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Formerly cited as MD CODE Art. 27, § 36



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

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

▢ [Title 4](#). Weapon Crimes

▢ [Subtitle 1](#). General Provisions

→→ **§ 4-101. Dangerous weapons**

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) “Nunchaku” means a device constructed of two pieces of any substance, including wood, metal, or plastic, connected by any chain, rope, leather, or other flexible material not exceeding 24 inches in length.

(3)(i) “Pepper mace” means an aerosol propelled combination of highly disabling irritant pepper-based products.

(ii) “Pepper mace” is also known as oleoresin capsicum (o.c.) spray.

(4) “Star knife” means a device used as a throwing weapon, consisting of several sharp or pointed blades arrayed as radially disposed arms about a central disk.

(5)(i) “Weapon” includes a dirk knife, bowie knife, switchblade knife, star knife, sandclub, metal knuckles, razor, and nunchaku.

(ii) “Weapon” does not include:

1. a handgun; or

2. a penknife without a switchblade.

Exceptions for certain individuals

(b) This section does not prohibit the following individuals from carrying a weapon:

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(1) an officer of the State, or of any county or municipal corporation of the State, who is entitled or required to carry the weapon as part of the officer's official equipment, or by any conservator of the peace, who is entitled or required to carry the weapon as part of the conservator's official equipment, or by any officer or conservator of the peace of another state who is temporarily in this State;

(2) a special agent of a railroad;

(3) a holder of a permit to carry a handgun issued under Title 5, Subtitle 3 of the Public Safety Article; or

(4) an individual who carries the weapon as a reasonable precaution against apprehended danger, subject to the right of the court in an action arising under this section to judge the reasonableness of the carrying of the weapon, and the proper occasion for carrying it, under the evidence in the case.

Prohibited

(c)(1) A person may not wear or carry a dangerous weapon of any kind concealed on or about the person.

(2) A person may not wear or carry a dangerous weapon, chemical mace, pepper mace, or a tear gas device openly with the intent or purpose of injuring an individual in an unlawful manner.

(3)(i) This paragraph applies in Anne Arundel County, Baltimore County, Caroline County, Cecil County, Harford County, Kent County, Montgomery County, Prince George's County, St. Mary's County, Talbot County, Washington County, and Worcester County.

(ii) A minor may not carry a dangerous weapon between 1 hour after sunset and 1 hour before sunrise, whether concealed or not, except while:

1. on a bona fide hunting trip; or

2. engaged in or on the way to or returning from a bona fide trap shoot, sport shooting event, or any organized civic or military activity.

Penalties

(d)(1) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

(2) For a person convicted under subsection (c)(1) or (2) of this section, if it appears from the evidence that

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the weapon was carried, concealed or openly, with the deliberate purpose of injuring or killing another, the court shall impose the highest sentence of imprisonment prescribed.

CREDIT(S)

Added by [Acts 2002, c. 26, § 2, eff. Oct. 1, 2002](#). Amended by [Acts 2002, c. 213, § 6, eff. Oct. 1, 2002](#); [Acts 2002, c. 571, § 1, eff. Oct. 1, 2002](#); [Acts 2003, c. 17, § 1, eff. Oct. 1, 2003](#); [Acts 2003, c. 21, § 1, eff. April 8, 2003](#).

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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, § 36.

Throughout this section, the references to a “deadly” weapon are deleted as included in the references to a “dangerous” weapon.

Subsection (a)(1) of this section is new language used as the standard introductory language to a definition subsection.

In subsection (b)(1) of this section, the reference to a “municipal corporation” is substituted for the former reference to “any ... city” for consistency with usage in Md. Constitution, Art. XI-E.

In subsection (b)(3) of this section, the reference to a permit to carry a “handgun” under Art. 27, § 36E is substituted for the former reference to a “concealed weapon” permit for clarity, because Art. 27, § 36E only applies to a permit to carry a handgun.

In subsection (b)(4) of this section, the reference to an “individual” is substituted for the former reference to a “person” because only a natural person may apprehend danger. Similarly, in subsection (c)(2) of this section, the reference to an “individual” is substituted for the former reference to a “person” because only a natural person may be injured by these weapons.

In subsection (c)(4)(ii) of this section, the former reference to a weapon “other than a handgun” is deleted as redundant of the exclusion of a “handgun” from the term “weapon” defined in subsection (a)(5) of this section.

In subsection (d)(1) of this section, the former reference to imprisonment “in jail, or sentenced to the Maryland Department of Correction” is deleted 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 (d)(1)(ii) of this section, the term “killing” is substituted for the former reference to “destroying the life of” another, for clarity.

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The Criminal Law Article Review Committee notes, for the consideration of the General Assembly, that, in subsection (b)(1) of this section, it is unclear whether the reference to an “officer of the State” who is entitled to wear a dangerous weapon denotes a “law enforcement officer” or some other, broader class of State official. Similarly, in subsection (b)(1) of this section, the reference to an officer of a “county or municipal corporation” entitled to wear a dangerous weapon, which is substituted for the former reference to an officer of a “county or city” so entitled, does not appear to include a law enforcement officer of a special taxing district such as Crofton, and may not include a law enforcement officer of a multicounty unit such as the Maryland-National Capital Park and Planning Commission. The General Assembly may wish to address the scope of law enforcement or other officers who are exempt from this section but are not employed by a State unit or a county or municipal corporation.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (b)(2) of this section, it is unclear whether the reference to a “special agent of a railroad” who is entitled to wear a dangerous weapon denotes a “Maryland railroad police officer” appointed under Art. 23, §§ 256 through 266 or some other class of railroad agent.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that the crimes established in subsection (c)(3) and (4) of this section apply only to minors, although they are not characterized as delinquent acts. It appears from the statute that these crimes would be prosecuted in criminal rather than juvenile court, although in practice they apparently are not.

The Criminal Law Article Review Committee also notes, for the consideration of the General Assembly, that in subsection (d)(1) of this section, the penalty for anyone carrying a concealed dangerous weapon is either imprisonment not exceeding 3 years or a fine not exceeding \$1,000 *but not both*. However, the penalty for a minor carrying pepper mace under subsection (d)(2) of this section is imprisonment not exceeding 3 years or a fine not exceeding \$1,000 *or both*. The General Assembly may wish to address the disparity between these sentences.

Defined terms: “County” § 1-101

“Minor” § 1-101

“Person” § 1-101

“State” § 1-101

HISTORICAL AND STATUTORY NOTES

2002 Legislation

Acts 2002, c. 213, § 6, in subsec. (d)(1)(i), inserted “or both”.

Acts 2002, c. 571, § 1, deleted subsec. (c)(3); redesignated subsecs. (d)(1)(i) and (d)(1)(ii) as subsecs. (d)(1) and (d)(2), respectively; and deleted subsec. (d)(2). As added by Acts 2002, c. 26, § 2, subsecs. (c)(3) and (d)(2)

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read:

“[(c)](3) Except as authorized under subsection (b) of this section, a minor may not possess pepper mace, either openly or concealed.

“[(d)](2) A person who violates subsection (c)(3) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.”

Acts 2002, c. 571, § 2, provides:

“SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that a school or school board of education may establish policies to limit or prohibit the possession of pepper mace on school property.”

2003 Legislation

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

Acts 2003, c. 21, § 1, made technical corrections to the Code.

Derivation:

Former Art. 27, § 36, related to possession of weapons or chemical devices, repealed by Acts 2002, c. 26, § 1.

LIBRARY REFERENCES

[Weapons](#)  5, 17(8).

Westlaw Key Number Searches: 406k5; 406k17(8).

[C.J.S. Weapons](#) §§ 3, 15.

RESEARCH REFERENCES

ALR Library

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

Encyclopedias

[Am. Jur. 2d Weapons and Firearms § 14](#), What Constitutes Concealment; Generally.

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

[Maryland Law Encyclopedia Weapons and Firearms § 5](#), Carrying Concealed Weapons, Generally--Exceptions.

UNITED STATES CODE ANNOTATED

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

UNITED STATES SUPREME COURT

Weapons offenses, use of firearm, firearm traded for drugs, see [Watson v. U.S.](#), 2007, 128 S.Ct. 579, 552 U.S. 74, 169 L.Ed.2d 472, on remand 262 Fed.Appx. 612, 2008 WL 205071.

