

Criminal Law Section B

Collateral Consequences of Criminal Convictions

Eric Tindal

Keegan , Tindal & Mason
103 E College St., Ste. 312
Iowa City, IA
eric@keeganlegal.com

David Johnson

Brinton, Bardwell & Johnson
PO Box 73
Clarion, IA
david@clarionalaw.com

Matthew Lindholm

Gourley, Rehkemper & Lindholm, PLC
440 Fairway Dr., Ste. 210
West Des Moines, IA
mtlindholm@grllaw.com



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BEYOND THE SENTENCE-DISCUSSING COLLATERAL CONSEQUENCES

Eric D. Tindal and Matt Lindholm

I. FIREARMS RIGHTS

A. While the debate about firearms has divided many the law in Iowa concerning firearms has become an increasingly confused morass. The confusion arises in part because laws concerning firearms are enacted in a piecemeal fashion. And in part, because laws governing firearms in Iowa are controlled by both federal and state law which are not always consistent with one another.

B. Who is a Prohibited Person

1. Federal Law – 18 USC § 922(g)
 - a. Felons
 - b. Fugitives
 - c. Unlawful users of or addicts to a controlled substance
 - d. Persons who have been adjudicated as mentally “defective” or who have been involuntarily committed to a mental institution.
 - e. Illegal aliens and non-immigrant aliens;
 - f. Persons dishonorably discharged from the armed forces;
 - g. Persons who have renounced their U.S. citizenship;
 - h. Persons who are the subject of disqualifying domestic protection order; and
 - i. Persons convicted of a misdemeanor crime of domestic violence.
2. State Law – Iowa Code § 724.26
 - a. Convicted felons or a person adjudicated delinquent on the basis of conduct which would constitute a felony if committed by an adult;
 - b. A person who is subject to a protective order under 18 U.S.C.(g)(8) or who has been convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9);

- c. A person subject to a commitment subject to the provisions of 18 U.S.C. § 922(d)(4) and (g)(4).
 3. Note that pursuant to Iowa Code § 724.25(1) a felony is defined as anything punishable by more than one (1) year **if** the criminal conviction included the use of a firearm. So, for example, Carrying Weapons conviction creates a lifetime firearms prohibition despite the fact that it is an Aggravated Misdemeanor.
- C. What is a Conviction for Purposes of Firearms Rights
1. A deferred judgment will preserve a persons firearms rights under both and federal and state law.
 2. A person convicted of a prohibiting offense must successfully complete probation before having any right to possess a firearm restored. *State v. Deng Kon Tong*, 805 N.W.2d 599 (Iowa 2011)
- D. Domestic Violence
1. The most important aspect to remember about domestic violence is that this prohibition is NOT convicted by the term “Domestic”. The prohibition is triggered where a) an element of the offense includes “use or attempted use or threat of physical force” and b) it involves a person who the defendant is in a domestic relationship with. See *United States v. Smith*, 171 F.3d 617 (8th Cir. 1999).
 2. What this means is that pleading a defendant to a simple misdemeanor non-domestic assault will generate a lifetime firearms prohibition.
 3. The goal should be to find a charging concession such as “disorderly conduct”. In the event that the prosecutor will not amend on that basis then one should plead specifically to the “offensive conduct” version of simple assault contained in Iowa Code § 708.1(2)(b).
 4. Under federal law if the order of conviction is statute specific and the statute does not include an element of “physical force” then no prohibition will trigger. If it is vague, however, such as simple assault under 708.1, the Court can look at any document such as complaint or minutes of testimony to determine whether the offense involved a threat of physical force and whether it involved a person they were in a domestic relationship with.
 5. A person subject of a domestic no-contact order will be prohibited from possessing firearms until the no-contact order is no longer in effect. See

Iowa Code § 724.26(6). This necessarily includes orders issued pursuant to Iowa Chapter 236.

