



IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES D. JOHNSON,)
Plaintiff,)
v.)
FULTON COUNTY SCHOOLS)
Defendant)

Civil Action No. 2014 CV 250660

PLAINTIFF'S BRIEF IN SUPPORT OF HIS MOTION FOR INTERLOCUTORY
INJUNCTION

Plaintiff commenced this action when a dispute arose between Plaintiff and officials of the Fulton County Schools. The dispute is centered on an interpretation of a statute to facts which cannot reasonably be disputed. Plaintiff seeks an interlocutory injunction during the pendency of this case.

Background

Plaintiff is a resident of Fulton County and has children that attend New Prospect Elementary School in Alpharetta, Georgia. Plaintiff visits New Prospect in support of his children's educational process.

Plaintiff has a Georgia weapons carry license ("GWL"). Plaintiff generally carries a firearm, in case of confrontation, as permitted by the GWL and as guaranteed by the Second Amendment to the Constitutional of the United States and Article 1, Section 1, Paragraph 8 of the Constitution of Georgia.

Prior to July 1, 2014, it generally was a crime to carry a firearm in a school, even for people with GWLs. See O.C.G.A. § 16-11-127.1. In the 2013-2014 legislative session, House Bill 826 was passed and signed by the governor as Act 575. Act 575, *inter alia*, decriminalized carrying firearms in schools for people with GWLs. Act 575 became effective on July 1, 2014.

On or about August 12, 2014, Defendant's officials were quoted in the local press as saying that it still is a crime to carry a firearm in Defendant's schools. Plaintiff challenged that press report, and obtained additional quotes from Defendant's attorney that a GWL holder may not carry a firearm in Defendant's schools.

Because there now is an actual dispute and controversy between Plaintiff and Defendant, Defendant seeks to resolve that dispute in the civil courts rather than as a criminal defendant.

Argument

A plaintiff may obtain an interlocutory injunction if he would be irreparably harmed if it were not granted and if it would not operate oppressively on the defendant's rights to grant it. The court may consider the likelihood of success on the merits, but that issue is not dispositive. *Garden Hills Civic Assoc. v. MARTA*, 273 Ga. 280, 282, 539 S.E.2d 811, 813 (2000). An interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication. There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy. *Haygood v. Tilley*, 295 Ga.App. 90, 92 (2008).

In the present case, Plaintiff will be irreparably harmed if the Motion is not granted. School resumed from the summer break in the Fulton County School District on August 11, 2014. Since that date, Plaintiff again visits New Prospect in support of his children's educational activities. While doing so, he desires to carry a firearm in case of confrontation as the law now permits. He would do so, however, under threat of arrest and prosecution from Defendant.

Because Plaintiff has a statutory right to carry a firearm as permitted by his GWL, Defendant has no authority to prevent Plaintiff from exercising that right. If Defendant is

permitted to hold the threat of prosecution over Plaintiff's head, it may effectively chill his exercise of the right he seeks to exercise. Of course, if he is dissuaded from exercising the right, he will have been damaged with no adequate remedy. A right not exercised is a right lost. It is therefore vital that this Court issued the interlocutory injunction to prevent Defendant from hurting Plaintiff "whilst their rights are being litigated."

Although the likelihood of success on the merits is not a mandatory consideration, in the present case it is important for the Court to understand the nature of the controversy and the development of the underlying law.

Prior to July 1, 2014, a "school safety zone" was defined to include "in or on any real property owned or leased to any public or private elementary school...." O.C.G.A. § 16-11-127.1(a)(1) (2013). A "weapon" was defined to mean "any pistol, revolver...." O.C.G.A. § 16-11-127.1(a)(2) (2013). It was unlawful "for any person to carry to or to possess ... while within a school safety zone ... any weapon...." O.C.G.A. § 16-11-127.1(b)(1) (2013). Violations by GWL holders are misdemeanors and by non GWL holders are felonies. O.C.G.A. § 16-11-127.1(b)(2) (2013). There was an exception for GWL holders "when such person carries or picks up a student at a school building...." O.C.G.A. § 16-11-127.1(c)(7) (2013).

It is clear, therefore, that prior to July 1, 2014, it was a misdemeanor for Plaintiff, a GWL holder, to carry a handgun in New Prospect, except when he was carrying or picking up his children. The *status quo ante* changed, however, with Act 575¹. A copy of Act 575 is filed

¹ Plaintiff acknowledges that the 2014 version of the O.C.G.A. has been published, so one might naturally look to those volumes to glean the changes from the 2014 session. That methodology presumes, however, that the Code Revision Commission accurately and faithfully implemented the acts of the General Assembly. Plaintiff posits that it did not, and in fact that failure no doubt contributes to the present controversy. For that reason, it is necessary to work from the actual act of the General Assembly, Act 575, and not the 2014 Code volumes.

contemporaneously for the Court's convenience. The changes from Act 575 are described below.

