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Packin' Heat: Firearms Law in Georgia

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Research Guides

Packin' Heat: Firearms Law in Georgia

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Introduction

The purpose of this web research guide is to provide firearm owners and/or potential firearm owners with information related to the ability to possess, carry, and use firearms in the State of Georgia.

About the Author

Clint Barbour - Fall 2007 - Georgia Law; Criminal Law

Disclaimer

BE ADVISED: this research guide covers only the relevant firearms provisions relating to the state of Georgia, not as they relate to the United States nor any other states. Furthermore, this research guide in no way constitutes legal advice in any shape or form.

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Primary Sources

United States Constitution

"*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.*" - U.S. Const. Amend. II

Georgia Constitution

"*The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne.*" - Georgia Constitution, Art. I, § 1, ¶ VIII

Carrying Firearms in Different States with your Georgia Concealed Weapons Permit - Reciprocity

1. O.C.G.A. § 16-11-126(e) provides that "a person licensed to carry a handgun in any state whose laws recognize and give effect within such state to a license

issued pursuant to this part shall be authorized to carry a handgun in this state, but only while the licensee is not a resident of this state; provided, however, that such license holder shall carry the handgun in compliance with the laws of this state."

2. So, for example, if South Dakota recognizes Georgia's Concealed Weapons Permit, than your Concealed Weapons Permit issued by a judge in, say, Homerville, entitles you to carry a concealed weapon in any part of South Dakota where firearms are allowed to be carried, and a person with a Concealed Weapons Permit issued in, say, Pierre, is allowed to carry anywhere legally allowed in Georgia.

3. States that are currently recognize Georgia Georgia's Concealed Weapons Permit (23): Alabama, Alaska, Arizona, Colorado, Florida, Idaho, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont and Wyoming. (See http://www.nraila.org for more information on "reciprocity" between states.) Basically, if you have a Georgia-issued Concealed Weapons Permit, you can use that permit, so long as you abide by the laws of that jurisdiction, in every state that borders Georgia with the exception of South Carolina.

Selected Georgia Case Law

1. Possession of Firearms

► Types of Firearms: Sawed-off Shotguns: Exact methodology is not required in measurement of a sawed-off shotgun; when it is not a "close call" exact precision is not required. *Thompson v. State*, 214 Ga.App. 889, 449 S.E.2d 364 (1994).

► Classes of Individuals: Convicted Felons: Possession can be actual or constructive. *Parramore v. State*, 277 Ga.App. 372, 626 S.E.2d 567 (2006).

► Locations where Possession of Firearms is Prohibited

- Public Gatherings: "Public places" are not the same as a "public gathering" - McDonald's is not covered under the statute. State v. Burns, 200 Ga.App. 16, 406 S.E.2d 547 (1991); parking lots can be considered "public gatherings," such as when they are outside of establishments that serve alcohol. *Hubbard v. State*, 210 Ga.App. 141, 435 S.E.2d 709 (1993)

- School Property: Being charged with illegally carrying a concealed weapon and possessing a weapon on school property do not merge - they are two distinct crimes. *Sinkfield v. State*, 266 Ga. 726, 470 S.E.2d 649 (1996)

2. Carrying Concealed Firearms

► Defendant has burden of proving that he possesses a valid concealed weapons permit. *London v. State*, 235 Ga.App. 30, 508 S.E.2d 247 (1998)

► Just because police officer recognizes a "bulge" as being a gun does not then mean that the gun is not concealed and thus does not require a permit. *Gainer v. State*, 175 Ga.App. 759, 334 S.E.2d 385 (1985)

► Bad character cannot be inferred from ownership or possession of firearms. *Henderson v. State*, 272 Ga. 621, 532 S.E.2d 398 (2000)

3. Using Firearms Generally

► If a property owner witnesses (and later identifies) another discharge a firearm on his property, that is enough to uphold a conviction for violation of O.C.G.A. § 16-11-104. *Graham v. State*, 236 Ga.App. 673, 512 S.E.2d 921 (1999).

4. Using Firearms in a Defensive Posture

► Mental anguish from a cheating spouse does not put a person in great bodily harm so as to be able to use a firearm against the cheating spouse's paramour. *Chancellor v. State*, 165 Ga.App. 365, 301 S.E.2d 294 (1983).

► "Mutual Combat" does not permit a defendant to raise self-defense unless the defendant ends the encounter. *Roberts v. State*, 215 Ga.App. 881, 452 S.E.2d 570 (1994).

