

11-8-2016

## HB 859 - Offenses Against Public Order and Safety

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### Recommended Citation

David Hsu & Jessica W. Truelove, *HB 859 - Offenses Against Public Order and Safety*, 33 GA. ST. U. L. REV. 21 (2016).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol33/iss1/2>

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## CRIMES AND OFFENSES

***Offenses Against Public Order and Safety: Amend 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, so as to Authorize the Carrying and Possession of Handguns in Certain Manners by Weapons Carry License Holders in Certain Buildings or on Real Property Owned by or Leased to Public Institutions of Postsecondary Education; Provide for Definitions; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. § 16-11-125.1 (amended)
BILL NUMBER:	HB 859
ACT NUMBER:	N/A
VETO NUMBERS:	9; 12
GEORGIA LAWS:	N/A
SUMMARY:	The Act would have allowed legal possession of a concealed firearm for individuals with a Georgia Weapons Carry License on property owned or leased by a technical school, college, or university.
EFFECTIVE DATE:	N/A

### *History*

In the wake of recent mass shootings on college campuses, policy-makers and commentators have advanced two competing approaches to curb gun violence on campuses.<sup>1</sup> Many argue that reducing restrictions on law-abiding citizens' ability to carry firearms in previously restricted places would allow people to better defend themselves and deter violent crime.<sup>2</sup> Others, however, contend that increasing the existing penalties for crimes committed on campuses and further restricting access to firearms would more effectively

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1. Suzanne Hultin, *Guns on Campus: Overview*, NAT'L CONFERENCE OF STATE LEGS. (May 31, 2016), <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx>.

2. *Id.*

reduce incidents of campus violence.<sup>3</sup> Spurred by an uptick in campus shootings and other campus crimes, many state legislatures have adopted the former approach, passing legislation that authorizes students and others to carry firearms on college campuses.<sup>4</sup> Opponents of this legislation who support more stringent gun control measures share the same concerns, but differ in their proposed methods for curbing campus violence.<sup>5</sup>

Currently, thirty-one states allow some form of “campus carry”—the carry of concealed weapons on public post-secondary campuses—in some form.<sup>6</sup> Eight states have provisions uniformly allowing concealed carry firearms on these campuses.<sup>7</sup> The other twenty-three states leave the decision to the individual college or university.<sup>8</sup>

Georgia enacted a provision prohibiting firearms at colleges and universities in 1976.<sup>9</sup> Attempts to repeal this campus carry prohibition have been occurring since 2001,<sup>10</sup> and legislation to that effect has been proposed in each legislative session since 2007.<sup>11</sup> In 2007, GeorgiaCarry.Org (“GCO”) incorporated as a state level advocacy group for the expansion of gun rights.<sup>12</sup> GCO has pushed for a general expansion of gun rights including campus carry.<sup>13</sup> Despite the efforts of legislators and groups like GCO, none of the previous campus carry bills made much progress through the Georgia legislature.<sup>14</sup> These efforts, however, were not for naught. While campus carry bills struggled to gain momentum in the legislature, legislators were able to find success passing more comprehensive

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3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Hultin, *supra* note 1

8. *Id.*

9. 1976 Ga. Laws 1430 (adding “schools or school functions” to the list of prohibited places for concealed weapons).

10. HB 304, as introduced, 2001 Ga. Gen. Assemb.

11. HB 859, as introduced, 2016 Ga. Gen. Assemb.; HB 29, as introduced, 2013 Ga. Gen. Assemb.; HB 55, as introduced, 2011 Ga. Gen. Assemb.; HB 615, as introduced, 2009 Ga. Gen. Assemb.; HB 915, as introduced, 2008 Ga. Gen. Assemb.

12. GEORGIA CARRY.ORG, <http://www.georgiacarry.org/> (last visited July 31, 2016).

13. *Id.*

14. *See* 2008 Ga. Laws 801; 2014 Ga. Laws 604.

gun legislation.<sup>15</sup> These bills often contained campus carry provisions; however, the Senate ultimately stripped these provisions out of the legislation.<sup>16</sup>

Jerry Henry, Executive Director of GCO, believes that the General Assembly stripped out campus carry provisions at the behest of the Board of Regents of the University System of Georgia.<sup>17</sup> Some legislators describe the Board of Regents as “the fourth branch of government” due to its power and influence.<sup>18</sup> As a strategic decision, GCO decided to focus its lobbying efforts on more comprehensive changes to Georgia gun laws.<sup>19</sup> It was not until 2016, with House Bill (HB) 859, that campus carry arrived at the forefront of the legislature’s attempt to remove firearm restrictions from Georgia’s college campuses.

