

**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL**

**January 24, 2022**

**Opinion No. 22-01**

**Carrying Handguns in Buildings in Which Judicial Proceedings Occur**

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**Question 1**

Are typical firearms, such as handguns, “weapon[s] prohibited by § 39-17-1302(a)” as that phrase is used in Tenn. Code Ann. § 39-17-1306?

**Opinion 1**

Yes. Tennessee Code Annotated § 39-17-1306(a) generally prohibits individuals from carrying “weapons” in buildings in which judicial proceedings are in progress. A handgun is not a “weapon prohibited by § 39-17-1302(a)” as that phrase is used in the first portion of Tenn. Code Ann. § 39-17-1306(a). But the second portion of Tenn. Code Ann. § 39-17-1306(a) prohibits *all* firearms in buildings in which judicial proceedings are in progress. Thus, a handgun, which is a type of firearm, is included among the weapons that Tenn. Code Ann. § 39-17-1306(a) prohibits.

**Question 2**

What conduct constitutes “judicial proceedings” as the term is used in Tenn. Code Ann. § 39-17-1306? Does the mere presence of a judge in his or her office or otherwise being on duty in the building constitute judicial proceedings?

**Opinion 2**

The meaning and scope of “judicial proceedings” in Tenn. Code Ann. § 39-17-1306 is analyzed in depth in Tenn. Att’y Gen. Op. 19-07 (June 18, 2019). In line with that analysis, judicial proceedings are in progress when a judge is in his or her office and is carrying out acts or taking steps that are part of any judicial proceeding, even when others are not present. But judicial proceedings may not be in progress when a judge is in the building but is performing duties unrelated to any judicial proceeding—such as, for example, preparing to speak to a civic group or at a continuing legal education program, or working on an administrative matter.

**Question 3**

Assuming that weapons are not prohibited in a building under Tenn. Code Ann. § 39-17-1359 and there are no “judicial proceedings in progress” in the building, may an individual who holds a handgun carry permit or carries a handgun pursuant to Tenn. Code Ann. § 39-17-1307(g) carry a handgun in the building?

### **Opinion 3**

If a judicial proceeding is not in progress in the building and weapons are not prohibited in the building under Tenn. Code Ann. § 39-17-1359, an individual who holds a valid handgun carry permit under Tenn. Code Ann. §§ 39-17-1351 or -1366 or who meets the requirements to carry a handgun without a permit pursuant to Tenn. Code Ann. § 39-17-1307(g) may carry a handgun in the building unless a specific prohibition applies to that individual.

### **Question 4**

Assuming that weapons are not prohibited in a building under Tenn. Code Ann. § 39-17-1359 but judicial proceedings are commenced in the building after an individual who is in legal possession of a handgun has entered the building, may that individual be charged with a violation of Tenn. Code Ann. § 39-17-1306 without being given actual notice that judicial proceedings have commenced and an opportunity to leave the building?

### **Opinion 4**

Whether an individual who is in legal possession of a handgun in a building in which weapons are not prohibited under Tenn. Code Ann. § 39-17-1359 and in which judicial proceedings are commenced after the individual has entered the building could be charged with a violation of Tenn. Code Ann. § 39-17-1306 depends on the specific facts and circumstances in any given instance.

### **Question 5**

May a judge who is in a building covered by Tenn. Code Ann. § 39-17-1306 carry a handgun at all times and at all places in the building? Does the answer change if an appropriate governmental entity has prohibited weapons in the building under Tenn. Code Ann. § 39-17-1359?

### **Opinion 5**

No. A judge who is in a building covered by Tenn. Code Ann. § 39-17-1306 may not carry a handgun at all times and at all places in the building. A judge is exempt from the application of Tenn. Code Ann. § 39-17-1306 only when the judge (1) is engaged in the “actual discharge of official duties as a judge”; (2) is authorized to carry a handgun pursuant to Tenn. Code Ann. § 39-17-1351, the enhanced handgun permit statute; (3) keeps the handgun concealed at all times when in the discharge of such duties; *and* (4) is vested with judicial powers under Tenn. Code Ann. § 16-1-101.

If a governmental entity has prohibited weapons in the building under Tenn. Code Ann. § 39-17-1359, the prohibition would apply to a judge only to the extent that it does not conflict with the exemption outlined above. The judge, though, would be subject to the prohibition when there are no judicial proceedings in progress in the building.

