

Response to Armed Individuals

Officers often interact with and investigate reports of armed individuals. This may be due to the actions of the armed person, the presence of an armed person alarming others, or the open carrying of firearms at a protest. While there is a general prohibition against the carrying of a firearm with the intent to go armed, there are several other statutes that regulate the carrying of firearms, and there are many defenses and exceptions which officers must know in order to determine if a violation of state law has occurred. Additionally, Tennessee law distinguishes when and where a person may carry a firearm based upon whether they have a valid handgun carry permit or if they are a qualified law enforcement officer.

General Prohibitions and Exceptions

In Tennessee, “[a] person commits an offense who carries, with the intent to go armed, a firearm or a club”. A violation of this section is a misdemeanor.¹ The statute also makes it a crime to:

- Possess a firearm if convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon; or convicted of a felony drug offense.²
- Possess a handgun and have a felony conviction.³
- Possess a firearm and have been convicted of a misdemeanor crime of domestic violence, is subject to an order of protection, or is prohibited from possessing a firearm under any other state or federal law.⁴
- Carry, with the intent to go armed, a firearm and:
 - Has been convicted of stalking;
 - Has been convicted of DUI two or more times within the prior 10 years or one time within the prior 5 years; or
 - Is otherwise prohibited by 18 U.S.C. 922(g) [existing on

There are a multitude of defenses to this statute, which include, but are not limited to:

- An unloaded rifle, shotgun or handgun not concealed on or about the person and the ammunition for the weapon was not in the immediate vicinity of the person or weapon;
- By a person authorized to possess or carry a firearm pursuant to § 39-17-1315 [Law Enforcement], § 39-17-1351 [Enhanced Handgun Carry Permit holders], or § 39-17-1366 [Concealed Handgun Carry Permit holders];
- At the person’s: place of residence, place of business, or premises;
- Incident to lawful hunting, trapping, fishing, camping, sport shooting or other lawful activity;
- By a state, county or municipal judge or any federal judge or any federal or county magistrate;
- By any out-of-state, full-time, commissioned law enforcement officer who holds a valid commission card from the appropriate LE agency and a photo identification [if reciprocity with TN; remember federal law provides an exception for active and retired qualified LEO’s];
- These defenses are not available, however, to a person who has been convicted of a felony involving the use or attempted use of force, violence, or a deadly weapon.⁵

¹ Tenn. Code Ann. § 39-17-1307(a)

² Tenn. Code Ann. § 39-17-1307(b)

³ Tenn. Code Ann. § 39-17-1307(c)

⁴ Tenn. Code Ann. § 39-17-1307(f)

⁵ Tenn. Code Ann. § 39-17-1308

There are also exceptions to § 39-17-1307(a), which include:

- By a person who is at least 21 years of age (18 w/ qualifying military service), who lawfully possesses the handgun, and is in a place where the person is lawfully present.⁶
- By a person who is not otherwise prohibited from possessing or receiving a firearm under federal law or purchasing a firearm under state law to carry the firearm (loaded, or not) in a vehicle, provided they are in lawful possession of the vehicle.⁷

These exceptions are to subsection (a) only (i.e., possession of a firearm with the intent to go armed). In other words, they are not an exception to the other subsections of § 1307 (e.g., felon in possession of a firearm, DV convictions, etc.). Additionally, a person who is not otherwise prohibited from possessing a firearm does not violate the unlawful possession of a weapon statute (§39-17-1307) if the person does not conceal the firearm and has no ammunition on or about their person. This could include the open carry of an unloaded handgun or long gun.

