

Formerly cited as MD CODE Art. 27, § 36B



West's Annotated Code of Maryland [Currentness](#)

Criminal Law ([Refs & Annos](#))

▢ [Title 4. Weapon Crimes](#)

▢ [Subtitle 2. Handguns](#)

→→ **§ 4-203. Wearing, carrying, or transporting handgun**

Prohibited

(a)(1) Except as provided in subsection (b) of this section, a person may not:

- (i) wear, carry, or transport a handgun, whether concealed or open, on or about the person;
- (ii) wear, carry, or knowingly transport a handgun, whether concealed or open, in a vehicle traveling on a road or parking lot generally used by the public, highway, waterway, or airway of the State;
- (iii) violate item (i) or (ii) of this paragraph while on public school property in the State; or
- (iv) violate item (i) or (ii) of this paragraph with the deliberate purpose of injuring or killing another person.

(2) There is a rebuttable presumption that a person who transports a handgun under paragraph (1)(ii) of this subsection transports the handgun knowingly.

Exceptions

(b) This section does not prohibit:

(1) the wearing, carrying, or transporting of a handgun by a person who is on active assignment engaged in law enforcement, is authorized at the time and under the circumstances to wear, carry, or transport the handgun as part of the person's official equipment, and is:

- (i) a law enforcement official of the United States, the State, or a county or city of the State;
- (ii) a member of the armed forces of the United States or of the National Guard on duty or traveling to or from duty;

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- (iii) a law enforcement official of another state or subdivision of another state temporarily in this State on official business;
 - (iv) a correctional officer or warden of a correctional facility in the State;
 - (v) a sheriff or full-time assistant or deputy sheriff of the State; or
 - (vi) a temporary or part-time sheriff's deputy;
- (2) the wearing, carrying, or transporting of a handgun by a person to whom a permit to wear, carry, or transport the handgun has been issued under Title 5, Subtitle 3 of the Public Safety Article;
- (3) the carrying of a handgun on the person or in a vehicle while the person is transporting the handgun to or from the place of legal purchase or sale, or to or from a bona fide repair shop, or between bona fide residences of the person, or between the bona fide residence and place of business of the person, if the business is operated and owned substantially by the person if each handgun is unloaded and carried in an enclosed case or an enclosed holster;
- (4) the wearing, carrying, or transporting by a person of a handgun used in connection with an organized military activity, a target shoot, formal or informal target practice, sport shooting event, hunting, a Department of Natural Resources-sponsored firearms and hunter safety class, trapping, or a dog obedience training class or show, while the person is engaged in, on the way to, or returning from that activity if each handgun is unloaded and carried in an enclosed case or an enclosed holster;
- (5) the moving by a bona fide gun collector of part or all of the collector's gun collection from place to place for public or private exhibition if each handgun is unloaded and carried in an enclosed case or an enclosed holster;
- (6) the wearing, carrying, or transporting of a handgun by a person on real estate that the person owns or leases or where the person resides or within the confines of a business establishment that the person owns or leases;
- (7) the wearing, carrying, or transporting of a handgun by a supervisory employee:
- (i) in the course of employment;
 - (ii) within the confines of the business establishment in which the supervisory employee is employed; and
 - (iii) when so authorized by the owner or manager of the business establishment;

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(8) the carrying or transporting of a signal pistol or other visual distress signal approved by the United States Coast Guard in a vessel on the waterways of the State or, if the signal pistol or other visual distress signal is unloaded and carried in an enclosed case, in a vehicle; or

(9) the wearing, carrying, or transporting of a handgun by a person who is carrying a court order requiring the surrender of the handgun, if:

(i) the handgun is unloaded;

(ii) the person has notified the law enforcement unit, barracks, or station that the handgun is being transported in accordance with the court order; and

(iii) the person transports the handgun directly to the law enforcement unit, barracks, or station.

Penalty

(c)(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to the penalties provided in this subsection.

(2) If the person has not previously been convicted under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

(i) except as provided in item (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than \$250 and not exceeding \$2,500 or both; or

(ii) if the person violates subsection (a)(1)(iii) of this section, the person shall be sentenced to imprisonment for not less than 90 days.

(3)(i) If the person has previously been convicted once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 1 year and not exceeding 10 years; or

2. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i)

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of this paragraph.

(4)(i) If the person has previously been convicted more than once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, or of any combination of these crimes:

1. except as provided in item 2 of this subparagraph, the person is subject to imprisonment for not less than 3 years and not exceeding 10 years; or

2. A. if the person violates subsection (a)(1)(iii) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years; or

B. if the person violates subsection (a)(1)(iv) of this section, the person is subject to imprisonment for not less than 5 years and not exceeding 10 years.

(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2003, c. 17, § 1, eff. Oct. 1, 2003; Acts 2003, c. 21, § 1, eff. April 8, 2003; Acts 2004, c. 25, § 1, eff. April 13, 2004; Acts 2005, c. 482, § 1, eff. Oct. 1, 2005; Acts 2010, c. 712, § 1, eff. Oct. 1, 2010; Acts 2011, c. 65, § 1, eff. April 12, 2011.

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LEGISLATIVE NOTES

Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, § 36B(b) and (c).

In subsection (a)(1) of this section, the introductory language “[e]xcept as provided in subsection (c) of this section” is added for clarity.

In subsection (a)(1)(ii) of this section, the former reference to “roads or parking lots generally used by the public” is deleted in light of the references to a “public” road and parking lot.

In subsection (b)(1) of this section, the reference to wearing, carrying, or transporting “the handgun” is substituted for the former reference to wearing, carrying, or transporting “such weapon” for specificity.

Also in subsection (b)(1) of this section, the former reference to an individual being “duly” author-

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ized is deleted as surplusage.

In subsection (b)(1)(ii) of this section, the reference to “a member” is substituted for the former reference to “members” in light of Art. 1, § 8, which provides that the singular includes the plural. Similarly, in subsection (b)(1)(v) and (vi) of this section, the references to “a sheriff or full-time assistant or deputy sheriff” and “a temporary or part-time sheriffs’ deputy” are substituted for the former references to “sheriffs ... or full-time assistant or deputy sheriffs” and “temporary or part-time sheriffs’ deputies”.

In subsection (b)(1)(iv) of this section, the reference to a “correctional officer” is substituted for the former references to a “jailer”, “prison guard”, “guard”, and “keeper” for consistency with usage in the Correctional Services Article.

Also in subsection (b)(1)(iv) of this section, the defined term “correctional facility” is substituted for the former reference to a “penal, correctional or detention institution” for consistency within this article.

In subsection (b)(2) of this section, the reference to a permit to wear, carry, or transport “the handgun” is substituted for the former reference to a permit to wear, carry, or transport “any such weapon” for clarity.

In subsection (b)(5) of this section, the reference to “each” handgun is added for clarity.

Also in subsection (b)(5) of this section, the former phrase “while traveling to or from any such place or event referred to in this paragraph” is deleted as unnecessary.

In subsection (c)(2) of this section, the reference to a person being “subject to imprisonment” is substituted for the former references to a person “be[ing] imprisoned in jail or sentenced to the Maryland Division of Correction” for consistency within this article. Currently inmates are sentenced to the custody of a unit such as the Division of Correction and then are placed in a particular facility. *See* [CS § 9-103](#).

In subsection (c)(2), (3)(i), and (4)(i) of this section, the references to a previous conviction “under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title” are substituted for the former references to a person who has not previously been convicted “of unlawfully wearing, carrying or transporting a handgun in violation of this section, or of unlawfully using a handgun in the commission of a crime in violation of subsection (d) of this section, or of unlawfully carrying a concealed weapon in violation of § 36 of this article [Article 27], or of unlawfully carrying a deadly weapon on public school property in violation of § 36A of this article [Article 27]” for brevity.

In subsection (c)(2)(i) of this section, the phrase “except as provided in item (ii) of this paragraph” is added for clarity.

In subsection (c)(3) of this section, the reference to a person previously being convicted “once” is added for clarity.

In subsection (c)(3)(ii) of this section, the reference to requiring the court to impose the “applicable” minimum sentence is substituted for the former reference to requiring imposition of “no less than the

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minimum sentence of 1 year” for clarity. The Criminal Law Article Review Committee brings this substitution to the attention of the General Assembly.

The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that in subsection (a)(1)(ii) of this section the prohibition on wearing, carrying, or transporting a handgun in a vehicle “traveling on a road or parking lot generally used by the public” may provide an inadvertent defense in the case of a person who is parked, and arguably not traveling, on the side of the road or in the parking lot. The General Assembly may wish to address this matter in substantive legislation.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (c)(2)(i) of this section, it is not clear whether the reference to a “fine of not less than \$250” is subject to reduction under § 14-102 of this article, or is a true minimum penalty. The General Assembly may wish to clarify this matter in substantive legislation.