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[1. 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

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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)

2. Due process of law

Defendant was not denied his constitutional rights or denied due process of law under Fourteenth Amendment because not assigned counsel in prosecution for carrying deadly weapon concealed on or about his person, for carrying openly deadly weapon with intent to injure, and for carrying deadly weapon in automobile. [Code 1957, art. 27, § 36](#); Baltimore City Code 1950, art. 24, § 48; Const. Declaration of Rights, art. 21; Maryland Rules, Rule 723b; [U.S.C.A.Const. Amend. 14. Patterson v. State, 1961, 175 A.2d 746, 227 Md. 194](#), vacated [83 S.Ct. 1103, 372 U.S. 776, 10 L.Ed.2d 137](#), conformed to [191 A.2d 237, 231 Md. 509](#). [Constitutional Law](#) 🔑 4809

3. Nature and elements of offense

Offense of carrying a deadly weapon openly with intent to injure is a specific intent crime. [Oesby v. State, 2002, 788 A.2d 662, 142 Md.App. 144](#), certiorari denied [798 A.2d 553, 369 Md. 181](#). [Weapons](#) 🔑 169

There are three distinct elements necessary to constitute a violation of concealed weapon statute: first, the weapon in question must be one of the weapons listed or must be considered to be a dangerous or deadly weapon; second, the person must be wearing or carrying a weapon; and third, weapon must be concealed upon or about the person. [Code 1957, Art. 27, § 36\(a\)](#). [In re Colby H., 2001, 766 A.2d 639, 362 Md. 702](#). [Weapons](#) 🔑 163

To violate statute prohibiting wearing or carrying concealed weapon, weapon merely needs to be on the body or about the person and concealed; it is not necessary that the weapon actually be transported from place to place. [Code 1957, Art. 27, § 36\(a\)](#). [In re Colby H., 2001, 766 A.2d 639, 362 Md. 702](#). [Weapons](#) 🔑 165

Term “wear,” as used in concealed weapon statute, is limited to areas that are in very close proximity to an alleged offender. [Code 1957, Art. 27, § 36\(a\)](#). [In re Colby H., 2001, 766 A.2d 639, 362 Md. 702](#). [Weapons](#) 🔑 165

Unit of prosecution is the act of wearing or carrying weapon, for purposes of statute providing that every person who wears or carries dangerous or deadly weapon openly with the intent or purpose of injuring any person in any lawful manner is guilty of a misdemeanor; it is the act of wearing or carrying itself, and it is a consummated crime even if no human being, other than the defendant himself, was anywhere within a ten-mile radius. [Code 1957, Art. 27, § 36\(a\)\(1\)](#). [Sullivan v. State, 2000, 753 A.2d 601, 132 Md.App. 682](#), certiorari denied [762 A.2d 969, 362 Md. 36](#). [Criminal Law](#) 🔑 29(15); [Weapons](#) 🔑 163

Spotlight is exclusively on the defendant himself and on what he is wearing or carrying for purposes of statute

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providing that every person who wears or carries dangerous or deadly weapon openly with the intent or purpose of injuring any person in any lawful manner is guilty of a misdemeanor; court is unconcerned with who or with how many may be in the shadows. [Code 1957, Art. 27, § 36\(a\)\(1\)](#). [Sullivan v. State, 2000, 753 A.2d 601, 132 Md.App. 682](#), certiorari denied [762 A.2d 969, 362 Md. 36](#). [Weapons 🔑 163](#)

Unit of prosecution is not each spectator to an act of wearing or carrying weapon, nor is it each potential victim threatened by such a wearing or carrying, for purposes of statute providing that every person who wears or carries dangerous or deadly weapon openly with the intent or purpose of injuring any person in any lawful manner is guilty of a misdemeanor. [Code 1957, Art. 27, § 36\(a\)\(1\)](#). [Sullivan v. State, 2000, 753 A.2d 601, 132 Md.App. 682](#), certiorari denied [762 A.2d 969, 362 Md. 36](#). [Criminal Law 🔑 29\(15\)](#); [Weapons 🔑 163](#)

As long as the defendant wears or carries the weapon with the requisite intent to harm someone, the crime of carrying deadly weapon is fully consummated; it is not negated by the absence of any potential victim from the scene nor is it multiplied by the presence of multiple potential or intended victims at the scene. [Code 1957, Art. 27, § 36\(a\)\(1\)](#). [Sullivan v. State, 2000, 753 A.2d 601, 132 Md.App. 682](#), certiorari denied [762 A.2d 969, 362 Md. 36](#). [Criminal Law 🔑 29\(15\)](#); [Weapons 🔑 163](#)

In order to convict a person of carrying or possessing any rifle, gun, or knife on school property, State must show that instrument possessed can, under the circumstances, reasonably be considered a deadly weapon. [Code 1957, Art. 27, § 36A](#). [In re Melanie H., 1998, 706 A.2d 621, 120 Md.App. 158](#). [Weapons 🔑 111](#); [Weapons 🔑 171](#)

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](#)


To support conviction of carrying or wearing dangerous or deadly weapon, state must establish that accused was carrying weapon or that it was in such proximity to him as would make it available for his immediate use. [Code Supp. art. 27, § 36](#). [Corbin v. State, 1965, 206 A.2d 809, 237 Md. 486](#). [Weapons 🔑 163](#)


4. Weapons prohibited



Folding knife carried by defendant fell within penknife exception to statute defining offense of carrying a weapon openly with intent to injure, and was thus not “dangerous weapon ” within scope of statute; knife had two blades, both of which folded in its handle, and therefore constituted penknife regardless of length of its blades. [Thornton v. State, 2005, 876 A.2d 142, 162 Md.App. 719](#), certiorari granted [882 A.2d 286, 388 Md. 673](#), reversed [919 A.2d 678, 397 Md. 704](#). [Weapons 🔑 113](#); [Weapons 🔑 164](#)



Fact that pepper spray was not included in the statutory list of weapons that could not be worn or carried in a concealed manner did not mean that pepper spray could never be used in deadly or dangerous manner. [Code 1957, Art. 27, § 36\(a\)\(1\)](#). [Handy v. State, 2000, 745 A.2d 1107, 357 Md. 685](#). [Assault And Battery 🔑 56](#)



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
Statute that proscribes possession of deadly weapons on school property does not apply to possession of butter knife; although legislature used language indicating that possession of any knife on school property was prohibited, legislative intent was to prohibit carrying of dangerous weapons of any kind onto public school property, particularly deadly weapons such as rifles, guns, and knives, not possession of any knife-shaped object. [Code 1957, Art. 27, § 36A](#). [In re Melanie H., 1998, 706 A.2d 621, 120 Md.App. 158](#). [Infants](#)  153



Butter knife discovered in juvenile's school locker, after juvenile had been stopped on suspicion that she used marijuana and after she had turned out her pockets, revealing no contraband, was not reasonably adapted for use, or capable of being used, as a deadly weapon, and, thus, juvenile could not be adjudicated delinquent for possessing deadly weapon on school property. [Code 1957, Art. 27, § 36A](#). [In re Melanie H., 1998, 706 A.2d 621, 120 Md.App. 158](#). [Infants](#)  153



To convict an accused for carrying or wearing deadly weapon, state must prove, beyond reasonable doubt, that purported deadly weapon did not fall within statutory penknife exception. [Code 1957, Art. 27, § 36\(a\)\(1\)](#). [Stanley v. State, 1997, 701 A.2d 1174, 118 Md.App. 45](#), certiorari granted [707 A.2d 90, 349 Md. 105](#), affirmed in part, vacated in part [720 A.2d 323, 351 Md. 733](#). [Weapons](#)  250; [Weapons](#)  295

For objects not legislatively classified as dangerous and deadly per se, the state must prove that the object is within the class described as “any other dangerous or deadly weapon of any kind,” under statute making it unlawful to carry concealed dangerous or deadly weapon. [Code 1957, Art. 27, § 36\(a\)](#). [Anderson v. State, 1992, 614 A.2d 963, 328 Md. 426](#). [Weapons](#)  111; [Weapons](#)  168

