*, WGXA (Jan. 14, 2019), <https://wgxa.tv/news/local/house-bill-2-would-end-georgia-gun-carry-permits> (last visited May 13, 2021).

<sup>7</sup> Donna Lowry, *State Lawmaker Wants Weapons Laws Suspended During State Of Emergency*, GPB (July 13, 2020), <https://www.gpb.org/news/2020/03/27/state-lawmaker-wants-weapons-laws-suspended-during-state-of-emergency> (last visited May 13, 2021).

<sup>8</sup> *Id.*

<sup>9</sup> Doug Richards, *2 dozen guns bills holstered in Georgia legislature*, 11ALIVE (Jan. 15, 2020), <https://www.11alive.com/article/news/so-many-gun-bills/85-2bbb0da-1fbf-4102-8840-f6a4f5df037e> (last visited May 13, 2021).

<sup>10</sup> Thompson, *supra* note 6.

<sup>11</sup> *Id.*



requirement will place children in a better position to acquire firearms since there will not be any checks in place to verify that the child is of the requisite age to possess a firearm. In response to this concern Representative Gurtler stated, “‘It is [age] 18 for riffles and [age] 21 for handguns – that’s the US,’ he said. ‘You have to go through a series of background checks to acquire that firearm. This bill does not change that whatsoever.’”<sup>12</sup> He emphasizes that without the permit requirement one still must go through a series of background checks in order to obtain the firearm itself.<sup>13</sup>

Representative Gurtler is not alone in his support for the Georgia Constitutional Carry Act, Governor Brian Kemp has also expressed his support for gun rights throughout his campaign, which included exhibiting his firearms collection in his campaign commercials.<sup>14</sup> The support for bills of this nature extends beyond Georgia’s borders. South Dakota, Kentucky, and Oklahoma are included in the more than a dozen states that have adopted similar laws in 2019 alone.<sup>15</sup> Overall, eighteen states have enacted constitutional carry laws.<sup>16</sup>

While the bill was proposed in 2019, it has not received much action, especially due to the COVID-19 pandemic. Furthermore, the pandemic has impacted Georgian’s ability to obtain a carry permit in and of itself. Under Georgia law, individuals must request carry permits from their county offices, many of which are closed due to the COVID-19 pandemic.<sup>17</sup> In response to the outcomes of the COVID-19 pandemic, Gurtler “wants to make sure people can carry weapons concealed or open - without fear or arrest.”<sup>18</sup> In order to accomplish his goal, he sought to have the Governor suspend the enforcement of weapons licenses.<sup>19</sup> Gurtler argues, “we need to suspend enforcement especially during the state of emergency when so many individuals need to be able to defend themselves and their loved ones and their property.”<sup>20</sup> While Gurtler believes Georgians should not be required to obtain a permit overall when exercising their Second Amendment right, he contends that the permit requirement should at least be suspended during the COVID-19 pandemic.<sup>21</sup>

#### OPPOSITIONS RATIONALE

Opposition to this bill includes political activist groups, universities, House Speaker David Ralston, and many in the legal community. The activist group Athens for Everyone explicitly opposes the Georgia Constitutional Carry Act, arguing it expands carry rights and eliminates the necessity of a permit.<sup>22</sup> Members of the legal community also believe that the permit system needs

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Richards, *supra* note 9.

<sup>15</sup> Lisa Hagen, *Constitutional Carry: Activists Are Using Social Media To Redefine The Second Amendment*, WABE (Mar. 5, 2019), <https://www.wabe.org/constitutional-carry-activists-are-using-social-media-to-redefine-the-second-amendment/> (last visited May 13, 2021).

<sup>16</sup> *Constitutional Carry/Unrestricted/Permitless Carry*, USCCA (Apr. 2021), <https://www.usconcealedcarry.com/resources/terminology/types-of-concealed-carry-licensurepermitting-policies/unrestricted/> (last visited May 13, 2021).