Defined terms: “Correctional facility” § 1-101

“County” § 1-101

“Handgun” § 4-201

“Law enforcement official” § 4-201

“Person” § 1-101

“State” § 1-101

“Vehicle” § 4-201

HISTORICAL AND STATUTORY NOTES

2003 Legislation

Acts 2003, c. 17, § 1, in subsec. (b)(2), substituted “Title 5, Subtitle 3 of the Public Safety Article” for “[Article 27, § 36E of the Code](#)”.

Acts 2003, c. 21, § 1, in subsecs. (b)(3) and (b)(4), inserted “if each handgun is unloaded and carried in an enclosed case or an enclosed holster”.

2004 Legislation

Acts 2004, c. 25, § 1, made technical corrections to the Code.

2005 Legislation

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Acts 2005, c. 482, § 1, inserted subsecs. (a)(1)(iii) and (a)(1)(iv); and rewrote subsec. (c), which previously read:

“(c)(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to the penalties provided in this subsection.

“(2) If the person has not previously been convicted under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title:

“(i) except as provided in item (ii) of this paragraph, the person is subject to imprisonment for not less than 30 days and not exceeding 3 years or a fine of not less than \$250 and not exceeding \$2,500 or both; but

“(ii) if it appears from the evidence that the handgun was worn, carried, or transported on public school property in the State, the person shall be sentenced to imprisonment for not less than 90 days.

“(3)(i) If the person has previously been convicted once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, the person shall be sentenced:

“1. to imprisonment for not less than 1 year and not exceeding 10 years; but

“2. if it appears from the evidence that the handgun was worn, carried, or transported on public school property in the State, to imprisonment for not less than 3 years and not exceeding 10 years.

“(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of this paragraph.

“(4)(i) If the person has previously been convicted more than once under this section, § 4-204 of this subtitle, or § 4-101 or § 4-102 of this title, or of any combination of these crimes, the person shall be sentenced:

“1. to imprisonment for not less than 3 years and not exceeding 10 years; but

“2. A. if it appears from the evidence that the handgun was worn, carried, or transported on public school property in the State, to imprisonment for not less than 5 years and not exceeding 10 years; or

“B. if it appears from the evidence that the handgun was worn, carried, or transported with the deliberate purpose of injuring or killing another person, to imprisonment for not less than 5 years and not exceeding 10 years.

“(ii) The court may not impose less than the applicable minimum sentence provided under subparagraph (i) of

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this paragraph.”

2010 Legislation

Acts 2010, c. 712, § 1, added subsec. (b)(9).

2011 Legislation

Acts 2011, c. 65, § 1, in subsec. (c)(4)(i)1, removed parenthesis from around “2”.

Derivation:

Former Art. 27, § 36B, related to unlawful wearing or carrying of handguns, repealed by Acts 2002, c. 26, § 1.

CROSS REFERENCES

Criminal procedure, release, pre-trial release, restrictions, see [Criminal Procedure § 5-202](#).

LAW REVIEW AND JOURNAL COMMENTARIES

[Communitarians, Neorepublicans, and Guns: Assessing the Need for Firearms Prohibition](#). David B. Kopel and Christopher C. Little, 56 Md. L. Rev. 438 (1997).

[Which Court: Juvenile or Criminal?](#) David L. Addison, 30 Md. B.J. 30 (Nov./Dec. 1997).

LIBRARY REFERENCES

[Weapons](#)  4.

Westlaw Key Number Search: 406k4.

[C.J.S. Weapons § 3](#).

RESEARCH REFERENCES

ALR Library

[37 ALR, Federal 696](#), Federal Constitutional Right to Bear Arms.

[64 ALR 6th 131](#), Construction and Application of United States Supreme Court Holdings in [District of Columbia v. Heller](#), 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and [Mcdonald v. City of Chicago](#), Ill., 130 S. Ct. 3020...

[43 ALR 2nd 492](#), Offense of Carrying Concealed Weapon as Affected by Manner of Carrying or Place of Concealment.

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Encyclopedias

[Maryland Law Encyclopedia Criminal Law § 11](#), Merger of Offenses.

[Maryland Law Encyclopedia Criminal Law § 266](#), Reference to Evidence.

[Maryland Law Encyclopedia Criminal Law § 268](#), Requests for Instructions.

[Maryland Law Encyclopedia Criminal Law § 273](#), Communications Between Judge and Jury.

[Maryland Law Encyclopedia Criminal Law § 290](#), Several Indictments or Counts.

[Maryland Law Encyclopedia Criminal Law § 393](#), Verdict, Judgment, and Sentence.

[Maryland Law Encyclopedia Habit Crim. & Subsequent Off. § 1](#), Nature and Purpose of Statutes.

[Maryland Law Encyclopedia Habit Crim. & Subsequent Off. § 9](#), Offenses Forming Basis for Application of Statute.

[Maryland Law Encyclopedia Infants and Minors § 23](#), Forwarding of Complaint to State's Attorney.

[Maryland Law Encyclopedia Weapons and Firearms § 1](#), Constitutional Right to Bear Arms.

[Maryland Law Encyclopedia Weapons and Firearms § 2](#), State Regulation.

[Maryland Law Encyclopedia Weapons and Firearms § 4](#), Carrying Concealed Weapons, Generally.

[Maryland Law Encyclopedia Weapons and Firearms § 6](#), Carrying Concealed Weapons, Generally--Possession on School Property.

[Maryland Law Encyclopedia Weapons and Firearms § 7](#), Carrying or Possessing Handguns.

UNITED STATES CODE ANNOTATED

Firearms and weapons offenses, federal crimes and offenses, see [18 U.S.C.A. § 921 et seq.](#)


Gun-Free Schools Act of 1994, see [20 U.S.C.A. § 8921 et seq.](#)


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[1. Validity](#)

Statute prohibiting wearing, carrying, or transporting a handgun, without a permit and outside of one's home, was outside of the scope of the Second Amendment right to bear arms. [Williams v. State, 2011, 10 A.3d 1167, 417 Md. 479, certiorari denied 132 S.Ct. 93, 181 L.Ed.2d 22. Weapons](#)  [106\(3\)](#)

Even if Second Amendment did apply to state and local governments, statute prohibiting a person from wearing, carrying, or transporting a handgun in public did not infringe upon Second Amendment right to keep and bear arms in the home for purpose of immediate self-defense, where statute contained exception allowing for possession of a gun by a person on real estate that the person owned, leased, or resided. [Williams v. State, 2009, 982 A.2d 1168, 188 Md.App. 691, certiorari granted 988 A.2d 1008, 412 Md. 495, affirmed 10 A.3d 1167, 417 Md. 479, certiorari denied 132 S.Ct. 93, 181 L.Ed.2d 22. Weapons](#)  [106\(3\)](#)

Rebuttable presumption, under statute that prohibits knowingly transporting an illegal handgun, that the trans-

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portation of handgun is knowing is unconstitutional. (Per Adkins, J., with three judges concurring and three judges concurring in result.) [Smith v. State, 2002, 805 A.2d 1108, 145 Md.App. 400](#), certiorari granted [812 A.2d 288, 372 Md. 132](#), reversed [823 A.2d 664, 374 Md. 527](#). [Weapons 🔑 249](#)

Statute dealing with restrictions on the use and possession of handguns, including repeal of provisions for the issuance of permits to private detectives and enactment of provisions for mandatory minimum sentences, is not unconstitutional on theory that it embraces more than one subject or that it includes a subject matter not described in its title. [Code 1957, art. 27, § 36B](#); [Const. art. 3, § 29](#); Acts 1972, c. 13. [Bremer v. State, 1973, 307 A.2d 503, 18 Md.App. 291](#), certiorari denied 269 Md. 755, certiorari denied [94 S.Ct. 1440, 415 U.S. 930, 39 L.Ed.2d 488](#). [Statutes 🔑 107\(3\)](#); [Statutes 🔑 118\(1\)](#)

2. In general

Maryland General Assembly, when it recodified statutes relating to illegal use of weapons, without inserting a provision prohibiting duplicative sentencing, was presumed to have been aware of Maryland Court of Appeals' holding in *Frazier v. State* that the offenses of unlawfully wearing, carrying, or transporting a handgun and unlawful possession of firearm by convicted person do not merge, and thus, *Frazier* holding remained viable, though the recodification increased the penalties associated with possession of firearm by convicted person. [Pye v. State, 2007, 919 A.2d 632, 397 Md. 626](#). [Criminal Law 🔑 30](#)

The Motor Vehicle Administration Division of Investigative Service's investigators may not wear, carry, or transport a handgun without a permit. 77 Op. Atty. Gen. 92-022, July 14, 1992 ([1992 WL 674722](#)).

