

**WHAT A CHURCH SHOULD
KNOW ABOUT WEAPONS IN THE CHURCH**
Georgia's Safe Carry Protection Act

The 2014 Georgia General Assembly passed House Bill 60, known as the Safe Carry Protection Act. The law, effective July 1, 2014, makes significant changes to Georgia laws dealing with guns and weapons. This article discusses the impact of HB 60 on places of worship and churches in Georgia.

HOW DOES HB 60 AFFECT CHURCHES IN GEORGIA?

Section 16-11-127(b)(4) of the Official Code of Georgia Annotated, as amended by HB 60, prohibits carrying weapons in a place of worship unless *"the governing body or authority of the place of worship permits the carrying of weapons or long guns by license holders"*

Simply stated, this means that the governing body or authority of a place of worship (church) may permit license holders to carry weapons in the church. It also means that if the governing body or authority does not take action to permit weapons in church, then weapons are not allowed.

WHAT OPTIONS DOES A CHURCH HAVE REGARDING WEAPONS IN THE CHURCH?

A church has two options:

1. Where the church wants to permit license holders to carry weapons. In this situation *"the governing body or authority"* of the church must take action to permit license holders to carry weapons in the church. The process for a church to follow and suggested wording for a motion to permit weapons in the church is discussed below.
2. Where the church does not want to permit license holders to carry weapons. In this situation the church is not required to take any action. The law prohibits weapons in a place of worship unless the church's governing body or authority permits it. Thus, if a church does not "opt in" or vote to permit weapons on its property, then weapons are not allowed.

WHAT PROCESS MUST A CHURCH FOLLOW TO PERMIT LICENSE HOLDERS TO CARRY WEAPONS IN THE CHURCH?

The law simply provides that the *"governing body or authority of the place of worship"* must take action to permit licensed holders to carry weapons in the place of worship. (As discussed below, there are additional restrictions on weapons where there is an elementary or secondary school on the property.)

For Baptist churches the “governing body or authority” is not always the same. Each church is autonomous and decides for itself how it will be governed. To determine who is the “governing body or authority” of a church, its governing documents – constitution or charter, articles of incorporation, and bylaws – should be reviewed. If the documents are clear, then only that group needs to vote on the matter. However, even though it may be clear who that group is, if the church regularly follows a procedure prior to a vote by the governing board or authority, where matters are considered by the deacons, elders, trustees, church council, or some other committee, then it is best if that routine procedure is also followed.

If the documents are not clear as to how the church is governed a safe course of action would be for the church to have the matter voted on by the deacons, elders, trustees, and/or church council (whichever is appropriate) and then have a final vote on the matter by the congregation in a church conference or business meeting.

IS THERE SUGGESTED WORDING FOR A MOTION TO PERMIT WEAPONS IN CHURCH?

The following language might be used as a motion to be approved by the governing body or authority of the church to permit weapons in the church:

In accordance with and pursuant to the provisions of the Georgia Safe Carry Protection Act and OCGA § 16-11-127(b)(4), as the governing body or authority of [insert name of church] we hereby approve and permit the carrying of weapons and long guns by license holders on the property of [insert name of church].

CAN A CHURCH PERMIT WEAPONS BUT RESTRICT WHO CAN CARRY WEAPONS OR RESTRICT THE TYPE OF WEAPONS CARRIED?

If a church permits weapons in the church, that applies to all license holders and weapons. A church cannot pick and choose which license holders or which weapons can come into the church. The term “weapon” as used in the law includes any handgun and includes a knife with a blade in excess of five inches.

CAN A LICENSE HOLDER OPENLY CARRY OR DISPLAY A WEAPON IN CHURCH, FOR EXAMPLE, IN A HOLSTER ON THE HIP, OR MUST THE WEAPON BE CONCEALED?

A license holder can carry a weapon openly or concealed. If a church permits weapons in the church it cannot require the holder to carry the weapon in a concealed manner and the weapon may be openly displayed. However, if there are concerns about weapons being openly displayed in church, the church might consider having a policy where it could “request” that a license holder not display the weapon in an open manner and that the holder either conceal the weapon or store it in the vehicle. Even though such request is not binding it provides the license holder with an opportunity to comply.

IF A SCHOOL IS ON THE CHURCH PROPERTY, CAN THE CHURCH STILL PERMIT WEAPONS ON THE PROPERTY?

With limited exceptions for law enforcement, security, and some other categories, Georgia law (OCGA § 16-11-127.1) does not allow weapons within school zones, at school functions, or on school transportation. The law states that it is unlawful for a person to carry, possess or have under such person's control a weapon *"while within a school safety zone or at a school function, or on a bus or other transportation furnished by a school"* A *"school safety zone"* means *"in or on any real property or building owned by or leased to: (A) any public or private elementary school, [or] secondary school"* The law also provides that it is not a defense to unlawfully have a weapon in a school safety zone whether *"School was or was not in session at the time of the offense"* or that *"the real property was being used for other purposes besides school purposes at the time of the offense"*

This section of the law applies to *"public or private"* elementary and secondary schools. A church school is considered a private school. A license holder who violates this section and carries a weapon in a school safety zone, at school functions, or on school transportation is guilty of a misdemeanor. A non-license holder who violates this section is guilty of a felony.