Handgun Carry Permits

Tennessee currently issues two types of handgun carry permits. The handgun carry permit which has been issued for many years is now known as the Enhanced Handgun Carry Permit (EHCP). Tennessee also issues a Concealed Handgun Carry Permit (CHCP). The primary distinction between the two permits is the EHCP allows the holder to carry a handgun openly or concealed. The CHCP only allows the holder to carry a handgun concealed. Both permits authorize the holder to carry “any handgun or handguns that the permit holder legally owns or possesses”. In order to exercise this privilege, “[t]he permit holder shall have the permit in the holder’s immediate possession at all times when carrying a handgun in a location or manner that would be prohibited if not for the person’s status as an [enhanced/concealed] carry permit holder and shall display the permit on demand of a law enforcement officer under such circumstances”.⁸ Prior to the adoption of permitless carry in Tennessee, permit holders were obligated to display their permit anytime a law enforcement officer demanded to see it. Now, they are only obligated to display the permit if they are carrying in a location/manner that requires a carry permit to possess a handgun (e.g., public parks).

A facially valid handgun permit, firearms permit, weapons permit or license issued in another state is valid in Tennessee according to its terms and shall be treated as a permit issued by this state. The holder must be in possession of the permit when they are armed, and it is not valid for the carry of any firearm other than a handgun. Upon establishing residency in Tennessee, the out of state permit shall only be good for 6 months.⁹

Remember, the handgun carry permit laws are primarily a defense to Unlawful Possession of a Weapon statute.¹⁰ Unless specifically stated, it provides no protection to other statutes regulating the carrying of firearms, such as:

- Prohibited weapons (i.e., machine guns, SBR/SBS, etc.);¹¹

⁶ Tenn. Code Ann. § 39-17-1307(g)

⁷ Tenn. Code Ann. § 39-17-1307(e)

⁸ Tenn. Code Ann. § 39-17-1351(n)(1) & § 39-17-1366(e)

⁹ Tenn. Code Ann. § 39-17-1351(r)

¹⁰ Tenn. Code Ann. § 39-17-1307

¹¹ Tenn. Code Ann. § 39-17-1302

- Carrying weapons during judicial proceedings;¹²
- Carrying weapons on school property;¹³
- Possession of a handgun while under the influence;¹⁴
- Possession of a firearm during the commission or attempt to commit a dangerous felony;¹⁵
- Prohibitions at certain meetings – Any individual, business, government entity or agent may restrict the possession of weapons by persons on property owned, operated, managed, or under their control. This can be an outright prohibition on possession of weapons, or it can restrict possession to concealed carry only.¹⁶
 - Whether weapons are prohibited entirely or restricted to concealed carry only, there must be specifically worded and sized signage displayed in prominent locations, including all entrances. The signage must be plainly visible so as to alert persons entering the property of the prohibition or restriction.
 - This prohibition/restriction is ineffective when it comes to handgun carry permit holders storing firearms in their vehicle, provided the gun is locked in the car and out of sight, and the vehicle is parked in a location where it is permitted to be.¹⁷

Schools & Parks

Generally, firearms and other weapons are not permitted on public or private school grounds. Tennessee law does permit a nonstudent adult to possess a firearm if it is contained within a private vehicle operated by the adult and it is not handled by anyone while on school property.¹⁸ Tennessee law allows (but does not require) private schools (K-12 and institutions of higher education) to enact policies which authorize EHCP holders to possess a handgun on the property, provided they're in compliance with the school's policy.¹⁹

Additionally, employees at public universities may carry a handgun on property owned, operated, or controlled by the school if: 1) they have a valid EHCP, and 2) they have provided written notification to the LE agency with jurisdiction.²⁰ Employees must carry concealed and may not carry in certain locations.²¹ To qualify, they must be a full-time employee (faculty, staff, etc.), but does not include employees who are also enrolled as a student.²²

Handgun carry permit holders may carry a handgun in state and local public parks, natural areas, historic parks, nature trails, campgrounds, forests, greenways, waterways, and other similar public places, irrespective of local ordinances regarding firearms in local parks. However, they may not possess the handgun in the immediate vicinity of property being used by any board of education, school, college or

¹² Tenn. Code Ann. § 39-17-1306

¹³ Tenn. Code Ann. § 39-17-1309 (See exceptions below)

