

Senate Bill 204

By: Senators Moore of the 53rd, Rhett of the 33rd, Parent of the 44th, James of the 28th and Rahman of the 5th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 16 and 17 of Official Code of Georgia Annotated, relating to crimes and  
2 offenses and criminal procedure, respectively, so as to revise certain criminal provisions  
3 relating to the authorization of certain public officers and public entities; to revise standards  
4 for bringing an action against the government for an unauthorized act relating to regulation  
5 of weapons; to provide for definitions; to allow for offenses that are not serious violent  
6 felonies, sexual felonies, or other certain offenses to be charged by accusation of the district  
7 attorney; to provide for conditions; to provide for related matters; to repeal conflicting laws;  
8 and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 16 of the Official Code of Georgia Annotated, relating to Brady Law regulations, is  
12 amended by revising Code Section 16-11-173, relating to legislative findings, preemption  
13 of local regulation and lawsuits, and exceptions, as follows:

14 "16-11-173.

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

16 (1) 'Lawful weapons carrier' shall have the same meaning as set forth in Code  
17 Section 16-11-125.1.

18 (2) 'Weapon' means any device designed or intended to be used, or capable of being  
19 used, for offense or defense, including, but not limited to, firearms, bladed devices, clubs,  
20 electric stun devices, and defense sprays.

21 (b)(1) It is declared by the General Assembly that the regulation of firearms and other  
22 weapons is properly an issue of general, state-wide concern.

23 (2) The General Assembly further declares that the lawful design, marketing,  
24 manufacture, and sale of firearms and ammunition and other weapons to the public is not  
25 unreasonably dangerous activity and does not constitute a nuisance per se.

26 ~~(b)~~(c)(1) Except as otherwise provided in ~~subsection (c)~~ of this Code section, no county  
27 or municipal corporation, by zoning, by ordinance or resolution, or by any other means,  
28 nor any agency, board, department, commission, political subdivision, school district, or  
29 authority of this state, other than the General Assembly, by rule or regulation or by any  
30 other means shall regulate in any manner:

31 (A) Gun shows;

32 (B) The possession, ownership, transport, carrying, transfer, sale, purchase, licensing,  
33 storage, or registration of firearms or other weapons or components of firearms or other  
34 weapons;

35 (C) Firearms dealers or dealers of other weapons; or

36 (D) Dealers in components of firearms or other weapons.

37 (2) The authority to bring suit and right to recover against any weapons, firearms, or  
38 ammunition manufacturer, trade association, or dealer by or on behalf of any  
39 governmental unit created by or pursuant to an Act of the General Assembly or the  
40 Constitution, or any department, agency, or authority thereof, for damages, abatement,  
41 or injunctive relief resulting from or relating to the lawful design, manufacture,  
42 marketing, or sale of weapons, firearms, or ammunition to the public shall be reserved

43 exclusively to the state. This paragraph shall not prohibit a political subdivision or local  
44 government authority from bringing an action against a weapons, firearms, or  
45 ammunition manufacturer or dealer for breach of contract or express warranty as to  
46 weapons, firearms, or ammunition purchased by the political subdivision or local  
47 government authority.

48 ~~(c)~~(d)(1) A county or municipal corporation may regulate the transport, carrying, or  
49 possession, or storage of firearms by employees of the local unit of government, or by  
50 unpaid volunteers of such local unit of government, in the course of their employment or  
51 volunteer functions with such local unit of government; provided, however, that the  
52 sheriff or chief of police shall be solely responsible for regulating and determining the  
53 possession, carrying, ~~and transportation,~~ and storage of firearms and other weapons by  
54 employees under his or her respective supervision so long as such regulations comport  
55 with state and federal law.

56 (2) The commanding officer of any law enforcement agency shall regulate and determine  
57 the possession, carrying, ~~and transportation,~~ and storage of firearms and other weapons  
58 by employees under his or her supervision so long as such regulations comport with state  
59 and federal law.

60 (3) The district attorney, and the solicitor-general in counties where there is a state court,  
61 shall regulate and determine the possession, carrying, ~~and transportation,~~ and storage of  
62 firearms and other weapons by county employees under his or her supervision so long as  
63 such regulations comport with state and federal law.

64 ~~(d)~~(e) Nothing contained in this Code section shall prohibit municipalities or counties, by  
65 ordinance or resolution, from requiring the ownership of guns by heads of households  
66 within the political subdivision.

67 ~~(e)~~(f) Nothing contained in this Code section shall prohibit municipalities or counties, by  
68 ordinance or resolution, from reasonably limiting or prohibiting the discharge of firearms  
69 within the boundaries of the municipal corporation or county.

