

House Bill 1312

By: Representatives Santos of the 117<sup>th</sup> and Crawford of the 89<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 3 of Article 4 of Chapter 11 of Title 16 and Title 19 of the Official Code of  
2 Georgia Annotated, relating to carrying and possession of firearms and domestic relations,  
3 respectively, so as to prohibit persons subject to a protective order for family violence or  
4 dating violence from possessing a firearm or ammunition; to provide for penalties; to require  
5 reporting by the court issuing such prohibition; to require the surrender or transfer of firearms  
6 or ammunition in such person's possession; to provide for petitions for return of firearms or  
7 ammunition and restoration of rights; to provide for the adoption of procedures; to provide  
8 for applicability; to provide for definitions; to provide for a short title; to provide for related  
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Desai Safety Act."

13

**SECTION 2.**

14 Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
15 relating to carrying and possession of firearms, is amended in Code Section 16-11-131,  
16 relating to possession of firearms by convicted felons and first offender probationers, by  
17 revising subsections (a) through (c) and adding a new subsection to read as follows:

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

19 (1) 'Ammunition' means cartridges, primers, bullets, or other projectiles or components  
20 designed or intended for use in any firearm.

21 (2) 'Antique firearm' means:

22 (A) Any firearm manufactured on or before 1898, including, but not limited to, any  
23 firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system;

24 (B) Any replica of any firearm described in subparagraph (A) of this paragraph if such  
25 replica:

26 (i) Is not designed or redesigned for using rimfire or conventional center-fire fixed  
27 ammunition; or

28 (ii) Uses rimfire or conventional center-fire fixed ammunition which is no longer  
29 manufactured in the United States and which is not readily available through the  
30 ordinary channels of commercial trade; or

31 (C) Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol which  
32 is designed to use black powder, or a black powder substitute, and which cannot use  
33 fixed ammunition. Such term shall not include a weapon which incorporates a firearm  
34 frame or receiver, a firearm which is converted into a muzzle-loading firearm, or a  
35 muzzle-loading firearm which can be readily converted to fire fixed ammunition by  
36 replacing the barrel, bolt, breechblock, or any combination thereof.

37 (1)(3) 'Felony' means any offense punishable by imprisonment for a term of one year or  
38 more and includes conviction by a court-martial under the Uniform Code of Military

39 Justice for an offense which would constitute a felony under the laws of the United  
40 States.

41 ~~(2)(4)~~ 'Firearm' includes any handgun, rifle, shotgun, or other weapon which will or can  
42 be converted to expel a projectile by the action of an explosive or electrical charge. Such  
43 term shall not include an antique firearm.

44 (5) 'Protected person' means an individual with whom contact is restricted and who is:  
45 (A) A victim of family violence as such term is set forth in Code Section 19-13-1; or  
46 (B) A victim of dating violence as such term is set forth in Code Section 19-13A-1.

47 (6) 'Protective order' means:

48 (A) Any temporary protective order or permanent protective order issued pursuant to  
49 Chapter 13 of Title 19, provided that such order was issued after the restrained person  
50 received notice of the proceedings and an opportunity to be heard; or

51 (B) Any temporary protective order or permanent protective order issued pursuant to  
52 Chapter 13A of Title 19, provided that such order was issued after the restrained person  
53 received notice of the proceedings and an opportunity to be heard.

54 (b) Any person who is on probation as a felony first offender pursuant to Article 3 of  
55 Chapter 8 of Title 42, who is on probation and was sentenced for a felony under  
56 subsection (a) or (c) of Code Section 16-13-2, or who has been convicted of a felony by  
57 a court of this state or any other state; by a court of the United States including its  
58 territories, possessions, and dominions; or by a court of any foreign nation and who  
59 receives, possesses, or transports a firearm commits a felony and, upon conviction  
60 thereof, shall be imprisoned for not less than one year nor more than ten years; provided,  
61 however, that upon a second or subsequent conviction, such person shall be imprisoned  
62 for not less than five nor more than ten years; provided, further, that if the felony for  
63 which the person is on probation or has been previously convicted is a forcible felony,  
64 then upon conviction of receiving, possessing, or transporting a firearm, such person shall  
65 be imprisoned for a period of five years.

66 (b.1) Any person who is prohibited by this Code section from possessing a firearm because  
67 of conviction of a forcible felony or because of being on probation as a first offender or  
68 under conditional discharge for a forcible felony and who attempts to purchase or obtain  
69 transfer of a firearm shall be guilty of a felony and upon conviction shall be punished by  
70 imprisonment for not less than one year nor more than five years; provided, however, that  
71 upon a second or subsequent conviction, such person shall be punished by imprisonment  
72 for not less than five nor more than ten years.

73 (b.2)(1) Any person who receives, possesses, transports, or attempts to purchase or  
74 obtain a firearm or ammunition while being subject to a protective order commits a  
75 felony and, upon conviction thereof, shall be punished by a fine of not more than  
76 \$10,000.00 or imprisonment for not less than one year nor more than five years, or both.  
77 (2) Any person who knowingly provides false information to a court or law enforcement  
78 officer with the intent to evade the requirements of this subsection shall be guilty of a  
79 misdemeanor.