¹⁴ Tenn. Code Ann. § 39-17-1321

¹⁵ Tenn. Code Ann. § 39-17-1324

¹⁶ Tenn. Code Ann. § 39-17-1359

¹⁷ Tenn. Code Ann. § 39-17-1313(a)

¹⁸ Tenn. Code Ann. § 39-17-1309(c)(1)(B)

¹⁹ Tenn. Code Ann. § 39-17-1309(e)(9)

²⁰ Tenn. Code Ann. § 39-17-1309(e)(11)

²¹ May NOT carry in the following locations: 1) stadiums, gyms, auditoriums when events in progress; 2) meetings re: disciplinary matters; 3) meetings re: tenure issues; 4) hospital or offices where medical or mental health services are primarily provided; 5) any location where state or federal law (except 39-17-1359) prohibits carrying of a handgun.

²² Tenn. Code Ann. § 39-17-1309(e)(11)(E)

public or private educational institution for athletic or school-related activities. If the permit holder discovers the park (or other specified public area) is being used by a school, then the carry permit holder must take reasonable steps to leave the area.²³

Permitless Carry

Effective July 1, 2021, Tennessee law will allow those persons who are 21 years or older²⁴, are in lawful possession of a handgun, and are in a place where they are lawfully present, to carry that handgun in public without first having to obtain a carry permit.²⁵ Those engaged in permitless carry may carry the handgun either openly or concealed. The permitless carry provisions will not allow someone to carry a handgun in those locations where a carry permit is required, such as Parks, employees at public universities, etc. These persons will also be permitted to transport and store a firearm in their vehicle, in accordance with § 39-17-1313(a).

Open Carry of an Unloaded Weapon

Tennessee law allows for the open carry of unloaded firearms. Those, who are not otherwise prohibited by state or federal law from possessing a firearm, may (without a permit) openly carry a handgun, rifle, or shotgun provided it is unloaded and ammunition for the weapon is not in the immediate vicinity of the person or weapon.²⁶

Responding to Armed Individuals

The Tennessee Supreme Court has held that the mere presence of a firearm, alone, does not necessarily constitute reasonable suspicion to believe criminal activity is afoot. Tennessee is a “shall issue” state with regard to handgun carry permits (and now allows permitless carry), as such “possession of a firearm in this state is not necessarily a crime”.²⁷ This means that absent some articulable basis to believe the gun is unlawfully possessed (e.g., knowledge the suspect is a convicted felon, the property owner has banned the possession of firearms, they are in a place where handgun carry permit laws offer no defense, etc.), the mere possession of a gun, alone, will not support a *Terry* stop.

This does not mean that a person with a gun is never subject to being stopped under *Terry*. However, the presence of the gun *alone* is insufficient to support a detention. With that said, the possession of a firearm can be a relevant fact in the calculus of reasonable suspicion. When coupled with other factors, the presence of the firearm may add to an officer’s reasonable basis for believing criminal activity is afoot. For instance, a subject attempting to conceal a firearm and trying to cover his face outside of a business could lead a reasonable officer to believe a robbery is about to occur. Or a gun which is drawn and being held in a manner consistent with imminent use could give rise to the reasonable belief that an aggravated assault may be underway. Compare that, however, with someone who is wearing a holstered firearm as they pump gas into their car and is not engaged in any other suspicious activity. This latter scenario will not support an investigative detention.

²³ Tenn. Code Ann. § 39-17-1311(b)(1)(H)

²⁴ 18 or older for those who meet the military service provisions

²⁵ 2021 Public Chapter 108; Tenn. Code Ann. § 39-17-1307(g)

²⁶ Tenn. Code Ann. § 39-17-1308(a)(1)

²⁷ State v. Williamson, 368 S.W. 3d 468, 482 (Tenn. 2012)

