Owning and Carrying Non-Firearm Weapons¹

By Lisa J. Steele

Lisa J. Steele is a criminal defense attorney who represents indigent defendants in the Connecticut and Massachusetts appellate courts. She is a co-chair of the National Association of Criminal Defense Lawyers (NACDL) Forensic Evidence Committee, a director of AWARE, and has lectured and written about self-defense issues for attorneys and the public.

Firearms are not the only regulated weapon that you might carry or own. Most states have statutes regarding knives, bludgeoning weapons, and a variety of other hand-to-hand items. Your firearms permit is normally specific to firearms, not non-firearm weapons. Unfortunately, state non-firearm weapons laws are often cluttered with undefined terms and interpreted in ways that can confuse even experienced attorneys and can be a legal minefield for those who want to carry a non-firearm defensive weapon, or who own, carry, or transport bladed or bludgeoning instruments for martial arts, historical recreation, as curios or part of collection, or for religious reasons.

In trying to interpret, or at least understand, your state's weapons laws, it sometimes helps to look at what courts think the legislature intended.

The Kentucky Supreme Court once explained that:

At common law or by very early statute in England, people were prohibited from going armed that they might not terrorize the King's subjects. That was never the law in this country but from an early date, with the invention of small arms, statutes were enacted condemning the practice of carrying a deadly weapon concealed on or about the person. The reason for these statutes, it has been said, is 'because persons becoming suddenly angered and having such a weapon in their pocket, would be likely to use it, which in their sober moments they would not have done, and which could not have been done had not the weapon been upon their person.'

The condemnation of our statute is against anyone '[carrying] concealed a deadly weapon, other than an ordinary pocket knife, on or about his person'. Substantially the same language is used in many other states. Any mode is within the terms of the statute where the concealed weapon is carried in such close proximity to the person that it is readily accessible and available for use.

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Williams v. Commonwealth, 261 S.W.2d 807, 807-08 (Ky. 1953) (internal citations omitted). See also *State v. Raso*, 9 Misc. 2d 739, 740-41, 170 N.Y.S.2d 245 (1958).

The problem with this analysis is that it doesn't tie non-firearms weapons law into firearms laws. If one can have a permit to carry a concealed firearm, which presumably means one is trusted not to over-react while having a weapon on their person, then it seems logical that one should be similarly trustworthy with a bladed or bludgeoning weapon. It also suggests that the weapons laws are most concerned with easily concealable items, and may not include, unless specifically mentioned, swords, polearms or other large items typically owned for martial arts, historical recreation, or as curios or decorations.

Another theory is that weapons laws were "undoubtedly" enacted "to outlaw instruments which are ordinarily used for criminal and improper purposes, and so we have in this act [California's statute] a partial inventory of the arsenal of the public enemy, the gangster, and a prohibition against owning anything of the kind." *People v. Mulherin*, 140 Cal.App. 212, 35 P.2d 174 (Cal.App. 1934) (internal citations omitted). See also *Haynes v State*, 24 Tenn 120 (1844) (purpose to outlaw heavy, dangerous, destructive knives, the only use of which is to kill; did not apply to knives used for legitimate purposes). But see *State v Delgado*, 298 Or. 395, 692 P.2d 610 (1984) (all hand-held weapons necessarily share both characteristics, and that it is not the design of the knife but the use to which it is put that determines its offensive or defensive character). This theory also has some truth to it. One can often see in statutes the concerns and fears of the times the statute was enacted or amended. In the early 1910-20s, legislatures were often concerned with knives and bludgeons associated with anarchists. In the 1950s, Congress and various states banned switchblades because of concerns about gangs. In the 1960-70s, a fad based on Bruce Lee movies resulted in bans on illdescribed martial arts weapons. Unfortunately, the laws do not necessarily reflect changing times, when the "arsenal of the public enemy" has evolved into a useful tool for self-defense, an item of historical interest, or a popular item for martial arts training. See *People v. Tate*, 68 Ill.App.3d 881, 386 N.E.2d 584, 25 Ill.Dec. 313 (1979) (nunchaku as part of a legitimate sport); People v Malik, 70 Mich. App. 133, 245 N.W.2d 434 (1976) (nunchaku as a martial arts item not a "bludgeon"); People v Braunhut, 101 Misc. 2d 684, 421 N.Y.S.2d 763 (1979) (discussing a "spring whip" as a defensive weapon and contrasting it with the offensive uses of a "bludgeon").

