

Senate Bill 161

By: Senators Jones of the 10th, Harbison of the 15th, Jackson of the 2nd, Butler of the 55th,
Sims of the 12th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,
2 relating to dangerous instrumentalities and practices, so as change provisions relating to
3 persons who are ineligible for weapons carry licenses; to provide for definitions; to change
4 provisions relating to purchase of firearms by persons who have been involuntarily
5 hospitalized; to provide for restrictions and exceptions for purchasing of firearms and
6 weapons carry licensing for certain persons suffering from mental illness; to provide for
7 procedure; to amend Code Section 35-3-34 of the Official Code of Georgia Annotated,
8 relating to disclosure and dissemination of criminal records to private persons and
9 businesses, resulting responsibility and liability of issuing center, and providing certain
10 information to the FBI in conjunction with the National Instant Criminal Background Check
11 System, so as to change provisions relating to the retention of certain information; to provide
12 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
13 purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
17 dangerous instrumentalities and practices, is amended in Code Section 16-11-129, relating
18 to license to carry weapon, temporary renewal permit, and mandamus, by adding a new
19 subparagraph to paragraph (1) of subsection (b) and by revising subparagraph (b)(2)(J) as
20 follows:

21 "(D) 'Disability' shall have the same meaning as set forth in Code Section 37-1-1."

22 "(J) Any person who has been hospitalized as an inpatient in any mental hospital or
23 alcohol or drug treatment center diagnosed with a disability within the five ten years
24 immediately preceding the application. The judge of the probate court may require any
25 applicant to sign a waiver authorizing any mental hospital or treatment center to inform
26 the judge whether or not the applicant has been an inpatient in any such facility in the

27 ~~last five years and authorizing the superintendent of such facility to make to the judge~~
 28 ~~a recommendation regarding whether the applicant is a threat to the safety of others and~~
 29 ~~whether a license to carry a weapon should be issued. When such a waiver is required~~
 30 ~~by the judge, the applicant shall pay a fee of \$3.00 for reimbursement of the cost of~~
 31 ~~making such a report by the mental health hospital, alcohol or drug treatment center,~~
 32 ~~or the Department of Behavioral Health and Developmental Disabilities, which the~~
 33 ~~judge shall remit to the hospital, center, or department. Each applicant shall submit~~
 34 ~~with his or her application an affidavit attesting to whether or not he or she has been~~
 35 ~~diagnosed with a disability within the past ten years. If the applicant states that he or~~
 36 ~~she has not had any such diagnosis, the judge shall proceed with processing the~~
 37 ~~application. If the applicant states that he or she has been diagnosed with a disability~~
 38 ~~within the past ten years, the judge shall not issue a license or renewal license unless~~
 39 ~~the applicant submits a sworn statement from a psychologist or psychiatrist, licensed~~
 40 ~~in this state, that in the opinion of such psychologist or psychiatrist, the applicant is~~
 41 ~~mentally competent to be issued a weapon carry license or renewal license. Any person~~
 42 ~~who knowingly and willfully makes a false, fictitious, or fraudulent statement in an~~
 43 ~~affidavit submitted pursuant to this subparagraph shall be guilty of a violation of Code~~
 44 ~~Section 16-10-20 and, upon conviction, shall be punished as provided in such Code~~
 45 ~~section.~~ The judge shall keep any such ~~hospitalization~~ or treatment information
 46 confidential. It shall be at the discretion of the judge, considering the circumstances
 47 surrounding the ~~hospitalization~~ disability and the recommendation of the superintendent
 48 of the ~~hospital or treatment center where the individual was a patient~~ psychologist or
 49 psychiatrist, whether to issue the weapons carry license or renewal license."

50 SECTION 2.

51 Said article is further amended by revising Code Section 16-11-171, relating to definitions
 52 relative to Brady Law Regulations, as follows:

53 "16-11-171.

54 As used in this part, the term:

55 (1) 'Center' means the Georgia Crime Information Center within the Georgia Bureau of
 56 Investigation.

57 (2) 'Dealer' means any person licensed as a dealer pursuant to 18 U.S.C. Section 921, et
 58 seq., or Chapter 16 of Title 43.

59 (3) 'Disability' shall have the same meaning as set forth in Code Section 37-1-1.

60 ~~(3)~~(4) 'Firearm' means any weapon that is designed to or may readily be converted to
 61 expel a projectile by the action of an explosive or the frame or receiver of any such

62 weapon, any firearm muffler or firearm silencer, or any destructive device as defined in
63 18 U.S.C. Section 921(a)(3).

64 ~~(4)~~(5) 'Involuntarily hospitalized' means hospitalized as an inpatient in any mental health
65 facility pursuant to Code Section 37-3-81 or hospitalized as an inpatient in any mental
66 health facility as a result of being adjudicated mentally incompetent to stand trial or being
67 adjudicated not guilty by reason of insanity at the time of the crime pursuant to Part 2 of
68 Article 6 of Title 17.

69 ~~(5)~~(6) 'NICS' means the National Instant Criminal Background Check System created
70 by the federal 'Brady Handgun Violence Prevention Act' (P. L. No. 103-159)."