<sup>17</sup> Lowry, *supra* note 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *2019 State Legislative Session*, A4E, <https://athensforeveryone.com/legislation/2019-state-legislative-session/>, (last visited May 13, 2021).

to stay intact. Ari Freilich, an attorney with the Giffords Law Center to prevent gun violence, argues carry permits should remain mandatory.<sup>23</sup> He states, “Most people are responsible drivers, but we still have driver’s license. Most people aren’t terrorists, but we still go through security at the airport.”<sup>24</sup> He continues on to say that sustaining the current carry permit protocol is important in order “to save human life and protect human life.”<sup>25</sup>

In addition, *The Emory Wheel* states, “Abolishing the requirement for a mandatory background check removes a measure of accountability which comes at minimal inconvenience to those obtaining a permit.”<sup>26</sup> The authors contend that obtaining a carry permit does not impose a burden on being able to acquire a carry permit because all that the individual must complete is a background check, so removing the process to obtain such a permit would be futile.<sup>27</sup> In response to numerous states passing similar bills, the Emory based newspaper stated that Arizona “has experienced a 39 percent increase in firearm-related aggravated assaults since it enacted permitless carry legislation in 2010.”<sup>28</sup> The potential for increased firearm related crimes is not the only possible threat faced by states that wish to pass constitutional carry bills.

A Kansas blog highlights common issues among states that have passed a constitutional carry bill, including the complexity of the laws themselves.<sup>29</sup> The article stresses that even though permits are optional under this legislation, many people do not realize that the consequences for bringing a firearm in a gun-free zone differ depending on whether or not the individual has a carry permit.<sup>30</sup> For example, in Missouri, an individual with a permit could face a \$500 fine and a three-year permit suspension, but an individual without a permit may be arrested for the unlawful use of a weapon or face a Class B misdemeanor resulting in larger fines and jail or prison time.<sup>31</sup>

Furthermore, Speaker Ralston stated, “I probably have more gun racks in the back of pick-up trucks in my county than any other county in Georgia. This is not a county that’s exactly ready to disarm.”<sup>32</sup> While Speaker Ralston recognizes his constituents strong support for second amendment rights, he is not in favor of passing Constitutional Carry.<sup>33</sup> He explains that in his thirty plus years in the job he has only had two constituents tell him that they should be able to carry without a permit.<sup>34</sup> Speaker Ralston believes that many House members hold concerns over whether the bill should even be considered.<sup>35</sup>

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<sup>23</sup> Zach Merchant, *Proposed Ga. Bill could shake up state gun law*, 13WMAZ (Jan. 2, 2019), <https://www.13wmaz.com/article/news/proposed-ga-bill-could-shake-up-state-gun-law/93-ca81f775-b45a-4b5a-a085-a21b284b56f1> (last visited May 13, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Editorial Board, *Ga. Constitutional Carry Proposal Reckless*, THE EMORY WHEEL (Feb. 12, 2019), <https://emorywheel.com/ga-constitutional-carry-proposal-reckless> (last visited May 13, 2021).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Paige Thompson et al., *What Happens When States Pass Permitless Carry Laws?*, URBAN INSTITUTE (Sept. 4, 2019), <https://www.urban.org/urban-wire/what-happens-when-states-adopt-permitless-carry-laws> (last visited May 13, 2021).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Jim Galloway, *Speaker David Ralston casts doubt on bill to allow concealed firearms without a permit*, THE ATLANTA JOURNAL CONSTITUTION (Jan. 9, 2010), <https://www.ajc.com/blog/politics/speaker-david-ralston-casts-doubts-bill-allow-concealed-firearms-without-permit/PpqBZvh9PrX6zo9Otl6Rkl/> (last visited May 13, 2021).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

Concerns have also arisen in the Senate, especially with the current state of the nation with the COVID-19 pandemic.<sup>36</sup> Jen Jordan, a democratic senator, opposes the executive order suspending permits, stating that “the fact that we’ve seen a spike in sales of guns and ammunition underscores just how wrong Gurtler is” with respect to suspending permits.<sup>37</sup> Her position is that permits should remain mandatory, especially since more people are purchasing weapons due to COVID-19. She particularly opposes the suspension of permits since Georgia “already has some of the most lenient gun laws in the country.”<sup>38</sup>

#### IMPLICATIONS IN GEORGIA

Currently in Georgia, a background check and a valid carry permit is required in order to carry a concealed weapon in public.<sup>39</sup> The Georgia Constitutional Carry Act would eliminate the mandatory requirement for law abiding Georgians to maintain a carry permit in order to carry firearms outside of their homes, vehicles, or place of business.<sup>40</sup> However, the bill “would still restrict unlawful individuals such as convicted felons from having a gun.”<sup>41</sup> If enacted, under Georgia’s interpretation of the Second Amendment, so long as the citizen acquired the firearm legally and is a law-abiding citizen, he will not be required to have a carry permit.<sup>42</sup> In addition, “HB 2 looks to allow Georgia to offer carry permits for those gun owners who want to carry their firearms to other states through reciprocity agreements.”<sup>43</sup>