► A mobile home, or trailer, is a "habitation" under O.C.G.A. § 16-3-23 and force can be used to defend that habitation. *Goerndt v. State*, 144 Ga.App. 93, 240 S.E.2d 711 (1977).

Georgia Statutes

The State of Georgia's firearms laws under the Official Code of Georgia are covered in primarily two areas:

First, the general firearms statutes are covered under the Code §§ 16-11-100 through 16-11-134. §§ 16-11-120 through 16-11-134 are collectively known as the Georgia Firearms Act. Second, use of firearms in a defensive posture is covered under the Code in §§ 16-3-21 through 16-3-24. Georgia does have some other relevant statutes concerning firearms, which will be covered under this section as well.

1. Purchasing Firearms.

► O.C.G.A. § 16-11-172 requires submission to a federal background check if the firearms dealer is a federally licensed entity. Sales at "gun shows" (by non-licensed dealers) and person-to-person sales are not included, however.

► O.C.G.A. § 38-3-51(d)(8) allows the governor, during a state of emergency or disaster, to temporarily suspend or limit the sale, dispensing or transportation of firearms. Privately-owned firearms, whether purchased before or after the declared "state" are excluded, however, so long as the purchaser complies with all relevant Georgia and United States law. Basically, this provision applies to federally licensed firearms dealers.

2. Possession of Firearms. Under the O.C.G.A., certain types of firearms are excluded from possession, certain classes of individuals are excluded from possessing firearms, and certain locations are protected from individuals possessing firearms on the premises.

► Types of Firearms: Possession of "dangerous weapons" is prohibited per O.C.G.A. § 16-11-122. "Dangerous weapons" includes, but is not limited

to machine guns, sawed-off shotguns, sawed-off rifles, silencers, bazookas, and hand grenades. Exceptions to this provision (see O.C.G.A. § 16-11-124) include, but is not limited to state peace officers, federal peace officers, National Gurardsmen, members of the military, people who possess "inoperable" types of these weapons, and people who possess these weapons that were registered before implementation of the National Firearms Act (see 16 U.S.C.A. § 5841).

► Classes of Individuals:

- Convicted felons are prohibited from possessing firearms. O.C.G.A. § 16-11-131.
- Persons under the age of 18 are prohibited from possessing pistols or revolvers (not all firearms in general, however, and not it all circumstances either). O.C.G.A. § 16-11-132.

► Locations where Possession of Firearms is Prohibited

- Public Gatherings, including sporting events, public buildings, and establishments where alcohol is served. O.C.G.A. § 16-11-127. Furthermore, possession of firearms in the State Capitol building is expressly prohibited by O.C.G.A. § 16-11-134(b).
- School safety zones, school buildings/grounds, and locations of school functions. O.C.G.A. § 16-11-127.1.
- Nuclear power facility premises, except for security officers authorized under O.C.G.A. § 16-11-124. O.C.G.A. § 16-11-127.2.
- State parks, historic sites, or recreational areas (unless unloaded or stored or have prior permission from appropriate state authority). O.C.G.A. § 12-3-10(o).
- Public Transportation. O.C.G.A. § 16-12-127.
- Within guard lines at penal institutions. § 42- 4-13(d)(1)(A).

3. Carrying Concealed Firearms.

► O.C.G.A. § 16-11-126 prohibits the carrying of any concealed firearms. There are exceptions, however.

► O.C.G.A. § 16-11-128 generally prohibits the carrying of a *concealed* pistol except when the carrier leaves the pistol in an open and exposed manner (such as in the seat of an automobile), when the carrier has a valid concealed weapon permit, or when the carrier has a valid hunting or fishing license, or is legally allowed to hunt without a license.

► O.C.G.A. § 16-11-129 sets forth the requirements for obtaining a concealed weapons permit. Persons under the age of 21 are prohibited from obtaining a concealed weapons permit. Certain classes of individuals are exempt from obtaining a permit, however, including, but not limited to, peace officers, members of the military, defense contractors, and district attorneys (see O.C.G.A. § 16-11-130). The statute also prohibits the state from using the information obtained for a concealed weapons permit for "de facto" registration.

4. Using Firearms Generally. Generally, the use of firearms is prohibited by the following sections of the O.C.G.A.:

► During commission of a crime. O.C.G.A. § 16-11-106.

► While under the influence of drugs and/or alcohol. O.C.G.A. § 16-11-134.

► On or near a public highway (within 50 yards). O.C.G.A. § 16-11-103.