70 ~~(f) As used in this Code section, the term 'weapon' means any device designed or intended~~  
71 ~~to be used, or capable of being used, for offense or defense, including but not limited to~~  
72 ~~firearms, bladed devices, clubs, electric stun devices, and defense sprays.~~

73 ~~(g) Any person aggrieved as a result of a violation of this Code section may bring an~~  
74 ~~action against the person who caused such aggrievement. The aggrieved person shall be~~  
75 ~~entitled to reasonable attorney's fees and expenses of litigation and may recover or obtain~~  
76 ~~against the person who caused such damages any of the following:~~

77 ~~(1) Actual damages or \$100.00, whichever is greater;~~

78 ~~(2) Equitable relief, including, but not limited to, an injunction or restitution of money~~  
79 ~~and property; and~~

80 ~~(3) Any other relief which the court deems proper.~~

81 (g) Any individual who is a lawful weapons carrier who is or has been subject to or  
82 aggrieved by an act, rule, regulation, ordinance, or resolution in violation of this Code  
83 section shall have standing to bring:

84 (1) An action in mandamus or other legal proceeding against a public entity or public  
85 officer in his or her official capacity to obtain declaratory or injunctive relief. A  
86 prevailing plaintiff in such action shall be entitled to recover his or her costs in such  
87 action, including reasonable attorney's fees; or

88 (2) A civil action when such individual suffers personal, property, or economic damage  
89 and recover the greater of:

90 (A) Actual damages or \$25,000.00, whichever is greater, plus the expenses of litigation  
91 and reasonable attorney's fees; or

92 (B) Liquidated damages of three times the expenses of litigation and reasonable  
93 attorney's fees.

94 (h) Any action brought pursuant to this Code section shall be brought within one year of  
95 the enforcement of a rule, regulation, ordinance, or resolution that violates this Code  
96 section in the superior court of the county in which the violation occurred."

97 **SECTION 2.**

98 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is  
 99 amended by revising subsection (a) of Code Section 17-7-70.1, relating to trial upon  
 100 accusations in certain felony and misdemeanor cases and trial upon plea of guilty or nolo  
 101 contendere, as follows:

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

103 (1) 'Serious violent felony' shall have the same meaning as set forth in Code  
 104 Section 17-10-6.1.

105 (2) 'Sexual felony' shall have the same meaning as set forth in Code Section 16-5-21.

106 ~~(1) In felony cases involving violations of the following:~~

107 ~~(A) Code Sections 16-8-2, 16-8-14, 16-8-18, 16-9-1, 16-9-20, 16-9-31, 16-9-33,~~  
 108 ~~16-9-37, 16-10-52, and 40-5-58;~~

109 ~~(B) Article 1 of Chapter 8 of Title 16, relating to theft;~~

110 ~~(C) Chapter 9 of Title 16, relating to forgery and fraudulent practices;~~

111 ~~(D) Article 3 of Chapter 10 of Title 16, relating to escape and other offenses related to~~  
 112 ~~confinement;~~

113 ~~(E) Code Section 16-11-131, relating to possession of a firearm by a convicted felon~~  
 114 ~~or first offender probationer; or~~

115 ~~(F) Code Section 16-13-30, relating to the purchase, possession, manufacture,~~  
 116 ~~distribution, or sale of controlled substances or marijuana;~~

117 ~~in which defendants have either been bound over to the superior court based on a finding~~  
 118 ~~of probable cause pursuant to a commitment hearing under Article 2 of this chapter or~~  
 119 ~~have expressly or by operation of law waived a commitment hearing, the district attorney~~  
 120 ~~shall have authority to prefer accusations, and the defendants shall be tried on such~~  
 121 ~~accusations according to the same rules of substantive and procedural laws relating to~~  
 122 ~~defendants who have been indicted by a grand jury.~~

123 ~~(2) All laws relating to rights and responsibilities attendant to indicted cases shall be~~  
124 ~~applicable to cases brought by accusations signed by the district attorney.~~

125 ~~(3) The accusation need not be supported by an affidavit except in those cases in which~~  
126 ~~the defendant has not been previously arrested in conjunction with the transaction~~  
127 ~~charged in the accusation or when the accusation is to be used as the basis for the~~  
128 ~~issuance of an arrest warrant.~~

129 (a.1)(1) Notwithstanding any other law to the contrary, the district attorney shall have  
130 the authority to prefer accusations, and the accused shall be tried on such accusations  
131 according to the same rules of substantive and procedural laws relating to defendants who  
132 have been indicted by a grand jury for any felony other than a serious violent felony, a  
133 sexual felony, or violations of Code Section 16-11-173, 16-14-4, or 16-15-4, in which the  
134 accused has:

135 (A) Been bound over to the superior court based on a finding of probable cause  
136 pursuant to a commitment hearing under Article 2 of this chapter;

137 (B) Expressly or by operation of law waived a commitment hearing; or

138 (C) Been released on bond pending a commitment hearing.

139 (2) All laws relating to the rights and responsibilities attendant to indicted cases shall be  
140 applicable to cases charged by accusation signed by the district attorney.

141 (3) The accusation need not be supported by affidavit except in cases where the  
142 defendant has not been previously arrested in conjunction with the actions alleged in the  
143 accusation or when the accusation is to be used as the basis for the issuance of an arrest  
144 warrant."

145 **SECTION 3.**

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