- a. Note that there is a question on appeal right now whether a temporary no-contact order issued in a domestic prosecution is a prohibiting order. So, stay tuned.

E. Addicts and Mental Illness

1. The law is not entirely clear in this area in who is an unlawful user or addict.
2. In *United States v. Reed*, 114 F.3d 1067, 1071 (10th Cir. 1997) the court held that there must be a temporal nexus between the drug use and the possession of the firearm. Therefore courts look to “pattern and recency” to determine a violation of this prohibition.

3. Mental Health Commitments

- a. *United States v. Whiton*, 48 F.3d 356 (8th Cir. 1994). A Nebraska resident was forcibly hospitalized for an evaluation but following said evaluation was not “committed”. Therefore Mr. Whiton was not deemed a prohibited person. See also *U.S. v. Chamberlin*, 159 F.3d 656 (1st Cir. 1998)(although Chamberlin involuntarily committed for observation, since defendant volunteered to self-admit before the 5 day formal observation period was up this was not a disqualifying commitment).
- b. Under Iowa Code § 724.31 the Clerk of Court is required to send notice of commitment to all the relevant parties. The committed person may petition the Court to restore their firearms rights. In the event the petition is not granted, the Court can be petitioned every 2 years.

F. Conceal Carry Permits

1. Nonprofessional Permits to Carry Weapons are issued by the Sheriff of the applicant’s county of residence. The applicant must complete an application and pay a \$50.00 fee. Renewals of the permit are \$25.00. (Iowa Code § 724.11).
2. You cannot carry a concealed weapon if you are intoxicated. That is having a blood alcohol concentration of .08 as measured in the person’s blood breath or urine; having a controlled substance present in blood or urine; or are under the influence of alcohol or drug which impairs a

person's reason or mental ability; displays impaired judgment; or visibly excites a person's emotions; or has to any extent lost control of bodily actions or motions.

- a. Violation is now a serious misdemeanor pursuant to Iowa Code § 724.4C(1). There is an exception that prohibits conviction if the intoxication is within one's own dwelling, place of business, or on their own land. (Iowa Code § 724.4C(2)(a). See also the self defense exception to the charge. (Iowa Code § 724.4C(2)(b)).
3. There are several locations where a permit to carry does not extend
 - a. K-12 school grounds
 - b. School buses (including bus drivers)
 - c. State University Campuses
 - d. State-licensed casinos
 - e. State fairgrounds
 - f. State parks and preserves (only use is prohibited, not carrying)
 - g. State game refuges
4. Last year the legislature made 3 important changes to the law concerning where a person can carry
 - a. Allowed firearms to be carried on the capitol complex grounds with a valid permit to carry so long as the person displays their permit to carry upon request. (Iowa Code § 8A.322
 - b. Prohibited city, county or townships from passing any ordinance regulating the ownership, possession, transfer, transportation, registration, or licensing of firearms when the person is otherwise acting in accordance with state law. (Iowa Code § 724.28)
 - c. A person can now carry while riding on an ATV or snowmobile although they may not shoot from them unless the person is non-ambulatory and engaged in hunting. (Iowa Code §§ 321I.14 and 321G.13).
5. What you can do to restore weapons rights
 - a. Upon completion of a deferred judgment probation period for a prohibiting offense
 - b. If a person is determined no longer to be addicted to the use of drugs or alcohol pursuant to Iowa Code § 724.8(2)

- c. Upon the passage of 3 years after any serious or aggravated misdemeanor conviction under Iowa Code Chapter 708 (assault, harassment, stalking, etc...) not involving a firearm or explosive
- d. Government's special Restoration of Firearms Rights (Good luck – between 2011 and 2015 only 19 applicants were granted or about 10% of applicants).
- e. Wrongful denials or revocations of a conceal carry permit can be challenged pursuant to Iowa Code § 724.21A. The winner gets costs and reasonable attorney fees.

