

# Chapter 11

## Weapons

ICLE Commentary by  
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### M CrimJI 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 CrimJI 11.3, should be included in the instructions only where there is some question of the article being a pistol.

See M CrimJI 11.10–11.15 for exemptions.

#### History

M CrimJI 11.1 (formerly CJI2d 11.1) was CJI 11:1:01.

#### Reference Guide

##### *Statutes*

MCL 750.227, .231, .231a.

##### *Caselaw*

*People v Sturgis*, 427 Mich 392, 397 NW2d 783 (1986); *People v Butler*, 413 Mich 377, 384–385, 319 NW2d 540 (1982); *People v Henderson*, 391 Mich 612, 616–617, 218 NW2d 2 (1974); *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); *People v Nimeth*, 236 Mich App 616, 621, 601 NW2d 393 (1999); *People v Combs*, 160 Mich App 666, 408 NW2d 420 (1987); *People v Lane*, 102 Mich App 11, 300 NW2d 717 (1980); *People v Stone*, 100 Mich App 24, 28, 298 NW2d 607 (1980); *People v Jackson*, 43 Mich App 569, 204 NW2d 367 (1972); *People v Jones*, 12 Mich App 293, 296, 162 NW2d 847 (1968).

## ICLE Commentary

*Timothy A. Dinan*

### Statutory Authority

MCL 750.227.

### Elements

*The following elements apply if the defendant is charged with carrying a pistol concealed on his or her person:*

1. The defendant knowingly carried a pistol. It does not matter why the defendant was carrying the pistol, but the defendant must have known that he or she was carrying a pistol.
2. This pistol was concealed on or about the person of the defendant.

*The following elements apply if the defendant is charged with carrying a pistol in a vehicle:*

1. A pistol was in a vehicle that the defendant was in.
2. The defendant knew the pistol was there.
3. The defendant took part in carrying or keeping the pistol in the vehicle.

### Penalty

- Felony punishable by imprisonment for not more than five years or by a fine of not more than \$2,500. MCL 750.227(3).

**Sentencing guidelines classification:** Crime against public safety; class E offense. However, in *People v Lockridge*, 498 Mich 358, \_\_\_ NW2d \_\_\_ (2015), the Michigan Supreme Court held that the guidelines are advisory only. This means that a sentence must be reasonable, but there is no longer a requirement that the court articulate a substantial and compelling reason for a departure.

### Collateral Consequences

A conviction under MCL 750.227 serves as a future bar to carrying any legal concealed weapons as well as legally owning any firearms.

### Most Common Lesser Included Offenses

- Attempted carrying of a concealed weapon

- Other weapons misdemeanors

### Common Defenses

- The defendant was in a place where he or she was able to carry a pistol.
- The defendant is licensed to carry a pistol.
- The pistol was being transported pursuant to the firearms act in a locked case, unloaded and separate from its ammunition.

### Legal Overview

See MCL 750.227, .231, and .231a in “Statutes” at the end of this chapter.

The statute for carrying a concealed weapon 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); *Combs*; *People v Lane*, 102 Mich App 11, 300 NW2d 717 (1980).

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 deter-

mining 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.

### Special Considerations

Any concealed weapons charges against a defendant should be considered in light of the entire circumstances. This is especially important where your client has no prior offenses and the circumstances of the arrest do not suggest any other criminal activity was occurring.

Another consideration would be the defendant’s first-time offender status. Each county prosecutor’s office has different policies on gun crimes. It is incumbent on you to determine whether your client may qualify for any special consideration under these policies.

In vehicles with multiple passengers, there may be a defense based on the proximity of a defendant to the firearm. The circumstances of the discovery of the weapon are important to establish this defense.

### Additional ICLE Resources

- *Collateral Consequences of a Criminal Conviction*
- *Michigan Basic Practice Handbook*
- *Michigan Criminal Procedure*



**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.

**Use Note**

\*Define term used:

M Crim JI 11.4	Dangerous Stabbing Weapon
M Crim JI 11.5	Dirk, Dagger, and Stiletto

If the defendant is charged with carrying a double-edged, nonfolding stabbing instrument, no further definition of that term is necessary.