Act 575 made some definitional changes, though they do not directly drive the result of this case. In the interest of completeness, though, they will be presented here. First, Act 575 changes the definition of "school safety zone: to be "real property or building owned by or leased to any school...." This change is not substantive compared to the former definition, because "school" is defined to mean a "public or private ... institution instructing children at any level, pre-kindergarten through twelfth grade." Act 575, Section 1-1, Lines 42-48.

Next, Act 575 deletes the definition of weapon. Section 1-1, Lines 49-60. This change also does not drive the outcome of the present case, because the crime definition has been changed to say, "it shall be unlawful for any person to carry to or to possess ...while within a school safety zone ... any firearm...." Section 1-1, Lines 61-65. So, the definitional changes and the description of the crime remain substantively the same: it generally is a crime to carry a firearm in a school.

The part of Act 575 that makes all the difference for the present case is a modification to the exception described above as part of the *status quo ante*. Act 575 renumbered O.C.G.A. § 16-11-127.1(c)(7) to be 16-11-127.1(c)(6). Section 1-1, Line 108. The substantive change is that the exception no longer just applies when carrying or a picking up a student. Now, the exception states that Code section 16-11-127.1 does not apply to a GWL holder "**when he or she is within a school safety zone....**" [Emphasis supplied]. That is, it no longer is a crime for a GWL holder to carry a firearm in a school safety zone, which is defined to include all schools, including New Prospect.

Moreover, Defendant is independently preempted by state law from enacting its own policy regulating carrying guns at schools. O.C.G.A. § 16-11-173(b)(1)(B) states that no county ... shall regulate in any manner ... [t]he possession, ownership, transport, carrying... of firearms....” The Court of Appeals has construed § 16-11-173(b) quite broadly against cities and counties. *GeorgiaCarry.Org, Inc. v. City of Roswell*, 298 Ga.App. 686 (2009); *GeorgiaCarry.Org, Inc. v. Coweta County*, 288 Ga.App. 748 (2007); *Sturm Ruger v. City of Atlanta*, 253 Ga.App. 713 (2002).

Now that it no longer is a state crime for a GWL holder to carry a firearm in schools, and that schools cannot independently regulate carrying weapons, including firearms, there simply is no basis for Defendant to threaten Plaintiff with prosecution if he carries a firearm at New Prospect.

Because Plaintiff has a clearly-established right to carry a firearm at New Prospect, he will be irreparably harmed if he is prevented from doing so. Obviously Plaintiff suffers harm by not being able to exercise his right to carry a firearm. The question becomes is the harm irreparable. There is no way to quantify damages to Plaintiff for the loss of his right. The loss of a right to bear arms is similar in nature to the loss of the right of free speech. Once a person has been deprived of the right to speak, the harm is irreparable because the lost opportunity cannot be regained.

Lastly, it is impossible for the Court to conclude that an injunction would operate oppressively on Defendant. Defendant is preempted by state law from imposing a ban on Plaintiff from carrying a firearm. An injunction cannot operate oppressively when it orders a person not to do that which it has no legal right to do.



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House Bill 826 (AS PASSED HOUSE AND SENATE)

By: Representatives Setzler of the 35th, Gravley of the 67th, Pruett of the 149th, Golick of the 40th, Dunahoo of the 30th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 and Subpart 2 of Part 2 of Article 16 of
2 Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to dangerous
3 instrumentalities and practices and public school disciplinary tribunals, respectively, so as
4 to change provisions relating to carrying weapons within certain school safety zones and at
5 school functions; to provide for and change definitions; to change provisions relating to
6 exemptions for carrying weapons within school safety zones; to provide for weapons carry
7 licenses to be carried and exhibited on demand; to change provisions relating to expulsion
8 and disciplinary policy for students bringing weapons to school; to change provisions relating
9 to student codes of conduct and safety rules on school buses; to amend Chapter 11 of Title
10 15, Title 16, Chapter 2 of Title 20, and Code Section 40-5-22 of the Official Code of Georgia
11 Annotated, relating to the Juvenile Code, crimes and offenses, elementary and secondary
12 education, and persons not to be licensed, minimum ages for licensees, and school attendance
13 requirements, respectively, so as to correct cross-references; to change provisions relating
14 to carrying weapons in unauthorized locations; to provide for related matters; to repeal
15 conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 PART I
18 SECTION 1-1.

19 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
20 dangerous instrumentalities and practices, is amended by revising Code Section 16-11-127.1,
21 relating to carrying weapons within school safety zones, at school functions, or on school
22 property, as follows:

23 "16-11-127.1.