G. Stand Your Ground – Iowa Chapter 704

1. A person can use reasonable force if necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another. A person can be wrong in their estimation of danger or the force necessary to repel the danger as long as their belief was reasonable. A person who is not engaged in illegal activity has no duty to retreat from any place where the person is lawfully present before using force. There is a presumption that the use of force was justified if any of the following scenarios apply:
 - a. The person was unlawfully entering the dwelling, place of business or occupied vehicle of the person using the force;
 - b. The person is unlawfully removing or attempting to remove another person against the person's will from a dwelling, place of business, or occupied vehicle.
2. The presumption does not apply if:
 - a. The person using defensive force is engaged in a criminal offense or attempting to flee the scene of a criminal offense
 - b. The person sought to be removed as a child or grandchild or is otherwise in the lawful custody or guardianship of the person against whom force is used

H. Contact with the State

1. Ross Loder is a great contact at the Iowa Department of Public Safety. He is the Bureau Chief for Weapons Permits and can be emailed at loder@dps.state.ia.us or called at 515-724-6223

II. Department of Transportation

A. The ins and outs of drivers licenses are so complex that instead of outlining everything in a mind-numbing (and likely incomplete) blur we will focus on identifying some top issues to remember. THESE SECTIONS ARE EVER CHANGING. SO PLEASE CONSULT THE IOWA ADMINISTRATIVE CODE AND THE IOWA CODE FOR YOUR SPECIFIC CASE OR SITUATION.

B. A general resource list.

1. This is not an exhaustive list but rather a set of code provisions that will get you started

a. Iowa Administrative Code § 761-615: non OWI Revocations and Suspensions

b. Iowa Administrative Code § 761-620: OWI Revocations and Suspensions

c. Iowa Administrative Code § 761-607: Commercial Driver's Licenses

d. Iowa Code Sections

a. 321.208 (CDL Licenses)

b. 321.209 (Mandatory Revocations Upon Certain Convictions)

c. 321.210 (Suspension Offenses)

d. 321.210C (Driving Probation)

e. 321.211 (Notice and Hearings)

f. 321.212 (Periods of Suspension or Revocation)

g. 321.213 (Suspensions or Revocations for Juveniles)

h. 321.215 (Temporary Restricted Licenses)

i. 321.555 (Habitual Offender Defined)

j. 321.560 (Revocation and TRL for Habitual Offenders)

k. 321J.4 (OWI Suspension Based upon Convictions)

l. 321J.9 (OWI Suspensions Based Upon Refusals)

m. 321J.12 (OWI Suspensions Based Upon Test Failures)

n. 321J.20 (Temporary Restricted Licenses for OWI's)

e. Contact at the Iowa Department of Transportation

1. Sara Siedsma (sara.siedsma@iowadot.us)

C. The Must Know List

1. Mandatory Revocations for Certain Convictions (Iowa Code § 321.209 and 761-615.29)

- a. Manslaughter resulting from use of a motor vehicle
 - b. Using a Vehicle During the Commission of a Felony
 - c. Failure to Stop and Render Aid with an Accident Resulting in Death or Personal Injury
 - d. Perjury or False Affidavit to the DOT
 - e. Two convictions of reckless driving
 - f. Draft Racing
 - g. Eluding or Attempting to Elude
 - h. Driving While Suspended or Revoked Convictions (see Sub 3 below)
 - i. Note: 124 violations (possession of controlled substance) no longer result in a driver's license suspension.
2. Other Scenarios Resulting in Suspensions (Iowa Code § 321.210)
- a. Habitually Reckless or Negligent Driving (761-615.12)
 - b. Habitual Violator (Iowa Code § 321.555 and 761-615.9)
 - c. Physical or Mental Incapability (761-615.14)
 - d. Unlawful or Fraudulent Use of License (i.e. Fake ID)(761-615.15)
 - e. Out of State Offenses (761-615.16 and 761-615.30)
 - f. Serious Violations (speed violation of 25 mph or more over the limit, “unusually serious report”, moving violation resulting in death, passing school bus)(761-615.17)
 - g. Failure to pay an out of state ticket (761-615.18)
 - h. Three or more final convictions of certain offenses within a six-year period results in “barment” (Iowa Code § 321.555(A))
 - 1. Offenses include OWI, Driving While Revoked, Manslaughter, Perjury to DOT or Dept. of Public Safety, Felony with a Vehicle, Eluding, Serious injury by Vehicle, and “Failure to Stop and Leave Information or Render Aid.
 - 2. The length of the bar depends on the points assigned to the conviction. IAC 761-615.9 sets forth those points. Ex. Two OWIs (4 pts each) plus one Driving While Revoked (3 pts) equals 11 points resulting in a 4-year bar.
3. Commercial Drivers Licenses
- a. More people than you realize have a Commercial Driver's License. This is important for you to establish so you know how to advise them.