The Motor Vehicle Administration may require that all investigators be armed or it may impose reasonable criteria on who are to be armed - for example, by requiring that only investigators assigned to certain geographic areas of the State be armed. 77 Op. Atty. Gen. 92-022, July 14, 1992 ([1992 WL 674722](#)).

Although the Motor Vehicle Administration may authorize its investigators to carry handguns, it must ensure that each investigator receives adequate training in the use of a handgun before carrying, wearing, or transporting the handgun, and it must establish rules and guidelines on the appropriate conditions under which an investigator is permitted to use a handgun. 77 Op. Atty. Gen. 92-022, July 14, 1992 ([1992 WL 674722](#)).

3. Purpose

Statute prohibiting carrying of concealed weapon was enacted to protect members of the public generally, regardless of location, and statute applies to carrying within private residences, not just to public areas; location of defendant, including whether he or she is in public place or on private property, is simply one factor for trier of fact to consider in its determination of whether defendant has requisite general intent to commit offense and whether instrument in his or her possession would be covered under statute. [Code 1957, Art. 27, § 36](#). [State v. Brinkley, 1995, 651 A.2d 465, 102 Md.App. 774](#). [Weapons 🔑 107\(1\)](#); [Weapons 🔑 171](#); [Weapons 🔑 203\(2\)](#)

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4. Preemption

Statute governing wearing, carrying, and transporting of handguns regulates both loaded and unloaded handguns, and expressly preempts all local laws regulating the same subject, thus invalidating county ordinance which prohibited sale of ammunition unless certain requirements were met and which restricted wearing, carrying, or transporting of loaded handguns. Acts 1972, c. 13, §§ 1 et seq., 6; [Code 1957, Art. 27, §§ 36B-36G, 36B\(a\), \(c\)\(1, 3-5\), 36C\(a\)\(i, ii\), 36D\(a\), 36E, 36E\(a\)\(6\),\(i\), 36F, 36F\(a\)\(1, 2, 5\), 36G\(a\)\(3\)\(i\)](#). [Montgomery County v. Atlantic Guns, Inc., 1985, 489 A.2d 1114, 302 Md. 540. Counties ↪ 21.5](#)

5. Due process of law

State, as possessor of sawed-off shotgun taken from defendant and forming basis of claim that he unlawfully carried handgun, did not have due process obligation to fully investigate whether weapon was operable, as required in order to convict of charge; defendant could have used discovery rule to have shotgun test fired. [Code 1957, Art. 27, § 36B\(b\); Md.Rule 4-263\(b\)\(5\)](#). [Mangum v. State, 1996, 676 A.2d 80, 342 Md. 392. Constitutional Law ↪ 4594\(7\); Criminal Law ↪ 1995](#)

6. Nature and elements of offenses

Under Maryland law, there are three distinct elements necessary to constitute violation of statute prohibiting wearing or carrying of concealed dangerous weapon: (1) weapon in question must be listed or considered to be dangerous or deadly weapon, (2) person must be wearing or carrying weapon, and (3) weapon must be concealed upon or about person. [U.S. v. Robson, 2005, 391 F.Supp.2d 383. Weapons ↪ 163](#)

Verdict of trial court that defendant was not guilty of wearing, carrying, or transporting a handgun was inconsistent with its verdicts that defendant was guilty of use of a handgun in commission of a felony and use of a handgun in commission of a crime of violence; defendant must have possessed handgun before he could have used it. [State v. Williams, 2007, 916 A.2d 294, 397 Md. 172. Criminal Law ↪ 255.4](#)

Verdict of trial court that defendant was not guilty of wearing, carrying, or transporting a handgun was consistent with its verdicts that defendant was guilty as a second-degree principal of attempted robbery and attempted theft; attempted robbery and attempted theft did not require proof of use of handgun, and it therefore was not necessary that defendant possess a handgun or have knowledge that his cohorts were going to use a handgun to commit offenses. [State v. Williams, 2007, 916 A.2d 294, 397 Md. 172. Criminal Law ↪ 255.4](#)

Verdict of trial court that defendant was not guilty of wearing, carrying, or transporting a handgun was inconsistent with its verdicts that defendant was guilty as a second-degree principal of attempted robbery with a dangerous weapon and first-degree assault; defendant knew or had reason to know of criminal intentions of his two cohorts, embraced entire criminal enterprise, and was found guilty as a second-degree principal in part because he drove cohorts to and from gas station where offenses occurred, and trial court failed to explain how defendant, while traveling with cohorts, was not in joint possession of handgun used by them in commission of offenses. [State v. Williams, 2007, 916 A.2d 294, 397 Md. 172. Criminal Law ↪ 255.4](#)

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Procurement of license is not element of offense of carrying firearm. [Code 1957, art. 27, § 36\(a\)](#). [Mackall v. State, 1978, 387 A.2d 762, 283 Md. 100](#). [Weapons 🔑 163](#)

7. Intent or purpose

In order to violate statute prohibiting carrying of concealed weapon, it must first be determined by trier of fact whether instrument used by defendant constitutes dangerous or deadly weapon; this determination is made not simply on basis that instrument may be used to inflict serious or deadly harm upon another person; rather it must be shown that defendant had at least the “general intent” to carry the instrument for use as weapon. [Code 1957, Art. 27, § 36](#). [State v. Brinkley, 1995, 651 A.2d 465, 102 Md.App. 774](#). [Weapons 🔑 111](#); [Weapons 🔑 168](#); [Weapons 🔑 169](#)

Statute which prohibited wearing or carrying handgun was strict liability statute which did not require showing of scienter; scienter requirement applied only to vehicular transportation of handgun, which was inserted into statute as amendment. [Code 1957, Art. 27, § 36B\(b\)](#). [Lee v. State, 1988, 537 A.2d 235, 311 Md. 642](#). [Weapons 🔑 169](#); [Weapons 🔑 172](#)

In view of want of any evidence to substantiate defendant's claim that he conducted nursery business near trailers, and in view of “junk yard” nature of area surrounding trailers, his assertion that he conducted nursery business in proximity to the trailers and was carrying his handgun to his place of business, within statutory exception, at 1:30 in the morning, was ludicrous. [Code 1957, Art. 27, §§ 36B, 36B\(c\)\(3\), 481C\(a\)\(4\)](#). [Sproates v. State, 1984, 473 A.2d 1289, 58 Md.App. 547](#), certiorari denied [481 A.2d 240, 300 Md. 795](#). [Weapons 🔑 201](#)

8. Different offenses in same transaction

Multiple handgun use convictions and sentences are appropriate where there are multiple victims. [Code 1957, Art. 27, § 36B\(d\)](#). [West v. State, 2000, 764 A.2d 345, 136 Md.App. 141](#), certiorari granted [770 A.2d 169, 363 Md. 661](#), affirmed in part, reversed in part [797 A.2d 1278, 369 Md. 150](#). [Criminal Law 🔑 29\(15\)](#)

Defendant could not be convicted of both carrying deadly weapon concealed and carrying that same weapon openly with intent to injure arising out of one incident. [Code 1957, Art. 27, § 36\(a\)](#). [Eldridge v. State, 1993, 619 A.2d 531, 329 Md. 307](#). [Criminal Law 🔑 29\(15\)](#)



Defendant who was convicted of robbery with deadly weapon could not also be convicted of carrying deadly weapon arising out of same conduct; robber who uses deadly weapon is subjected to increased punishment, and, thus, it would not make sense to believe legislature contemplated robber could also be convicted of carrying deadly weapon. [Code 1957, Art. 27, §§ 36\(a\), 488](#). [Eldridge v. State, 1993, 619 A.2d 531, 329 Md. 307](#). [Criminal Law 🔑 29\(15\)](#)


Identical conduct, having a gun, could constitute offense of either unlawfully carrying a gun or possession of a handgun by one previously convicted of crime of violence, or both, or neither. [Code 1957, Art. 27, §§ 36B\(b\), 445\(c\)](#). [Johnson v. State, 1986, 507 A.2d 1134, 67 Md.App. 347](#), certiorari denied [513 A.2d 314, 307 Md. 260](#),


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certiorari denied 107 S.Ct. 594, 479 U.S. 993, 93 L.Ed.2d 595. Weapons  164; Weapons  174