During Georgia’s 2016 legislative session, Representative Rick Jasperse (R-11th) introduced HB 859.<sup>20</sup> Representative Jasperse previously authored many gun rights bills, including HB 60 in 2014, which opponents described as the “guns everywhere” bill.<sup>21</sup> In its original form, HB 859 would allow those with a Georgia Weapons Carry License (GWCL) issued pursuant to O.C.G.A. § 16-11-127.1 to carry on campus in the same manner as they could off-campus, either openly or concealed.<sup>22</sup> Concerned that the presence of an openly carried firearm could be disruptive in a classroom setting,<sup>23</sup> the House Public Safety and Homeland Security Committee revised

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15. 2008 Ga. Laws 801; 2014 Ga. Laws 604.

16. Telephone Interview with Jerry Henry, Executive Director of GeorgiaCarry.Org (July 31, 2016) [hereinafter Henry Interview].

17. *Id.*; see also Claire Simms, *Gun Expansion Stalls*, GA. PUB. BROAD. (March 28, 2013), <http://www.gpb.org/news/2013/03/29/gun-expansion-stalls>.

18. Simms, *supra* note 17.

19. Henry Interview, *supra* note 16.

20. Georgia General Assembly, HB 859, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/859>.

21. Aaron Gould Sheinin & Kristina Torres, *Georgia Lawmakers Pass Sweeping Gun Bill*, ATLANTA J.-CONST. (Mar. 20, 2014), <http://www.ajc.com/news/news/state-regional-govt-politics/georgia-lawmakers-pass-sweeping-gun-bill/nfHn6/>; Georgia General Assembly, HB 60, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/60>. See, e.g. Georgia General Assembly, HB 875, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/875>.

22. HB 859, as introduced, 2016 Ga. Gen. Assemb.

23. Telephone Interview with Rep. Rick Jasperse, (R-11th) (Mar. 7, 2016)

the bill to include language requiring any firearm carried on campus be concealed.<sup>24</sup>

### *Bill Tracking of HB 859*

#### *Consideration and Passage by the House*

Representatives Jasperse (R-11th), Mandi Ballinger (R-23rd), John Meadows (R-5th), Alan Powell (R-32nd), Dustin Hightower (R-68th), and Trey Kelley (R-16th) sponsored HB 859.<sup>25</sup> The House read the bill for the first time on January 28, 2016.<sup>26</sup> The House read the bill for the second time on February 1, 2016.<sup>27</sup> Speaker David Ralston (R-7th) assigned the bill to the House Public Safety and Homeland Security Committee, which favorably reported the bill by substitute on February 17, 2016.<sup>28</sup>

The Committee substitute included provisions limiting the bill to public institutions and concealed weapons, changing the term “weapon” to “handgun,” reorganizing the bill into subsections, and adding subsection (h) of Code section 16-11-126 to the licensees included in the bill.<sup>29</sup> Additionally, the Committee substitute defined the terms “handgun” and “concealed.”<sup>30</sup>

The House read HB 859 for a third time, adopted the Committee substitute, and passed the bill on February 22, 2016.<sup>31</sup>

#### *Consideration and Passage by the Senate*

Senator Jesse Stone (R-23rd) sponsored HB 859 in the Senate.<sup>32</sup> The Senate first read HB 859 on February 23, 2016, and assigned it

24. Compare HB 859, as introduced, 2016 Ga. Gen. Assemb., with HB 859 (HCS), 2016 Ga. Gen. Assemb.

25. Georgia General Assembly, HB 859, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/859>.

26. State of Georgia Final Composite Status Sheet, HB 859, May 5, 2016.

27. *Id.*

28. *Id.*

29. Compare HB 859, as introduced, 2016 Ga. Gen. Assemb., with HB 859 (HCS), 2016 Ga. Gen. Assemb.

30. HB 859 (HCS) § 1, p. 2, ll. 1–10, 2016 Ga. Gen. Assemb.

31. State of Georgia Final Composite Status Sheet, HB 859, May 5, 2016.

32. *Id.*

to the Senate Judiciary Committee, which favorably reported it on March 8, 2016.<sup>33</sup> On March 10, 2016, the Senate read HB 859 for a second time.<sup>34</sup> On March 11, 2016, the Senate read HB 859 a third time and passed HB 859, by a vote of 37 to 17.<sup>35</sup> The House sent the bill to Governor Nathan Deal (R) on March 28, 2016.<sup>36</sup> Governor Nathan Deal vetoed HB 859 on May 3, 2016.<sup>37</sup>