### **Question 6**

Is a law enforcement officer who is in a courtroom while judicial proceedings are being conducted allowed to possess a handgun or other weapon in the building and/or courtroom when the officer is appearing as a prosecuting officer or as a witness? Would the answer change if the officer's presence was only as a subpoenaed witness in a civil or criminal action?

### **Opinion 6**

A law enforcement officer is exempt from the application of Tenn. Code Ann. § 39-17-1306 when the officer is “in the actual discharge of official duties.” Accordingly, whether a law enforcement officer is exempt from the general prohibition against carrying a weapon in a building in which a judicial proceeding is in progress would depend on the nature of the “official duties”—or job-related duties—of the particular officer. When an officer appears in court as a witness or in another capacity that is connected with that officer's job-related duties and the officer is “actual[ly] discharg[ing]” those duties by making the appearance, the exemption would apply. On the other hand, if the officer is appearing as a witness or in another capacity unrelated to that officer's job-related duties, the exemption would not apply.

### **Question 7**

Is a judicial magistrate or a judicial commissioner covered by any of the exceptions in Tenn. Code Ann. § 39-17-1306(c)?

### **Opinion 7**

A judicial commissioner is not exempt from the general prohibition against carrying a weapon in any building in which judicial proceedings are in progress. A judicial magistrate, on the other hand, could be exempt. If the particular magistrate is vested with judicial powers under Tenn. Code Ann. § 16-1-101 and satisfies all of the other statutory conditions for the exemption provided to judges by Tenn. Code Ann. § 39-17-1306(c)(3), the magistrate is exempt from the general prohibition against carrying a weapon in any building in which judicial proceedings are in progress.

## **ANALYSIS**

1. Tennessee law generally prohibits individuals from carrying “weapons” in buildings in which judicial proceedings are in progress:

No person shall intentionally, knowingly, or recklessly carry on or about the person while inside any building in which judicial proceedings are in progress any weapon prohibited by § 39-17-1302(a), for the purpose of going armed; provided, that if the weapon carried is a firearm, the person is in violation of this section regardless of whether the weapon is carried for the purpose of going armed.

Tenn. Code Ann. § 39-17-1306(a).

As the Court of Criminal Appeals has observed, this one sentence contains two prohibitions: The first prohibition—that an individual may not carry a “weapon” specified in Tenn. Code Ann. § 39-17-1302(a) in a building in which judicial proceedings are in progress “for the purpose of going armed”—does not include handguns because the seven weapons specified in § 1302(a) do not include handguns.<sup>1</sup> *State v. Williams*, 854 S.W.2d 904, 907 (Tenn. Crim. App. 1993).

But the second prohibition does cover handguns. It prohibits an individual from carrying a weapon that “is a firearm” in a building in which judicial proceedings are in progress whether the weapon is carried for the purpose of going armed or not. “[T]he reference to ‘firearm’ in the second portion of [] § 39-17-1306(a) refers to all firearms and not only to those firearms specifically enumerated in Section 1302(a).” *Id.* at 908. Thus, a “handgun,” which is a type of firearm,<sup>2</sup> is included among the prohibited weapons in Tenn. Code Ann. § 39-17-1306(a), even though it is not specifically enumerated as a prohibited weapon under Tenn. Code Ann. § 39-17-1302(a). *See id.* at 907-08 (finding a “pistol” was included in the proscription of § 39-17-1306(a) although not enumerated in § 39-17-1302(a)).

Accordingly, Tenn. Code Ann. § 39-17-1306(a) prohibits an individual from carrying a handgun in a building when judicial proceedings are in progress.

**2.** The meaning and scope of “judicial proceedings” in Tenn. Code Ann. § 39-17-1306 was analyzed in depth in Tenn. Att’y Gen. Op. 19-07 (June 18, 2019). As explained in that Opinion, a “judicial proceeding” includes much more than just formal trials and hearings conducted in a courtroom, so that, depending on the specific facts and circumstances in any given instance, “judicial proceedings” may also include proceedings that take place in a judge’s chambers or elsewhere in a building, whether in person with litigants or attorneys or by conference call or other electronic means. As further explained in that Opinion, a “judicial proceeding in progress” refers to any judicial proceeding that is currently underway or being carried out anywhere in the building.