► On the property of another without their permission. O.C.G.A. § 16-11-104.

5. Using Firearms in a Defensive Posture. Georgia allows the use of force, including the use of firearms, in three distinct situations.

► In defense of self or others. O.C.G.A. § 16-3-21.

► In defense of habitation. O.C.G.A. § 16-3-23.

► In defense of property. O.C.G.A. § 16-3-24.

► Furthermore, under O.C.G.A. § 16-3-23.1, effective July 1 of 2006, individuals who respond to force under any of the three above code sections have no duty to retreat.

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Secondary Sources

Molner Georgia Criminal Law

Crimes and Punishments is an incredibly good source for researching the various firearms-related laws.

► Chapter 67 Weapons Offenses covers virtually every firearm-related law in Georgia. Some selected sections include:

- § 67-9 Georgia Firearms and Weapons Act
- § 67-7 Discharge of firearm while under influence of alcohol, certain drugs, or controlled substances
- § 67-10 Carrying a concealed weapon; transportation of firearms

- § 67-13 Carrying pistol without license.

► Chapter 4, Section 7 (§ 4-7) covers defense of self, others, habitation, and property.

Corpus Juris Secundum

Corpus Juris Secundum: an encyclopedia of United States law; it does however have a general overview of firearms law and cites to numerous Georgia cases. See 94 C.J.S. Weapons § 1 (2007) through 94 C.J.S. Weapons § 62 (2007).

Law Reviews

Law Reviews: these law reviews were published in law reviews from law schools in the State of Georgia and relate to general firearm and Second Amendment issues.

► Nelson Lund, *The past and future of the individual's right to arms,* 31 Ga. L. Rev. 1 (1996) (discussing general second amendment issues).

► Randy E. Barnett & Don B. Kates, *Under Fire: The New Consensus on the Second Amendment*, 45 Emory L.J. 1139 (1996) (discussing interpretation of the second amendment).

► Donald Braman & Dan M. Kahan, *Overcoming the fear of guns, the fear of gun control, and the fear of cultural politics: constructing a better gun debate*, 55 Emory L.J. 569 (2006) (discussing legal and social aspects of firearms law).

Kurtz Criminal Offenses and Defenses in Georgia

Kurtz Criminal Offenses and Defenses in Georgia has extremely good sections relating to firearms laws in Georgia:

► Weapons: Contains virtually every firearm (and other weapons) law on the books in Georgia

► Defense of Property and Habitation

► Self-Defense (includes defense of others as well).

American Law Reports

American Law Reports: although these ALR's are generally national in scope, they provide a host of references to Georgia case law as well as a general overview of issues involved in Georgia firearms law.

► W.M. Moldoff, Annotation, *Offense of carrying concealed weapon as affected by manner of carrying or place of concealment*, 43 A.L.R.2d 492 (1955).

► L.S.E., Annotation, *Homicide or assault in defense of habitation or property*, 34 A.L.R. 1488 (1925).

Websites

There are a number of useful websites that can guide research in this area.

► Alcohol, Tobacco, and Firearms : contains a comprehensive list of most of Georgia's firearms laws (be advised, however, as this document includes Georgia statutes that have been repealed.)

► Georgia Bureau of Investigation : contains information relating to background checks

► National Rifle Association: contains a comprehensive overview of virtually every firearm law in the United States

► Georgia Carry: contains a basic summary of Georgia firearms law

► GeorgiaPacking.org: another site containing a basic summary of Georgia firearms law

► Eugene Volokh, UCLA Law Professor: contains a comprehensive list of individual states' right to keep and bear arms.

Peach Sheets

Peach Sheets: these law review type articles are compiled by Georgia State College of Law Students and provide analysis of recently (at the time of publication) enacted statutes in Georgia.

► David M. Bessho, Recent Statute, *OFFENSES AGAINST PUBLIC ORDER AND SAFETY: PROHIBIT DISCHARGE OF FIREARM WHILE INTOXICATED; PROVIDE FOR INSTANT BACKGROUND CHECKS WHEN PURCHASING HANDGUN; PREEMPT LOCAL REGULATION OF FIREARMS*, 12 Ga. St. U. L. Rev. 112 (1995) (discussing various firearm-related statutes).