### *The Bill*

Section 1 of the Act would have modified Code section 16-11-127.1 to authorize the carrying and possession of handguns by GWCL holders in some buildings and on real property owned or leased by public postsecondary education institutions.<sup>38</sup> The Act would have appended this amendment to the end of paragraph eighteen of Code section 16-11-127.1 as paragraph nineteen with sections (A) and (B).<sup>39</sup>

Section (A) lists the various postsecondary public institutions in which concealed handguns would have been allowed.<sup>40</sup> This list includes public technical schools, vocational schools, colleges, and universities.<sup>41</sup> Subsection (i) of section (A) excludes the athletic buildings and student housing, including sorority and fraternity houses.<sup>42</sup> Subsection (ii) of section (A) limits the carriers to restrictions pursuant to subsection (h) of Code section 16-11-126 and Code section 16-11-129.<sup>43</sup> Subsection (iii) of section (A) also limits permissible carrying to concealed weapons.<sup>44</sup>

Code section 16-11-126(h), as referenced in subsection (ii) of section (A) of the Act, states “No person shall carry a weapon without a valid weapons carry license unless he or she meets one of

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33. *Id.*

34. State of Georgia Final Composite Status Sheet, H.B. 859, May 5, 2016.

35. Georgia Senate Voting Record, H.B. 859, Vote #584 (Mar. 11, 2016).

36. State of Georgia Final Composite Status Sheet, H.B. 859, May 5, 2016.

37. *Id.*

38. HB 859, as passed, 2016 Ga. Gen. Assemb.

39. *Id.*

40. *Id.* § 1, p. 1, ll. 15–24.

41. *Id.*

42. *Id.* § 1, p. 1, ll. 19–20.

43. *Id.* § 1, p. 1, ll. 21–23.

44. HB 859, as passed, § 1, p. 1, l. 24.

the exceptions to having such license as provided in subsections (a) through (g) of [Code section 16-11-126].”<sup>45</sup> Code section 16-11-129 provides the restrictions of an applicable licensed carrier under the Act.<sup>46</sup>

Section (B) of the Act defines “handgun” and “concealed” as referenced in section (A).<sup>47</sup> The Act’s definition of “handgun” mirrors Code section 16-11-125.1.<sup>48</sup> Code section 16-11-125.1 defines “handgun” as:

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 .46 centimeters or less in diameter.<sup>49</sup>

Section (B) defines “concealed” as:

carried in such a fashion that does not actively solicit the attention of others and prominently, openly, and intentionally displayed only 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.<sup>50</sup>

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45. O.C.G.A. § 16-11-126(h) (2016).

46. O.C.G.A. § 16-11-129 (2016).

47. HB 859, as passed, § 1, p. 2, ll. 26–27.

48. *Id.*

49. O.C.G.A. § 16-11-125.1(1) (2016).

50. HB 859, as passed, § 1, p. 2, ll. 28–35, 2016 Ga. Gen. Assemb.

Section 2 of the Act would have repealed all law and parts in conflict with the Bill.<sup>51</sup>

### *Analysis*

#### *Conflicting Views*

As evidenced by Governor Deal's veto, strong arguments for and against the bill existed. Many Second Amendment supporters viewed the bill as a "crucial measure for members of the school community to protect themselves."<sup>52</sup> They argued "allowing students who have passed background checks to carry concealed handguns on campus would help make the environment safer, and serve as a deterrent for increased gun violence."<sup>53</sup> However, supporters also reasoned "criminals with the intent to cause harm to students with a firearm will do so whether or not HB 859 is in place."<sup>54</sup>

On the other hand, opposition to the Bill stems from a diverse array of concerns. For example, in an article with USA Today, music artist and University of Georgia graduate Michael Stipe stated he worried about the bill because it would legalize firearms "at a tailgate where alcohol is served."<sup>55</sup> Stipe also expressed concern that potential victims of sexual assault may have to "face an armed assailant."<sup>56</sup> Others argued that "cash strapped Georgia schools simply can't afford" the cost of preparing for guns on campus.<sup>57</sup> Finally, some opponents expressed concern that the bill would deter students from engaging in honest discussion in the classroom for fear

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51. *Id.*

52. Emanuella Grinberg, *Georgia Governor Vetoes Campus Carry Bill*, CNN (May 3, 2016), <http://www.cnn.com/2016/05/03/health/georgia-campus-carry-bill/>.