In the absence of unifying principles, you will need to look at your state's statutes and case law individually.

WHAT IS ALLOWED OR PROHIBITED?

How do you figure out which non-firearms weapons are prohibited? For the most part, there's a general consensus about what a firearm is. The legislature usually defines terms like "firearm", "assault weapon", "large-capacity" firearm, and "machine gun", which give a firearms owner some sense of what he or she can own and carry.

Non-firearms weapons laws, on the other hand, can be frighteningly vague. Let's start with Massachusetts. General Laws ch. 269, § 10(b) prohibits you from carrying on your person, or under your control in a vehicle, any of the following:

any stiletto, dagger or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand, or a manrikigusari or similar length of chain having weighted ends

Other state statutes regulate "electronic defense weapons" (Gen. Laws ch. 140, § 131J) and require a permit for pepper spray (Gen. Laws ch. 140, § 129B(9B)).

Some of these terms seem clear. Some have been defined by the state courts. *Commonwealth v. Miller*, 497 N.E.2d 29, 22 Mass. App. Ct. 694 (1986) (defining "dirk knife"). A few are defined in other states, Massachusetts courts might look to those cases to interpret its own statute. A "slung shot" is not a sling shot, nor a sling. New York defines it as "a piece of metal or stone fastened to a strap or thong, used as a weapon. *People v. Desthers*, 343 N.Y.S.2d 887, 73 Misc. 2d 1085 (1973). A sling shot or bean blower cannot be legally made or sold in Massachusetts, see Gen. Laws ch. 269, § 12, but it seems that one can legally purchase one in another state. New Jersey defines a cestus as a hand covering of leather bands often loaded with lead or iron. *State v. Rackis*, No. A-1437-99T2 (N.J.Super.App.Div. 08/01/20003). Nunchuku sticks were considered in *State v. Tucker*, 28 Or. App. 29, 558 P.2d 1244 (1977); *People v. Malik*, 70 Mich. App. 133, 245 N.W.2d 434 (1976); *Commonwealth v. Adams*, 245 Pa. Super. 431, 369 A.2d 479 (1976). The others are unexplained.

Turning to Connecticut, we find another laundry list of prohibited weapons. General Statutes § 53-206 prohibits you from carrying on your person:

any BB gun, blackjack, metal or brass knuckles, or any dirk knife, or any switch knife, or any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, or stiletto, or any knife the edged portion of the blade of which is four inches or over in length, any police baton or

nightstick, or any martial arts weapon or electronic defense weapon, as defined in section 53a-3, or any other dangerous or deadly weapon or instrument

A similar list is found in General Statutes § 29-38, prohibiting weapons in motor vehicles. General Statutes § 53a-3 helpfully defines an electronic defense weapon as "a weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury" and a martial arts weapon as a "nunchaku, kama, kasari-fundo, octagon sai, tonfa or chinese star". None of the martial arts weapons have been defined by Connecticut courts. Unlike Massachusetts, Connecticut maintains verbatim transcripts of its legislative sessions, there may be some guidance in the legislative history.

For some objects, you may try to assert that they are not weapons. The Virginia courts look to the physical characteristics of the item, its common uses, and the circumstances surrounding the defendant's possession and use of it. See *Gilliam v. Commonwealth*, 49 Va. App. 508, 642 S.E.2d 774 (2007); *Delcid v. Commonwealth*, 32 Va. App. 14, 17, 526 S.E.2d 273, 274 (2000). For objects owned and used only as decorations, curios, costume accessories, theatrical props, or everyday tools, your attorney may be able to convince a prosecutor, judge, or jury to adopt that test.

Your attorney might be able to make an argument that some of the undefined exotic weapons statutes are void due to vagueness because an ordinary person would not know he or she was violating the law. See *Oregon v. Perrin*, 145 Or.App. 80, 929 P.2d 1016 (1996) ("any instrument or weapon commonly known as a blackjack" void due to vagueness and lack of common understanding of what a blackjack is.)

