

Permitless Carry

What Changed?

Historically, a firearm could only be carried on one's person if they met one of the several defenses found in § 39-17-1308, primarily the possession of a handgun carry permit.

On July 1, 2021, Tennessee law (Public Chapter 108) will permit a large majority of citizens to carry a loaded handgun, on their person, without having to first obtain a permit. This law does NOT affect the carrying of rifles or shotguns.

Public Chapter 108 makes several changes to the Tennessee Code relative to firearms, with the primary modification being to the statute on Unlawful Possession of a Weapon (§ 39-17-1307). The legislature added a new subsection (g) which makes it an *exception* to the general prohibition on carrying a firearm with the intent to go armed that the person was:

- 21 years of age or older
 - 18 or older if honorably discharged from: army national guard, army reserve, navy reserve, marine corps reserve, air national guard, air force reserve, or coast guard reserve AND have successfully completed basic training; or
 - 18 or older and a member of the US armed forces on active duty status or a current member of army national guard, army reserve, navy reserve, marine corps reserve, air national guard, air force reserve, or coast guard reserve AND have successfully completed basic training.
- In lawful possession of the handgun
 - May be carried openly or concealed;
 - Only applies to handguns;
 - “Lawful possession” could mean a multitude of things, including but not limited to:
 - The gun isn't stolen;
 - Not under the influence of alcohol or a controlled substance;
 - Not in a place where the possession of weapons is prohibited, such as:
 - Meetings conducted by or on property owned, operated, or managed by an individual, corporation, business entity, or government entity, in accordance with § 39-17-1359 (*i.e. private property or businesses that have posted the prohibition*);
 - School grounds;

- Parks, playgrounds, etc.
 - In a place that serves alcohol for on premises consumption AND consuming alcohol.
- Not prohibited from possessing a handgun under the remainder of the Unlawful Possession of a Weapon statute, which includes:
 - Been convicted of a felony;
 - A fugitive from justice;
 - Unlawful user of or addicted to any controlled substance (as defined by 21 USC 802);
 - Adjudicated as a mental defective or who has been judicially committed to or hospitalized in a mental institution, or had a court appoint a conservator for the person by reason of mental defect;
 - An alien (as defined in 8 USC 1101(a)(3));
 - Illegally or unlawfully in the United States;
 - Admitted to the United States under a nonimmigrant visa (as defined in 8 USC 1101(a)(26);
 - Dishonorably discharged from the Armed Forces;
 - Having renounced their U.S. citizenship;
 - Subject to an order of protection;
 - “Intimate partners” only – spouse, former spouse, parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
 - No ex parte. Must be a full order of protection.
 - Convicted of a misdemeanor crime of domestic violence;
 - Only the following relationships qualify – current or former spouse, parent, guardian, person with whom the victim shares a child in common, a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
 - Has been convicted of Stalking as prohibited by § 39-17-315;
 - Has been convicted of the offense of DUI in this or any other state;
 - 1 time in the last 5 years; or
 - 2 or more times in the last 10 years
 - Prohibited from possessing a firearm under any other state or federal law.
- In a place where they are lawfully present
 - i.e., they are not trespassing

If each of these requirements is met, then the person may carry a handgun without first obtaining a carry permit. As noted above, there are some locations where permitless carry is not permitted (primarily schools, parks, and posted buildings).

Analysis and Need to Know about Those Engaged in Permitless Carry

Remember, the Tennessee Supreme Court has held that merely being armed *alone* (absent other factors giving rise to reasonable suspicion that a crime is afoot) is not sufficient to justify a *Terry* stop. As such, officers will need more than an observation or a citizen report of someone carrying a handgun in order to stop them. **Also important to keep in mind is that persons who are utilizing permitless carry are not required to present any identification or proof that they can lawfully possess a firearm nor can they be required to submit to questioning.** For years, the TN handgun carry permit laws required someone carrying a firearm to display a copy of their permit upon demand of a law enforcement officer. There is no such requirement to identify oneself when utilizing permitless carry. Additionally, permit holders (enhanced or concealed) are no longer required to display their permit upon demand of a law enforcement officer unless they are carrying in a location where a permit is required (e.g., a park).