### History

M Crim JI 11.2 (formerly CJI2d 11.2) was CJI 11:1:02; amended April, 1999.

### Reference Guide

#### *Statutes*

MCL 750.227, .231, .231a.

#### *Caselaw*

*People v Lynn*, 459 Mich 53, 586 NW2d 534 (1998); *People v Smith*, 393 Mich 432, 225 NW2d 165 (1975); *People v Vaines*, 310 Mich 500, 17 NW2d 729 (1945); *People v Goolsby*, 284 Mich 375, 378, 279 NW 867 (1938); *People v Johnson*, 175 Mich App 56, 59, 437 NW2d 302 (1989).

## ICLE Commentary

*Timothy A. Dinan*

### Statutory Authority

MCL 750.227.

### Elements

*The following elements apply if the defendant is charged with carrying a weapon concealed on his or her person:*

1. The defendant knowingly carried a dagger; a dirk; a stiletto; a double-edged, nonfolding stabbing instrument; or a dangerous stabbing weapon.
2. This dagger; dirk; stiletto; double-edged, nonfolding stabbing instrument; or dangerous stabbing weapon was concealed.

*The following elements apply if the defendant is charged with carrying a weapon in a vehicle:*

1. The instrument or item was a dagger; a dirk; a stiletto; a double-edged, nonfolding stabbing instrument; or a dangerous stabbing weapon.
2. The instrument or item was in a vehicle that the defendant was in.
3. The defendant knew the instrument or item was in the vehicle.
4. The defendant took part in carrying or keeping the instrument or item in the vehicle.

### Penalty

- Felony punishable by imprisonment for not more than five years or by a fine of not more than \$2,500. MCL 750.227(3)

**Sentencing guidelines classification:** Crime against public safety; class E offense. However, in *People v Lockridge*, 498 Mich 358, \_\_\_ NW2d \_\_\_ (2015), the Michigan Supreme Court held that the guidelines are advisory only. This means that a

sentence must be reasonable, but there is no longer a requirement that the court articulate a substantial and compelling reason for a departure.

### Collateral Consequences

A conviction under MCL 750.227 or .231 will serve as a bar for any concealed weapons being carried.

### Most Common Lesser Included Offenses

- Carrying a concealed weapon (CCW) or attempted CCW
- Other weapons misdemeanor charges

### Common Defenses

- The defendant was not carrying a weapon that fit the definition of a concealed knife, dagger, double-edged knife, etc.

### Legal Overview

See MCL 750.227, .231, and .231a in “Statutes” at the end of this chapter.

The terms *dagger*, *dirk*, and *stiletto* are not defined in statutes or caselaw.

In *People v Smith*, 393 Mich 432, 225 NW2d 165 (1975), the Michigan Supreme Court construed the phrase *other dangerous weapon*, as used in this statute, to apply to stabbing weapons only. The court specifically declined to include firearms.

In *People v Johnson*, 175 Mich App 56, 59, 437 NW2d 302 (1989), the court of appeals cited CJI 11:1:02 (now M Crim JI 11.2) in holding that MCL 750.227(1) applies only to stabbing-type weapons and does not prohibit carrying an ax handle fashioned as a weapon.

This instruction was revised by the committee in April, 1999, to reflect the supreme court’s decision in *People v Lynn*, 459 Mich 53, 586 NW2d 534 (1998). The court there suggested that trial courts instruct the jury to determine as a separate element whether the item was a double-edged, nonfolding stabbing instrument. *Id.* at 60. Paragraph (4) of the present instruction does so.

In addition to finding that an instrument could be used as a stabbing weapon, the jury must find that the weapon was dangerous. The Michigan Supreme Court stated the test for determining dangerousness in *People v Goolsby*, 284 Mich 375, 378, 279 NW 867 (1938).

While some weapons are dangerous per se, other instruments become dangerous only when used or carried for use as weapons. Whether a weapon is dangerous is a question of fact. *People v Vaines*, 310 Mich 500, 17 NW2d 729 (1945).

See the ICLE Commentary to M Crim JI 11.1, Carrying Concealed Weapon—Pistol, for discussion of when a weapon is “concealed” and when it is “carried.”