

**Ala. Code 1975, § 13A-11-72(a)**

**Certain Persons Forbidden to Possess Firearm**

The defendant is charged with ex-felon in possession of a firearm.

A person commits the crime of ex-felon in possession of a firearm if he/she owns a firearm or has a firearm in his/her possession or under his/her control and he/she has been convicted in this state or elsewhere of committing or attempting to commit a crime of violence, a misdemeanor offense of domestic violence, a listed violent offense, or is subject to a valid protection order for domestic abuse, or is of unsound mind.

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

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

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

(A) The defendant had been convicted in this state or elsewhere of committing or attempting to commit: **[Read as appropriate]:**

1. A crime of violence, **[insert crime];**

2. A misdemeanor offense of domestic violence, **[insert crime]; [OR]**

3. A listed violent offense, **[insert offense(s) from list in 12-25-32];**

**[OR]**

(B) The defendant was subject to a valid protection order for domestic abuse;

**[OR]**

(C) The defendant was of unsound mind;

**(AND)**

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

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

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

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

**[Read as appropriate]:** The term *convicted* as used in this section requires that the person was represented by counsel in the case, or knowingly and intelligently waived

the right to counsel in the case if required by law, and either the case was tried before a judge, tried by a jury, or the person knowingly and intelligently waived the right to have the case tried, by guilty plea or otherwise. [13A-11-72(k)(1)]

**[Read as appropriate]:** A person may not be considered to have been convicted for the purposes of this section if the person is not considered to have been convicted in the jurisdiction in which the proceedings were held or the conviction has been expunged, set aside, or is of an offense for which the person has been pardoned or has had civil rights restored, unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms. [13A-11-72(k)(2)]

**[Read as appropriate]:** A *crime of violence* is any of the following crimes or an attempt to commit any of them, namely, murder, manslaughter, (except manslaughter arising out of the operation of a vehicle), rape, mayhem, assault with intent to rob, assault with intent to ravish, assault with intent to murder, robbery, burglary, and kidnapping. "Crime of violence" shall also mean any Class A felony or any Class B felony that has as an element serious physical injury, the distribution or manufacture of a controlled substance, or is of a sexual nature involving a child under the age of 12. [13A-11-70(2)]

**[Read as appropriate]:** *Misdemeanor offense of domestic violence* is a misdemeanor offense that has, as its elements, the use or attempted use of physical force or the threatened use of a dangerous instrument or deadly weapon, and the victim is a current or former spouse, parent, child, person with whom the defendant has a child in common, or a present or former household member. [13A-11-72(l)]

**[Read as appropriate]:** A *valid protection order* means an order issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate, that does any of the following:

- (1) Restrains the person from harassing, stalking, or threatening a qualified individual or child of the qualified individual or person or engaging in other conduct that would place a *qualified individual* in reasonable fear of bodily injury to the individual or child and that includes a finding that the person represents a credible threat to the physical safety of the qualified individual or child.
- (2) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the *qualified individual* or child that would reasonably be expected to cause bodily injury.

[13A-11-72(m)]

**[Read as appropriate]:** A *qualified individual* as used in the definition of a *valid protection order* is a spouse or former spouse of the person, an individual who is a parent of a child of the person, or an individual who cohabitates or has cohabited with the person. [13A-11-72(n)]

**[Read as appropriate]:** *Unsound mind* includes any person who is subject to any of the findings listed below, and who has not had his or her rights to possess a firearm reinstated by operation of law or legal process:

- (1) Found by a court, board, commission, or other lawful authority that, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease, is a danger to himself or herself or others or lacks the mental capacity to contract or manage his or her own affairs.
- (2) Found to be insane, not guilty by reason of mental disease or defect, found mentally incompetent to stand trial, or found not guilty by a reason of lack of mental responsibility by a court in a criminal case, to include state, federal and military courts.
- (3) Involuntarily committed for a final commitment for inpatient treatment to the Department of Mental Health or a Veterans' Administration hospital by a court after a hearing.

[13A-11-72(o)]

**[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 ex-felon in possession of a firearm, then you shall find the defendant guilty of ex-felon in possession of a firearm.

If you find that the State has failed to prove any one or more of the elements of ex-felon in possession of a firearm, then you cannot find the defendant guilty of ex-felon in possession of a firearm.

### **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)

"While the statute clearly states that proof of one prior crime is sufficient for a conviction, it in no way restricts the number that may be proved." *O'Neal v. State*, 276 So.2d 616, 620 (Ala. App. 1973), cert. denied, 276 So.2d 621 (Ala. 1973)

"Alabama law empowers the State Board of Pardons and Paroles to restore the right of a person convicted of a crime of violence to possess a firearm. Without an express limitation on the certificate restoring civil and political rights to Fowler, under Alabama law the restoration of civil and political rights restores the firearm rights limited by § 13A-11-72(a)." *U.S. v. Fowler*, 198 F.3d 808, 811 (11th Cir. 1999)

"We hold that when a felon is in imminent peril of great bodily harm, or reasonably believes himself or others to be in such danger, he may take possession of a weapon for a period no longer than is necessary or apparently necessary to use it in self-defense, or in defense of others. In such a situation justification is a defense to the charge of felon in possession of a firearm." *Ex parte Taylor*, 636 So.2d 1246, 1247 (Ala. 1993) (citing *State v. Blache*, 480 So.2d 304 (La. 1985))

[Approved 05/09/19]