Not all knives are dangerous or deadly weapons and, depending on the circumstances, the concealed carrying of some cutting tools may be considered lawful. [Code 1957, Art. 27, § 36\(a, d\)](#). [Anderson v. State, 1992, 614 A.2d 963, 328 Md. 426](#). [Weapons](#)  113; [Weapons](#)  168



In trial for carrying dangerous weapon openly with intent to injure, evidence that object was knife over three inches long was insufficient to show that knife did not fall within statutory exception for penknives without switchblades. [Code 1957, Art. 27, § 36\(a\)](#). [Johnson v. State, 1992, 602 A.2d 255, 90 Md.App. 638](#). [Weapons](#)  113; [Weapons](#)  164



Penknife exception to prohibition against carrying weapon applies to openly carried weapons, not only to offense of carrying concealed weapon. [Code 1957, Art. 27, § 36\(a\)](#). [Bacon v. State, 1991, 586 A.2d 18, 322 Md. 140](#). [Weapons](#)  113; [Weapons](#)  164



Pocketknife that defendant withdrew from pocket with blade in locked and open position was “penknife” that was excepted from prohibition against carrying weapon openly with intent to injure; fact that blade was opened and locked did not remove knife's identity as penknife. [Code 1957, Art. 27, § 36\(a\)](#). [Bacon v. State, 1991, 586 A.2d 18, 322 Md. 140](#). [Weapons](#)  113; [Weapons](#)  164



“Buck knife,” knife with blade approximately three and three-quarter inches long and handle four and three-



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
quarter inches in length, with blade between three-quarter and one inch wide tapering to narrow point, which blade folded into handle, and when open, blade locked into place and could not be folded down without purposeful depression of mechanism on bottom opening side of handle, was within “penknife” exception from prohibition against openly carrying weapon. [Code 1957, Art. 27, § 36\(a\)](#). [Bacon v. State, 1991, 586 A.2d 18, 322 Md. 140](#). [Weapons](#)  113; [Weapons](#)  164

Pocketknife that defendant withdrew from his pocket with blade in locked and open position was not “penknife” that was excepted from prohibition against carrying weapon openly with intent to injure. [Code 1957, Art. 27, § 36\(a\)](#). [Bacon v. State, 1990, 573 A.2d 114, 82 Md.App. 737](#), certiorari granted [579 A.2d 281, 320 Md. 636](#), reversed [586 A.2d 18, 322 Md. 140](#). [Weapons](#)  113; [Weapons](#)  164


Knife carried by juvenile charged with committing delinquent act by carrying “concealed dangerous and deadly weapon” fell within “penknife without switchblade” exception to statute making it misdemeanor for person to wear or carry any “switchblade knife” where knife blade folded into handle and locked into place when open, but lacked additional offensive qualities of switchblade or gravity knife which made those instruments instantly available for any violent design at command of user. [Code 1957, Art. 27, § 36\(a\)](#). [In re Daryl L., 1986, 511 A.2d 1108, 68 Md.App. 375](#). [Weapons](#)  113; [Weapons](#)  164

Weapons exception set out in enacting clause defining offense of unlawfully carrying knife is essential ingredient of offense since offense defined is committed only if certain weapons are carried; weapons excepted are as necessary to description of offense as are weapons proscribed and it is incumbent upon state to prove, beyond reasonable doubt, that weapon carried was one within ambit of statute. [Code 1957, art. 27, § 36](#). [Mackall v. State, 1978, 387 A.2d 762, 283 Md. 100](#). [Weapons](#)  110; [Weapons](#)  164


“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


Twenty-two caliber starter's pistol, which was similar in appearance to regular pistol, was both “pistol” and “dangerous weapon” within statute prohibiting carrying of any pistol or other dangerous or deadly weapon. [Code Supp. art. 27, § 36](#). [Jackson v. State, 1963, 191 A.2d 432, 231 Md. 591](#). [Weapons](#)  112(2); [Weapons](#)  164


5. Manner of carrying or concealment



Defendant's action of walking several steps toward victim while holding beer stein, which was used to hit victim in head, did not constitute “carrying” that weapon, for purposes of offense of carrying a dangerous weapon openly with the intent to injure; defendant carried stein only a short distance, defendant had no purpose other than to injure victim, and defendant's movement was necessary to commit assault. [Chilcoat v. State, 2004, 843 A.2d 240, 155 Md.App. 394](#), certiorari denied [851 A.2d 594, 381 Md. 675](#). [Weapons](#)  165


Formerly cited as MD CODE Art. 27, § 36


A defendant may be convicted of wearing or carrying a dangerous weapon openly with the intent to injure when the wearing or carrying occurred inside his own residence. [Thomas v. State, 2002, 792 A.2d 368, 143 Md.App. 97, certiorari denied 801 A.2d 1033, 369 Md. 573. Weapons](#)  203(2)


Generally, under concealed weapon statute, a person in legal possession of a dangerous and deadly weapon may conceal or store it as long as the person is on property which the person owns, or is a legal resident of, or is an invited guest who has informed the owner or resident of the presence of the weapon. [Code 1957, Art. 27, § 36 \(a\). In re Colby H., 2001, 766 A.2d 639, 362 Md. 702. Weapons](#)  203(2)


Juvenile was not “wearing” or “carrying,” within meaning of concealed weapon statute, a shotgun that police officer seized from under juvenile's mattress at juvenile's residence, though weapon may have been in close proximity to juvenile when he purchased it and when he placed it under mattress, where juvenile was not present at residence when his mother found shotgun or when officer seized it. [Code 1957, Art. 27, § 36\(a\). In re Colby H., 2001, 766 A.2d 639, 362 Md. 702. Weapons](#)  168

Carrying or wearing concealed weapon statute proscribes carrying of deadly weapon, regardless of whether it is carried concealed or openly. [Code 1957, Art. 27, § 36\(a\). Eldridge v. State, 1993, 619 A.2d 531, 329 Md. 307. Weapons](#)  164; [Weapons](#)  168

A weapon is “concealed” within statute prohibiting wearing or carrying a concealed weapon if it is so situated as not to be discernible by ordinary observation by those who would be near enough to see it if it were not concealed and who would come into contact with possessor in usual associations of life, but absolute invisibility is not required. [Code 1957, art. 27, § 36\(a\). Smith v. State, 1973, 308 A.2d 442, 18 Md.App. 612, certiorari denied 269 Md. 766. Weapons](#)  168


Although handle of pistol protruded above front seat of defendant's automobile, where it was nighttime when defendant was arrested and the pistol was not visible until light went on in car upon door opening, the defendant who permitted weapon to remain in position in which it could not be discerned in the dark by ordinary observation was guilty of carrying a “concealed weapon.” [Code 1957, art. 27, § 36\(a, b\). Smith v. State, 1973, 308 A.2d 442, 18 Md.App. 612, certiorari denied 269 Md. 766. Weapons](#)  168


Showing of absolute invisibility is not required to support finding that weapon was concealed. [Code 1957, art. 27, § 36. Giles v. State, 1970, 261 A.2d 806, 8 Md.App. 721. Weapons](#)  168

If a dangerous weapon is concealed in an automobile in such proximity to the owner as to make it available to him for his immediate use it is “concealed upon or about his person” in violation of statute against wearing or carrying a concealed weapon. [Code 1957, art. 27, § 36. Shipley v. State, 1966, 220 A.2d 585, 243 Md. 262. Weapons](#)  168




A weapon is “concealed” within statute prohibiting wearing or carrying a concealed weapon 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


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

come into contact with the possessor in usual associations of life, but absolute invisibility is not required; since ordinary observation does not extend to a search unusually careful, thorough or detailed, made because of suspicion that contraband which is not visible by ordinary observation may in actuality be present. [Code 1957, art. 27, § 36. Shipley v. State, 1966, 220 A.2d 585, 243 Md. 262. Weapons](#)  168