While a *Terry* stop may not always be possible, nothing prevents an officer from approaching an individual and engaging them in a consensual conversation. Information gained during that consensual interaction could provide reasonable suspicion or probable cause to justify a detention or an arrest. Remember, an individual engaged in permitless carry has no obligation to identify themselves or answer any questions. Additionally, those persons with a carry permit, who are carrying in a location where someone could engage in permitless carry, likewise have no obligation to display their carry permit, identify themselves, or answer questions. If, however, the carry permit holder is carrying a handgun in a location where a carry permit is required, they must display the permit on demand of a law enforcement officer.²⁸ The failure to do either (carry or display the permit where required) can provide, at a minimum, reasonable suspicion to investigate further, or probable cause to arrest. Most public locations, however, no longer require a carry permit in order to possess a handgun. Again, there is no obligation for a subject to identify themselves or answer questions even if there is reasonable suspicion to stop them under *Terry*.

What if they are openly carrying a long gun? Remember, Tennessee carry permits are for handguns only. Likewise, the permitless carry provisions apply to handguns only. There are several defenses, however, which apply equally to long guns. When called to investigate an individual armed with a long gun, there are several factors officers may consider when determining whether an arrest, investigatory stop, or a consensual encounter is appropriate:

- Where did the incident occur?
 - Are they in an area where possession is restricted by law or the property owner?
 - Is it near a location that would heighten suspicion (e.g., federal courthouse, an elementary school, a religious facility, etc.)?
 - Is it near a location where possession of a long gun could be expected (on private property, near wooded areas used for hunting, a gun range, or outside of a gun show, etc.)?
 - Is possession in conjunction with a First Amendment event such as a Second Amendment rally?
- What manner of carry is being used?
 - Gun in hand at low ready?
 - Gun in hand, but in a non-threatening manner?
 - Gun slung and not being handled at all?
- Is the weapon loaded or is ammunition on or about the person?
 - Is there a magazine inserted and bolt closed – indicating the gun could be loaded and ready to fire?
 - Is there no magazine in the weapon, but the bolt is closed, indicating a possible one shot weapon?
 - Is there no magazine in the weapon and the bolt is locked open, indicating the gun is likely not loaded?
 - Does the subject have loaded magazines or ammunition visible on their person?
- Do they have a valid defense to the unlawful possession of a weapon statute?
 - Was the weapon unloaded with no ammunition in the vicinity of the person or weapon?
 - Was it at the person's residence, place of business, or premises?

²⁸ Tenn. Code Ann. § 39-17-1351(n)(1) and § 39-17-1366(e)

- Was it in a vehicle they are in lawful possession of and they are not prohibited by state and federal law from possessing or purchasing a firearm?
- Was possession incident to lawful hunting, fishing, camping, or sport shooting?
- Are they prohibited by law from possessing a firearm?
 - Convicted felon?
 - Conviction for misdemeanor crime of domestic violence?
 - Subject to an order of protection?
 - Are they in a location where possession is prohibited?
 - School property.
 - Public parks, playgrounds, civic centers, or other building or facility run by state, local, or county government for recreational purposes.
 - Private or government property that is properly posted.

Disarming a Subject

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.

A law enforcement officer, in the performance of his/her duties may “disarm a permit holder at any time when the officer reasonably believes it is necessary for the protection of the permit holder, officer or other individual or individuals”. Once the person is discharged from the scene, the handgun shall be returned to the permit holder unless they have violated the handgun carry permit laws or are being arrested for any other offense.²⁹

Conclusion

As you can see, officers must be familiar with the various weapons laws in Tennessee in order to determine whether an armed individual is lawfully carrying a weapon, or if there is reasonable suspicion or probable cause that possession of the firearm is a criminal act. The factual circumstances surrounding the possession will dictate whether an offense has been committed. Like other statutes, weapons laws are amended frequently, so officers should refer to the applicable statute to confirm the elements have not changed since this guide was authored. Should officers need assistance, they may consult with a supervisor, the Legal Resources Section, or a department legal advisor.

²⁹ Tenn. Code Ann. § 39-17-1351(t) & § 39-17-1366(m)