

Ala. Code 1975, § 13A-11-72(b)

Certain Persons Forbidden to Possess Pistol

The defendant is charged with certain persons forbidden to possess a pistol.

A person commits the crime of certain persons forbidden to possess a pistol if he/she owns a pistol or has one in his/her possession or under his/her control and is a minor, a drug addict, or an habitual drunkard.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

(1) The defendant owned a pistol or had a pistol in his/her possession or under his/her control;

(2) **[Read as appropriate]:**

(A) The defendant was a minor;

[OR]

(B) The defendant was a drug addict;

[OR]

(C) The defendant was an habitual drunkard;

(AND)

(3) The defendant acted **[INSERT APPROPRIATE MENS REA ELEMENT - SEE USE NOTE]**.

A *pistol* is a firearm with a barrel less than 12 inches in length. [13A-11-70(1)]

A *firearm* is a weapon from which a shot is discharged by gunpowder. [13A-11-62(1); 13A-8-1(5)]

To *possess* means to have physical possession or otherwise to exercise dominion or control over tangible property. [13A-1-2(13)]

[Read as appropriate:] A minor cannot be found guilty of this offense if the minor has permission to possess a pistol from a parent or legal guardian who is not prohibited from possessing a firearm under state or federal law, and any of the following are satisfied:

(1) The minor is attending a hunter education course or a firearms safety course under the supervision of an adult who is not prohibited from possessing a firearm under state or federal law;

(2) The minor is engaging in practice in the use of a firearm or target shooting at an established range under the supervision of an adult who is not prohibited from possessing a firearm under state or federal law;

- (3) The minor is engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under 26 U.S.C. § 501(c)(3) which uses firearms as part of the performance;
- (4) The minor is hunting or fishing pursuant to a valid license, if required, and the person has the license in his or her possession; has written permission of the owner or legal possessor of the land on which the activities are being conducted; and the pistol, when loaded, is carried only in a manner discernible by ordinary observation;
- (5) The minor is on real property under the control of the minor's parent, legal guardian, or grandparent;
- (6) The minor is a member of the armed services or National Guard and the minor is acting in the line of duty; **(OR)**
- (7) The minor is traveling by motor vehicle to any of the locations or activities listed in subdivisions (1) through (6), has written permission to possess the pistol by his/her parent or legal guardian, and the pistol is unloaded, locked in a compartment or container that is in or affixed securely to the motor vehicle and is out of reach of the driver and any passenger in the motor vehicle.

[13A-11-72(f)]

[Read as appropriate:] A minor cannot be found guilty of this offense if he/she uses a pistol while acting in self-defense of himself/herself or other persons against an intruder into the residence of the minor or a residence in which the minor is an invited guest. [13A-11-72(g)]

[Read as appropriate:] A person cannot be found guilty of this offense if he/she purchased, possessed or sold pistols as curiosities or ornaments or transported such pistols unloaded and in a bag, box or securely wrapped package, not concealed on the person. [13A-11-83]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of certain persons forbidden to possess a pistol, then you shall find the defendant guilty of certain persons forbidden to possess a pistol.

If you find that the State has failed to prove any one or more of the elements of certain persons forbidden to possess a pistol, then you cannot find the defendant guilty of certain persons forbidden to possess a pistol.

Use Notes

The statute does not state a specific mens rea element. Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

1. A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]
2. A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
3. A person acts recklessly with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
4. A person acts with criminal negligence with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence.[13A-2-2(4)].

There is no requirement under the statute that the State establish that the pistol was in good working order. *Kemp v. State*, 434 So.2d 298, 303 (Ala. Crim. App. 1983)

“In order to establish the unlawful possession of a weapon, the actual physical hold thereof is not necessary; constructive possession is sufficient.” *Pugh v. State*, 283 So.2d 616, 617 (Ala. Crim. App. 1973)

[Approved 05/09/19]