Massachusetts and Connecticut are not unique. You will likely encounter similar poorly-defined statutes in other states. In order to know what you are allowed to carry, you may need to retain an attorney or do some detailed legal research to understand your state's statutes and case law.

WEAPONS ON YOUR PERSON AND/OR IN YOUR VEHICLE

Assuming you can figure out what is, and is not permitted – the next question is whether those prohibitions apply generally, or whether there are places where you can own and carry items otherwise prohibited.

Massachusetts General Laws ch. 269, § 10(b) applies to things you may not carry on your person, or under your control in a vehicle. Also, it states that

whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and [unlicensed firearms]

A violation of General Laws ch. 269, § 10(b) risks imprisonment for 2 1/2 to 5 years in the state prison, or 6 months to 2 1/2 years in a jail or house of correction, or, for

persons with no prior felony record, a fine of \$50 or imprisonment for up to 2 1/2 years in a jail or house of correction.

The "catch-all" provision only applies in limited circumstances. In Massachusetts, it appears that you can carry items that are not specifically named so long as you behave lawfully. See *Commonwealth v. Blavackas*, 11 Mass. App. Ct. 746, 419 N.E.2d 856 (1981) (carrying kitchen bread knife in car not prohibited as no warrant for arrest and no breach of peace alleged).

In Connecticut, a violation of General Statutes § 53-206, by carrying a prohibited item on your person is a felony, risking a \$500 fine and/or up to three years in jail. This statute also has a series of exemptions, which does not include carrying one for self-defense. General Statutes § 29-38 precludes possessing weapons in vehicles, using the same list of weapons and exemptions. A violation is a felony, risking a \$1,000 fine and/or up to five years in jail. See *State v. Delossantos*, 211 Conn. 258, 273, 559 A.2d 164 (1989) (state must prove the following elements: (1) that the defendant owned, operated or occupied the vehicle; (2) that he had a weapon in the vehicle; (3) that he knew the weapon was in the vehicle; and (4) that he had no permit or registration for the weapon.) (*Delossantos* was decided before Connecticut revoked its rarely-used permit system for non-firearm weapons in 1999, see P.A. 99-212 – its courts have not yet considered whether that change will have any effect on its weapons possession laws.)

Both statutes have a catch-all provision for dangerous/deadly weapons other than those enumerated, which can be a trap for any number of common household objects that can be used as weapons. As noted above, the Massachusetts catch-all provision applies in limited situations. Connecticut case law is unclear about the liability of a person who carries an ordinary object that could be used as a dangerous weapon, but has not done so or shown an intent to so use it. See *State v. Ramos*, 271 Conn. 785, 860 A.2d 249 (2004); *State v. Scully*, 195 Conn. 668, 678, 490 A.2d 984 (1985) (discussing "common, everyday possessions which anyone is allowed to transport in [a] motor vehicle without subjecting themselves to arrest absent something more.")

The short answer, here, is to make sure that anything you are carrying on your person or under your control in a vehicle complies with your state law. Be aware that ordinary household objects may fall within these statutes and act with caution.

WEAPONS IN YOUR HOME OR PLACE OF BUSINESS

Some states, either by statute or by common law, allow people to own weapons in their homes or fixed places of business that they could not carry in places shared with neighbors or with the public. An Illinois appeals court notes that:

In exempting property owners or persons in their fixed place of business, the legislature was mindful of the need of people to defend their homes and businesses from unlawful intruders and the fact that the police cannot protect every home and every business 24 hours a day. The renter also has this right insofar as his apartment is concerned. However, to allow all of

the renters of one apartment complex to carry or possess a weapon in the common areas would be to invite the situation that the legislature sought to prevent, i.e., the mass possession of weapons, which would pose a danger to the public and the police alike. In limiting the allowable possession of weapons to property in which one has ownership, the legislature has balanced a person's need to protect his home or business with the need of the general public and the police to be protected from potential use of weapons in situations unrelated to protecting one's property or business.