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

25 (1) 'Bus' means:

- 26 (A) A motor vehicle operated for the transportation of children to and from school or
 27 school activities. Such term shall not include a privately owned motor vehicle with a
 28 capacity of 15 persons or less operated for the transportation of children to and from
 29 school activities if such motor vehicle is not being operated by an employee or
 30 independent contractor of a school; or
- 31 (B) A motor vehicle operated by a local transit system which meets the equipment and
 32 identification requirements of Code Section 40-8-115; provided, however, that such
 33 motor vehicle shall be a bus only while transporting children or children and employees
 34 or independent contractors of a school to or from school or school activities.
- 35 (2) 'Dangerous weapon' shall have the same meaning as set forth in Code Section
 36 16-11-121.
- 37 (3) 'Firearm' means a handgun, rifle, shotgun, or other weapon which will or can be
 38 converted to expel a projectile by the action of an explosive or electrical charge.
- 39 (4) 'Fireworks' shall have the same meaning as set forth in Code Section 25-10-1.
- 40 (5) 'Machine gun' shall have the same meaning as set forth in Code Section 16-11-121.
- 41 (6) 'Peace officer' shall have the same meaning as set forth in Code Section 35-8-2.
- 42 (7) 'School' means a public or private educational program or institution instructing
 43 children at any level, pre-kindergarten through twelfth grade.
- 44 ~~(7)~~(8) 'School safety zone' means in or on any real property or building owned by or
 45 leased to any public or private elementary school, secondary school, or school board and
 46 used for elementary or secondary education and in or on the campus of any public or
 47 private technical school, vocational school, college, university, or institution of
 48 postsecondary education school or postsecondary institution.
- 49 ~~(2) 'Weapon' means and includes any pistol, revolver, or any weapon designed or~~
 50 ~~intended to propel a missile of any kind, or any dirk, bowie knife, switchblade knife,~~
 51 ~~ballistic knife, any other knife having a blade of two or more inches, straight-edge razor,~~
 52 ~~razor blade, spring stick, knuckles, whether made from metal, thermoplastic, wood, or~~
 53 ~~other similar material, blackjack, any bat, club, or other bludgeon-type weapon, or any~~
 54 ~~flailing instrument consisting of two or more rigid parts connected in such a manner as~~
 55 ~~to allow them to swing freely, which may be known as a nun chahka, nun chuck,~~
 56 ~~nunchaku, shuriken, or fighting chain, or any disc, of whatever configuration, having at~~
 57 ~~least two points or pointed blades which is designed to be thrown or propelled and which~~
 58 ~~may be known as a throwing star or oriental dart, or any weapon of like kind, and any~~
 59 ~~stun gun or taser as defined in subsection (a) of Code Section 16-11-106. This paragraph~~
 60 ~~excludes any of these instruments used for classroom work authorized by the teacher.~~
- 61 (b)(1) Except as otherwise provided in subsection (c) of this Code section, it shall be
 62 unlawful for any person to carry to or to possess or have under such person's control

63 while within a school safety zone or at a school building, school function, or school
 64 property or on a bus or other transportation furnished by the a school any weapon firearm
 65 or explosive compound, other than fireworks ~~the possession of which is regulated by~~
 66 ~~Chapter 10 of Title 25.~~

67 (2) Any license holder who violates this subsection shall be guilty of a misdemeanor.
 68 Any person who is not a license holder who violates this subsection shall be guilty of a
 69 felony and, upon conviction thereof, be punished by a fine of not more than \$10,000.00,
 70 by imprisonment for not less than two nor more than ten years, or both.

71 (3) Any person convicted of a violation of this subsection involving a dangerous weapon
 72 or machine gun, ~~as such terms are defined in Code Section 16-11-121,~~ shall be punished
 73 by a fine of not more than \$10,000.00 or by imprisonment for a period of not less than
 74 five nor more than ten years, or both.

75 (4) A child who violates this subsection may be subject to the provisions of Code Section
 76 15-11-601.

77 (5) This subsection shall not apply to any firearm used for classroom work authorized
 78 by a teacher.