80 (3) A person subject to a protective order shall, within 48 hours of service of such order:  
81 (A) Surrender to the court, local law enforcement agency, or a federally licensed  
82 firearms dealer any firearms and ammunition in his or her possession;  
83 (B) Transfer any firearms and ammunition in his or her possession to a person who is  
84 not prohibited from possessing firearms under this article and who is not residing with  
85 the person subject to the protective order and who attests to such by oath or affidavit;  
86 or  
87 (C) Transfer any firearms and ammunition in his or her possession to a federally  
88 licensed firearms dealer for temporary storage.

89 (4) If a person required to surrender or transfer a firearm or ammunition pursuant to this  
90 subsection fails to surrender or transfer such firearm or ammunition, a law enforcement  
91 officer shall be authorized to seize any firearms or ammunition located in plain view, if

probable cause exists to believe the firearms or ammunition belong to the prohibited person.

(5) A person who has surrendered firearms or ammunition under this subsection may petition the court for the return of such firearms or ammunition upon satisfactory demonstration that he or she is not otherwise prohibited from possessing firearms under state or federal law and that he or she is no longer subject to a protective order.

(6)(A) When a person is subject to a protective order, the clerk of court shall report the existence of the order to the Georgia Crime Information Center and to the National Instant Criminal Background Check System.

(B) The clerk of court shall adopt procedures consistent with state and federal requirements to submit accurate and timely records and to preserve the confidentiality of victims where required by law.

(7) Law enforcement agencies shall be authorized to establish protocols consistent with this subsection to accept surrendered firearms and to document chain of custody.

(8) Nothing in this subsection shall create a private right of action for enforcement by a private person against another person.

(c) This Code section shall not apply to:

(1) Any person who has been pardoned for the felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitutions or laws of the several states or of a foreign nation and, by the terms of the pardon, has expressly been authorized to receive, possess, or transport a firearm;

(2) The possession or acquisition of a firearm or ammunition by a person solely because he or she is a witness in a criminal proceeding, provided that the firearm or ammunition is held by law enforcement or an authorized third party pursuant to a court order;

117 (3) The temporary transfer of a firearm to a federally licensed firearms dealer or other  
118 qualified person where such transfer is for the purpose of safe storage, repair, or disposal,  
119 and where the prohibited person does not retain possession or control of such firearm; or  
120 (4) Acts otherwise permitted by state or federal law for peace officers, corrections  
121 officers, or other persons authorized to possess firearms in the performance of official  
122 duties."

## SECTION 3.

124 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is  
125 amended in Code Section 19-13-4, relating to family violence protective orders and consent  
126 agreements, by adding a new subsection to read as follows:

127 "(a.1) A protective order issued pursuant to subsection (a) of this Code section that was  
128 granted after notice was provided to the respondent and after such respondent was given  
129 an opportunity to be heard on such issue shall prohibit such respondent from receiving,  
130 possessing, or transporting a firearm or ammunition. Such order shall state on its face that  
131 the order creates a firearm prohibition and shall inform the restrained person about the duty  
132 to surrender or transfer firearms and ammunition, the timeframe for such surrender or  
133 transfer, and the penalty for failure to comply pursuant to Code Section 16-11-131. A  
134 respondent's right to receive, possess, or transport a firearm or ammunition shall be restored  
135 upon the cessation of the order issued pursuant to this Code section or, upon petition to the  
136 court, a finding by the court that the respondent no longer possesses a danger to public  
137 safety. Any restoration of such rights shall be reported by the clerk of court to the Georgia  
138 Crime Information Center and to the National Instant Criminal Background Check System,  
139 and any such restoration shall not remove any requirement relating to any reporting  
140 requirements under state or federal law."

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**SECTION 4.**

142 Said title is further amended in Code Section 19-13A-4, relating to required findings of fact  
143 and authority of court, by adding a new subsection to read as follows:

144 "(b.1) A protective order granted under this Code section after notice was provided to the  
145 respondent and after such respondent was given an opportunity to be heard on such issue  
146 shall prohibit such respondent from receiving, possessing, or transporting a firearm or  
147 ammunition. Such order shall state on its face that the order creates a firearm prohibition  
148 and shall inform the restrained person about the duty to surrender or transfer firearms and  
149 ammunition, the timeframe for such surrender or transfer, and the penalty for failure to  
150 comply pursuant to Code Section 16-11-131. A respondent's right to receive, possess, or  
151 transport a firearm or ammunition shall be restored upon the cessation of the order issued  
152 pursuant to this Code section or, upon petition to the court, a finding by the court that the  
153 respondent no longer possesses a danger to public safety. Any restoration of such rights  
154 shall be reported by the clerk of court to the Georgia Crime Information Center and to the  
155 National Instant Criminal Background Check System, and any such restoration shall not  
156 remove any requirement relating to any reporting requirements under state or federal law."

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**SECTION 5.**

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