As previously mentioned, the Georgia Constitutional Carry Act is a 2019 bill, but Georgia legislative sessions have been halted due to the COVID-19 pandemic. This halt of legislative sessions has created conflicts for individuals attempting to obtain a carry permit. Thus, Representative Gurtler sought to have the enforcement of weapons licenses suspended.<sup>44</sup> Governor Kemp issued an executive order that declared a public health state of emergency, which the Georgia General Assembly approved during a special legislative session in March 2020.<sup>45</sup> Subsequently, the Georgia Supreme Court “suspended all but essential court functions”, which included one’s ability to obtain a carry permit.<sup>46</sup> As of March 9, 2021 the Supreme Court of Georgia ordered its Twelfth Order Extending Declaration of Statewide Judicial Emergency pursuant to OCGA § 38-3-61 thereby limiting court functions to those which are essential.<sup>47</sup>

Following the executive order, in April 2020, a Fulton County resident (“Plaintiff”) filed a federal lawsuit against Kemp seeking an emergency request to prohibit the enforcement of mandatory permits while it is not possible to obtain one.<sup>48</sup> The District Court ruled against Plaintiff, declining to suspend weapons permits stating it would be unreasonable to do so since

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<sup>36</sup> Lowry, *supra* note 7.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Spencer, *supra* note 5.

<sup>40</sup> Katie Brumback, *Judge won’t suspend handgun carry law during virus emergency*, AP NEWS (April 21, 2020), <https://apnews.com/article/8390befaed77edaa7a2d7660c6552bdc> (last visited May 13, 2021).

<sup>41</sup> Spencer, *supra* note 5.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Lowry, *supra* note 7.

<sup>45</sup> Brumback, *supra* note 40.

<sup>46</sup> *Id.*

<sup>47</sup> *Twelfth Order Extending Declaration of Statewide Judicial Emergency*, SUPREME COURT OF GEORGIA (March 9, 2021), [https://www.gasupreme.us/wp-content/uploads/2021/03/12th-SJEO\\_as-issued.pdf](https://www.gasupreme.us/wp-content/uploads/2021/03/12th-SJEO_as-issued.pdf) (last visited May 13, 2021).

<sup>48</sup> Brumback, *supra* note 40.

Georgia law prohibits law enforcement officers from detaining someone for the sole purpose of determining whether he or she has a carry permit and because Georgia residents may carry a weapon in their homes, vehicles, and places of business without a carry permit.<sup>49</sup> The District Court Judge based his reasoning on a previous United States Supreme Court ruling which “did not define the extent to which the Second Amendment may protect individuals seeking to carry firearms outside the home and in public.”<sup>50</sup>

The Georgia Constitution provides that “[t]he right of the people to keep and bear arms shall not be infringed but the General Assembly shall have the power to prescribe the manner in which arms may be borne.”<sup>51</sup> The Supreme Court of Georgia has determined that statutes prohibiting the carrying of firearms without a permit does not violate Georgia’s right to bear arms provision.<sup>52</sup> The court has determined the test to decide if a law violates such provision is “whether the particular regulation involved is legitimate and reasonably within the police power or whether it is arbitrary and under the name of regulation, amounts in effect to a deprivation of the constitutional right.”<sup>53</sup>

#### LEGISLATIVE GENEALOGY

The Georgia Constitutional Carry Act was prefiled in the House on November 6, 2018 and presented to the House hopper on January 30, 2019.<sup>54</sup> The first reading of the bill took place on February 5, 2019 with the second reading on February 6, 2019.<sup>55</sup>

**Prepared by:** *Mats Rosén*

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *State Right to Bear Arms in Georgia*, GIFFORDS LAW CENTER (Sept. 29, 2020), <https://giffords.org/lawcenter/state-laws/state-right-to-bear-arms-in-georgia/> (last visited May 13, 2021).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> H.B. 2 Status Sheet, *supra* note 2.

<sup>55</sup> *Id.*