Even though Tennessee law has long allowed those with a handgun carry permit (now known as an enhanced carry permit) to carry either openly or concealed, there may now be more persons openly carrying a firearm. These persons may not have had the benefit of a course of instruction on firearms and what to do when encountering law enforcement. Keep this in mind as you interact with a subject who is armed. Likewise, the public, apprehensive of seeing an armed individual, may call to report the subject. Information is being provided to the Department of Emergency Communications (DEC) on the new law, along with questions that should be asked on such calls for service by the call taker in order to limit instances where officers are asked to investigate a subject who is armed, but not otherwise engaged in any criminal or suspicious behavior.

With respect to disarming a person who is engaged in permitless carry, officers should rely on the principles outlined in *Terry* (and subsequent decisions) regarding frisks. That is, officers must possess reasonable suspicion that a crime is afoot to first stop the subject. If the officer also has articulable reasonable suspicion that the subject is armed and dangerous, then they may conduct a frisk for weapons.

Persons relying upon the new permitless carry provision may also store the handgun in their vehicle in accordance with § 39-17-1313, which formerly only applied to persons with either an enhanced or a concealed handgun carry permit.

Public Chapter 108 also modified the statute regarding the grading of Theft of Property and Services. The theft of a firearm is now a felony, regardless of value. If the firearm

stolen is valued at less than \$2,500, then it is a Class E felony. The theft of a firearm shall be punished by confinement for not less than 180 days in addition to any other penalty authorized by law. Additionally, theft of a firearm from a motor vehicle is now an enhancement factor which the court must consider when determining the defendant's sentence. The legislature also added enhanced terms which must be served before a defendant is eligible for release on parole for certain gun crimes.

Effect on Other Permit Laws/Permit Holder Compliance

Other than the provisions mentioned above regarding the requirement to display a carry permit (enhanced or concealed) in certain locations, the remainder of the handgun carry permit laws are unchanged, including the statutory provision that allows a law enforcement officer to disarm a permit holder when they reasonably believe it necessary for the protection of the permit holder, officer, or other individual(s). Tennesseans can still obtain either an enhanced handgun carry permit or a concealed carry permit, and will likely do so in order to carry their handgun in other states which recognize TN permits and to carry in locations that still require a carry permit, including:

- Public park, playground, civic center, or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.
- Private (not public) schools that enact a policy permitting the carrying of handguns on school grounds in accordance with § 49-50-803 [Enhanced only – concealed permit holders cannot carry here].
- Employees authorized to carry a handgun on property owned, operated, or controlled by the public institution of higher education at which the employee is employed, in accordance with § 39-17-1309(e)(11) [Enhanced only – concealed permit holders cannot carry here].
- Judges, elected officials of a county or municipality, or county attorney *in the discharge of official duties* who are carrying in a building in which judicial proceedings are in progress (but not in the actual room in which judicial proceedings are taking place) if they have an *enhanced* carry permit.
- To carry on school grounds in a distressed rural county (Davidson County does NOT qualify) in accordance with § 49-6-816 [Enhanced only – Concealed permit holders cannot carry here].
- Possession of a handgun on the premises of a refuge, public hunting area or wildlife management area in accordance with §§ 70-4-117 & 70-5-101, or while bow hunting in accordance with § 70-4-123 [Enhanced only – Concealed permit holders cannot carry here].
- On the campus or grounds of a private institution of higher education, in accordance with § 49-7-161 [Enhanced only – Concealed permit holders cannot carry here].

- On school grounds in accordance with § 49-6-815 [Enhanced only – Concealed permit holders cannot carry here].

If there are any questions regarding the issues discussed in this RCT, please consult a supervisor, a member of the legal resources division, or a department legal advisor.