9. Merger of offenses

Legislature did not intend that convictions for use of firearm in relation to drug trafficking, and for unlawful wearing, carrying, or transporting of handgun, would merge; Legislature was concerned about use and possession of handguns and about the aggravating circumstance of weapons being used by persons trafficking in drugs, and Legislature intended to authorize separate punishments for the two offenses. *Johnson v. State*, 2003, 839 A.2d 769, 154 Md.App. 286, certiorari denied 846 A.2d 402, 380 Md. 618. Criminal Law  30; Sentencing And Punishment  539


Under required evidence test, convictions for use of firearm in relation to drug trafficking, and for unlawful wearing, carrying, or transporting of handgun, required proof of a different element, and thus, the convictions did not merge; former offense required proof that weapon was used during and in relation to drug trafficking, while latter offense required proof of use of handgun. *Johnson v. State*, 2003, 839 A.2d 769, 154 Md.App. 286, certiorari denied 846 A.2d 402, 380 Md. 618. Criminal Law  30

Defendant's conviction for carrying and wearing handgun should have been merged into his conviction for use of handgun in commission of crime of violence for sentencing purposes. *Code 1957, Art. 27, § 36B(b, d)*. *Tilghman v. State*, 1997, 701 A.2d 847, 117 Md.App. 542, certiorari denied 707 A.2d 90, 349 Md. 104, habeas corpus denied 2001 WL 34596185, appeal dismissed 26 Fed.Appx. 311, 2002 WL 170744, certiorari denied 122 S.Ct. 2680, 536 U.S. 967, 153 L.Ed.2d 851. Criminal Law  30

10. Double jeopardy

Facts concerning a vehicle traveling on the highway are not necessary to prove that an accused is in possession of a concealed weapon or that he is a rogue and vagabond so that fact that defendant had been convicted in district court of carrying a concealed weapon and being a rogue and vagabond did not preclude the State from charging him, on appeal to circuit court for trial de novo, with additional offenses of knowingly carrying or transporting a handgun in a vehicle while traveling on the public roads. *Code 1957, art. 27, §§ 36(a), 36B(b), 445(c), 490; U.S.C.A.Const. Amend. 5*. *Pinkett v. State*, 1976, 352 A.2d 358, 30 Md.App. 458, certiorari denied 278 Md. 730. Double Jeopardy  140

11. Places prohibited



Under Maryland law, as predicted by the district court, access road leading to Air Force base was not “highway,” for purposes of criminal statute prohibiting transportation of handguns in vehicles on public roads and highways, even though military members, their dependents, and employees of various organizations and businesses on base used road, where base commander exercised absolute authority to bar public from coming onto base at any time. *U.S. v. Robson*, 2005, 391 F.Supp.2d 383. Weapons  171



Statute prohibiting wearing, carrying, or transporting handgun did not apply to defendant's conduct in carrying handgun in his own home, although defendant used handgun to shoot his brother. *Code 1957, Art. 27, § 36B*



Formerly cited as MD CODE Art. 27, § 36B


(c)(4). [Wieland v. State, 1994, 643 A.2d 446, 101 Md.App. 1. Weapons](#)  203(2)



12. Handgun, generally


Semi-automatic pistol that needed particular magazine to be inserted to connect pistol's internal firing mechanism was “readily convertible” or “readily operable” as a handgun, and therefore constituted a “handgun,” for purposes of unlawful possession of a handgun, even if city police department ballistics experts had to test the gun three times because they had difficulty finding a magazine that would make the pistol operable; magazine was an insertable and removable part that defendant would have expected to take out of pistol from time to time, and it could be inferred that defendant was familiar with proper magazine for his weapon and therefore could obtain it with less difficulty than could police ballistics experts. [Powell v. State, 2001, 780 A.2d 1219, 140 Md.App. 479, certiorari denied 785 A.2d 1292, 367 Md. 90. Weapons](#)  112(2); [Weapons](#)  164

For a weapon to meet the definition of a “handgun,” for purposes of unlawful possession of a handgun, it must be a firearm or it must be “readily convertible” into a firearm, that is, a gun which could be explosive of projectiles. [Powell v. State, 2001, 780 A.2d 1219, 140 Md.App. 479, certiorari denied 785 A.2d 1292, 367 Md. 90. Weapons](#)  112(2); [Weapons](#)  164

A weapon that is “readily convertible” into a firearm, and that therefore constitutes a “handgun” for purposes of unlawful possession of a handgun, excludes weapons not designed or constructed to fire missiles by gaseous explosion, and incapable of doing so because of their design and construction. [Powell v. State, 2001, 780 A.2d 1219, 140 Md.App. 479, certiorari denied 785 A.2d 1292, 367 Md. 90. Weapons](#)  112(2); [Weapons](#)  164


Term “handgun,” within meaning of the handgun statute does not include any hand weapon simulating the appearance of a pistol or revolver that is capable of discharging a missile by any method of propulsion; for a device to be a handgun it must be a firearm or must be readily or easily convertible into a firearm and to be a firearm it must propel a missile by gunpowder or some similar explosive; overruling [Todd v. State, 28 Md.App. 127, 343 A.2d 890. Code 1957, art. 27, §§ 36B, 36B\(b\). Douglas v. State, 1977, 378 A.2d 189, 37 Md.App. 557. Weapons](#)  112(6)



Conviction of unlawfully carrying a handgun, specifically, a CO2 pellet gun having the appearance of a pistol, was required to be reversed absent evidence that carbon dioxide (CO2) is an explosive similar to gunpowder or that the weapon was easily convertible into a firearm. [Code 1957, art. 27, §§ 36B, 36B\(b\). Douglas v. State, 1977, 378 A.2d 189, 37 Md.App. 557. Weapons](#)  112(1); [Weapons](#)  164


To average individual, for device to be “handgun” within meaning of handgun statute, it must be firearm or it must be readily or easily convertible into firearm and, to be “firearm,” it must propel missile by gunpowder or similar explosive. [Code 1957, art. 27, §§ 36B-36F, 36B\(d\), 36F\(a\). Howell v. State, 1976, 364 A.2d 797, 278 Md. 389. Weapons](#)  112(2)



Gas used in tear gas gun was not “missile” within natural and ordinary signification of term, and accordingly,





Formerly cited as MD CODE Art. 27, § 36B



tear gas pistol was not “handgun” within meaning of handgun statute because it was not “firearm,” or device readily convertible into firearm, capable of emitting “missile” propelled by gunpowder or similar explosive. [Code 1957, art. 27, §§ 36B-36F, 36B\(d\), 36F\(a\). Howell v. State, 1976, 364 A.2d 797, 278 Md. 389. Weapons](#)  115

“Tear gas” gun allegedly used by defendants, which propelled projectiles that were capable of inflicting serious injury to victims' eyes, had characteristic meeting all requirements of “handgun” within contemplation of handgun statute, and use by defendant of such weapon in commission of felony constituted misdemeanor. [Code 1957, art. 27, §§ 36-36F, 36B\(d\). Howell v. State, 1976, 350 A.2d 145, 29 Md.App. 646, certiorari denied 277 Md. 738, reversed 364 A.2d 797, 278 Md. 389. Weapons](#)  115; [Weapons](#)  190


For purposes of determining whether weapon shoots “projectile” for purposes of defining weapon as handgun, size of projectile expelled is of no moment; whether it be as big as artillery shell or as small as subatomic particle, it is still projectile. [Code 1957, art. 27, § 36B\(d\). Howell v. State, 1976, 350 A.2d 145, 29 Md.App. 646, certiorari denied 277 Md. 738, reversed 364 A.2d 797, 278 Md. 389. Weapons](#)  112(1)

Weapon in form of pistol which will expel, or which is designed to or which may readily be converted to expel, by explosive force, tear gas in form of finely divided solids or particles is “handgun” within meaning of handgun statute. [Code 1957, art. 27, §§ 36B-36F. Howell v. State, 1976, 350 A.2d 145, 29 Md.App. 646, certiorari denied 277 Md. 738, reversed 364 A.2d 797, 278 Md. 389. Weapons](#)  112(2); [Weapons](#)  115

“Tear gas” gun, in form of pistol which will expel, or which may readily be converted to expel, by explosive force, tear gas in form of finely divided solids or particles is subject not only to proscriptions against unlawfully wearing, carrying or transporting handgun, and unlawfully using handgun in commission of certain crimes, but also to provisions requiring permit to carry handgun. [Code 1957, art. 27, §§ 36B, 36E. Howell v. State, 1976, 350 A.2d 145, 29 Md.App. 646, certiorari denied 277 Md. 738, reversed 364 A.2d 797, 278 Md. 389. Weapons](#)  115; [Weapons](#)  134; [Weapons](#)  164; [Weapons](#)  170

