

# Chapter 11

## Weapons

### *Instructions*

M Crim JI 11.1	Carrying Concealed Weapon—Pistol . . . . .	11-4
M Crim JI 11.2	Carrying Concealed Weapon—Dangerous Weapon . . . . .	11-7
M Crim JI 11.3	Definition of Pistol . . . . .	11-9
M Crim JI 11.4	Definition of Dangerous Stabbing Weapon . . . . .	11-10
M Crim JI 11.5	Definition of Dirk, Dagger, and Stiletto . . . . .	11-12
M Crim JI 11.6	Defense—Firearm Inoperable . . . . .	11-13
M Crim JI 11.7	Defense—Defendant Unaware of Weapon . . . . .	11-15
M Crim JI 11.8	Self-Defense Is Not a Defense to Carrying a Concealed Weapon . . . . .	11-16
M Crim JI 11.9	Exemption—Hunting Knife . . . . .	11-17
M Crim JI 11.10	Exemption—Pistol Carried by Licensee . . . . .	11-18
M Crim JI 11.11	Exemption—Weapon Carried in Home, Place of Business, or on Land Possessed by Defendant. . . . .	11-19
M Crim JI 11.12	Exemption—Pistol Carried by Agent of Manufacturer . . . . .	11-20
M Crim JI 11.13	Exemption—Antique Firearm . . . . .	11-21
M Crim JI 11.14	Exemption—Pistol Carried from Place of Purchase or to Place of Repair, Etc. . . . .	11-22
M Crim JI 11.15	Exemption—Pistol Carried En Route to Hunting or Target Shooting Area . . . . .	11-23

*Weapons*

M Crim JI 11.16	Exemption—Short-barreled Shotgun . . . . .	11-24
Note	Additional Exemptions . . . . .	11-25
M Crim JI 11.17	Going Armed with Firearm or Dangerous Weapon with Unlawful Intent . . . . .	11-26
M Crim JI 11.18	Definition of Knife and Razor . . . . .	11-27
M Crim JI 11.19	Definition of Dangerous Weapon . . . . .	11-28
M Crim JI 11.20	Careless, Reckless, or Negligent Use of Firearm with Injury or Death Resulting . . . . .	11-29
M Crim JI 11.21	Definition of Negligence . . . . .	11-30
M Crim JI 11.22	Definition of Willfully and Wantonly . . . . .	11-32
M Crim JI 11.23	Intentionally Pointing a Firearm Without Malice . . . . .	11-33
M Crim JI 11.24	Discharge of Firearm While Intentionally Aimed Without Malice . . . . .	11-34
M Crim JI 11.25	Discharge of Firearm Causing Injury While Intentionally Aimed Without Malice . . . . .	11-35
M Crim JI 11.26	Reckless or Wanton Use of a Firearm . . . . .	11-36
M Crim JI 11.26a	Discharge of Firearm at Occupied Building . . . . .	11-37
M Crim JI 11.26b	Discharge of Firearm in Occupied Structure . . . . .	11-39
M Crim JI 11.27	Failure to Present Pistol for Safety Inspection . . . . .	11-40
M Crim JI 11.28	Sale or Possession of a Pocket Knife Opened by a Mechanical Device . . . . .	11-41
M Crim JI 11.29	Manufacture, Sale, or Possession of Prohibited Weapons . . . . .	11-42
M Crim JI 11.30	Manufacture, Sale, or Possession of Short-barreled Shotgun . . . . .	11-45
M Crim JI 11.31	Definition of Manufacture . . . . .	11-47
M Crim JI 11.32	Definition of Sell . . . . .	11-48

*Weapons*

M Crim JI 11.33	Definition of Offer to Sell. . . . .	11-49
M Crim JI 11.34	Possession of Firearm at Time of Commission or Attempted Commission of Felony (Felony Firearm) . . . . .	11-50
M Crim JI 11.34a	Felony Firearm—Possession . . . . .	11-53
M Crim JI 11.34b	Felony Firearm—Self-Defense. . . . .	11-54
M Crim JI 11.35	Aiding and Abetting Felony Firearm: Direct Participation [deleted] . . . . .	11-55
M Crim JI 11.36	Aiding and Abetting Felony Firearm: Indirect Participation [deleted] . . . . .	11-56
M Crim JI 11.37	Firearm Discharge (Felony) . . . . .	11-57
M Crim JI 11.38	Felon Possessing Firearm: Nonspecified Felony . . . . .	11-59
M Crim JI 11.38a	Felon Possessing Firearm: Specified Felony . . . . .	11-62
Statutes . . . . .		11-65

**M Crim JI 11.1**  
**Carrying Concealed Weapon—Pistol**

(1) The defendant is charged with the crime of carrying a concealed pistol. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

*[Use the following if defendant is charged with carrying a pistol concealed on person:]*

(2) First, that the defendant knowingly carried a pistol. It does not matter why the defendant was carrying the pistol, but to be guilty of this crime the defendant must have known that [he / she] was carrying a pistol.\*

(3) Second, that this pistol was concealed on or about the person of the defendant. Complete invisibility is not required. A pistol is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

*[Use the following if defendant is charged with carrying a pistol carried in vehicle:]*

(4) First, that a pistol was in a vehicle that the defendant was in.\*

(5) Second, that the defendant knew the pistol was there.