Arguably, Georgia law prevents a church that has an elementary or secondary school on the property from allowing license holders to carry weapons on that property at any time, unless the person carrying the weapon is covered by one of the exceptions in the law. These exceptions include certain categories of persons (law enforcement, school security, etc.) and include a license holder in a school safety zone or at a school function only to carry or pick up a student. These exceptions should be carefully reviewed if there is concern about who is or is not allowed to carry a weapon in a school safety zone, at a school function, or on school transportation.

ARE SIGNS REGARDING WEAPONS REQUIRED TO BE POSTED AT THE CHURCH?

The law does not require the posting of signs and provides no guidance on signage. In either circumstance (permitting or not permitting weapons) there may be reasons for posting a sign and reasons for not posting. The best course of action regarding the issue of posting signs is to discuss this with the church's insurance company.

However, if a church has property located separately from its place of worship and the church does not want to permit weapons on that property, then a sign or some type of notice may be needed that weapons are not allowed on the property. This is discussed in more detail in the last question.

WHERE THE CHURCH DOES NOT PERMIT WEAPONS HOW SHOULD IT RESPOND IF A LICENSE HOLDER ADVISES CHURCH PERSONNEL THAT THE HOLDER HAS A WEAPON?

There is a section in the law that provides if a license holder with a weapon arrives at a location where weapons are not permitted, the holder does not violate the law, if the holder approaches security or management personnel at the location, notifies such personnel that the holder has a weapon, and explicitly follows directions for removing, securing, storing, or temporarily surrendering such weapon. Since a license holder is advised to approach security or management personnel in that situation, it would seem that a church should have a policy on how to respond if a license holder were to notify an usher, greeter, or deacon at the church that the holder is carrying a weapon.

CAN PERMITTING WEAPONS IN CHURCH HAVE AN IMPACT ON A CHURCH'S LIABILITY OR INSURANCE?

Insurance companies have policies with language explaining what is covered under the policy, what is excluded, and what an insured must do to maintain coverage. A church carries insurance to provide protection from risks and liability; therefore, it is recommended that the church consult with its insurance company if the church permits license holders to carry weapons in the church.

Should a serious incident or injury occur after a church takes action to permit weapons in the church, in our litigious environment it is not unlikely that the church could be involved in a claim or litigation. It is important for the church to have assurance from its insurance company that it is covered for any such incidents or injuries, whether it involves an employee, member, or guest. It is also important for the church to be aware of and be in compliance with any conditions or requirements of its insurance policy regarding weapons in the church.

IF A CHURCH OWNS, RENTS, OR CONTROLS REAL PROPERTY SEPARATE FROM ITS PLACE OF WORSHIP DOES THAT CHANGE HOW THE CHURCH SHOULD RESPOND?

The law does not use the word church but uses the term "*place of worship*." However, if a church owns, rents, or controls property that is in a separate location from its "*place of worship*" a different section of the law would likely apply to that property. That section provides that weapons are allowed to be carried by a license holder "*in every location in this state*" This is why HB 60 has been referred to as the "*guns everywhere law*." There are, of course, exceptions to the guns in every location provision, such as the exceptions discussed in this article and exceptions for allowing weapons in places such as courthouses, jails, prisons, government buildings (where security is present), etc.

This section of the law states a license holder *"shall be authorized to carry a weapon ... in every location in this state ...; provided, however, that private property owners or persons in legal control of private property ... shall have the right to exclude or eject a person who is in possession of a weapon or long gun on their private property in accordance with paragraph (3) of subsection (b) of Code Section 16-7-21"* Where a church owns, rents, or controls property in a separate location from its *"place of worship"* this section would likely allow weapons on such property if the church as a private property owner did not take action to exclude weapons from the property.

However, an issue with this part of the law is that Code Section 16-7-21, the code section referenced in the law, is the Georgia criminal trespass statute. That means a private property owner has a right to *"exclude or eject"* a person in possession of a weapon *"in accordance with"* the Georgia criminal trespass statute (OCGA § 16-7-21(b)(3)). The criminal trespass statute implies, even requires, that a person be given notice or have knowledge that such person is not allowed on the property.

In other words a license holder is permitted to carry a weapon onto private property, openly or concealed, where the property owner has not, in some way or manner, provided notice or signaled an intent that weapons are not allowed on the property. If it is the intent of a church that owns, rents, or controls separate property (not its place of worship) that it will not allow weapons on the property, then the church should make arrangements to provide some type of notice that persons with weapons are not allowed on the property.

This article was prepared by Thomas O. Duvall, attorney for the Georgia Baptist Convention. The article is only for general information purposes and is not intended to be, and should not be taken as, legal advice. It is suggested that you contact a local attorney should you have specific questions or need legal advice relating to HB 60 or the subject matter of this article.

R140528