Where juvenile defendant was charged with illegal possession of handgun, gun was “handgun” in contemplation of statute only if it was operable. [Code 1957, art. 27, § 36B. In re Appeal No. 1124 \(1974\) from Circuit Court of Baltimore City Sitting as Juvenile Court, 1975, 340 A.2d 338, 27 Md.App. 468. Infants](#)  153; [Weapons](#)  112(6)

13. Manner of carrying or concealment

For purposes of Maryland statute prohibiting wearing or carrying of concealed dangerous weapons, weapon is “concealed” if it is so situated as not to be discernible by ordinary observation by those near enough to see it if it were not concealed who would come into contact with possessor in usual associations of life, but absolute invisibility is not required. [U.S. v. Robson, 2005, 391 F.Supp.2d 383. Weapons](#)  168

Where statute prohibiting any person from wearing, carrying, or transporting a handgun contained exception which was applicable where, inter alia, handgun was being transported in an enclosed case or enclosed holster in

Formerly cited as MD CODE Art. 27, § 36B

connection with target shoot, such exception did not apply to defendant, whose guns were being transported in an unfastened sack. [Code 1957, art. 27, §§ 36B-36F, 36B\(c\)\(3\), 441. *Jordan v. State*, 1975, 330 A.2d 496, 24 Md.App. 267, certiorari denied 274 Md. 729. Weapons 🔑 201](#)

With respect to statute prohibiting carrying a concealed and dangerous weapon on or about one's person, a weapon is "about" a person if it is in such proximity as would make it available for immediate use. [Jefferson v. State, 2010, 4 A.3d 17, 194 Md.App. 190. Weapons 🔑 168](#)

14. Habitual and career offenders

Under "enhanced sentence" or "subsequent offender" provision of section stating that, for second offense of unlawfully wearing, carrying or transporting handgun, defendant shall be sentenced for term of not less than one year nor more than 10 years it is mandatory upon court to impose no less than minimum sentence of one year, but maximum sentence of 10 years is permitted, which exceeds three-year maximum allowed for first offense. [Code 1957, Art. 27, § 36B\(b\)\(ii\). *King v. State*, 1983, 466 A.2d 1292, 55 Md.App. 672, certiorari granted 470 A.2d 353, 298 Md. 394, affirmed 477 A.2d 768, 300 Md. 218. Sentencing And Punishment 🔑 1424](#)

Mere fact that statute proscribing unlawfully carrying a handgun authorizes more severe punishment for subsequent offender is not sufficient notice in constitutional sense that State intends to prosecute accused as subsequent offender. [Code 1957, art. 27, §§ 36B, 36B\(a-e\); Maryland Rules, Rule 713. *Sullivan v. State*, 1976, 349 A.2d 663, 29 Md.App. 622. Sentencing And Punishment 🔑 1361](#)


Where defendant was not prosecuted as a subsequent offender as required by rules, since he was not notified that he would be so prosecuted, he could only be punished upon conviction of the current offense charged as a person who had not been previously convicted of a crime which under that statute subjected him to increased punishment. [Code 1957, art. 27, § 36B\(b\), \(b\)\(i\); Maryland Rules, Rule 713. *Sullivan v. State*, 1976, 349 A.2d 663, 29 Md.App. 622. Sentencing And Punishment 🔑 1361](#)


Within rule providing for notice to defendant that he is to be prosecuted as second or subsequent offender by attaching to indictment an addendum warning defendant that State has evidence that he was formerly convicted of same offense, "indictment" includes a grand jury indictment, a criminal information and charging documents as defined in Maryland District Rules. [Code 1957, art. 27, § 36B\(b\), \(b\)\(i\); Maryland Rules, Rule 713; M.D.R. 702 a, 706 c 3; Code, Courts and Judicial Proceedings, § 4-302\(c\). *Sullivan v. State*, 1976, 349 A.2d 663, 29 Md.App. 622. Sentencing And Punishment 🔑 1365; Sentencing And Punishment 🔑 1367](#)

Rule requiring that an addendum be attached to indictment warning defendant that he has formerly been convicted of same offense and that the State intends to prosecute him for current offense as a second or subsequent offender applies to statute proscribing unlawfully carrying a handgun. [Code 1957, art. 27, §§ 36B, 36B\(b\); Maryland Rules, Rule 713. *Sullivan v. State*, 1976, 349 A.2d 663, 29 Md.App. 622. Sentencing And Punishment 🔑 1365](#)


To subject defendant to increased punishment as second offender, fact of prior conviction of crime within con-


Formerly cited as MD CODE Art. 27, § 36B

templation of statute proscribing unlawfully carrying handgun had to be proved by State beyond a reasonable doubt. [Code 1957, art. 27, § 36B\(b\), \(b\)\(i\)](#); Maryland Rules, Rule 713. [Sullivan v. State, 1976, 349 A.2d 663, 29 Md.App. 622. Sentencing And Punishment](#)  1380(2)


Prosecutor's statement that his record revealed that defendant charged with handgun violation was currently on probation for such a violation was not evidence sufficient to establish a prior conviction for purposes of increased punishment. [Code 1957, art. 27, § 36B\(b\), \(b\)\(i\)](#); Maryland Rules, Rule 713. [Sullivan v. State, 1976, 349 A.2d 663, 29 Md.App. 622. Sentencing And Punishment](#)  1381(3)


14.1. Disqualifying offenses


Gun owner's conviction in the District of Columbia for attempting to carry a pistol without a license was a “qualifying offense” under statute that disqualified a person from receiving permit to possess a regulated firearm if they were convicted of a misdemeanor with a penalty of greater than two years imprisonment; offense was a misdemeanor and carried a maximum penalty of up to three years imprisonment. [McCloud v. Department of State Police, 2011, 28 A.3d 214, 200 Md.App. 725, certiorari granted 33 A.3d 981, 424 Md. 54. Weapons](#)  134

Gun owner's conviction in the District of Columbia for attempting to carry a pistol without a license was a disqualifying offense under statute that disqualified a person from receiving permit to possess a regulated firearm if they were convicted of a misdemeanor with a penalty of greater than two years imprisonment; the Maryland equivalent of the D.C. offense was a misdemeanor and carried a maximum penalty of up to three years' imprisonment. [McCloud v. Department of State Police, 2011, 28 A.3d 214, 200 Md.App. 725, certiorari granted 33 A.3d 981, 424 Md. 54. Weapons](#)  134


15. Defenses


Necessity is valid defense to unlawful possession of handgun, if defendant is in imminent peril of death or serious bodily injury or reasonably believes himself or another to be in that danger, if defendant does not intentionally or recklessly place himself in situation making it probable that he will need to choose criminal conduct, if defendant does not have any reasonable, legal alternative to possession of handgun, if handgun is available to defendant without preconceived design, and if defendant gives up possession of handgun as soon as necessity or apparent necessity ends. [Code 1957, Art. 27, §§ 36, 36\(a\), 36B, 36B\(b\). State v. Crawford, 1987, 521 A.2d 1193, 308 Md. 683. Criminal Law](#)  38

Necessity is not defense to crime of unlawful possession of handgun, if threatened harm is property damage or future personal injury. [Code 1957, Art. 27, §§ 36, 36\(a\), 36B, 36B\(b\). State v. Crawford, 1987, 521 A.2d 1193, 308 Md. 683. Criminal Law](#)  38



Necessity is not defense to unlawful possession of handgun, if compulsion to possess handgun arises directly from defendant's misconduct. [Code 1957, Art. 27, §§ 36, 36\(a\), 36B, 36B\(b\). State v. Crawford, 1987, 521 A.2d 1193, 308 Md. 683. Criminal Law](#)  38



Formerly cited as MD CODE Art. 27, § 36B



Generally, in sudden emergency, person may avail himself of weapon in immediate vicinity but not otherwise being unlawfully carried. [Code 1957, Art. 27, §§ 36B, 36B\(b\)](#). [Crawford v. State, 1985, 487 A.2d 1214, 61 Md.App. 620](#), certiorari granted [493 A.2d 351, 303 Md. 297](#), affirmed [521 A.2d 1193, 308 Md. 683](#). [Weapons](#)  [202](#)



Reasonable anticipation of danger is not proper defense to charge of illegally carrying a handgun without a permit. [Code 1957, Art. 27, § 36B\(b\)](#). [Medley v. State, 1982, 448 A.2d 363, 52 Md.App. 225](#), certiorari denied [294 Md. 544](#). [Weapons](#)  [202](#)