People v. Pulley, 345 Ill. App. 3d 916, 926, 281 Ill. Dec. 332, 803 N.E.2d 953 (2004). In places where a statute or the case law is silent as to non-firearms weapons in the home or business place, your attorney may try to assert a Second Amendment right to carry weapons in these private areas – the law in this area is in flux, so tread with caution when relying on this right absent clear statutory language.

The Massachusetts Supreme Court interpreted its state law to conclude that you can lawfully own a firearm without a permit in your residence or your place of business, even though the statute was silent on this matter at that time. *Commonwealth v. Seay*, 376 Mass. 735, 383 N.E.2d 828 (1978). The legislature later amended the firearms statute to exempt those in their residences or places of business. See Gen. Laws 269, § 10(a)(1). The rule has not thus far been extended to non-firearm weapons. The Massachusetts courts might do so, perhaps as an extension of one's Second Amendment rights. 1See *State v. Stevens*, 113 Ore. App. 429, 833 P.2d 318 (1992) (switchblade is "arms", carrying thereof cannot be totally prohibited under state constitution's counterpart to Second Amendment); *State v. Smoot*, 97 Ore. App. 255, 775 P.2d 344 (1989) (same); 2 *State v. Hamdan*, 264 Wis.2d 433, 665 N.W.2d 785, 808 (2003) ("If the constitutional right to keep and bear arms for security is to mean anything, it must, as a general matter, permit a person to possess, carry, and sometimes conceal arms to maintain the security of [her] private residence.") See also 3*District of Columbia v. Heller*, 554 U.S. ____, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (right to carry handguns in one's home).

The Connecticut Supreme Court has interpreted its state law to conclude that you can lawfully own a weapon in your residence/place of abode or your place of business, even though the statute is silent on this matter. *State v. Sealy*, 208 Conn. 689, 546 A.2d 271 (1988).

Residence and abode are legal terms – they refer to areas under your exclusive control, not shared areas like the common hallway of an apartment building. *Id. See* also *Commonwealth v. Belding*, 42 Mass.App.Ct. 435, 677 N.E.2d 707 (1997); *Commonwealth v. Statham*, 38 Mass. App. Ct. 582, 650 N.E.2d 358 (1995). It is unclear how it might apply to semi-public areas like the porch, detached garage, or yard of a private residence. The more access the public has to the area, the less likely it is that a court will consider it part of your residence.

Place of business is also a legal term. It generally only grants a right to carry weapons to the business owner(s), not to managers or employees, see *State v. Vickers*, 260 Conn. 219, 796 A.2d 502 (2002) and is limited to fixed business places, not to a business vehicle like a taxi. 4*State v. Lutters*, 270 Conn. 198, 853 A.2d 434 (2004).

A business owner normally cannot delegate this right to a manager, watchman, or guard when the owner is not personally present. See *State v Valentine*, 124 N.J. Super 425, 307 A2d 617 (1973) (tavern owner could not delegate right to night bartender).

Some statutes allow, or imply, that you can carry a weapon from your home to your place of business and vice-versa. The exemption is most likely to apply if: (1) the weapon is not habitually carried between those places; (2) the purpose for carrying the weapon is legitimate; (3) the route taken is a practical one; and (4) the journey proceeds without undue delay or unnecessary or unreasonable deviation. See *Bergman v. State*, 90 S.W.3d 855 (Tex. App. 2002).

In sum, your home and your place of business may have greater protection under state law, but be wary of grey areas such as common areas of multi-unit buildings, public parts of your house or yard, and mobile places of business. Similarly, if you are temporarily staying in someone else's home or do not have a clear interest as owner or tenant in your abode, or you are a manager or employee of a business, look carefully at your state law before relying on these provisions.

SELF-DEFENSE AND A WEAPONS POSSESSION CHARGE

If you are carrying a weapon for self-defense purposes, state law varies about whether you can also assert self-defense as to the charge of unlawfully carrying a weapon. The answer is generally "no" as to firearms and weapons which are specifically proscribed under state law, see *Commonwealth v. Lindsey*, 396 Mass. 840, 489 N.E.2d 666 (1986), but "yes" as to common household items like a kitchen knife which might also fit the catch-all deadly/dangerous weapon language. See 5*State v. Ramos*, 271 Conn. 785, 860 A.2d 249 (2004) (6an otherwise legal item which did not become a dangerous instrument under Gen. Stat. § 29-38 until it was used in self-defense).