79 (c) The provisions of this Code section shall not apply to:

80 ~~(1) Baseball bats, hockey sticks, or other sports equipment possessed by competitors for~~
 81 ~~legitimate athletic purposes;~~

82 ~~(2)~~(1) Participants in organized sport shooting events or firearm training courses;

83 ~~(3)~~(2) Persons participating in military training programs conducted by or on behalf of
 84 the armed forces of the United States or the Georgia Department of Defense;

85 ~~(4)~~(3) Persons participating in law enforcement training conducted by a police academy
 86 certified by the Georgia Peace Officer Standards and Training Council or by a law
 87 enforcement agency of the state or the United States or any political subdivision thereof;

88 ~~(5)~~(4) The following persons, when acting in the performance of their official duties or
 89 when en route to or from their official duties:

90 (A) A peace officer ~~as defined by Code Section 35-8-2;~~

91 (B) A law enforcement officer of the United States government;

92 (C) A prosecuting attorney of this state or of the United States;

93 (D) An employee of the Georgia Department of Corrections or a correctional facility
 94 operated by a political subdivision of this state or the United States who is authorized
 95 by the head of such correctional agency or facility to carry a firearm;

96 (E) A person employed as a campus police officer or school security officer who is
 97 authorized to carry a weapon in accordance with Chapter 8 of Title 20; and

98 (F) Medical examiners, coroners, and their investigators who are employed by the state
 99 or any political subdivision thereof;

- 100 ~~(6)~~(5) A person who has been authorized in writing by a duly authorized official of the
101 school, a school, local board of education, or postsecondary institution to have in such
102 person's possession or use ~~as part of any activity being conducted at a school building,~~
103 school property, or school function a ~~weapon~~ within a school safety zone or on a bus or
104 other transportation furnished by a school a firearm which would otherwise be prohibited
105 by this Code section. Such authorization shall specify the ~~weapon or weapons~~ type of
106 firearms which have been authorized and the time period during which the authorization
107 is valid;
- 108 ~~(7)~~(6) A person who is licensed in accordance with Code Section 16-11-129 or issued
109 a permit pursuant to Code Section 43-38-10, ~~when such person carries or picks up a~~
110 student at a school building, school function, or school property when he or she is within
111 a school safety zone or on a bus or other transportation furnished by ~~the~~ a school or a
112 person who is licensed in accordance with Code Section 16-11-129 or issued a permit
113 pursuant to Code Section 43-38-10 when he or she has any ~~weapon~~ firearm legally kept
114 within a vehicle when such vehicle is parked ~~at such school property~~ within a school
115 safety zone or is in transit through a designated school safety zone;
- 116 ~~(8)~~(7) A ~~weapon~~ firearm possessed by a license holder which is under the possessor's
117 control in a motor vehicle or which is in a locked compartment of a motor vehicle or one
118 which is in a locked container in or a locked firearms rack which is on a motor vehicle
119 which is being used by an adult over 21 years of age ~~to bring to or pick up a student at~~
120 a school building, school function, or school property within a school safety zone or on
121 a bus or other transportation furnished by ~~the~~ a school, or when such vehicle is used to
122 transport someone to an activity being conducted ~~on school property~~ within a school
123 safety zone which has been authorized by a duly authorized official ~~of the school as~~
124 provided by paragraph (5) of this subsection; provided, however, that this exception shall
125 not apply to a student attending ~~such~~ a school;
- 126 ~~(9)~~(8) Persons employed in fulfilling defense contracts with the government of the
127 United States or agencies thereof when possession of the ~~weapon~~ firearm is necessary for
128 manufacture, transport, installation, and testing under the requirements of such contract;
- 129 ~~(10)~~(9) Those employees of the State Board of Pardons and Paroles when specifically
130 designated and authorized in writing by the members of the State Board of Pardons and
131 Paroles to carry a ~~weapon~~ firearm;
- 132 ~~(11)~~(10) The Attorney General and those members of his or her staff whom he or she
133 specifically authorizes in writing to carry a ~~weapon~~ firearm;
- 134 ~~(12)~~(11) Probation supervisors employed by and under the authority of the Department
135 of Corrections pursuant to Article 2 of Chapter 8 of Title 42, known as the 'State-wide

136 Probation Act,' when specifically designated and authorized in writing by the director of
 137 the Division of Probation;

138 ~~(13)(12)~~ Public safety directors of municipal corporations;

139 ~~(14)(13)~~ State and federal trial and appellate judges;

140 ~~(15)(14)~~ United States attorneys and assistant United States attorneys;

141 ~~(16)(15)~~ Clerks of the superior courts;

142 ~~(17)(16)~~ Teachers and other ~~school~~ personnel who are otherwise authorized to possess
 143 or carry ~~weapons~~ firearms, provided that any such ~~weapon~~ firearm is in a locked
 144 compartment of a motor vehicle or one which is in a locked container in or a locked
 145 firearms rack which is on a motor vehicle; or

146 ~~(18)(17)~~ Constables of any county of this state.

