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CRIMES AND OFFENSES Offenses Against Public Order and Safety: Prohibit the Issuance of Pistol Licenses to Nonpardoned Felons

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CRIMES AND OFFENSES

Offenses Against Public Order and Safety: Prohibit the Issuance of Pistol Licenses to Nonpardoned Felons

CODE SECTION: O.C.G.A. § 16-11-129 (amended)
BILL NUMBER: HB 1201
ACT NUMBER: 809
SUMMARY: The Act prohibits the issuance of a license to carry a pistol or revolver and a temporary renewal permit to felons.
EFFECTIVE DATE: July 1, 1994

History

Prior to the introduction of HB 1201, Georgia law permitted persons convicted of a forcible felony to receive a license to carry a pistol or revolver upon showing they had been free of all restraint and supervision in connection with the felony for at least ten years.¹ Additionally, persons convicted of a nonforcible felony could obtain a license upon a showing that they had been free of all restraint and supervision for at least five years.² However, Georgia law also provides that transportation of a firearm by a convicted felon is a felony.³ Therefore, felons who made the appropriate showing to receive a license would appear to be in lawful possession of a firearm, even though another statute made it a felony to do so.⁴ The General Assembly introduced HB 1201 to resolve the conflict between the two statutes⁵

1. 1990 Ga. Laws 2012 (codified at O.C.G.A. § 16-11-129(b)(3) (1992)).

2. *Id.*

3. O.C.G.A. § 16-11-131(b) (1992).

4. Telephone Interview with Judge Jim Clark, Gwinnett County Probate Judge [hereinafter Clark Interview]. Judge Clark suggested that HB 1201 be introduced. *But see* *Fain v. State*, 259 Ga. 708 (Ga. 1989). In *Fain*, a convicted felon was able to obtain a handgun permit by making the requisite showing under O.C.G.A. § 16-11-129. *Id.* at 708-09. The felon later murdered his wife with a handgun. The felon was convicted of murder and possession of a firearm by a convicted felon under O.C.G.A. § 16-11-131. *Id.* at 708. In an attempt to overturn his possession of a firearm conviction, the felon claimed he was in lawful possession of the firearm because a permit had been issued to him under O.C.G.A. § 16-11-129. *Id.* at 709. The Georgia Supreme Court held that despite the conflict between O.C.G.A. §§ 16-11-129 and -131, a felon who has made the proper showing under O.C.G.A. § 16-11-129 is nonetheless ineligible for a firearm license unless he obtains a pardon. *Id.* However, because the court felt the defendant's due process rights might be violated if convicted under O.C.G.A. § 16-11-131(b), the court reversed his conviction. *Id.*

5. Clark Interview, *supra* note 4.

and to ensure that nonpardoned felons cannot obtain a license to carry a pistol or revolver.⁶

HB 1201

The Act amends Code section 16-11-129(b)(3), relating to the issuance of firearm permits, and provides that felons shall not be eligible for pistol licenses unless they have been pardoned.⁷ Therefore, in order to be eligible for a pistol license, felons must show they have been pardoned by either “the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation.”⁸

In order to align Code sections 16-11-129 and -131, the Act amends Code section 16-11-129 in two ways.⁹ First, the Act removes the distinctions between forcible and nonforcible felonies and therefore applies to all felons.¹⁰ Second, the Act draws language from Code section 16-11-131¹¹ by providing that a felon convicted by “a court of this state or any other state; . . . a court of the United States including its territories, possessions, and dominions; or [from] a court of any foreign nation shall be denied a pistol or revolver license.”¹²

The Act does not modify the rights of persons convicted of a forcible misdemeanor or of persons convicted of violations under Code section 16-11-126, -127, and -128.¹³

HB 1201 received unanimous support and passed both the House and Senate without amendment.¹⁴

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6. Telephone Interview with Rep. Vinson Wall, House District No. 82 (Mar. 31, 1994) [hereinafter Wall Interview]. Rep. Wall sponsored HB 1201. *Id.*

7. O.C.G.A. § 16-11-129(b)(3) (Supp. 1994).

8. *Id.*

9. Clark Interview, *supra* note 4.

10. Compare O.C.G.A. § 16-11-129(b)(3) (Supp. 1994) with *id.* § 16-11-129(b)(3) (1992). This revision makes O.C.G.A. § 16-11-129(b) consistent with O.C.G.A. § 16-11-131(b), which also applies to all felons. See *id.* § 16-11-131(b) (1992).

11. Compare *id.* § 16-11-129(b)(3) (Supp. 1994) with *id.* § 16-11-131(b) (1992).

12. *Id.* § 16-11-129(b)(3) (Supp. 1994).

13. *Id.* O.C.G.A. § 16-11-126 relates to carrying a concealed weapon. *Id.* § 16-11-126 (1992). O.C.G.A. § 16-11-127 relates to the carrying of a deadly weapon to or at a public gathering. *Id.* § 16-11-127 (1992). O.C.G.A. § 16-11-128 relates to carrying a pistol without a license. *Id.* § 16-11-128 (1992).

14. Wall Interview, *supra* note 6.