► Susan Beth Jacobs, Recent Statute, *OFFENSES AGAINST PUBLIC ORDER AND SAFETY: INCREASE PENALTY FOR COMMISSION OF CRIME*

WITH A FIREARM BY A CONVICTED FELON; PROVIDE FOR LIFE CONFINEMENT UPON A SUBSEQUENT CONVICTION; PROVIDE FOR FELONY OFFENSE OF RIOT WHEN A PERSON IN A PENAL INSTITUTION COMMITS AN ACT OF VIOLENCE, 12 Ga. St. U. L. Rev. 112 (1995) (discussing increase of penalties for firearm-related statutes).

- Rachelle Renfro Green, Recent Statute, *OFFENSES AGAINST PUBLIC ORDER AND SAFETY: PROVIDE FOR SPECIFIC MEANS OF CARRYING CONCEALED WEAPONS; PERMIT HOLDER OF VALID LICENSE TO HAVE HANDGUN IN ANY LOCATION WITHIN MOTOR VEHICLE; PERMIT PERSONS LEGALLY ENTITLED TO CARRY HANDGUNS IN OTHER STATES TO CARRY HANDGUNS IN GEORGIA*, 13 Ga. St. U. L. Rev. 123 (1996) (discussing concealed weapons statutes).
- Seth F. Kirby, Recent Statute, *OFFENSES AGAINST PUBLIC ORDER AND SAFETY: CHANGE PENALTY PROVISIONS APPLICABLE TO THE OFFENSE OF FURNISHING A PISTOL TO A PERSON UNDER THE AGE OF 18; CHANGE THE PENALTY PROVISIONS APPLICABLE TO THE OFFENSE OF UNLAWFUL POSSESSION OF FIREARMS OR WEAPONS; CHANGE THE PENALTY PROVISIONS APPLICABLE TO A SECOND OR SUBSEQUENT OFFENSES OF CARRYING A CONCEALED WEAPON; CHANGE THE PENALTY PROVISIONS APPLICABLE TO CARRYING CERTAIN WEAPONS WITHIN A SCHOOL SAFETY ZONE; CHANGE THE PENALTY PROVISIONS APPLICABLE TO POSSESSION OF A FIREARM BY A CONVICTED FELON; CHANGE THE PENALTY PROVISIONS APPLICABLE TO POSSESSION OF A FIREARM BY A PERSON UNDER 18; PROVIDE THAT IT IS A FELONY FOR A PERSON CONVICTED OF OR ON FIRST OFFENDER PROBATION FOR A FORCIBLE FELONY TO ATTEMPT TO PURCHASE A FIREARM*, 17 Ga. St. U. L. Rev. 97 (2000) (discussing changing of penalty provisions for firearm-related statutes).
- Leah Poynter, Recent Statute, *OFFENSES AGAINST PUBLIC HEALTH AND MORALS: AUTHORIZE THE GOVERNOR TO ISSUE A CALL FOR A SPECIAL SESSION OF THE GENERAL ASSEMBLY IN THE EVENT OF A BIOTERRORIST ATTACK OR OTHER PUBLIC HEALTH EMERGENCY PRIOR TO DECLARING A STATE OF EMERGENCY; PROVIDE FOR DUE PROCESS PROCEDURES RELATED TO QUARANTINE AND VACCINATION PROGRAMS IN A PUBLIC HEALTH EMERGENCY; AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO PROMULGATE RULES AND REGULATIONS FOR THE MANAGEMENT OF A PUBLIC HEALTH EMERGENCY; PROVIDE REPORTING REQUIREMENTS FOR BIOTERRORISM AND OTHER CONDITIONS THAT POSE A SUBSTANTIAL RISK OF A PUBLIC HEALTH EMERGENCY; CHANGE THE EMERGENCY POWERS OF THE GOVERNOR REGARDING FIREARMS DURING AN EMERGENCY*, 19 Ga. St. U. L. Rev. 1 (2002) (discussing governor's emergency powers to regulate firearms).

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Computerized Research

Computerized Research

1. Lexis and Westlaw are two web-based research services that contain basically everything your heart desires as it relates to firearms-related laws. They are costly, however.

2. Casemaker is a free service for members of the Georgia Bar, but due to is limited search capabilities in not very effective.

3. If a researcher chooses to forego the costly Lexis and Westlaw, however, and has no luck using Casemaker, Google is an extremely exceptional tool to use to research firearms-related laws, as there exists an incredibly large amount of gun rights advocacy and gun control advocacy groups all over the World Wide Web

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Important Interest Groups

Gun Rights

Gun Rights

- National Rifle Association
- Georgia Carry

Gun Control

Gun Control

- Brady Campaign
- Coalition to Stop Gun Violence

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