- b. A temporary restricted license does not apply to a commercial driver's license whether as a result of Operating While Intoxicated or otherwise. See Iowa Code §§ 321J.20(4) and 321.215(4).
- c. If you are appealing a CDL disqualification, the suspension does not get stayed while you are exhausting your administrative remedies. Iowa Admin. Code § 761-615.38(5)(b)(3). If, however, you file a petition for judicial review after the administrative remedies are exhausted a stay does issue. Iowa Code § 321.208(15).
- d. Suspension of a non-CDL license will result in suspension of a CDL License
- e. Exceptions to CDL License Requirements (farming w/in 150 miles). See Iowa Code § 321.176A.

D. Operating While Intoxicated

1. NEW LAW effective July 1, 2018 (House File 2338)(amends 321J.20)
 - a. Removes all hard suspension periods
 - b. Removes all time, place, and manner restrictions
 - c. Requires installation of ignition interlock devices on all offenses
 - d. Requires installation of ignition interlock devices on ALL vehicles owned or registered to the Defendant/driver.
 - e. Note that if your client is under the age of 21 there are no temporary restricted license's issued until age 21 IF your client has two prior revocations.
2. Suspension Periods (321J.9 and 321J.12)
 - a. First Offense – 180 days for test failure/1 year for test refusal
 - b. Second Offense – 1 year for test failure/2 years for test refusal
 - c. Third Conviction – six-year revocation if it is a third conviction within 12 years. *Wyciskalla v. Iowa Dist. Court for Johnson County*, 598 N.W.2d 403 (Iowa 1998)(six year revocation can only be issued for 3 OWI convictions occurring within the 12 year look back period).
 - d. Iowa Code § 321J.4 sets the revocations following an OWI conviction if the person was not otherwise suspended.
3. Miscellaneous Information concerning OWIs
 - a. Second Offense OWI revocations require the installation of an ignition interlock for one year regardless of whether the person gets a temporary restricted license or not.

- b. The suppression of a test result or test failure provides grounds to rescind the revocation. See Iowa Code § 321J.13(6) BUT if they plead to or are convicted of an OWI, it will still result in a suspension as set forth in 321J.4
- c. You can request a hearing with the DOT to contest the revocation of the individuals license as long as it is within 10 days of being served with the notice of revocation and the DOT has to stay their license suspension.

E. Moving Violations

1. Right to Speed Law

- a. The first two speeding tickets within a year that are 10 mph or less in 35 mph to 55 mph speed zones are not moving violations. Iowa Code § 321.210C(3)
- b. Keep in mind the speed zones. A number of law enforcement officers issuing citations on the interstate have issued tickets and incorrectly told the driver that it would not be a moving violation.