Even though the blade of dirk knife was visible when driver of automobile was not sitting in the automobile, it was a permissible inference for trier of facts that when he was in driver's seat knife would have been shielded at night from ordinary observation by his legs and feet, particularly when there was another pair of legs and feet obscuring the floor of the front of the automobile, warranting conclusion that weapon was concealed within statute prohibiting wearing or carrying a concealed weapon. [Code 1957, art. 27, § 36. Shipley v. State, 1966, 220 A.2d 585, 243 Md. 262. Weapons](#)  168


6. Intent

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

The intent required for prohibited concealed carrying of dangerous weapon requires only intent to carry object, such as utility knife, for its use as weapon, even if there is no intent to injure another. [Code 1957, Art. 27, § 36 \(a\). Anderson v. State, 1992, 614 A.2d 963, 328 Md. 426. Weapons](#)  169

Prohibition on carrying concealed instrument which is not legislatively declared to be dangerous or deadly weapon per se is not violated simply because instrument can be used to inflict serious or deadly harm; the person carrying the object must have at least the general intent to carry the instrument for its use as a weapon, either of offense or defense, based on all of the circumstances. [Code 1957, Art. 27, § 36\(a\). Anderson v. State, 1992, 614 A.2d 963, 328 Md. 426. Weapons](#)  110; [Weapons](#)  169

A person may be carrying a utility knife for its use as a weapon, so as to violate prohibition against carrying dangerous weapon, even if the person's intent merely is to display the knife in the belief that the display will deter aggressors, without any intent to inflict bodily injury. [Code 1957, Art. 27, § 36\(a\). Anderson v. State, 1992, 614 A.2d 963, 328 Md. 426. Weapons](#)  169

Defendant was improperly convicted under statute prohibiting carrying of concealed dangerous and deadly weapon without consideration of his intent, where utility knife that defendant was carrying was not dangerous and deadly weapon per se. [Code 1957, Art. 27, § 36\(a\). Anderson v. State, 1992, 614 A.2d 963, 328 Md. 426. Weapons](#)  169

7. Merger of offenses

Formerly cited as MD CODE Art. 27, § 36

Merger of sentence for carrying a dangerous weapon openly with the intent to injure into conviction for robbery with a dangerous weapon was warranted, as it would be contrary to common sense, and, thus, intent of legislature, to impose additional sentence for crime of carrying weapon used in robbery openly, with intent to injure. [Somers v. State, 2004, 846 A.2d 1065, 156 Md.App. 279, certiorari denied 855 A.2d 350, 382 Md. 347. Sentencing And Punishment](#) 🔑 539

Conviction of wearing and carrying deadly weapon openly with intent to injure did not merge into offense of robbery with dangerous or deadly weapon under rule of lenity. [Code 1957, Art. 27, § 36\(a\). Selby v. State, 1988, 544 A.2d 14, 76 Md.App. 201, certiorari granted 548 A.2d 845, 314 Md. 95, affirmed 571 A.2d 1236, 319 Md. 174. Criminal Law](#) 🔑 30

Because carrying deadly weapon required no intent to rape, offense of carrying deadly weapon openly with intent to injure another person was not necessarily merged into conviction of attempted first-degree rape. [Walker v. State, 1982, 452 A.2d 1234, 53 Md.App. 171. Criminal Law](#) 🔑 30

Offense of carrying concealed weapon was not merged into assaults with intent to murder and attempted robbery with dangerous weapon. [Code 1957, art. 27, §§ 12, 607. Veney v. State, 1962, 177 A.2d 883, 227 Md. 608. Criminal Law](#) 🔑 30

8. Double jeopardy

Defendant who was charged with assault, carrying openly a weapon with intent to injure, larceny, shoplifting and receiving stolen property, and who had previously been acquitted in trial on warrant of charge of assault, would not be placed in jeopardy twice by trial on indictment even though prior assault charge arose at same time as offenses charged in indictment, in view of fact that assault charged in warrant was upon different person than assault charged in indictment, and in view of fact that remaining offenses charged in indictment required different evidence and had different elements than previous assault charge. [Code 1957, art. 27, § 36; U.S.C.A.Const. Amend. 5. Cousins v. State, 1976, 354 A.2d 825, 277 Md. 383, certiorari denied 97 S.Ct. 652, 429 U.S. 1027, 50 L.Ed.2d 631. Double Jeopardy](#) 🔑 141; [Double Jeopardy](#) 🔑 182

Offense of carrying a weapon openly with intent to injure requires proof that defendant carried weapon openly, an element not found in offense of assault, and assault requires proof of attempt to injure another by force, an element not found in offense of carrying a weapon openly with intent to injure; thus, such offenses are not the same for double jeopardy purposes under required evidence test. [Code 1957, art. 27, § 36; U.S.C.A.Const. Amend. 5. Cousins v. State, 1976, 354 A.2d 825, 277 Md. 383, certiorari denied 97 S.Ct. 652, 429 U.S. 1027, 50 L.Ed.2d 631. Double Jeopardy](#) 🔑 141

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\(c\),](#)

Formerly cited as MD CODE Art. 27, § 36

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

9. Robbery

Pepper spray may become a “dangerous weapon,” within meaning of robbery with deadly weapon statute, when it is used as an offensive weapon to injure and overcome the intended victim; temporary blinding of an individual qualifies as serious harm. *Code 1957, Art. 27, § 488. Handy v. State*, 1999, 730 A.2d 710, 126 Md.App. 548, certiorari granted 735 A.2d 1105, 355 Md. 610, affirmed 745 A.2d 1107, 357 Md. 685. *Robbery* 🔑 11

It is the use to which the object is put that determines whether a particular object is a dangerous or deadly weapon within meaning of robbery with deadly weapon statute. *Code 1957, Art. 27, § 488. Handy v. State*, 1999, 730 A.2d 710, 126 Md.App. 548, certiorari granted 735 A.2d 1105, 355 Md. 610, affirmed 745 A.2d 1107, 357 Md. 685. *Robbery* 🔑 11

Pepper spray is not a dangerous or deadly weapon per se; however, that does not mean that pepper spray may not be a dangerous or deadly weapon, within meaning of robbery with deadly weapon statute, where it is used to blind and temporarily disable a person in furtherance of a robbery. *Code 1957, Art. 27, § 488. Handy v. State*, 1999, 730 A.2d 710, 126 Md.App. 548, certiorari granted 735 A.2d 1105, 355 Md. 610, affirmed 745 A.2d 1107, 357 Md. 685. *Robbery* 🔑 11

Lightweight toy plastic pistol is not “deadly weapon” or “dangerous weapon” within meaning of armed robbery statute. *Code 1957, Art. 27, § 488. Brooks v. State*, 1989, 552 A.2d 872, 314 Md. 585. *Robbery* 🔑 11

For instrument to qualify as dangerous or deadly weapon under armed robbery statute, instrument must be: designed as anything used or designed to be used in destroying, defeating, or injuring enemy, or as instrument of offensive or defensive combat; or immediately usable to inflict serious or deadly harm; or actually used in way likely to inflict serious or deadly harm. *Code 1957, Art. 27, § 488. Brooks v. State*, 1989, 552 A.2d 872, 314 Md. 585. *Robbery* 🔑 11

Statute proscribing robbery with a dangerous or deadly weapon was not particularly addressed to use of firearms but, rather, was intended to encompass devices used for intimidation regardless of an ability to execute the implied threat; character of a weapon as deadly or dangerous, for purposes of the statute, is not necessarily determined by its design, construction, or purpose. *Code 1957, art. 27, § 488. Whack v. State*, 1980, 416 A.2d 265, 288 Md. 137, appeal dismissed, certiorari denied 101 S.Ct. 1688, 450 U.S. 990, 68 L.Ed.2d 189. *Robbery* 🔑 11

Under robbery statute, a “dangerous weapon” generally is anything used or designed to be used in destroying, defeating, or injuring an enemy, or as an instrument of offensive or defensive combat. *Code 1957, art. 27, §§ 486, 488. Bennett v. State*, 1964, 205 A.2d 393, 237 Md. 212. *Robbery* 🔑 11

Evidence supported finding that microphone cord used in taxicab robbery constituted ‘dangerous weapon’ where