Accordingly, judicial proceedings are in progress when a judge is in his or her office and is carrying out acts or taking steps—for example, reviewing briefs, performing legal research, or writing an opinion—that are part of any judicial proceeding, even when others are not present. But judicial proceedings are not in progress when a judge may be in his or her office performing duties unrelated to any judicial proceeding—such as, for example, preparing to speak to a civic group or at a continuing legal education program, or working on an administrative matter.

**3.** If judicial proceedings are not in progress in the building, the prohibition against carrying weapons in Tenn. Code Ann. § 39-17-1306(a) does not apply. Tenn. Att’y Gen. Op. 19-07 (June 18, 2019). Thus, when judicial proceedings are not in progress and weapons are not prohibited in

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<sup>1</sup> The weapons specified in Tennessee Code Annotated § 39-17-1302(a) are: (1) an explosive or an explosive weapon; (2) a device principally designed, made, or adapted for delivering or shooting an explosive weapon; (3) a machine gun; (4) a short-barrel rifle or shotgun; (5) hoax device; (6) knuckles; or (7) any other implement for infliction of serious bodily injury or death that has no common lawful purpose.

<sup>2</sup> A “[h]andgun” means any firearm with a barrel length of less than twelve inches (12”) that is designed, made or adapted to be fired with one (1) hand.” Tenn. Code Ann. § 39-11-106(19).

the building under Tenn. Code Ann. § 39-17-1359,<sup>3</sup> an individual who has a valid handgun carry permit<sup>4</sup> or who meets the requirements to carry a handgun pursuant to Tenn. Code Ann. § 39-17-1307(g)<sup>5</sup> may carry a handgun in the building unless a specific restriction applies to that individual. For instance, Tenn. Code Ann. § 39-17-1314(b)(1) authorizes local governmental entities to regulate the carrying of firearms by employees acting in the course and scope of their employment.

**4.** Whether an individual who is in legal possession of a handgun in a building in which weapons are not prohibited under Tenn. Code Ann. § 39-17-1359 and in which judicial proceedings are commenced after the individual has entered the building could be charged with a violation of Tenn. Code Ann. § 39-17-1306 depends on the specific facts and circumstances in any given instance.

A governmental entity is not required to post notice of the acts proscribed under Tenn. Code Ann. § 39-17-1306, nor is it required to give actual notice to an individual that judicial proceedings have commenced in order to give that individual an opportunity to leave the building. Thus, lack of notice that judicial proceedings have commenced would not be a defense to charge of a violation of Tenn. Code Ann. § 39-17-1306. *See State ex rel. Lawrence Cnty. v. Hobbs*, 194 Tenn. 323, 332, 250 S.W.2d 549, 553 (1952) (criminal defendant cannot raise a defense that he did not know the act that he committed was a crime).

But a conviction under Tenn. Code Ann. § 39-17-1306 does require proof that the person acted “intentionally, knowingly, or recklessly” as those mental states are defined for the purposes of title 39.<sup>6</sup> And whether a person acts intentionally, knowingly, or recklessly by remaining in a building while carrying a handgun once judicial proceedings commence can only be determined on a case-by-case basis.

**5.** Certain individuals are exempt from the general prohibition against carrying firearms in a building in which judicial proceedings are in progress. A judge is exempt when he or she (1) is engaged in the “actual discharge of official duties as a judge”; (2) is authorized to carry a handgun under § 39-17-1351, the enhanced handgun permit statute; (3) keeps the handgun concealed at all times when in the discharge of such duties; *and* (4) is vested with judicial powers under § 16-1-101.<sup>7</sup> Tenn. Code Ann. § 39-17-1306(c)(3). This exemption applies only when the judge meets all four conditions.

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<sup>3</sup> Tennessee Code Annotated § 39-17-1359 authorizes both public and private property owners to prohibit the possession of weapons by any person on property that they own, operate, manage, or control, provided that the property owner posts the appropriate notices mandated by the statute.

<sup>4</sup> *See* Tenn. Code Ann. § 39-17-1351 (enhanced handgun permits); § 39-17-1366 (concealed handgun carry permits).

<sup>5</sup> Tennessee Code Annotated § 39-17-1307(g) was enacted earlier this year. This provision allows persons who meet the provision’s requirements to carry handguns—openly or concealed—without a permit.

<sup>6</sup> *See* Tenn. Code Ann. §§ 39-11-106, -301(b), and -302.