If you come into possession of the firearm or other weapon as a part of a self-defense incident, then self-defense may apply to temporary possession and use of the weapon. See *Commonwealth v. Lindsey*, 396 Mass. 840, 489 N.E.2d 666 (1986).

Do not expect self-defense to protect you from prosecution for carrying an item listed as a dangerous weapon in your state. If you are going to carry a weapon – find one that is legal in your state and be able to explain why you chose that item and why it is a legitimate tool for self-defense.

MINIMIZING THE RISK OF VIOLATING A CONFUSING ARRAY OF LAWS

First and foremost, you need to be aware of your state weapons law and comply with it as best you can. Where your state law is ambiguous, you may want to minimize the risk of a dispute with the police and/or a prosecutor. If you are arrested for possession of a dangerous/deadly weapon, then you are in the midst of a criminal case, which can be expensive to defend, with the risk of a felony conviction if the judge or jury disagree with your interpretation of the law and conclude that you unlawfully possessed a dangerous weapon.

As noted above, consider getting a firearms carry permit. It may not include non-firearms weapons, but it may help persuade a police officer, prosecutor, or juror that if

you can be trusted with a concealed handgun, then you did not have an unlawful purpose when you owned or carried an item that falls within a grey area.

Don't carry questionable items for self-defense --- you can find a clearly legal item that will serve your needs. Know and be able to clearly explain the self-defense uses of whatever item you carry --- police officers and juries may react poorly to "evil looking" items, even if they are not prohibited by statute and were used lawfully, unless you or your attorney can explain why you carried that specific item as a legitimate tool of self-defense.

If you own any weapon, you should not just leave it lying around. Many states have safe-storage laws for firearms, primarily designed to protect children from harm and to prevent thefts. Even if your state's statute does not mention non-firearm weapons, you should apply similar principles to them. Keep them securely stored in a locked container when not in use.

Likewise, although state laws prohibiting carrying a firearm while intoxicated such as Gen. Law ch. 269, § 10H and Gen. Stat. § 53-206d(a) may not mention non-firearm weapons, judgment-affecting substances and weapons do not mix.

When transporting any weapon in a vehicle, be aware of your state's laws and the laws of states you are travelling through. In Massachusetts, the statute prohibits having a weapon under your control. Store items that might arguably fall in a grey area in a solid, locked container in the trunk (if possible). In Connecticut, the statute appears to prohibit weapons anywhere in the vehicle; however, having an item in a locked container away from the passenger area may suggest that you do not intend to use it as a dangerous weapon.

If you are stopped and asked whether there is a weapon in the car, you will have to decide what to say. If you say yes, the officer will want to see the weapon and there may be questions about your right to possess it. If you say no, and the officer finds the weapon, your credibility is lost. Where the laws are ambiguous, the officer has considerable discretion about whether to arrest you and/or confiscate the item. In general, be polite and don't argue with the officer. Remember that any statements you make may be used against you.

Don't waive your *Miranda* rights, either.

Do not waive your rights regarding searches. An officer who stops your car can look around the passenger compartment. If he or she has a fear for his or her safety, you can be ordered out of the car and frisked and the passenger compartment searched. An officer should not be in your trunk without your consent unless you have been, or are about to be, arrested, and should not open locked containers absent a warrant. If a search occurs, you need to tell your attorney as soon as possible so that he or she can try to preserve evidence if the search was unlawful.

If you own an item that falls within a grey area as a collector or for martial arts, historical recreation, or other lawful purposes, store and/or transport it in that context. Even if your state does not have specific exemptions like those in Connecticut, placing the item in the context of a tool or prop or curio may persuade an officer, prosecutor, judge, or jury that it is not a weapon, but an ordinary household implement and does not fall within a weapons statute.

