

STATE OF MICHIGAN

**MIKE COX, ATTORNEY GENERAL**

CONCEALED WEAPONS:

Carrying of a pistol in a motor vehicle

FIREARMS:

CRIMINAL LAW:

A person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

A person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained and that belongs to another person who has exited the vehicle, only if the occupant is not carrying the weapon, a determination that depends on the facts of each case.

Opinion No. 7136

July 30, 2003

Honorable Scott Shackleton  
State Representative  
The Capitol  
Lansing, Michigan

You have asked two questions concerning the carrying of a pistol in a motor vehicle. You first ask if a person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

Section 227(2) of the Michigan Penal Code, MCL 750.227(2), makes it a crime to carry a pistol, whether concealed or otherwise, in a vehicle. Section 227(2) states, in pertinent part, as follows:

A person shall not carry a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person, except in his or her dwelling house, place of business, or on other land possessed by the person, *without a license to carry the pistol as provided by law* and if licensed, shall not carry the pistol in a place or manner inconsistent with any restrictions upon such license. [Emphasis added.]

By its express terms, the criminal prohibition in section 227(2) does not apply to a person licensed to carry a pistol, provided that the pistol is carried in a manner or place consistent with any restriction upon that license. This conclusion is further supported by section 425c(2) of the Concealed Pistol Licensing Act, MCL 28.425c(2), which expressly authorizes a concealed pistol licensee to "[c]arry a pistol in a vehicle, whether concealed or not concealed, anywhere in this state." Moreover, section 231a(1)(a) of the Penal Code, MCL 750.231a(1)(a), provides that the prohibition against carrying a concealed pistol in a motor vehicle does not apply to a person holding a valid license to carry a concealed pistol, provided that the pistol is carried in conformity with any restrictions appearing on the license.<sup>1</sup>

The primary rule of statutory construction is to effectuate the intent of the Legislature. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). If the language of a statute is clear and unambiguous, it is assumed the Legislature intended its plain meaning to be enforced as written. *People v Stone*, 463 Mich 558, 562; 621 NW2d 702 (2001). Here, the statutes clearly provide that a person licensed to carry a concealed pistol is not subject to the prohibition against carrying a pistol in a motor vehicle, regardless of whether the pistol belongs to the licensee or another person.

It is my opinion, therefore, in answer to your first question, that a person licensed to carry a concealed pistol may lawfully occupy a motor vehicle in which a pistol has been left that belongs to another person who has exited the vehicle.

Your second question asks if a person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained,<sup>2</sup> and that belongs to another person who has exited the vehicle.

As previously noted, MCL 750.227(2) generally prohibits a person from carrying a concealed pistol in a motor vehicle unless that person is licensed to carry a concealed pistol. MCL 750.231a(1) contains several exceptions to the prohibition. Subsection (d) exempts a person "while transporting a pistol for a lawful purpose that is licensed by the owner or occupant of the motor vehicle in compliance with section 2 of 1927 PA 372, MCL 28.422, and the pistol is unloaded in a closed case designed for the storage of firearms in the trunk of the vehicle."<sup>3</sup> MCL 750.231a(1)(d). Subsection (e) applies to vehicles without trunks by requiring that the firearm not be readily accessible to the occupants of the vehicle. MCL 750.231a(1)(e).

Under the facts provided in your request, the passenger has remained in the vehicle with a properly stored pistol belonging to the driver. Under these facts, the exceptions contained in MCL 750.231a(d) and (e) are inapplicable since the passenger is not "transporting" the firearm. "To transport is to convey from one place or station to another . . ." *People v Al-Saiegh*, 244 Mich App 391, 399; 625 NW2d 419 (2001).

Nonetheless, a violation of MCL 750.227(2) must be proven by evidence of the following: (1) that a weapon is present in a vehicle operated or occupied by the defendant; (2) that the defendant knew or was aware of its presence; and (3) that the defendant was "carrying" the weapon. *People v Courier*, 122 Mich App 88; 322 NW2d 421 (1982), citing *People v Butler*, 414 Mich 377; 319 NW2d 540 (1982). "Carrying" is an essential element that must be proven to establish a violation of the prohibition in section 227(2) and may not automatically be inferred from evidence that the defendant had knowledge that the weapon was present in the vehicle. *People v Emery*, 150 Mich App 657; 667; 389 NW2d 472 (1986).

The element of "carrying" depends on the particular facts of each case. It cannot be stated, as a definitive matter of law, what conduct constitutes carrying for the purposes of section 227(2). Nevertheless, Michigan courts have articulated several factors to be considered in resolving whether the essential element of "carrying" a weapon in a vehicle has been established. Factors that have been considered include: (1) the defendant's awareness of the weapon; (2) the accessibility or proximity of the weapon to the defendant; (3) the defendant's possession of items which connect him to the weapon, such as ammunition; (4) the defendant's ownership or operation of the vehicle; and (5) the length of time during which the defendant drove or occupied the vehicle. *People v Emery*, 150 Mich App at 667.

The fact that a pistol is lawfully contained does not necessarily exempt a person from possible prosecution under section 227(2). See, for example, *People v Wilson*, 2001 Mich App LEXIS 1144 (unpublished), in which the Court of Appeals held that the defendant was subject to prosecution under section 227(2), notwithstanding that the pistol was locked in the truck of a vehicle.

It is my opinion, therefore, in answer to your second question, that a person who is not licensed to carry a concealed pistol may lawfully occupy a vehicle in which a pistol has been left that is lawfully contained and that belongs to another person who has exited the vehicle, only if the occupant is not carrying the weapon, a determination that depends on the facts of each case.

MIKE COX  
Attorney General

<sup>1</sup> This analysis is limited to consideration of a violation of MCL 750.227 only and assumes that the pistol is lawfully owned, inspected, and has not been used in the commission of a crime.

<sup>2</sup> By using the term "lawfully contained," it is understood that the pistol left in the vehicle is either (1) unloaded in a closed case designed for the storage of firearms in the trunk of the vehicle; or (2) unloaded in a closed case designed for the storage of firearms in a vehicle that does not have a trunk and is not readily accessible to the occupants of the

vehicle. See MCL 750.231a(1)(d) and (e).

<sup>3</sup> Section 2 of 1927 PA 372, MCL 28.422, provides the qualifications for the purchase of a pistol.

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<http://opinion/datafiles/2000s/op10212.htm>

**State of Michigan, Department of Attorney General**

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