Formerly cited as MD CODE Art. 27, § 36

cord was twisted about driver's neck and used to restrain him. [Code 1957, art. 27, § 488](#). [Bennett v. State, 1964, 205 A.2d 393, 237 Md. 212](#). [Robbery](#) 🔑 [24.15\(2\)](#)

10. Habitual and career offenders

Prior conviction for carrying a weapon openly with the intent to injure under Maryland law was a “violent felony,” for purposes of sentencing as an armed career criminal. [18 U.S.C.A. § 924\(e\)](#); [Md.Code 1957, Art. 27, § 36\(a\)\(1\)](#); [U.S.S.G. § 4B1.4](#), 18 U.S.C.A. [U.S. v. Frazier-El, 2000, 204 F.3d 553](#), certiorari denied [121 S.Ct. 487, 531 U.S. 994, 148 L.Ed.2d 459](#), post-conviction relief denied [2002 WL 32356686](#), appeal dismissed [46 Fed.Appx. 168, 2002 WL 31018173](#), habeas corpus dismissed [2009 WL 3029818](#), affirmed [2010 WL 1552803](#). [Sentencing And Punishment](#) 🔑 [1285](#)

For purposes of sentencing defendant as an armed career criminal based, in part, on finding that prior Maryland conviction was for a violent felony, district court properly found that the prior conviction was under the intent to injure rather than the concealed weapon portion of the Maryland statute, though defendant received a sentence of only 89 days, as court document described offense as “Deadly Weapon--Int/Injure,” and defendant was also convicted of assault in connection with the same conduct. [18 U.S.C.A. § 924\(e\), \(e\)\(2\)\(B\)\(i\)](#); [Md.Code 1957, Art. 27, § 36\(a\)\(1, 2\)](#); [U.S.S.G. § 4B1.4](#), 18 U.S.C.A. [U.S. v. Frazier-El, 2000, 204 F.3d 553](#), certiorari denied [121 S.Ct. 487, 531 U.S. 994, 148 L.Ed.2d 459](#), post-conviction relief denied [2002 WL 32356686](#), appeal dismissed [46 Fed.Appx. 168, 2002 WL 31018173](#), habeas corpus dismissed [2009 WL 3029818](#), affirmed [2010 WL 1552803](#). [Sentencing And Punishment](#) 🔑 [1285](#)

Defendant's prior conviction in Maryland for “openly carrying a dangerous weapon with the intent of injuring any person,” qualified as “violent felony” under federal sentencing enhancement statute; intent to injure particular person was not required for crime to constitute “conduct that presents a serious potential risk of physical injury to another.” [18 U.S.C.A. § 924\(e\)\(2\)\(B\)\(ii\)](#); [Md.Code 1957, Art. 27, § 36\(a\)](#). [U.S. v. Frazier-El, 1998, 10 F.Supp.2d 508](#), affirmed [204 F.3d 553](#), certiorari denied [121 S.Ct. 487, 531 U.S. 994, 148 L.Ed.2d 459](#), post-conviction relief denied [2002 WL 32356686](#), appeal dismissed [46 Fed.Appx. 168, 2002 WL 31018173](#). [Sentencing And Punishment](#) 🔑 [1263](#)

Defendant's prior conviction in Maryland for “openly carrying a dangerous weapon with the intent of injuring any person” constituted “felony” under federal sentencing enhancement statute, even though under Maryland law it was classified as misdemeanor and defendant was sentenced to prison for less than one year, which was suspended, since maximum sentence for such crime was three years, and thus, defendant's conviction was not “misdemeanor punishable by a term of imprisonment for two years or less.” [18 U.S.C.A. §§ 921\(a\)\(20\), 924\(e\)\(2\)\(B\)](#); [Md.Code 1957, Art. 27, § 36\(a\)](#). [U.S. v. Frazier-El, 1998, 10 F.Supp.2d 508](#), affirmed [204 F.3d 553](#), certiorari denied [121 S.Ct. 487, 531 U.S. 994, 148 L.Ed.2d 459](#), post-conviction relief denied [2002 WL 32356686](#), appeal dismissed [46 Fed.Appx. 168, 2002 WL 31018173](#). [Sentencing And Punishment](#) 🔑 [1280](#)

Where State did, in fact, give timely notice to defendant that it intended to seek enhanced punishment up to ten years for second conviction of unlawfully wearing and transporting a handgun and that it was relying on convictions under specific statutes, fact that notice failed to comply with technical requirements of rule governing notice of alleged prior conviction which would require imposition of mandatory sentence upon conviction as

Formerly cited as MD CODE Art. 27, § 36

“subsequent offender,” did not preclude sentencing defendant as “subsequent offender.” [Code 1957, Art. 27, §§ 36, 36\(a\), 36B](#); Md.Rule 734, subd. b; [Const.Declaration of Rights, Art. 21](#). [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](#) 🔑 1361

Notice of alleged prior conviction which would require imposition of mandatory sentence upon conviction, as “subsequent offender,” for unlawfully wearing and transporting a handgun did not adequately set forth “each prior conviction to be relied upon” where notice merely set forth numbers of sections proscribing a range of activities relating to handguns and other weapons, but did not give clear or reasonable indication of those convictions upon which State intended to rely. [Code 1957, Art. 27, §§ 36, 36\(a\), 36B](#); Md.Rule 734, subd. b. [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](#) 🔑 1361

Defendant had no duty to bring to State's attention a defective notice of alleged prior conviction which would require imposition of mandatory sentence upon conviction, as “subsequent offender,” while unlawfully wearing and transporting a handgun. [Code 1957, Art. 27, §§ 36, 36\(a\), 36B](#); Md.Rule 734, subd. b. [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](#) 🔑 1361

11. Justification or excuse


Defendant's emergence from home armed with drawn bow and arrow, while looking for another who had swung lead pipe at him and then fled, was not a reasonable precaution from attack which would establish self-defense to charge of carrying a dangerous weapon openly with intent to injure another. [Code 1957, Art. 27, § 36\(a\), d](#). [Williams v. State](#), 1988, 550 A.2d 722, 77 Md.App. 411, certiorari granted 553 A.2d 706, 315 Md. 140, affirmed 561 A.2d 216, 316 Md. 677. [Weapons](#) 🔑 202

12. Searches and seizures


Police officers, who had sufficient articulable suspicion to make Terry stop of defendant's car after observing defendant walking past several jewelry stores many times, had probable cause to arrest defendant after seeing half pool cue, modified with black tape wrapped around one end, which was “dangerous weapon.” [U.S.C.A. Const.Amend. 4](#); [Code 1957, Art. 27, § 36](#). [Farrow v. State](#), 1986, 514 A.2d 35, 68 Md.App. 519, certiorari denied 519 A.2d 1283, 308 Md. 382. [Arrest](#) 🔑 63.4(16)

When police officer saw dirk knife which would have been shielded from view by driver's legs and feet, officer was justified in concluding that a misdemeanor had been committed in presence of the police, the carrying of a concealed weapon, and hence was justified in making arrests of automobile occupants, so that an immediate search of automobile and seizure of articles therein were lawful aside from fact that various incriminating articles were found by virtue of the consent of owner of the automobile. [Code 1957, art. 27, § 36](#). [Shipley v. State](#), 1966, 220 A.2d 585, 243 Md. 262. [Arrest](#) 🔑 63.4(16); [Arrest](#) 🔑 71.1(5)


Formerly cited as MD CODE Art. 27, § 36


It was clearly established under Maryland law that arrestee's penknife was legal and could not provide probable cause for his arrest for carrying concealed weapon, and, thus, arresting police officer was not entitled to qualified immunity in arrestee's § 1983 action arising out of such arrest. [Sorrell v. McGuigan, 2002, 38 Fed.Appx. 970, 2002 WL 1396826, Unreported. Civil Rights](#)  1376(6)

13. Defenses



Even if weapon person carries is within exception to openly carrying weapon statute, circumstances may be such that person has committed other crimes involving weapon, thus fact that weapon is excepted by openly carrying weapon statute immunizes person against criminality only with respect to that statute. [Code 1957, Art. 27, § 36 \(a\). Bacon v. State, 1991, 586 A.2d 18, 322 Md. 140. Weapons](#)  163