Further Reading:

Massachusetts:

<u>Massachusetts Weapons Law</u> (look at section (b) for melee weapons) <u>Summary by GOAL</u>

Connecticut:

Connecticut Weapons Law

Connecticut Law Prohibiting Weapons in Vehicles

Legislative Summary of CT Firearm Laws

United States

Switchblade Knives Act 15 USC 1241 et seq., see also 19 CFR §§12.95-12.103 (associated customs regulations)

Interesting Possession Cases

A.P.E. v. People, 20 P.3d 1179 (Colo. 2001) (discussion of "push dagger" as prohibited weapon under catch-all definition; no evidence of intent to use as weapon, could be owned as collection or for decorative purposes).

State v. Panitz, 251 A.D. 276; 296 N.Y.S. 80 (1937) (possession of bayonet in car allegedly to find another like it for decorative purpose)

Commonwealth v. Walton, 252 Pa. Super. 54, 380 A.2d 1278 (1977) (discussion of state curio exemption as applied to sword cane)

RELIGION AND WEAPONS LAWS

There is not a great deal of guidance for those who own weapons for religious purposes. There are a few cases involving Sikhs, who carry a dagger (kirpan) as part of their faith. If you may be asserting a religious defense to a weapons possession law, you may want to keep a copy of any documents discussing your faith's requirements, and strictly keep and use the item in the appropriate religious context.

Cheema v. Thompson, 67 F.3d 883 (9th Cir. 1995) (school district ordered to find accommodation with Sikh children regarding kirpan)

People v. Singh, 135 Misc. 2d 701, 516 N.Y.S.2d 412 (N.Y. Crim. Ct. Queens County 1987) (holding that a New York law prohibiting, with some exceptions, the wearing or carrying of knives did not violate a Sikh's freedom to practice his religion, which required him to carry a sword called a "Kirpan", but wearing a Kirpan in a Sikh temple would not violate statute)

State v. Singh, 117 Ohio App. 3d 381; 690 N.E.2d 917 (1996) (discussing application of Religious Freedoms Restoration Act of 1993 to Sikh's kirpan)

State v. Easterlin, 159 Wn.2d 203, 209 n. 3, 149 P.3d 366 (2006) ("if a defendant is in possession of a ceremonial weapon, such as a Sikh's kirpan that he is required to carry by religious commandment, or of a prop, or of a kitchen knife in a picnic basket, or is a farmer who carries a .22 caliber rifle in a gun rack, or has some object that merely could be used as a weapon, it may be appropriate to allow him to argue to the trier of fact that he is not "armed" as meant by Washington law and to allow the trier of fact to make that determination.")

OTHER SOURCES

American Knife and Tool Institute suggested <u>definitions of knives</u>
American Knife and Tool Institute suggested <u>protocol for measuring blade length</u>
Carl Brown, Martial Arts and the Law (1998)
Bernard Levine's compilation of state knife laws

Olson & Koppel, All the Way Down the Slippery Slope: Gun Prohibition in England and Some Lessons for Civil Liberties in America, 22 Hamline L. Rev. 399 (1999) Wikipedia on Switchblade Laws

AMERICAN LAW REVIEW (ALR)

ALR is a legal encyclopedia of essays collecting state and federal cases on a wide variety of topics. It has a number of entries on weapons possession laws and may be a good resource for those interested in the topic. ALR is often available at courthouse law libraries.

Offense of carrying concealed weapon as affected by manner of carrying or place of concealment, 43 A.L.R.2d 492

Pocket or clasp knife as deadly or dangerous weapon for purposes of statute aggravating offenses such as assault, robbery, or homicide, 100 A.L.R.3d 287

Scope and effect of exception, in statute forbidding carrying of weapons, as to person on his own premises or at his place of business, 57 A.L.R.3d 938

Validity of state statute proscribing possession or carrying of knife, 47 A.L.R.4th 651 Walking cane as deadly or dangerous weapon for purpose of statutes aggravating offenses such as assault and robbery, 8 A.L.R.4th 842

What constitutes a "bludgeon," "blackjack," or "billy" within meaning of criminal possession statute, 11 ALR4th 1272

What constitutes "dangerous weapon" under statutes prohibiting the carrying of dangerous weapons in motor vehicles, 2 A.L.R.4th 1342