

39-17-1324. Offense of possessing firearm or antique firearm during commission or attempt to commit a dangerous felony

(a) It is an offense to **possess a firearm** or antique firearm with the intent to go armed during the commission of or attempt to commit a dangerous felony.

(b) It is an offense to employ a firearm or antique firearm during the:

- (1) Commission of a dangerous felony;
- (2) Attempt to commit a dangerous felony;
- (3) Flight or escape from the commission of a dangerous felony; or
- (4) Flight or escape from the attempt to commit a dangerous felony.

(c) A person may not be charged with a violation of subsection (a) or (b) if possessing or employing a firearm or antique firearm is an essential element of the underlying dangerous felony as charged. In cases where possession or employing a firearm or antique firearm are elements of the charged offense, the state may elect to prosecute under a lesser offense wherein possession or employing a firearm or antique firearm is not an element of the offense.

(d) A violation of subsection (a) or (b) is a **specific and separate offense**, which shall be pled in a separate count of the indictment or presentment and tried before the same jury and at the same time as the dangerous felony. The jury shall determine the innocence or guilt of the defendant unless the defendant and the state waive the jury.

(e)

(1) A sentence imposed for a violation of subsection (a) or (b) shall be served **consecutive** to any other sentence the person is serving at the time of the offense or is sentenced to serve for conviction of the **underlying dangerous felony**.

(2) A person sentenced for a violation of subsection (a) or (b) shall **not be eligible for pretrial diversion** pursuant to title 40, chapter 15, **judicial diversion** pursuant to § 40-35-313, **probation** pursuant to § 40-35-303, **community correction** pursuant to title 40, chapter 36, participation in a **drug court program** or any other program whereby the person is permitted supervised or unsupervised release into the community prior to service of the entire mandatory minimum sentence imposed less allowable sentence credits earned and retained as provided in § 40-35-501(j).

(f) In a trial for a violation of subsection (a) or (b), where the state is also seeking to have the person sentenced under subdivision (g)(2) or (h)(2), the trier of fact shall first determine whether the person possessed or employed a firearm or antique firearm. If the trier of fact finds in the affirmative, proof of a qualifying prior felony conviction pursuant to this section shall then be presented to the trier of fact.

(g)

(1) A violation of subsection (a) is a **Class D felony**, punishable by a **mandatory minimum three-year sentence** to the department of correction.

(2) A violation of subsection (a) is a **Class D felony**, punishable by a **mandatory minimum five-year sentence** to the department of correction, if the defendant, at the time of the offense, had a prior felony conviction.

(h)

(1) A violation of subsection (b) is a **Class C felony**, punishable by a **mandatory minimum six-year sentence** to the department of correction.

(2) A violation of subsection (b) is a **Class C felony**, punishable by a **mandatory minimum ten-year sentence** to the department of correction, if the defendant, at the time of the offense, had a prior felony conviction.

(i) As used in this section, unless the context otherwise requires:

(1) **“Dangerous felony” means:**

(A) Attempt to commit first degree murder, as defined in §§ 39-12-101 and 39-13-202;

(B) Attempt to commit second degree murder, as defined in §§ 39-13-210 and 39-12-101;

(C) Voluntary manslaughter, as defined in § 39-13-211;

(D) Carjacking, as defined in § 39-13-404;

(E) Especially aggravated kidnapping, as defined in § 39-13-305;

(F) Aggravated kidnapping, as defined in § 39-13-304;

(G) Especially aggravated burglary, as defined in § 39-13-1004;

(H) Aggravated burglary, as defined in § 39-13-1003;

(I) Especially aggravated stalking, as defined in § 39-17-315(d);

(J) Aggravated stalking, as defined in § 39-17-315(c);

(K) Initiating the process to manufacture methamphetamine, as defined in § 39-17-435;

(L) A felony involving the **sale, manufacture, distribution or possession with intent to sell, manufacture or distribute a controlled substance** or controlled substance analogue defined in part 4 of this chapter; or

(M) Any attempt, as defined in § 39-12-101, to commit a dangerous felony;

(2)

(A) “Prior conviction” means that the person serves and is released or discharged from, or is serving, a separate period of incarceration or supervision for the commission of a dangerous felony prior to or at the time of committing a dangerous felony on or after January 1, 2008;

(B) "Prior conviction" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a dangerous felony. If a felony offense in a jurisdiction other than Tennessee is not identified as a dangerous felony in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for a dangerous felony; and

(3) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). A dangerous felony shall be considered as having been committed after a separate period of incarceration or supervision if the dangerous felony is committed while the person was:

(A) On probation, parole or community correction supervision for a dangerous felony;

(B) Incarcerated for a dangerous felony;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a dangerous felony; or

(D) On escape status from any correctional institution when incarcerated for a dangerous felony.

(j) Any person convicted under this section who has a prior conviction under this section shall be sentenced to incarceration with the department of correction for not less than fifteen (15) years. A person sentenced under this subsection (j) shall serve one hundred percent (100%) of the sentence imposed.