147 (d)(1) This Code section shall not prohibit any person who resides or works in a business
 148 or is in the ordinary course transacting lawful business or any person who is a visitor of
 149 such resident located within a school safety zone from carrying, possessing, or having
 150 under such person's control a ~~weapon~~ firearm within a school safety zone; provided,
 151 however, that it shall be unlawful for any such person to carry, possess, or have under
 152 such person's control while ~~at a school building or school function or on school property,~~
 153 ~~a school bus, on a bus~~ or other transportation furnished by ~~the~~ a school any ~~weapon~~
 154 firearm or explosive compound, other than fireworks ~~the possession of which is regulated~~
 155 ~~by Chapter 10 of Title 25.~~

156 (2) Any person who violates this subsection shall, upon conviction, be subject to the
 157 penalties specified in subsection (b) of this Code section.

158 ~~(3) This subsection shall not be construed to waive or alter any legal requirement for~~
 159 ~~possession of weapons or firearms otherwise required by law.~~

160 (e) It shall be no defense to a prosecution for a violation of this Code section that:

161 (1) A school or postsecondary institution ~~School~~ was or was not in session at the time
 162 of the offense;

163 (2) The real property was being used for other purposes besides school or postsecondary
 164 institution purposes at the time of the offense; or

165 (3) The offense took place on a bus or other transportation furnished by a school ~~vehicle~~.

166 (f) In a prosecution under this Code section, a map produced or reproduced by any
 167 municipal or county agency or department for the purpose of depicting the location and
 168 boundaries of the area of the real property of a school ~~board or a private or public~~
 169 ~~elementary or secondary school that is used for school purposes or the area of any campus~~
 170 ~~of any public or private technical school, vocational school, college, university, or~~
 171 ~~institution of postsecondary education or the area of any postsecondary institution,~~ or a true
 172 copy of the map, shall, if certified as a true copy by the custodian of the record, be

173 admissible and shall constitute prima-facie evidence of the location and boundaries of the
 174 area, if the governing body of the municipality or county has approved the map as an
 175 official record of the location and boundaries of the area. A map approved under this Code
 176 section may be revised from time to time by the governing body of the municipality or
 177 county. The original of every map approved or revised under this subsection or a true copy
 178 of such original map shall be filed with the municipality or county and shall be maintained
 179 as an official record of the municipality or county. This subsection shall not preclude the
 180 prosecution from introducing or relying upon any other evidence or testimony to establish
 181 any element of this offense. This subsection shall not preclude the use or admissibility of
 182 a map or diagram other than the one which has been approved by the municipality or
 183 county.

184 (g) A county school board may adopt regulations requiring the posting of signs designating
 185 the areas of school boards and private or public elementary and secondary schools as
 186 'Weapon-free and Violence-free School Safety Zones.'

187 **SECTION 1-2.**

188 Said article is further amended by adding a new Code section to read as follows:

189 "16-11-137.

190 (a) Every license holder shall have his or her valid weapons carry license in his or her
 191 immediate possession at all times when carrying a weapon, or if such person is exempt
 192 from having a weapons carry license pursuant to Code Section 16-11-130 or subsection (c)
 193 of Code Section 16-11-127.1, he or she shall have proof of his or her exemption in his or
 194 her immediate possession at all times when carrying a weapon, and his or her failure to do
 195 so shall be prima-facie evidence of a violation of the applicable provision of Code Sections
 196 16-11-126 through 16-11-127.2.

197 (b) A person convicted of a violation of this Code section shall be fined no more than
 198 \$10.00 if he or she produces in court his or her weapons carry license, provided that it was
 199 valid at the time of his or her arrest, or produces proof of his or her exemption."

200 **SECTION 1-3.**

201 Subpart 2 of Part 2 of Article 16 of Chapter 2 of Title 20 of the Official Code of Georgia
 202 Annotated, relating to public school disciplinary tribunals, is amended by revising Code
 203 Section 20-2-751, relating to definitions, as follows:

204 "20-2-751.

205 As used in this subpart, the term:

206 (1) 'Dangerous weapon' shall have the same meaning as set forth in Code Section
 207 16-11-121.

208 ~~(1)~~(2) 'Expulsion' means expulsion of a student from a public school beyond the current
209 school quarter or semester.

210 (3) 'Firearm' shall have the same meaning as set forth in Code Section 16-11-127.1.

211 (4) 'Hazardous object' means any dirk, bowie knife, switchblade knife, ballistic knife,
212 any other knife having a blade of two or more inches, straight-edge razor, razor blade,
213 spring stick, knuckles, whether made from metal, thermoplastic, wood, or other similar
214 material, blackjack, any bat, club, or other bludgeon-type weapon, or any flailing
215 instrument consisting of two or more rigid parts connected in such a manner as to allow
216 them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku,
217 shuriken, or fighting chain, or any disc, of whatever configuration, having at least two
218 points or pointed blades which is designed to be thrown or propelled and which may be
219 known as a throwing star or oriental dart, or any instrument of like kind, any nonlethal
220 air gun, and any stun gun or taser as defined in subsection (a) of Code Section 16-11-106.
221 Such term shall not include any of these instruments used for classroom work authorized
222 by the teacher.