14. Conclusiveness of prior adjudication

Where defendant had previously been acquitted in trial on warrant of charge of assault, but court in such trial stated that evidence was sufficient to establish assault by defendant on second victim, which second assault had not been charged in warrant, State was not barred by collateral estoppel from prosecuting defendant for offense of assault on second victim and offense of carrying openly a weapon with intent to injure, which charges arose at same time as original assault charge. [Code 1957, art. 27, § 36. Cousins v. State, 1976, 354 A.2d 825, 277 Md. 383, certiorari denied 97 S.Ct. 652, 429 U.S. 1027, 50 L.Ed.2d 631. Judgment](#)  751

Fact that defendant had been convicted in district court on charges of carrying a concealed weapon and being a rogue and a vagabond did not collaterally estop State, on appeal to circuit court for trial de novo, from also charging defendant with knowingly transporting a weapon in a vehicle while traveling on the public roads. [Code 1957, art. 27, §§ 36\(a\), 36B\(b\), 445\(c\), 490. Pinkett v. State, 1976, 352 A.2d 358, 30 Md.App. 458, certiorari denied 278 Md. 730. Judgment](#)  751



15. Indictment and information


State is not required to allege that weapon was not penknife or handgun in document which charges defendant with wearing or carrying deadly weapon openly with intent or purpose of unlawfully injuring any person. [Code 1957, Art. 27, § 36\(a\). Biggus v. State, 1991, 593 A.2d 1060, 323 Md. 339. Weapons](#)  223; [Weapons](#)  226


Averments of indictment that defendant wore and carried concealed upon his person a dangerous and deadly knife sufficiently characterized crime of carrying a concealed deadly weapon so that indictment was not defective for failure to charge an offense within jurisdiction of circuit court, even though indictment did not aver that knife was not a pen knife without switchblade, the exception stated in statute. [Code 1957, Art. 27, § 36\(a\). Hall v. State, 1985, 490 A.2d 1287, 302 Md. 806. Indictment And Information](#)  111(1); [Weapons](#)  223; [Weapons](#)  226


Indictment for carrying concealed deadly weapon was sufficient, despite its lack of allegation that knife which defendant carried was not penknife without switchblade. [Code 1957, Art. 27, § 36\(a\). Hall v. State, 1983, 468](#)

Formerly cited as MD CODE Art. 27, § 36


A.2d 1015, 57 Md.App. 1, certiorari granted 474 A.2d 918, 299 Md. 520, affirmed 490 A.2d 1287, 302 Md. 806. Weapons  223; Weapons  226


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 carrying concealed weapon was not defective because it did not negate exceptions set forth in statute allegedly violated relating to peace officers and others. Code 1957, art. 27, § 36 and subd. (b). *Spurrer v. State*, 1962, 182 A.2d 358, 229 Md. 110. Indictment And Information  111(1)

Where state warrant was captioned as a concealed weapon warrant, and set forth charge that defendant unlawfully carried two deadly and dangerous weapons, warrant informed defendant of charge against him, amendment adding “concealed upon and about his person” did not change basic description of offense, and it was not improper to permit the amendment. Code 1957, art. 27, § 36(a, b); Const. Declaration of Rights, art. 21; Code 1957, art. 52, § 22. *Gray v. State*, 1958, 140 A.2d 643, 216 Md. 410. Indictment And Information  162

16. Admissibility of evidence

Trial court's act of permitting State to present rebuttal testimony to impeach defendant with a prior inconsistent statement in prosecution for carrying a concealed weapon, in which officer gave testimony that rebutted defendant's statement on cross-examination that gun he wore into bank was not loaded or capable of being fired, constituted reversible error; State failed to lay a proper foundation for to impeachment by failing to give defendant an opportunity during cross-examination to explain his statements to officers. *McCracken v. State*, 2003, 820 A.2d 593, 150 Md.App. 330. Criminal Law  1170.5(1)

Firearms expert's opinion that weapon recovered from defendant's residence was handgun within meaning of Maryland law was admissible in murder prosecution; expert's testimony did not amount to conclusion regarding ultimate issue of defendant's guilt or credibility of any witness, and definition of handgun under Maryland law was complicated. Code 1957, Art. 27, § 36F(b). *Braxton v. State*, 1998, 720 A.2d 27, 123 Md.App. 599. Criminal Law  476.1

In prosecution for assault and battery and for carrying concealed weapons, testimony relating to defendant's assault and battery upon plaintiff, and that a revolver was fired during ensuing fight was sufficient to establish corpus delicti, and hence defendant's confession was admissible, notwithstanding testimony that revolver from which shot was fired fell out of automobile, and that no one had previously seen revolver. Code 1939, art. 27, § 40. *Davis v. State*, 1953, 97 A.2d 303, 202 Md. 463. Criminal Law  517.3(4)

In prosecution for carrying concealed weapon, eye-witnesses' testimony as to firing of shot at prosecuting wit-

Formerly cited as MD CODE Art. 27, § 36

ness from automobile back seat, occupied by defendant and another, who testified that defendant had no weapon in his hands when he entered automobile, was sufficient corroboration of defendant's confession to warrant admission thereof in evidence even if revolver, from which shot was fired, was lying unconcealed on seat or floor of automobile at time of fight. [Code 1939, art. 27, § 40](#). [Wood v. State, 1949, 65 A.2d 316, 192 Md. 643](#). [Criminal Law](#) 🔑 535(2)

17. Presumptions and burden of proof

To prove the specific intent or purpose to injure element of the offense of carrying a dangerous weapon openly with the intent to injure, it is not necessary for the state to prove that the defendant committed an assault; it is necessary for the state to show defendant openly carried one of the prohibited deadly or dangerous weapons and did so having the intent or purpose to injure, regardless of whether the weapon was used or an injury was inflicted. [Somers v. State, 2004, 846 A.2d 1065, 156 Md.App. 279](#), certiorari denied [855 A.2d 350, 382 Md. 347](#). [Weapons](#) 🔑 169

In order to obtain conviction for wearing or carrying dangerous or deadly weapon openly with intent or purpose of unlawfully injuring any person, State must establish that dangerous or deadly weapon did not fall within exception for penknives without switchblades or handguns. [Code 1957, Art. 27, § 36\(a\)](#). [Biggus v. State, 1991, 593 A.2d 1060, 323 Md. 339](#). [Criminal Law](#) 🔑 329; [Weapons](#) 🔑 241

To prove that defendant was guilty of wearing or carrying concealed dangerous or deadly weapon, it was only necessary for State to show that defendant carried weapon concealed upon or about his person and, therefore, it was constitutionally sound to place burden on defendant to prove that he was not criminally responsible; defendant's ability to appreciate criminality of his conduct and ability to conform his conduct was not mens rea requirement of possession crime. [Code, Health-General, § 12-108\(a\)](#); [Code 1957, Art. 27, § 36](#); [U.S.C.A. Const.Amend. 14](#). [Hoey v. State, 1988, 536 A.2d 622, 311 Md. 473](#). [Criminal Law](#) 🔑 331; [Weapons](#) 🔑 168

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

Under sawed-off shotgun statute, State is required to prove beyond a reasonable doubt that defendant failed to register the gun in accordance with the United States statutes. [Code 1957, art. 27, §§ 481C, 481C\(b\)](#). [Roos v. State, 1980, 410 A.2d 1113, 45 Md.App. 21](#). [Weapons](#) 🔑 170

Exceptions provided by subsection of statute proscribing carrying of knife, referring to persons against whom statute should not be construed to apply, are not so incorporated with definition or description of offense as to constitute part thereof, and state, as part of its case in chief in prosecution under statute, need not prove that defendant was without class of persons excepted. [Code 1957, art. 27, § 36\(c\)](#). [Mackall v. State, 1978, 387 A.2d 762, 283 Md. 100](#). [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 desig-

Formerly cited as MD CODE Art. 27, § 36

nated 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

State did not have burden of proving that defendant charged with carrying concealed weapon was not within exceptions provided for peace officers and others in statute allegedly violated and burden was on defendant to prove that he came within one or more of exceptions. [Code 1957, art. 27, § 36 and subd. \(b\)](#). [Spurrier v. State, 1962, 182 A.2d 358, 229 Md. 110](#). [Criminal Law](#) 🔑 329; [Weapons](#) 🔑 250

