

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."

**SECTION 2.**

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, is amended in Code Section 16-11-131, relating to possession of firearms by convicted felons and first offender probationers, by revising subsections (a) through (c) and adding a new subsection to read as follows:

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

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

(2) 'Antique firearm' means:

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

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

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

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

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

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

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

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

(5) 'Protected person' means an individual with whom contact is restricted and who is:

(A) A victim of family violence as such term is set forth in Code Section 19-13-1; or

(B) A victim of dating violence as such term is set forth in Code Section 19-13A-1.

(6) 'Protective order' means:

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

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

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

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

(b.2)(1) Any person who receives, possesses, transports, or attempts to purchase or obtain a firearm or ammunition while being subject to a protective order commits a felony and, upon conviction thereof, shall be punished by a fine of not more than \$10,000.00 or imprisonment for not less than one year nor more than five years, or both.

(2) Any person who knowingly provides false information to a court or law enforcement officer with the intent to evade the requirements of this subsection shall be guilty of a misdemeanor.

(3) A person subject to a protective order shall, within 48 hours of service of such order:

(A) Surrender to the court, local law enforcement agency, or a federally licensed firearms dealer any firearms and ammunition in his or her possession;

(B) Transfer any firearms and ammunition in his or her possession to a person who is not prohibited from possessing firearms under this article and who is not residing with the person subject to the protective order and who attests to such by oath or affidavit;  
or

(C) Transfer any firearms and ammunition in his or her possession to a federally licensed firearms dealer for temporary storage.

(4) If a person required to surrender or transfer a firearm or ammunition pursuant to this subsection fails to surrender or transfer such firearm or ammunition, a law enforcement 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 ~~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."

### 123 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."

**SECTION 4.**

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

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

**SECTION 5.**

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