16. Civil liability



In a tort suit against manufacturer or marketer of a “Saturday Night Special” handgun, a handgun should rarely, if ever, be deemed a “Saturday Night Special” as a matter of law; instead, it is a finding to be made by trier of facts. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563](#). [Products Liability](#)  [275](#); [Products Liability](#)  [400](#)

Abnormally dangerous activity doctrine, which is not extended to instances in which alleged tort-feasor is not owner or occupier of land, would not be extended to manufacturer or marketer of handgun to impose liability for incident in which victim was shot during armed robbery. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563](#). [Products Liability](#)  [110](#); [Products Liability](#)  [275](#)

Handgun manufacturer or marketer could not be held liable for strict product liability to victim who was shot during armed robbery; handgun would not be found defective merely because it was capable of being used during criminal activity to inflict harm. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563](#). [Products Liability](#)  [119](#); [Products Liability](#)  [275](#)

“Risk/utility test,” which rests on balancing of allegedly defective product's risks and utilities, and which is only applied when something goes wrong with a product, would not be extended to impose liability on manufacturer or marketer of handgun which had not malfunctioned. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563](#). [Products Liability](#)  [119](#); [Products Liability](#)  [275](#)

To impose strict liability upon manufacturers or marketers of handguns for gunshot injuries resulting from misuse of handguns by others would have been contrary to Maryland public policy as set forth by the legislature. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563](#). [Products Liability](#)  [182](#); [Products Liability](#)  [275](#)

Manufacturers and marketers of “Saturday Night Special” handguns, cheap, easily concealable handguns primarily suited for criminal activity, can be found strictly liable to innocent persons who suffer gunshot injuries from criminal use of their products. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563](#). [Products Liability](#)  [113](#); [Products Liability](#)  [275](#)

Formerly cited as MD CODE Art. 27, § 36B

Once trier of facts determines that a handgun is a “Saturday Night Special,” then liability for all resulting damages suffered by gunshot victim consistent with established law concerning tort damages may be imposed against manufacturer or anyone else in marketing chain, including retailer, if plaintiff or plaintiff’s decedent suffers injury or death because he is shot with the weapon, the shooting is a criminal act, and plaintiff is not a participant in the criminal activity; shooting itself may be sole criminal act or may occur in course of another crime where person firing the weapon is one of perpetrators of the crime, and neither contributory negligence nor assumption of risk is recognized as a defense. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563. Products Liability](#) 🔑 275

Change of common law specifying conditions under which strict liability would be imposed against manufacturer or marketer of Saturday Night Special handgun would be applied in instant case and all other causes of actions accruing after date of mandate unless it would be shown that initial marketing of the weapon to a member of the public occurred prior to date of the mandate. [Kelley v. R.G. Industries, Inc., 1985, 497 A.2d 1143, 304 Md. 124, 44 A.L.R.4th 563. Courts](#) 🔑 100(1)

16.5. Probable cause for arrest

Officer had probable cause to believe that handgun was possessed by defendant and, therefore, had probable cause to arrest defendant; handgun was found beneath the right front passenger seat and that seat was immediately in front of where defendant was sitting, as a right-hand, rear-seat passenger, and as officer approached the car, officer observed defendant repeatedly looking back in his direction, reaching around in the car, and then bending down in front of him, and it could reasonably be inferred that defendant, on observing approach of police car, had deliberately attempted to hide loaded weapon underneath the seat in front of him. [Burns v. State, 2003, 817 A.2d 885, 149 Md.App. 526. Arrest](#) 🔑 63.4(16)

17. Indictment and information

Where charging documents in prosecution on weapons charges did not specify whether shotgun was carried by defendant openly with intent to injure, nor did it specify whether shotgun was sawed off and could thereby fall within handgun statute, documents were insufficient to charge offense either under handgun statute or under statute proscribing carrying of dangerous or deadly weapon with intent to injure any person in unlawful manner. [Code 1957, art. 27, §§ 36\(a\), 36B\(b\); Maryland Rules, Rule 1085. Pedzich v. State, 1976, 365 A.2d 567, 33 Md.App. 620, certiorari denied 279 Md. 684. Weapons](#) 🔑 226

Indictment charging unlawful carrying of a handgun was not unconstitutionally vague in failing to identify the weapon, particularly where defendant demanded and was granted particulars as to such count. [Code 1957, art. 27, § 36B\(b\); Maryland Rules, Rule 715. Bremer v. State, 1973, 307 A.2d 503, 18 Md.App. 291, certiorari denied 269 Md. 755, certiorari denied 94 S.Ct. 1440, 415 U.S. 930, 39 L.Ed.2d 488. Indictment And Information](#) 🔑 71.4(1)

18. Presumptions and burden of proof

Status of a person in a vehicle who is the driver, whether that person actually owns, is merely driving or is the

Formerly cited as MD CODE Art. 27, § 36B

lessee of the vehicle, permits an inference, by a fact-finder, of knowledge, by that person, of contraband found in that vehicle. [State v. Smith, 2003, 823 A.2d 664, 374 Md. 527. Weapons 🔑 249](#)

Defendant's status as both the driver and the owner or lessee of a vehicle is generally sufficient to permit an inference that defendant has knowledge of contraband in vehicle, but if there is a greater nexus between passenger and contraband than between defendant and contraband, then defendant should not be convicted of knowingly transporting contraband based solely on the driver-owner inference. (Per Adkins, J., with three judges concurring and three judges concurring in result.) [Smith v. State, 2002, 805 A.2d 1108, 145 Md.App. 400, certiorari granted 812 A.2d 288, 372 Md. 132, reversed 823 A.2d 664, 374 Md. 527. Weapons 🔑 249](#)

Location of handgun underneath passenger's coat in trunk of leased vehicle was evidence that passenger had a greater nexus to the gun than did the defendant, who was the driver and lessee, thus defeating an otherwise permissible finding in prosecution for knowingly transporting an illegal handgun that, based on his status as driver-lessee, defendant's transporting of handgun was knowing. (Per Adkins, J., with three judges concurring and three judges concurring in result.) [Smith v. State, 2002, 805 A.2d 1108, 145 Md.App. 400, certiorari granted 812 A.2d 288, 372 Md. 132, reversed 823 A.2d 664, 374 Md. 527. Weapons 🔑 291\(3\)](#)

In cases involving wearing, carrying, or transporting a handgun, there is rebuttable presumption that person is knowingly transporting handgun. [Code 1957, Art. 27, § 36B\(b\). Timmons v. State, 1997, 690 A.2d 530, 114 Md.App. 410. Weapons 🔑 249](#)

Conviction for transporting handgun in vehicle was supported by sufficient evidence, which indicated that at 5:30 a.m. defendant was in pool room with his car parked out front, as from such evidence arose rational inference that defendant transported himself to pool room in car and parallel inference that gun which was contained in car was transported there with him, rather than deposited later in automobile. [Ruffin v. State, 1988, 549 A.2d 411, 77 Md.App. 93. Weapons 🔑 244; Weapons 🔑 291\(4\)](#)

Under handgun statute, burden is upon accused to prove himself as being within a particular exception. [Code 1957, art. 27, § 36B. Roos v. State, 1980, 410 A.2d 1113, 45 Md.App. 21. Weapons 🔑 250](#)

Exceptions prescribed under statute prohibiting persons under 18 years of age from carrying dangerous or deadly weapon other than handgun between one hour after sunset and one hour before sunrise in certain designated counties, are not elements of offense and thus it is incumbent upon accused to interpose as defense that he was carrying such weapon while on bona fide hunting trip or while engaged in or on way to or returning from bona fide trap shoot, sport shooting event, or any organized civic or military activity. [Code 1957, art. 27, § 36\(a\). Mackall v. State, 1978, 387 A.2d 762, 283 Md. 100. Weapons 🔑 250](#)

Burden was on defendant to show that he came within statutory exception to statute prohibiting any person from wearing, carrying, or transporting a handgun. [Code 1957, art. 27, §§ 36B-36F, 36B\(c\)\(3\), 441. Jordan v. State, 1975, 330 A.2d 496, 24 Md.App. 267, certiorari denied 274 Md. 729. Criminal Law 🔑 329; Weapons 🔑 250](#)

Formerly cited as MD CODE Art. 27, § 36B

With regard to crime of wearing, carrying and transporting a handgun on or about one's person, a rational factfinder may infer that, generally, an owner/driver of a vehicle has knowledge of the contents of that vehicle. [Jefferson v. State, 2010, 4 A.3d 17, 194 Md.App. 190. Weapons ⚔ 244](#)