In prosecutions for carrying concealed weapon, state must prove that someone carried a dangerous or deadly weapon concealed on or about his person. [Code 1939, art. 27, § 40](#). [Davis v. State, 1953, 97 A.2d 303, 202 Md. 463](#). [Weapons](#) 🔑 244

18. Weight and sufficiency of evidence



State's evidence as recited in agreed statement of facts was legally insufficient to establish that knife police officer observed during traffic stop of vehicle defendant was driving was concealed, as necessary to support conviction for wearing and carrying a concealed dangerous weapon; statement of facts submitted to trial judge merely stated that officer, who was standing by passenger side of vehicle, observed a five-inch brown fixed blade bowie knife in a sheath "wedged near the dash," but this statement did not establish concealment, but established only that officer, as soon as he looked in through passenger window, knew that he saw a knife, and all officer had to do to breach the "concealment" was to open his eyes. [Polk v. State, 2008, 961 A.2d 603, 183 Md.App. 299](#). [Weapons](#) 🔑 291(7)


Sufficient evidence supported conviction for carrying a dangerous weapon openly with the intent to injure; defendant was carrying rifle, was masked, and was pointing rifle directly at sales clerk as he ordered him to put money from cash register in bag, all of which, in turn, supported inference that defendant was engaging in such conduct with purpose of shooting clerk, either as part of effort to terrorize or to force compliance if clerk did not accede to demand for money. [Somers v. State, 2004, 846 A.2d 1065, 156 Md.App. 279](#), certiorari denied [855 A.2d 350, 382 Md. 347](#). [Weapons](#) 🔑 281; [Weapons](#) 🔑 292


Evidence was sufficient to support finding that defendant's weapon qualified as a deadly weapon that was concealed, as required to support conviction for carrying a concealed deadly weapon; defendant's claim that he was not carrying the gun into bank as a weapon was inconsistent with his own testimony that he purchased it and carried it for self-protection, police were initially called to bank because an employee of bank observed a suspicious bulge under defendant's coat, and bank employee was only able to observe the end of the gun when she asked defendant to have a seat. [McCracken v. State, 2003, 820 A.2d 593, 150 Md.App. 330](#). [Weapons](#) 🔑 291(7)


Evidence was insufficient to support conviction for wearing or carrying a dangerous weapon openly with the intent to injure; evidence indicated that defendant, in his one-room apartment, used a hammer and a cheese knife


Formerly cited as MD CODE Art. 27, § 36


on the victim, but that did not necessarily establish those weapons were carried openly with the intent to injure. [Thomas v. State, 2002, 792 A.2d 368, 143 Md.App. 97, certiorari denied 801 A.2d 1033, 369 Md. 573. Weapons](#)  281; [Weapons](#)  291(3)


Conviction for carrying or wearing deadly weapon was not supported by record and would be reversed where trooper testified that victim told him that defendant had small penknife, state offered no contradictory evidence and, thus, state failed to prove beyond reasonable doubt that knife used in attack did not fall within statutory exception for penknives. [Code 1957, Art. 27, § 36\(a\)\(1\). Stanley v. State, 1997, 701 A.2d 1174, 118 Md.App. 45, certiorari granted 707 A.2d 90, 349 Md. 105, affirmed in part, vacated in part 720 A.2d 323, 351 Md. 733. Weapons](#)  295

Evidence that defendant waved open pocketknife in victim's face and threatened to cut her, that he pulled it on victim's brother, and that he was observed walking with knife out supported conviction for carrying weapon openly with intent to injure. [Code 1957, Art. 27, § 36\(a\). Bacon v. State, 1990, 573 A.2d 114, 82 Md.App. 737, certiorari granted 579 A.2d 281, 320 Md. 636, reversed 586 A.2d 18, 322 Md. 140. Weapons](#)  292

Finding that defendant violated condition of probation by possessing dangerous weapon without permission from his probation officer was supported by evidence that defendant was carrying knife with four and a half-inch blade when apprehended by county police officer near scene of alleged breaking and entering. [Dunn v. State, 1985, 501 A.2d 881, 65 Md.App. 637, certiorari granted 517 A.2d 771, 308 Md. 146, reversed 517 A.2d 772, 308 Md. 147, on remand 69 Md.App. 789, on remand 70 Md.App. 750. Sentencing And Punishment](#)  2021

Evidence that defendant picked up hammer and then knife, each with express intent or purpose of putting third party and then defendant's wife in fear of an imminent battery, supported his conviction on two counts of carrying a deadly weapon openly with intent to injure. [Code 1957, Art. 27, § 36. Harrod v. State, 1985, 499 A.2d 959, 65 Md.App. 128. Weapons](#)  292

Evidence, consisting of weapon which defendant had carried, was sufficient to support conclusion that weapon was not penknife, and thus, was sufficient to support conviction for carrying concealed deadly weapon. [Code 1957, Art. 27, § 36\(a\). Hall v. State, 1983, 468 A.2d 1015, 57 Md.App. 1, certiorari granted 474 A.2d 918, 299 Md. 520, affirmed 490 A.2d 1287, 302 Md. 806. Weapons](#)  291(7)

Evidence was insufficient to sustain defendant's conviction of carrying weapon openly with intent to injure, absent any evidence tending to show that the knife in question was not a penknife. [Code 1957, Art. 27, § 36\(a\). Washington v. State, 1982, 445 A.2d 684, 293 Md. 465. Weapons](#)  292

In view of testimony of witness that a man, who was identified by others as defendant and whom she had seen on road prior to murder, had an object that “looked like an army knife” and in view of testimony concerning stabbing, evidence was sufficient to sustain conviction of carrying a deadly weapon openly with intent to injure. [Code 1957, art. 27, § 36\(a\). Wantland v. State, 1980, 413 A.2d 1376, 45 Md.App. 527, certiorari denied 288 Md.](#)

Formerly cited as MD CODE Art. 27, § 36

745, vacated 101 S.Ct. 3001, 451 U.S. 1014, 69 L.Ed.2d 386, on remand 435 A.2d 102, 49 Md.App. 636. Criminal Law ⚔ 566; Weapons ⚔ 281; Weapons ⚔ 291(3)

Absent proof of nonregistration of sawed-off shotgun with federal government, evidence was insufficient to sustain conviction for possession of sawed-off shotgun. Code 1957, art. 27, §§ 481C, 481C(b). *Roos v. State*, 1980, 410 A.2d 1113, 45 Md.App. 21. Weapons ⚔ 291(3)

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)

Even assuming that nature of wounds inflicted by defendant charged with carrying dangerous and deadly weapon would at least raise inference that penknife was not used, such inference would not prove, beyond reasonable doubt, that weapon used was not penknife without switchblade, and thus was within proscription of statute. Code 1957, art. 27, §§ 36, 36(a). *Mackall v. State*, 1978, 387 A.2d 762, 283 Md. 100. Weapons ⚔ 281; Weapons ⚔ 291(3)

Where it was clear from evidence that defendant was wearing short sleeved maroon shirt and no coat and only evidence concerning manner in which defendant was carrying gun was testimony of victim that defendant pulled pistol from his belt, evidence was insufficient to sustain conviction for carrying concealed weapon. Code 1957, art. 27, § 36; Maryland Rules, Rule 1086. *Clemons v. State*, 1970, 262 A.2d 786, 9 Md.App. 127, certiorari denied 258 Md. 726. Weapons ⚔ 291(7)

Testimony by police officer on direct examination that he saw defendant throw gun under automobile and on cross-examination that defendant took gun from down inside his belt was not such evidence as would support finding that gun was concealed. Maryland Rules, Rule 1086; Code 1957, art. 27, § 36. *Giles v. State*, 1970, 261 A.2d 806, 8 Md.App. 721. Weapons ⚔ 291(7)

Evidence was insufficient to sustain conviction for carrying a “concealed weapon,” where arresting officer testified that, when he observed defendant, defendant had the top part of a straight razor protruding out of pocket of a sport coat, since the razor was not a “concealed weapon.” Code 1957, art. 27, § 36. *Smith v. State*, 1968, 241 A.2d 437, 4 Md.App. 128, certiorari denied 251 Md. 752. Weapons ⚔ 291(7)