<sup>7</sup> Tennessee Code Annotated § 16-1-101 provides that “[t]he judicial power of the state is vested in judges of the courts of general sessions, recorders of certain towns and cities, circuit courts, criminal courts, common law and chancery courts, chancery courts, courts of appeals, and the supreme court, and other courts created by law.”

When judicial proceedings are not in progress, Tenn. Code Ann. § 39-17-1306 does not apply. Accordingly, when judicial proceedings are not in progress—and assuming that weapons are not prohibited in the building under Tenn. Code Ann. § 39-17-1359—a judge could carry a handgun to the same extent that any other individual could, as explained above in the analysis for Question 3.

If a governmental entity has prohibited weapons in the building under Tenn. Code Ann. § 39-17-1359, the prohibition would apply to a judge only to the extent that it does not conflict with the exemption afforded to a judge who satisfies the conditions of Tenn. Code Ann. § 39-17-1306(c)(3) to carry a handgun when judicial proceedings are in progress. *See* Tenn. Att’y Gen. Op. 21-13 (Aug. 31, 2021). The judge, though, would be subject to the prohibition when there are no judicial proceedings in progress in the building. *Id.*; *see, e.g.*, Tenn. Att’y Gen. Op. 12-32 (Mar. 9, 2012) (explaining that Tenn. Code Ann. § 39-17-1359 allows a local government to prohibit persons, including persons possessing an enhanced gun permit under Tenn. Code Ann. § 39-17-1351, from carrying handguns into a courtroom when it is being used for an administrative meeting, as opposed to a judicial proceeding).

**6.** A law enforcement officer is also exempt to a certain extent from the general prohibition against carrying a weapon in any building in which judicial proceedings are in progress. While a law enforcement officer, as a general rule, has the authority to carry a firearm at all times and in all places within Tennessee, on-duty or off-duty, regardless of the officer’s regular duty hours or assignments,<sup>8</sup> a law enforcement officer may carry a firearm in a building in which a judicial proceeding is in progress only when the officer is engaged “in the actual discharge of official duties,” Tenn. Code Ann. § 39-17-1306(c)(1);<sup>9</sup> or (2) when the officer is directed by a court to bring the firearm for the purpose of providing evidence, *id.* § 39-17-1306(c)(2).

Accordingly, whether a law enforcement officer is exempt from the general prohibition against carrying a weapon in a building in which a judicial proceeding is in progress would depend on the nature of the “official duties”—or job-related duties—of the particular officer. *See Frazier v. Elmore*, 180 Tenn. 232, 238, 173 S.W.2d 563, 565 (1943) (“office” is defined as an “assigned duty or function”). If the officer’s appearance in court as a witness or in another capacity is connected with that officer’s job-related duties and the officer is “actual[ly] discharg[ing]” those duties by making the appearance, the exemption would apply. On the other hand, if the officer is appearing as a witness or in another capacity unrelated to that officer’s job-related duties, the exemption would not apply.

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<sup>8</sup> Tennessee Code Annotated § 39-17-1350(a) provides: “Notwithstanding any law to the contrary, any law enforcement officer may carry firearms at all times and in all places within Tennessee, on-duty or off-duty, regardless of the officer’s regular duty hours or assignments, except as provided by subsection (c), federal law, lawful orders of court or the written directives of the executive supervisor of the employing agency.”

<sup>9</sup> While Tennessee Code Annotated § 39-17-1350(a), *supra*, generally provides that a law enforcement officer “may carry firearms at all times and in all places” “[n]otwithstanding any law to the contrary,” this grant of authority is expressly subject to the exceptions provided by subsection (c), which states that “[t]he authority conferred by this section shall not extend to a law enforcement officer: [w]ho is not engaged in the actual discharge of official duties as a law enforcement officer while attending a judicial proceeding.”

7. In Tennessee, judicial powers are “vested in judges of the courts of general sessions” and in judges of the “circuit courts, criminal courts, common law and chancery courts, chancery courts, courts of appeals, and the supreme court, and other courts created by law.” Tenn. Code Ann. § 16-1-101. As explained above in the analysis for question 5, those judges are exempt, under certain circumstances, from the prohibition on carrying a weapon in a building in which a judicial proceeding is in progress.