19. Impeachment of witnesses

Conviction for “handgun violation” was inadmissible for purpose of impeaching witness' credibility, particularly absent indication of what offense formed basis for the “handgun violation.” [Code 1957, Art. 27, § 36B\(d\). Holmes v. State, 1985, 492 A.2d 351, 63 Md.App. 159, certiorari denied 498 A.2d 1185, 304 Md. 298. Witnesses ⚔ 359](#)

20. Weight and sufficiency of evidence

Testimony of two witnesses that they saw defendant holding a gun was sufficient to establish that defendant possessed the gun, as required to support convictions for possessing a regulated firearm after having been convicted of a disqualifying crime, and wearing, carrying, or transporting a handgun. [Stringfellow v. State, 2011, 20 A.3d 825, 199 Md.App. 141, certiorari granted 28 A.3d 644, 421 Md. 557. Weapons ⚔ 291\(3\); Weapons ⚔ 293\(3\)](#)

There was sufficient evidence that defendant had knowledge of, as well as dominion and control over, handgun recovered underneath the passenger seat in the vehicle he was driving, and that the gun was in close proximity to his person and was available for immediate use, as required to support defendant's conviction for wearing, carrying and transporting a handgun on or about his person; revolver was found underneath passenger side seat of vehicle defendant was driving, the butt of the handgun was facing outward towards the passenger seat, and officer testified that a person located either in the driver's side seat or the passenger's side seat could reach the weapon. [Jefferson v. State, 2010, 4 A.3d 17, 194 Md.App. 190. Weapons ⚔ 291\(7\)](#)

Evidence was sufficient to support conviction for possession of a firearm, even though defendant was a passenger in vehicle in which weapon was found; vehicle was owned by defendant's mother, defendant resided at the same address as his mother, weapon was found under the driver's seat, defendant was sitting in the back seat behind the driver, and an article of clothing was placed under the driver's seat, from behind the seat, to partially cover the weapon. [Henderson v. State, 2008, 960 A.2d 627, 183 Md.App. 86, certiorari granted 967 A.2d 182, 407 Md. 529, reversed 5 A.3d 1072, 416 Md. 125. Weapons ⚔ 291\(4\)](#)

Evidence was sufficient to show that defendant was shooter, so as to support convictions for second degree murder, use of handgun in felony or crime of violence, and wearing, carrying, or transporting handgun; shooting occurred in apartment, defendant drove distinctive-looking car, car was parked in front of apartment building at time of shooting, witnesses heard gunshots and immediately saw man exit apartment building, while holding his pants in manner indicating that he was carrying gun, and drive away in car, witnesses' description of man's general physical characteristics matched those of defendant, defendant hid from police for two months, and victim was wife's boyfriend. [Johnson v. State, 2004, 848 A.2d 660, 156 Md.App. 694. Homicide ⚔ 1181; Homicide ⚔ 1184; Weapons ⚔ 291\(7\); Weapons ⚔ 294\(3\)](#)

Formerly cited as MD CODE Art. 27, § 36B

Sufficient evidence supported conviction of defendant, who was driver of rented vehicle, for knowingly transporting a handgun; although gun was found in trunk of car under jacket belonging to one of two passengers also in car, defendant was in possession and control of vehicle at time of traffic stop which led to handgun being found in trunk, defendant had right to grant and deny access to trunk of car, and knowledge of contents of vehicle could be imputed to defendant as driver of vehicle. [State v. Smith, 2003, 823 A.2d 664, 374 Md. 527. Weapons ⚔ 291\(4\)](#)

Evidence was legally sufficient to permit finding that defendant was in possession of handgun and to support jury verdicts convicting defendant of transporting a handgun in a vehicle and illegal possession of regulated firearm by convicted felon; baggie in defendant's pocket matched baggies containing cocaine found on car's center console, and it linked defendant in as a full participant in whatever illegal activity had been transpiring in car, and his linkage with contraband and his involvement in criminal possession of cocaine also gave belated meaning to his earlier gesturing as police car approached, and all of these circumstances strengthened permissible inference as to defendant's knowledge of and possession of handgun found under the seat in front of him. [Burns v. State, 2003, 817 A.2d 885, 149 Md.App. 526. Weapons ⚔ 293\(3\); Weapons ⚔ 294\(3\)](#)

One way to establish that there is a greater nexus between passenger and contraband than between driver-owner and contraband, so as to defeat a conviction of vehicle's driver-owner for knowingly transporting contraband based solely on driver-owner status, is to present evidence that the passenger had better access to the contraband, while other ways would be to show use of contraband, consciousness of guilt, efforts to avoid detection or arrest, or location or size of contraband. (Per Adkins, J., with three judges concurring and three judges concurring in result.) [Smith v. State, 2002, 805 A.2d 1108, 145 Md.App. 400, certiorari granted 812 A.2d 288, 372 Md. 132, reversed 823 A.2d 664, 374 Md. 527. Weapons ⚔ 291\(2\)](#)

Circumstantial evidence may be used to determine whether handgun carried by defendant was operable, as required to establish violation of statute prohibiting carrying of handgun. [Code 1957, Art. 27, § 36B\(b\). Mangum v. State, 1996, 676 A.2d 80, 342 Md. 392. Weapons ⚔ 281; Weapons ⚔ 291\(3\)](#)



Circumstantial evidence supported determination that sawed-off shotgun being carried by defendant was operable, as required to establish violation of statute prohibiting carrying of handguns; defendant was carrying bandolier of shotgun shells when police first made contact with him, claimed that people were following him and he was in fear for his life, and admitted to having fired a shotgun previous day. [Code 1957, Art. 27, § 36B\(b\). Mangum v. State, 1996, 676 A.2d 80, 342 Md. 392. Weapons ⚔ 281; Weapons ⚔ 291\(3\)](#)


In prosecution for knowingly transporting handgun in vehicle traveling upon ways generally used by public, evidence that defendant had handgun on his person while traveling in vehicle on highway was sufficient to sustain conviction. [Code 1957, Art. 27, § 36B\(b\). Battle v. State, 1985, 499 A.2d 200, 65 Md.App. 38, certiorari denied 503 A.2d 252, 305 Md. 243. Weapons ⚔ 291\(4\)](#)

Evidence on issue whether weapon in question was a "handgun" was insufficient to sustain defendant's convictions of unlawful possession of handgun and use of handgun in commission of felony. [Code 1957, art. 27, § 441. Beard v. State, 1980, 423 A.2d 275, 47 Md.App. 410. Weapons ⚔ 281; Weapons ⚔ 291\(3\); Weapons ⚔](#)


Formerly cited as MD CODE Art. 27, § 36B



294(1)


Evidence which showed only that knife carried by defendant was dangerous and deadly weapon, but which failed to show that knife was not penknife without switchblade, was legally insufficient to sustain conviction for unlawfully carrying knife. [Code 1957, art. 27, § 36](#). [Mackall v. State, 1978, 387 A.2d 762, 283 Md. 100](#). [Weapons](#)  281; [Weapons](#)  291(3)


Evidence, including two police officers' observations that defendant was carrying handgun and removal of handgun from his person at time of lawful arrest, was sufficient to support defendant's conviction of carrying handgun in violation of statute. [Code 1957, art. 27, § 36B](#). [Grandison v. State, 1976, 363 A.2d 523, 32 Md.App. 705](#), certiorari granted 279 Md. 682, certiorari granted 367 A.2d 1253. [Weapons](#)  291(3)

21. Questions of law or fact


Issue of whether machete located in plain view on front seat of tractor-trailer was “concealed” was for jury in prosecution under Maryland statute prohibiting wearing or carrying of concealed dangerous weapons, in light of evidence that search occurred during daylight hours, tractor-trailer was higher off ground than ordinary vehicle, and security officers noticed machete as soon as they stepped up to passenger's window. [U.S. v. Robson, 2005, 391 F.Supp.2d 383](#). [Weapons](#)  304

Under Maryland law, issue of whether handguns seized from defendant's tractor-trailer were operable was for jury in criminal prosecution for illegal transportation of handgun, even though government did not test fire weapons, in light of evidence that handguns were loaded with ammunition, and were located in tractor-trailer cab within short distance from defendant. [U.S. v. Robson, 2005, 391 F.Supp.2d 383](#). [Weapons](#)  301; [Weapons](#)  304

Evidence created jury question as to necessity defense to unlawful possession of handgun by defendant who was attacked and shot, who wrestled gun away from assailants and fell from apartment window, who then picked up gun to defend himself, who was victim of gunshots, and who had no time to seek police protection. [Code 1957, Art. 27, § 36B\(b\)](#). [State v. Crawford, 1987, 521 A.2d 1193, 308 Md. 683](#). [Criminal Law](#)  739(1)