71 **SECTION 3.**

72 Said article is further amended by revising Code Section 16-11-172, relating to transfers or
73 purchases of firearms subject to the NICS, information concerning persons who have been
74 involuntarily hospitalized to be forwarded to the FBI, penalties for breach of confidentiality,
75 and exceptions, as follows:

76 "16-11-172.

77 (a) All transfers or purchases of firearms conducted by a licensed importer, licensed
78 manufacturer, or licensed dealer shall be subject to the NICS, and all transfers or purchases
79 of firearms shall only be made to a person who has not been diagnosed with a disability
80 within ten years prior to the date of such transfer or purchase, as further set forth in
81 subsection (b) of this Code section. To the extent possible, the center shall provide to the
82 NICS all necessary criminal history information and wanted person records in order to
83 complete an NICS check.

84 (b)(1) The center shall forward to the Federal Bureau of Investigation information
85 concerning persons who have been involuntarily hospitalized ~~as defined in this part~~ for
86 the purpose of completing an NICS check.

87 (2) Each transferee or purchaser shall submit with his or her request for a transfer or sale
88 of a firearm an affidavit attesting to whether or not he or she has been diagnosed with a
89 disability within the past ten years. If the transferee or purchaser states that he or she has
90 not had any such diagnosis, the transfer or sale shall proceed in accordance with the
91 provisions of this Code section. If the transferee or purchaser states that he or she has
92 been diagnosed with a disability within the past ten years, the transfer or sale shall not
93 proceed unless the transferee or purchaser submits a sworn statement from a psychologist
94 or psychiatrist, licensed in this state, that in the opinion of such psychologist or
95 psychiatrist, the transferee or purchaser is mentally competent to be transferred or sold
96 a firearm. Any person who knowingly and willfully makes a false, fictitious, or
97 fraudulent statement in an affidavit submitted pursuant to this paragraph shall be guilty

98 of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as
 99 provided in such Code section. The licensed importer, licensed manufacturer, or licensed
 100 dealer shall keep any such treatment information confidential. It shall be at the discretion
 101 of the licensed importer, licensed manufacturer, or licensed dealer, considering the
 102 circumstances surrounding the disability and the recommendation of the psychologist or
 103 psychiatrist, whether to complete the transfer or sale.

104 (c) Any government official who willfully or intentionally compromises the identity,
 105 confidentiality, and security of any records and data pursuant to this part shall be guilty of
 106 a felony and fined no less than \$5,000.00 and shall be subject to automatic dismissal from
 107 his or her employment.

108 (d) The provisions of this part shall not apply to:

109 (1) Any firearm, including any handgun with a matchlock, flintlock, percussion cap, or
 110 similar type of ignition system, manufactured in or before 1898;

111 (2) Any replica of any firearm described in paragraph (1) of this subsection if such
 112 replica is not designed or redesigned to use rimfire or conventional center-fire fixed
 113 ammunition or uses rimfire or conventional center-fire fixed ammunition which is no
 114 longer manufactured in the United States and which is not readily available in the
 115 ordinary channels of commercial trade; and

116 (3) Any firearm which is a curio or relic as defined by 27 C.F.R. Section 178.11."

117 **SECTION 4.**

118 Code Section 35-3-34 of the Official Code of Georgia Annotated, relating to disclosure and
 119 dissemination of criminal records to private persons and businesses, resulting responsibility
 120 and liability of issuing center, and providing certain information to the FBI in conjunction
 121 with the National Instant Criminal Background Check System, is amended by revising
 122 paragraph (2) of subsection (e) as follows:

123 "(2) The records of the ~~Georgia Crime Information Center~~ center shall include
 124 information as to whether a person has been involuntarily hospitalized. Notwithstanding
 125 any other provisions of law and in order to carry out the provisions of this Code section
 126 and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be
 127 provided such information and no other mental health information from the involuntary
 128 hospitalization records of the probate courts concerning persons involuntarily
 129 hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges
 130 Training Council and the ~~Georgia Bureau of Investigation~~ bureau to preserve the
 131 confidentiality of patients' rights in all other respects. Further, notwithstanding any other
 132 provisions of law and in order to carry out the provisions of this Code section and Code
 133 Section 16-11-172, the center shall be provided information as to whether a person has

134 been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity
135 at the time of the crime, has been involuntarily hospitalized, or both from the records of
136 the clerks of the superior courts concerning persons involuntarily hospitalized after
137 March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of
138 Georgia and the ~~Georgia Bureau of Investigation~~ bureau to preserve the confidentiality
139 of patients' rights in all other respects. After ~~five~~ ten years have elapsed from the date
140 that a person's involuntary hospitalization information has been received by the ~~Georgia~~
141 ~~Crime Information Center, the center,~~ the center shall purge its records of such
142 information as soon as practicable and in any event purge such records within 30 days
143 after the expiration of such ~~five-year~~ ten-year period."

144 **SECTION 5.**

145 This Act shall become effective on July 1, 2013.

146 **SECTION 6.**

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