223 ~~(2)~~(5) 'Long-term suspension' means the suspension of a student from a public school for
224 more than ten school days but not beyond the current school quarter or semester.

225 ~~(3)~~(6) 'Short-term suspension' means the suspension of a student from a public school
226 for not more than ten school days.

227 ~~(4) 'Weapon' means a firearm as such term is defined in Section 921 of Title 18 of the~~
228 ~~United States Code."~~

229 **SECTION 1-4.**

230 Said subpart is further amended by revising Code Section 20-2-751.1, relating to expulsion
231 and disciplinary policy for students bringing weapons to school, as follows:

232 "20-2-751.1.

233 (a) Each local board of education shall establish a policy ~~requiring the expulsion from~~
234 ~~school for a period of not less than one calendar year of any student who is determined,~~
235 ~~pursuant to this subpart, to have brought a weapon to school regarding a student's~~
236 ~~possession of a firearm, dangerous weapon, or hazardous object at school. With respect~~
237 ~~to a student who is determined to have possessed a firearm or dangerous weapon at school,~~
238 such policy shall require expulsion from school for a period of not less than one calendar
239 year; provided, however, that a hearing officer, tribunal, panel, administrator,
240 superintendent, or local board of education shall have the authority to modify such
241 expulsion requirement on a case-by-case basis.

242 ~~(b) The local board of education shall have the authority to modify such expulsion~~
243 ~~requirement as provided in subsection (a) of this Code section on a case-by-case basis.~~

244 ~~(c)(b)~~ A hearing officer, tribunal, panel, superintendent, or local board of education shall
 245 be authorized to place a student determined to have brought a firearm, dangerous weapon,
 246 or hazardous object to school in an alternative educational setting.
 247 ~~(d)(c)~~ Nothing in this Code section shall infringe on any right provided to students with
 248 Individualized Education Programs pursuant to the federal Individuals with Disabilities
 249 Education Act, Section 504 of the federal Rehabilitation Act of 1973, or the federal
 250 Americans with Disabilities Act."

251 **SECTION 1-5.**

252 Said subpart is further amended by revising paragraph (12) of subsection (a) of Code Section
 253 20-2-751.5, relating to student codes of conduct and safety rules on school buses, as follows:
 254 "(12) Possession of a ~~weapon~~ firearm, as provided for in Code Section 16-11-127.1, and
 255 possession of a dangerous weapon or hazardous object;"

256 **PART II**

257 **SECTION 2-1.**

258 Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to the Juvenile
 259 Code, is amended by revising subparagraph (N) of paragraph (13) of Code Section 15-11-2,
 260 relating to definitions for juvenile proceedings, as follows:

261 ~~"(N) An act which constitutes a second or subsequent adjudication of delinquency~~
 262 ~~based on a violation of Code Section 16-11-127.1 or which is a first violation of Code~~
 263 ~~Section 16-11-127.1 involving:~~
 264 ~~(i) A firearm, as defined in paragraph (2) of subsection (a) of Code Section~~
 265 ~~16-11-131;~~
 266 ~~(ii) A dangerous weapon or machine gun, as defined in Code Section 16-11-121; or~~
 267 ~~(iii) Any weapon, as defined in Code Section 16-11-127.1, together with an assault;~~
 268 ~~or"~~

269 **SECTION 2-2.**

270 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 271 amended by revising subsection (i) of Code Section 16-5-21, relating to aggravated assault,
 272 as follows:

273 "(i) Any person who commits the offense of aggravated assault involving the use of a
 274 firearm upon a student or teacher or other school personnel within a school safety zone as
 275 defined in ~~paragraph (1) of subsection (a) of Code Section 16-11-127.1~~ shall, upon

276 conviction thereof, be punished by imprisonment for not less than five nor more than 20
277 years."

278 **SECTION 2-3.**

279 Said title is further amended by revising subsection (g) of Code Section 16-5-24, relating to
280 aggravated battery, as follows:

281 "(g) Any person who commits the offense of aggravated battery upon a student or teacher
282 or other school personnel within a school safety zone as defined in ~~paragraph (1) of~~
283 ~~subsection (a) of~~ Code Section 16-11-127.1 shall, upon conviction thereof, be punished by
284 imprisonment for not less than five nor more than 20 years."