The place, relatively isolated and deserted after midnight, in proximity to a synagogue, closed at that hour, and implausible stories of why defendants were there permitted inference that mechanic’s tools, pinch bar and nail-studded board were had by defendants to be used to break into a building, and that dirk knife, garrotting cords and masks similarly presented a likelihood of use at an early moment in holdups, mugging and yoking, warranting conviction of being rogues and vagabonds. Code 1957, art. 27, §§ 36, 490. *Shipley v. State*, 1966, 220 A.2d 585, 243 Md. 262. Vagrancy ⚔ 1

Formerly cited as MD CODE Art. 27, § 36

Jury verdict which determined that gravity knife found on person of defendant constituted a dangerous or deadly weapon under statute making it a misdemeanor to carry certain types of knives and other dangerous or deadly weapons was supported by the evidence. Code Supp. art. 27, § 36(a). [Savoy v. State, 1964, 202 A.2d 324, 236 Md. 36. Weapons 🔑 281; Weapons 🔑 291\(3\)](#)

19. Questions for jury

Factual issue as to whether pepper spray was a dangerous or deadly weapon within meaning of robbery with deadly weapon statute was properly left for the jury. [Code 1957, Art. 27, § 488. Handy v. State, 1999, 730 A.2d 710, 126 Md.App. 548, certiorari granted 735 A.2d 1105, 355 Md. 610, affirmed 745 A.2d 1107, 357 Md. 685. Robbery 🔑 26](#)

Whether an object that is not necessarily a dangerous weapon, but can be used as such, may be considered a dangerous weapon, within meaning of robbery with deadly weapon statute, is a question of fact to be resolved by the trier of fact. [Code 1957, Art. 27, § 488. Handy v. State, 1999, 730 A.2d 710, 126 Md.App. 548, certiorari granted 735 A.2d 1105, 355 Md. 610, affirmed 745 A.2d 1107, 357 Md. 685. Robbery 🔑 26](#)

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\(1\)](#)

20. Instructions

In view of evidence that defendant had acted in defense of himself in shooting his brother-in-law, who had characteristics of violent and dangerous person, court, instead of informing jury that, if defendant prepared for and provoked affray, he could not assert right of defense, should have advised jury that, if it believed that defendant was not seeking fight with brother-in-law, but was apprehensive that he might be attacked by him, defendant had right to arm himself in anticipation of assault. [Code 1957, art. 27, § 36\(b\). Gunther v. State, 1962, 179 A.2d 880, 228 Md. 404. Homicide 🔑 1480](#)

21. Verdict

Defendant was not prejudiced by general verdict finding him guilty under three-count indictment charging him with carrying deadly weapon concealed on or about his person, carrying openly deadly weapon with intent to injure, and carrying deadly weapon in automobile, though first two counts of indictment were allegedly inconsistent, where two-year sentence imposed was within maximum permitted under either of first two counts. [Code 1957, art. 27, § 36; Baltimore City Code 1950, art. 24, § 48. Patterson v. State, 1961, 175 A.2d 746, 227 Md. 194, vacated 83 S.Ct. 1103, 372 U.S. 776, 10 L.Ed.2d 137, conformed to 191 A.2d 237, 231 Md. 509. Criminal Law 🔑 1177.3\(1\)](#)

22. Sentencing and punishment

Formerly cited as MD CODE Art. 27, § 36

Convictions for carrying weapon openly with intent to injure, and first-degree rape and first-degree sexual assault were properly punished separately, absent indication of contrary legislative intent; there was no ambiguity in legislative intent which would call rule of lenity into play. [Code 1957, Art. 27, §§ 36, 462, 464](#). [Nance v. State, 1988, 549 A.2d 1182, 77 Md.App. 259](#), certiorari denied [552 A.2d 894, 314 Md. 629](#). [Sentencing And Punishment](#) 🔑 539

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 could receive separate sentences for attempted first-degree rape and carrying deadly weapon openly with intent to injure victim during course of rape. [Code 1957, Art. 27, §§ 407, 462\(a\)](#). [Walker v. State, 1982, 452 A.2d 1234, 53 Md.App. 171](#). [Sentencing And Punishment](#) 🔑 539

Where there was no indication that in determining sentences judge was motivated by passion, ill will, prejudice or any other motive than that of sense of public duty and it was clear that trial judge did consider defendant's physical condition and military service prior to imposing sentence, consecutive sentences of 12 years for assault with intent to murder and three years for carrying a weapon openly with intent to injure did not constitute cruel and unusual punishment. [Code 1957, art. 27, §§ 12, 36](#); [U.S.C.A.Const. Amend. 8](#); [Const. Declaration of Rights, art. 25](#). [Brooks v. State, 1978, 381 A.2d 718, 38 Md.App. 550](#), certiorari denied 282 Md. 730, affirmed [397 A.2d 596, 284 Md. 416](#). [Sentencing And Punishment](#) 🔑 1508

Statute defining handgun violation and providing that it shall constitute “a separate misdemeanor” and prescribing minimum sentence of five years “in addition to any other sentence” did not require that mandatory five-year sentence be made consecutive to other sentence but rather allowed sentencing judge to impose handgun violations sentence either concurrently or consecutively at his discretion. [Code 1957, art. 27, §§ 36\(a\), 36B, 36B\(d\)](#). [Wright v. State, 1975, 330 A.2d 482, 24 Md.App. 309](#). [Sentencing And Punishment](#) 🔑 598

23. Review

Court of Special Appeals would treat trial court's “sentencing” merger of defendant's convictions of second-degree murder and carrying a weapon openly with intent to injure as having created final reviewable judgment as to both, where latter conviction would otherwise be unreviewable due to defendant's failure to challenge it on appeal. [Thornton v. State, 2005, 876 A.2d 142, 162 Md.App. 719](#), certiorari granted [882 A.2d 286, 388 Md. 673](#), reversed [919 A.2d 678, 397 Md. 704](#). [Criminal Law](#) 🔑 1023(11)

Defendant's claim that the evidence was not legally sufficient to support the verdicts of guilty for wearing or carrying openly a dangerous or deadly weapon with intent to injure was not preserved for appeal since he failed to raise this claim before trial judge; at the close of the state's case, defendant made no argument of any sort with respect to the charge of carrying a weapon, and at the end of the entire case, he simply renewed the motion for

Formerly cited as MD CODE Art. 27, § 36

judgment of acquittal he had made at the close of the state's case. [Code 1957, Art. 27, § 36\(a\)\(1\)](#); [Md.Rule 4-324 \(a\)](#). [Sullivan v. State, 2000, 753 A.2d 601, 132 Md.App. 682](#), certiorari denied [762 A.2d 969, 362 Md. 36](#). [Criminal Law](#) 🔑 1036.8

Defendant's argument on motion for acquittal preserved claim that his pocketknife was penknife excepted from prohibition against openly carrying weapon, even though trial court did not specify that the knife did not fall within exception; trial court stated that what would be perfectly legal knife could become weapon carried openly with intent to harm. [Code 1957, Art. 27, § 36\(a\)](#); [Md.Rules 4-324\(a\), 8-131\(a\)](#). [Bacon v. State, 1990, 573 A.2d 114, 82 Md.App. 737](#), certiorari granted [579 A.2d 281, 320 Md. 636](#), reversed [586 A.2d 18, 322 Md. 140](#). [Criminal Law](#) 🔑 1030(3)

Where defendant was given consecutive sentences, reviewing court considered issue of merger of offenses of carrying a weapon openly with intent to injure and assault with intent to murder even though it was not raised or decided below. [Code 1957, art. 27, §§ 12, 36](#). [Brooks v. State, 1978, 381 A.2d 718, 38 Md.App. 550](#), certiorari denied [282 Md. 730](#), affirmed [397 A.2d 596, 284 Md. 416](#). [Criminal Law](#) 🔑 1028

MD Code, Criminal Law, § 4-101, MD CRIM LAW § 4-101

The statutes and Constitution are current through the 2011 Regular Session and the 2011 Special Session of the General Assembly.

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