(6) Third, that the defendant took part in carrying or keeping the pistol in the vehicle.

*Use Note*

\*The definition of pistol, M Crim JI 11.3, should be included in the instructions only where there is some question of the article being a pistol.

See M Crim JI 11.10–11.15 for exemptions.

*History*

M Crim JI 11.1 was CJI 11:1:01.

*Commentary*

See MCL 750.227; MCL 750.231; and MCL 750.231a in “Statutes” at the end of this chapter.

The carrying a concealed weapon statute covers two situations: where the weapon is concealed on a person and where the weapon is carried in a vehicle.

Although the statute specifically exempts those with a license to carry a pistol, the prosecutor is not required to prove that the defendant lacked a license. Once the prosecutor establishes a prima facie case, the defendant has the burden of proving that she or he was licensed. The prosecutor must then establish beyond a reasonable doubt that the defendant lacked a license. *People v Henderson*, 391 Mich 612, 616–617, 218 NW2d 2 (1974); *People v Combs*, 160 Mich App 666, 408 NW2d 420 (1987).

Carrying a concealed weapon is a general intent crime. *People v Sturgis*, 427 Mich 392, 397 NW2d 783 (1986); *People v Lane*, 102 Mich App 11, 300 NW2d 717 (1980); *Combs*.

When the pistol is concealed on the person, it does not have to be absolutely invisible. *People v Jackson*, 43 Mich App 569, 204 NW2d 367 (1972). “[A] weapon is concealed when it is not discernible by the ordinary observation of persons coming in contact with the person carrying it, casually observing him, as people do in the ordinary and usual associations of life.” *People v Jones*, 12 Mich App 293, 296, 162 NW2d 847 (1968).

In *People v Nimeth*, 236 Mich App 616, 621, 601 NW2d 393 (1999), the court of appeals held that a “gun lodged in a space existing near the engine of a motorcycle falls squarely within the plain meaning of the term [in a motor vehicle] and is thus considered to be in the motorcycle for purposes of the statute [penalizing carrying a concealed weapon].”

The court of appeals in *People v Stone*, 100 Mich App 24, 28, 298 NW2d 607 (1980), cited CJI 11:1:01(5) (now M Crim JI 11.1(4–6)) in holding that “carrying” is a separate and distinct element of the offense. A defendant’s mere knowledge that a pistol is in a car does not automatically lead to the conclusion that the defendant was “carrying” the pistol. *People v Butler*, 413 Mich 377, 384–385, 319 NW2d 540 (1982).

In *People v Green*, 260 Mich App 392, 677 NW2d 677 NW2d 363 (2004), *overruled on other grounds*, *People v Anstey*, 476 Mich 436, 719 NW2d 579 (2006), the court of appeals relied on the ordinary dictionary definition of “carry” in determining that a defendant was carrying a pistol in a briefcase in the trunk of his car. The court wrote:

The Legislature’s intent and purpose in enacting the statute is effectuated through application of the ordinary dictionary definition of the term “carry,” meaning to transport or convey. In this case, there was evidence that defendant was knowingly carrying, i.e., transporting or conveying, from one

place to another, the pistol that was found concealed in the trunk of the car he was driving.

In light of the ordinary definition of “carry” and the purpose of the statute, we would conclude that this was sufficient to charge and convict defendant of “carrying” a pistol in violation of MCL 750.227(2).

*Green*, 260 Mich App at 404 (footnote omitted).

The *Green* court then outlined factors found in *Butler*, 413 Mich at 390 n11, useful in determining whether a person is “carrying” a weapon in a motor vehicle, including the weapon’s accessibility and the defendant’s proximity to it and awareness of it, together with the defendant’s connection to and length of use or occupancy of the motor vehicle involved.

**M Crim JI 11.2**  
**Carrying Concealed Weapon—Dangerous Weapon**

(1) The defendant is charged with the crime of carrying a concealed weapon. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

*[Use the following if defendant is charged with carrying a weapon concealed on person:]*

(2) First, that the defendant knowingly carried a [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon]. It does not matter why the defendant was carrying the weapon, but to be guilty of this crime the defendant must have known that it was a weapon.\*

(3) Second, that this [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon] was concealed. Complete invisibility is not required. A weapon is concealed if it cannot easily be seen by those who come into ordinary contact with the defendant.

*[Use the following if defendant is charged with carrying a weapon carried in vehicle:]*

(4) First, that the instrument or item was a [dagger / dirk / stiletto / double-edged, nonfolding stabbing instrument / dangerous stabbing weapon].

(5) Second, that the instrument or item was in a vehicle that the defendant was in.

(6) Third, that the defendant knew the instrument or item was in the vehicle.

(7) Fourth, that the defendant took part in carrying or keeping the instrument or item in the vehicle.