285 **SECTION 2-4.**

286 Said title is further amended by revising paragraph (3) of subsection (a) of Code Section
287 16-5-44.1, relating to highjacking a motor vehicle, as follows:

288 "(3) 'Weapon' means an object, device, or instrument which when used against a person
289 is likely to or actually does result in serious bodily injury or death or any replica, article,
290 or device having the appearance of such a weapon including, but not limited to, any
291 object defined as a ~~weapon by Code Section 16-11-127.1~~ hazardous object by Code
292 Section 20-2-751 or as a dangerous weapon by Code Section 16-11-121."

293 **SECTION 2-5.**

294 Said title is further amended by revising the introductory language of subsection (b) and
295 subsection (c) of Code Section 16-11-127, relating to carrying weapons in unauthorized
296 locations and penalty, as follows:

297 "(b) Except as provided in Code Section 16-11-127.1 and subsection (d) of this Code
298 section, a ~~A~~ person shall be guilty of carrying a weapon or long gun in an unauthorized
299 location and punished as for a misdemeanor when he or she carries a weapon or long gun
300 while:"

301 "~~(c) A~~ Except as provided in Code Section 16-11-127.1, a license holder or person
302 recognized under subsection (e) of Code Section 16-11-126 shall be authorized to carry a
303 weapon as provided in Code Section 16-11-135 and in every location in this state not listed
304 in subsection (b) of this Code section; provided, however, that private property owners or
305 persons in legal control of property through a lease, rental agreement, licensing agreement,
306 contract, or any other agreement to control access to such property shall have the right to
307 forbid possession of a weapon or long gun on their property, except as provided in Code
308 Section 16-11-135. A violation of subsection (b) of this Code section shall not create or
309 give rise to a civil action for damages."

310 **SECTION 2-6.**

311 Said title is further amended by revising subsection (c) of Code Section 16-11-127.2, relating
 312 to weapons on premises of nuclear power facility, as follows:

313 "(c) This Code section shall not apply to a security officer authorized to carry dangerous
 314 weapons pursuant to Code Section 16-11-124 who is acting in connection with his or her
 315 official duties on the premises of a federally licensed nuclear power facility; nor shall this
 316 Code section apply to persons designated in paragraph ~~(3), (4), (5), or (9)~~ (2), (3), (4), or
 317 (8) of subsection (c) of Code Section 16-11-127.1."

318 **SECTION 2-7.**

319 Said title is further amended by revising paragraph (5) of subsection (b) of Code Section
 320 16-12-1, relating to contributing to the delinquency, unruliness, or deprivation of a minor,
 321 as follows:

322 "(5) Knowingly and willfully provides to a minor any weapon firearm as defined in
 323 paragraph (2) of subsection (a) of Code Section 16-11-127.1, or any dangerous weapon
 324 as defined in Code Section 16-11-121, or any hazardous object as defined in Code
 325 Section 20-2-751 to commit any felony which encompasses force or violence as an
 326 element of the offense or delinquent act which would constitute a felony which
 327 encompasses force or violence as an element of the offense if committed by an adult; or"

328 **SECTION 2-8.**

329 Said title is further amended by revising division (g)(2)(A)(ii) and subparagraph (g)(2)(D)
 330 of Code Section 16-13-31, relating to trafficking in cocaine, illegal drugs, marijuana, or
 331 methamphetamine, as follows:

332 "(ii) The defendant did not possess or use a firearm, dangerous weapon, or hazardous
 333 object during the crime;"

334 "(D) As used in this paragraph, the term:

335 (i) 'Dangerous weapon' shall have the same meaning as set forth in Code Section
 336 16-11-121.

337 (ii) 'Firearm' shall have the same meaning as set forth in Code Section 16-11-127.1.

338 (iii) 'Hazardous object' shall have the same meaning as set forth in Code Section
 339 20-2-751.

340 ~~(iv)~~ (iv) 'Leader' means a person who planned and organized others and acted as a
 341 guiding force in order to achieve a common goal.

342 (ii) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1."

343 **SECTION 2-9.**

344 Said title is further amended by revising subparagraph (b)(1)(B) and paragraph (4) of
 345 subsection (b) of Code Section 16-13-31.1, relating to trafficking in ecstasy, as follows:

346 "(B) The defendant did not possess or use a firearm, dangerous weapon, or hazardous
 347 object during the crime;"

348 "(4) As used in this paragraph, the term:

349 (A) 'Dangerous weapon' shall have the same meaning as set forth in Code Section
 350 16-11-121.

351 (B) 'Firearm' shall have the same meaning as set forth in Code Section 16-11-127.1.

352 (C) 'Hazardous object' shall have the same meaning as set forth in Code Section
 353 20-2-751.

354 (A)(D) 'Leader' means a person who planned and organized others and acted as a
 355 guiding force in order to achieve a common goal.