Defendant's version of events occurring on night of his arrest generated jury issue as to whether he armed himself in actual self-defense. [Code 1957, Art. 27, § 36B](#). [Crawford v. State, 1985, 487 A.2d 1214, 61 Md.App. 620](#), certiorari granted 493 A.2d 351, 303 Md. 297, affirmed 521 A.2d 1193, 308 Md. 683. [Criminal Law](#)  739(1)

22. Instructions

Error, if any, in providing jury with supplemental instruction in handgun concealment trial, by reading portion of statute relating to wearing, carrying, or transporting handgun, and sending a written copy of statute to the jury room during deliberations, was harmless beyond a reasonable doubt because copy of the statute confirmed in writing what the jury had already heard when the trial court instructed the jury. [Jefferson v. State, 2010, 4 A.3d 17, 194 Md.App. 190](#). [Criminal Law](#)  1174(1)

Formerly cited as MD CODE Art. 27, § 36B

Trial court's response to jury note requesting a supplemental instruction, by reading portion of statute relating to wearing, carrying, or transporting handgun, and sending a written copy of statute to the jury room during deliberations, was within trial court's discretion; providing the jury with a written copy of the statute was no different than providing a written copy of an oral jury instruction permitted by rule governing items that may be taken to jury room. [Jefferson v. State, 2010, 4 A.3d 17, 194 Md.App. 190. Criminal Law 🔑 863\(2\)](#)

Trial judge's action of giving supplemental instructions to jury during deliberations in prosecution for carrying a handgun, in which judge, over defendant's objections, instructed jury that "it's the burden of the defendant to prove the existence of the license, if one exists, not the State," was error; while having a license to carry handgun was affirmative defense, defendant did not raise such defense in any pleading or at trial, and no evidence was presented at trial that pertained to defendant having a license. [Brogden v. State, 2005, 866 A.2d 129, 384 Md. 631. Criminal Law 🔑 863\(2\)](#)

Trial judge's erroneous supplemental instructions to jury during deliberations in prosecution for carrying a handgun, in which court instructed jury that "it's the burden of the defendant to prove the existence of the license, if one exists, not the State" when defendant had not raised such affirmative defense of carrying a license at trial, resulted in unfair prejudice to defendant; supplemental charge imposed burden of proof on defendant that he never had. [Brogden v. State, 2005, 866 A.2d 129, 384 Md. 631. Criminal Law 🔑 1174\(1\)](#)

Trial court's erroneous instruction on definition of handgun warranted reversal of convictions for unlawfully carrying handgun and unlawful use of handgun in commission of crime of violence, but had no impact on conviction for attempted robbery with dangerous or deadly weapon. [Code 1957, Art. 27, §§ 36B, 36F\(a\). Wright v. State, 1987, 522 A.2d 401, 70 Md.App. 616. Criminal Law 🔑 1172.1\(3\)](#)

Jury should have been instructed on question of necessity, i.e., duress of circumstances, where evidence offered by defendant as to events occurring on night of his arrest, if believed, established that he was in peril, that he was under attack by assailants bent on his destruction, and that his carrying of handgun was excusable. [Code 1957, Art. 27, § 36B. Crawford v. State, 1985, 487 A.2d 1214, 61 Md.App. 620, certiorari granted 493 A.2d 351, 303 Md. 297, affirmed 521 A.2d 1193, 308 Md. 683. Criminal Law 🔑 772\(6\)](#)

23. Sentence and punishment

Imposition of maximum statutory penalty upon prisoner following his conviction of robbery with a deadly weapon and use of a handgun in the commission of a crime of violence and assault with intent to commit murder and use of a handgun in the commission of a crime of violence did not violate any federal right of state prisoner. [Coates v. State of Maryland, 1977, 436 F.Supp. 226. Habeas Corpus 🔑 507](#)

That jury verdict acquitting defendant of wearing, carrying, and transporting a handgun was factually inconsistent with jury verdict finding defendant guilty of unlawful possession of a regulated firearm did not warrant setting aside conviction; to warrant setting aside conviction, verdicts had to be legally inconsistent. [McNeal v. State, 2011, 28 A.3d 88, 200 Md.App. 510, certiorari granted 33 A.3d 981, 424 Md. 55. Criminal Law 🔑 878\(4\)](#)

Formerly cited as MD CODE Art. 27, § 36B

Sentencing provisions of statute prohibiting wearing, carrying or transporting handgun did not affect coverage of exceptions contained in statute. [Code 1957, Art. 27, § 36B\(b\)\(iv\), \(c\)](#). [Wieland v. State, 1994, 643 A.2d 446, 101 Md.App. 1](#). [Weapons](#) 🔑 199

Five-year sentence for unlawfully transporting handgun exceeded statutory limit for first conviction and could not stand. [Code 1957, Art. 27, § 36B\(b\), \(b\)\(i\)](#); [Md.Rule 4-351](#). [Rose v. State, 1988, 539 A.2d 1142, 74 Md.App. 644](#), certiorari denied [542 A.2d 858, 313 Md. 31](#). [Weapons](#) 🔑 342

While State's notice of enhanced punishment did not completely comply with Supreme Court rules, deficiency was harmless beyond reasonable doubt, where State served notice months prior to trial of its intent to seek additional penalties based on evidence regarding defendant's prior conviction of possession of handgun violation, notice correctly stated defendant faced ten-year sentence, and defendant did not allege that, had he received more detailed notice, he would have conducted defense differently. [Md.Rule 4-245](#); [Code 1957, Art. 27, § 36B\(b\)\(i\)](#). [Ford v. State, 1988, 534 A.2d 992, 73 Md.App. 391](#). [Criminal Law](#) 🔑 1177.3(2); [Sentencing And Punishment](#) 🔑 240

For defendant to be sentenced for second offense of unlawful carrying or transporting of handgun, it was incumbent upon State to give notice prior to trial, and failure of State to do so required remand for resentencing. [Code 1957, Art. 27, § 36B\(b\)\(ii\)](#). [Armstrong v. State, 1986, 515 A.2d 1190, 69 Md.App. 23](#), certiorari denied [522 A.2d 392, 309 Md. 47](#), certiorari denied [522 A.2d 393, 309 Md. 48](#). [Criminal Law](#) 🔑 1181.5(9); [Sentencing And Punishment](#) 🔑 1361


Where state's notice of intent to seek enhanced punishment merely stated that defendant was convicted under specifically named statute, but notice included neither date of conviction, court in which proceeding occurred, statute under which conviction was obtained, nor exact nature of offense with which defendant was charged, notice was defective. [Code 1957, Art. 27, §§ 36, 36\(a\), 36B, 36B\(b\)](#); [Md.Rules 734, 734, subd. b](#). [King v. State, 1984, 477 A.2d 768, 300 Md. 218](#). [Sentencing And Punishment](#) 🔑 240

Defendant, who was convicted of unlawfully transporting a handgun and was given three-year sentence, was not entitled to relief on basis of contention that trial court improperly concluded that defendant and his companions had been contemplating armed robbery and considered such uncharged crime in sentencing defendant, in view of evidence indicating that defendant and companions had been casing carryout shop and that, but for excellent police work, loaded handguns would have been used for robbery. [Tann v. State, 1979, 406 A.2d 448, 43 Md.App. 544](#). [Weapons](#) 🔑 342

24. Review

Denial of motion to sever trial for possessing pistol from trial for possessing revolver after being convicted of crime of violence did not unduly prejudice defendant; same evidence as to each charge would support finding that defendant unlawfully possessed handgun; presumption of prejudice was inapplicable; and trial judge gave cautionary instructions. [Code 1957, Art. 27, §§ 36B\(b\), 445\(c\)](#); [Md.Rules 734, 735, 745, 4-253, 4-253\(b, c\)](#). [Frazier v. State, 1990, 569 A.2d 684, 318 Md. 597](#). [Criminal Law](#) 🔑 1166(6)

Formerly cited as MD CODE Art. 27, § 36B

Defendants waived for review on appeal challenge to trial court's instruction on offense of unlawful transportation of handgun where defendants offered no objection to instruction. [Code 1957, Art. 27, § 36B\(b\)](#); [Md.Rule 4-325\(e\)](#). [Armstrong v. State, 1986, 515 A.2d 1190, 69 Md.App. 23](#), certiorari denied [522 A.2d 392, 309 Md. 47](#), certiorari denied [522 A.2d 393, 309 Md. 48](#). [Criminal Law](#)  [1038.1\(4\)](#)

MD Code, Criminal Law, § 4-203, MD CRIM LAW § 4-203

The statutes and Constitution are current through Chapters 1 and 2 of the 2012 Regular Session of the General Assembly.

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