While judicial commissioners perform certain judicial functions,<sup>10</sup> they are not vested with judicial powers under Tenn. Code Ann. § 16-1-101. And, because judicial commissioners are not vested with judicial power under § 16-1-101, they, unlike the judges who are so vested, cannot avail themselves of the exemption provided to judges under Tenn. Code Ann. § 39-17-1306(c)(3).<sup>11</sup>

Moreover, judicial commissioners are not elected.<sup>12</sup> Thus, they cannot avail themselves of the exemption provided by Tenn. Code Ann. § 39-17-1306(c)(4), which allows an “elected” county or municipal official to carry a handgun in a building in which judicial proceedings are in progress under specified conditions. *Id.* § 39-17-1306(c)(4) (an elected county or municipal official with an enhanced handgun permit who “[i]s in the actual discharge of official duties” may carry his or her handgun in the building as long as the official is not in the room in which the judicial proceeding is in progress).

A judicial magistrate, on the other hand, could be exempt from the general prohibition against carrying a weapon in any building in which judicial proceedings are in progress—if that magistrate is otherwise also vested with judicial power under § 16-1-101. A magistrate is an officer who has power to issue a warrant for the arrest of a person charged with a public offense, Tenn. Code Ann. § 40-5-101, and the following are listed as magistrates within the meaning of § 40-5-101: (1) judges of the supreme court; (2) judges of the circuit and criminal courts; (3) judicial commissioners; (4) judges of the courts of general sessions; (5) city judges in cities and towns; and (6) judges of juvenile courts. *Id.* § 40-5-102; *see id.* § 40-1-106 (“The judges of the supreme, appellate, chancery circuit, general sessions and juvenile courts throughout the state, judicial commissioners and county mayors in those officers’ respective counties, and the presiding

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<sup>10</sup> *See* Tenn Code Ann. § 40-1-111 (setting forth the functions of judicial commissioners appointed by certain county legislative bodies); § 40-5-201 (setting forth the functions of judicial commissioners whose positions are created by the legislative body of any county having a metropolitan form of government, as well as the functions of judicial commissioners whose positions are created by other certain county legislative bodies). The duties of judicial commissioners vary, depending on the statute under which they are appointed, but include issuance of arrest warrants, setting of bonds and recognizances, and the issuance of mittimus. *See* Tenn Code Ann. § 40-1-111(a)(1)(A)(i), (ii), and (iv); § 40-1-111(b); § 40-1-111(d)(2)(A), (B), and (D); § 40-1-111(e)(1)(A), (B), (D), and (E); § 40-5-201(b).

It has long been settled in Tennessee that delegation of duties to a judicial commissioner does not create an inferior court. *State v. Bush*, 626 S.W.2d 470, 472 (Tenn. Crim. App. 1981).

<sup>11</sup> *See* note 7, *supra*, and accompanying text.

<sup>12</sup> As previously observed in note 10, *supra*, the county legislative body appoints judicial commissioners under Tenn. Code Ann. § 40-1-111. When the position of judicial commissioner is created by a county legislative body under Tenn. Code Ann. § 40-5-201, judicial commissioners are appointed by a majority of the general sessions judges in the county. *See* Tenn. Code Ann. § 40-5-204.

officer of any municipal or city court within the limits of their respective corporations are magistrates within the meaning of this title.”).

But even though judicial commissioners are listed as magistrates along with judges of courts of record, that alone does not entitle them to the same exemption from the prohibition on carrying weapons to which judges are entitled. To qualify for that exemption, the “magistrate” must also be vested with underlying judicial power under § 16-1-101, and not all officials statutorily listed as magistrates are vested with that judicial power. Some officials authorized to serve as magistrates are vested with judicial power under § 16-1-101, *e.g.*, judges of the courts of general sessions, while others are not, *e.g.*, judicial commissioners, as discussed above.

In short, only those magistrates who are otherwise vested with judicial powers under Tenn. Code Ann. § 16-1-101 *and* satisfy all of the other statutory conditions for the exemption provided to judges by Tenn. Code Ann. § 39-17-1306(c)(3) are exempt from the general prohibition against carrying a weapon in any building in which judicial proceedings are in progress.<sup>13</sup> Judicial commissioners, even when acting as magistrates, do not satisfy all of the statutory conditions for the exemption because they are not vested with the judicial power of the State.

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<sup>13</sup> See note 7, *supra*, and accompanying text.