53. *Georgia Governor Vetoes 'Campus-Carry' Concealed Gun Bill*, FOX NEWS (May 3, 2016), <http://www.foxnews.com/politics/2016/05/03/georgia-governor-to-veto-campus-carry-concealed-gun-bill.html#>.

54. Maxime Tamsett, *UGA Students Speak Out In Support of Georgia Campus Carry Bill*, RED AND BLACK (Apr. 1, 2016), [http://www.redandblack.com/athensnews/uga-students-speak-out-in-support-of-georgia-campus-carry/article\\_8b1fe24-f79e-11e5-b3a5-cb25b9ecl1b.html](http://www.redandblack.com/athensnews/uga-students-speak-out-in-support-of-georgia-campus-carry/article_8b1fe24-f79e-11e5-b3a5-cb25b9ecl1b.html).

55. Michael Stipe, *Opinion, Governor, Please Veto This Gun Bill*, USA TODAY (Apr. 25, 2016), <http://www.usatoday.com/story/opinion/2016/04/25/michael-stipe-georgia-governor-nathan-deal-guns-on-campus/83474144/>.

56. *Id.*

57. *Id.*



“the people around them could have loaded guns in their backpacks.”<sup>58</sup>

*Reason for Veto*

After the legislature passed the bill, Governor Deal expressed reservations, particularly because the bill would allow licensed individuals to carry firearms into daycare facilities and administrative offices on university campuses.<sup>59</sup> He urged the legislature to amend the language to include a prohibition for these locations on campus.<sup>60</sup> The legislature refused to amend the Bill, and called on the Governor to sign it as passed.<sup>61</sup>

On May 3, 2015, Governor Deal vetoed HB 859 and issued a veto stating his reasons.<sup>62</sup> His cited reasons for the veto including: (1) historical precedent, (2) lack of applicability to the majority of students, and (3) its applicability to non-students.<sup>63</sup> The veto statement did not, however, mention his previously expressed reservations.<sup>64</sup> Governor Deal pointed to a longstanding history of prohibiting weapons on university campuses, and specifically mentioned rules adopted by the University of Virginia in 1824, which provided that “[n]o student shall, within the precincts of the University, introduce, keep or use any spirituous or venomous liquors, [or] keep or use weapons or arms of any kind . . . .”<sup>65</sup> Additionally, he expressed doubt that the law would actually increase student safety because most students would be under 21 and ineligible for a GWCL.<sup>66</sup> At the same time, non-students with a

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58. *Id.*

59. *Deal Calls on General Assembly to Address “Campus Carry” Concerns*, OFFICE OF THE GOVERNOR (Mar. 14, 2016), <https://gov.georgia.gov/press-releases/2016-03-14/deal-calls-general-assembly-address-%E2%80%9Ccampus-carry%E2%80%9D-concerns>.

60. *Id.*

61. Awr Hawkins, *GA House Speaker to GA Governor: We Won’t Gut Campus Carry Bill for You*, BREITBART, (Mar. 22, 2016), <http://www.breitbart.com/big-government/2016/03/22/ga-house-speaker-to-ga-governor-we-wont-weaken-campus-carry-bill/>.

62. *Governor Deal Issues 2016 Veto Statements*, OFFICE OF THE GOVERNOR (May 3, 2016), <https://gov.georgia.gov/press-releases/2016-05-03/deal-issues-2016-veto-statements>.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

GWCL would be free to carry a firearm on university campuses.<sup>67</sup> Due to these concerns, the governor concluded, “[i]f the intent of HB 859 is to increase safety of students on college campuses, it is highly questionable that such would be the result.”<sup>68</sup>

### *Moving Forward*

The legislature has consistently raised campus carry as an issue in recent years and will likely continue to do so.<sup>69</sup> Governor Deal’s veto statement supporting the longstanding history of laws prohibiting weapons on university campuses suggests he would veto similar legislation in the future regardless of whether his other concerns are addressed.<sup>70</sup> The bill is eligible for a veto override at the beginning of the session next year.<sup>71</sup> However, if the vote comes down the same way it will not receive enough votes to sustain a veto.<sup>72</sup> Unless the composition of the legislature changes enough to allow a veto override, the legislature will likely have to start anew.

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67. *Id.*

68. *Governor Deal Issues 2016 Veto Statements*, *supra* note 62.

69. *See* statutes cited, *supra* note 11.

70. *Id.*

71. GA. CONST. art. III, § 5, para. 8.

72. Georgia Senate Voting Record, H.B. 859, Vote #584 (Mar. 11, 2016).