356 ~~(B) 'Weapon' shall have the same meaning as set forth in Code Section 16-11-127.1."~~

357 **SECTION 2-10.**

358 Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and
 359 secondary education, is amended by revising subsections (a) and (b) of and adding a new
 360 subsection to Code Section 20-2-1180, relating to loitering upon school premises or within
 361 a school safety zone, as follows:

362 "(a) It shall be unlawful for any person to remain ~~upon the premises or within the~~ in or on
 363 any school safety zone ~~as defined in paragraph (1) of subsection (a) of Code Section~~
 364 ~~16-11-127.1 of any public or private school~~ in this state or to remain ~~upon such premises~~
 365 ~~or within~~ in or on any such school safety zone when that such person does not have a
 366 legitimate cause or need to be present thereon. Each principal or designee of each public
 367 or private school in this state shall have the authority to exercise such control over the
 368 buildings and grounds upon which a school is located so as to prohibit any person who
 369 does not have a legitimate need or cause to be present thereon from loitering upon such
 370 premises. Each principal or designee of each public or private school in this state shall
 371 notify the appropriate law enforcement agency to prohibit any person who does not have
 372 a legitimate need or cause to be present therein from loitering within the school safety
 373 zone.

374 (b) Any person who:

375 (1) Is present ~~upon the premises or within the~~ in or on any school safety zone ~~of any~~
 376 ~~public or private school~~ in this state and willfully fails to remove himself or herself from
 377 such ~~premises~~ school safety zone after the principal or designee of such school requests
 378 him or her to do so; or

379 (2) Fails to check in at the designated location as required by subsection (c) of this Code
 380 section
 381 shall be guilty of a misdemeanor of a high and aggravated nature."
 382 "(g) As used in this Code section, the term 'school safety zone' shall have the same
 383 meaning as set forth in Code Section 16-11-127.1."

384 **SECTION 2-11.**

385 Said chapter is further amended by revising subsection (a) of Code Section 20-2-1184,
 386 relating to reporting of students committing prohibited acts, as follows:

387 "(a) Any teacher or other person employed at any public or private elementary or
 388 secondary school or any dean or public safety officer employed by a college or university
 389 who has reasonable cause to believe that a student at that school has committed any act
 390 upon school property or at any school function, which act is prohibited by ~~any of the~~
 391 ~~following: Code Section 16-5-21 or 16-5-24, Chapter 6 of Title 16, and Code Section~~
 392 ~~16-11-127, 16-11-127.1, 16-11-132, or 16-13-30.~~

393 ~~(1) Code Section 16-5-21, relating to aggravated assault if a firearm is involved;~~
 394 ~~(2) Code Section 16-5-24, relating to aggravated battery;~~
 395 ~~(3) Chapter 6 of Title 16, relating to sexual offenses;~~
 396 ~~(4) Code Section 16-11-127, relating to carrying a weapon or long gun in an~~
 397 ~~unauthorized location;~~
 398 ~~(5) Code Section 16-11-127.1, relating to carrying weapons at school functions or on~~
 399 ~~school property or within school safety zones;~~
 400 ~~(6) Code Section 16-11-132, relating to the illegal possession of a handgun by a person~~
 401 ~~under 18 years of age; or~~
 402 ~~(7) Code Section 16-13-30, relating to possession and other activities regarding~~
 403 ~~marijuana and controlled substances;~~
 404 shall immediately report the act and the name of the student to the principal or president
 405 of that school or the principal's or president's designee."

406 **SECTION 2-12.**

407 Said chapter is further amended by revising subsection (c) of Code Section 20-2-1185,
 408 relating to school safety plans, as follows:

409 "(c) School safety plans prepared by public schools shall address security issues in school
 410 safety zones as defined in ~~paragraph (1) of subsection (a) of Code Section 16-11-127.1.~~
 411 School safety plans should also address security issues involving the transportation of
 412 pupils to and from school and school functions when such transportation is furnished by
 413 the school or school system and school functions held during noninstructional hours."

414

SECTION 2-13.

415 Code Section 40-5-22 of the Official Code of Georgia Annotated, relating to persons not to
416 be licensed, minimum ages for licensees, and school attendance requirements, is amended
417 by revising division (a.1)(2)(C)(iii), as follows:

418 “(iii) Possession or use of a ~~weapon on school property or at a school-sponsored~~
419 ~~event. For purposes of this division, the term ‘weapon’ shall have the same meaning~~
420 ~~as in firearm in violation of Code Section 16-11-127.1 or possession or use of a~~
421 dangerous weapon as defined in Code Section 16-11-121 but shall not include any
422 part of an ~~archeological or cultural~~ exhibit brought to school in connection with a
423 school project;”

424

PART III

425

SECTION 3-1.

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