2. Pursuant to Iowa Administrative Code § 761-715.1 unless noted otherwise, the following is the list of non-moving violations (aka if not listed here it is a moving violation)

- a. Violations of Equipment Standards
- b. Parking Violations defined in Iowa Code § 321.210
- c. Seatbelt violations
- d. Violations of weight, registration, and dimensions laws
- e. Operating with Expired License
- f. Failure to Appear
- g. Disturbing the Peace with a Motor Vehicle
- h. Proof of Insurance

3. School Bus Violations – Iowa Code § 321.372(3)

- a. The driver of a vehicle, including the driver of a vehicle operating on a private road or driveway, meeting a school bus with flashing amber warning lamps shall reduce the vehicle's speed to nor more than 25 mph and shall bring the vehicle to a complete stop when the school bus stops and the stop signal arm is extended. The vehicle shall remain stopped until the stop signal arm is retracted after which time the driver may proceed with due caution

- b.when overtaking...shall not pass...bring vehicle to complete stop no closer than 15 feet from the bus...and remain stopped....
- c. IAC 761-615.17(2)(d) provides the following suspension periods
 - 1. 30 days for first conviction; 90 days for second; 180 days for third

F. Temporary Restricted Licenses for Non-OWI Suspensions (Iowa Code §321.215 and 761-615.45)

- 1. The following suspensions DO NOT authorize a restricted license at all (761-615.45)
 - a. License has been denied or canceled
 - b. Suspended for Incapability
 - c. Suspended for violation of financial responsibility law
 - d. Suspension for revocation of a minor’s school license
 - e. Suspension for failure to pay fine, penalty, surcharge or court costs
 - f. Extension of a revocation or suspension for operating while under suspension or revocation
 - g. Mandatory revocations pursuant to Iowa Code § 321.209 (See subsection (C)(1) above – although there must be two revocations for drag racing.
 - h. A bar under 321.560¹
 - i. Suspensions for failure to pay child support
 - j. Suspension for failure to pay student loans
 - k. Charge of vehicular homicide (321.210D and 761-615.19)
 - l. Suspension of graduated license (321.180B)
- 2. Allowable Purposes (Iowa Code § 321.215)
 - a. Full or Part-Time Employment
 - b. Continuing Health Care or Health Care of a Dependent
 - c. Continuing Education
 - d. Substance abuse Treatment
 - e. Court ordered community service
 - f. Appointments with probation or parole officer

G. Violations of Driving Probation (Iowa Code § 321.210C; 761-615.20)

¹ A person convicted solely for driving while a person’s license is suspended, denied, revoked or barred may qualify for a temporary restricted license. See Iowa Code § 321.215(2)(Use to include violations of 321J.2)

1. Non OWI
 - a. 12 month probation period follows the suspension or remedial action (driver improvement school)
 - b. In the event of two moving violations during the probation the department may suspend.
 - c. First two speeding violations of 10 mph or less in 34-56 mph zones do not count (see paragraph E(1) herein)
2. OWI
 - a. The same is applicable except that one moving violation will cause a potential suspension as opposed to two

H. Minors

1. School Licenses (761-615.21 and 761-615.33)
 - a. The DOT may suspend for one moving violation or accident that is the licensee's fault
 - b. The DOT may suspend for violating restrictions on the license
 - c. The DOT shall suspend for two or more moving violations
 - d. Full or Part-Time Employment
 2. Delinquency Findings (761-615(23); Iowa Code §§ 321.213 and 321.213A)
- #### I. Hearings and Appeals (Iowa Code § 321J.12; Chapter 17A and 761-615.38)
1. Make sure client's address with the DOT is up to date (if they move they need to update it to assure they receive notices)
 2. Not all offenses require suspensions and are discretionary through a hearing
 3. Many offenses allow an appeal
 4. An appeal generally results in a stay
 5. There is a decision you need to make based upon the DOT ramifications versus the criminal ramifications
 - a. The alleged defendant has 10 days from the notice of revocation to request a hearing on the suspension. Appeal is taken by giving a notice of hearing request within that 10 days. This can be faxed to the Iowa Department of Transportation at 515-239-1837. It is ideal that you get a confirmation that your fax was sent. Alternatively, you can mail a copy to the DOT and request a copy be stamped and returned to you in a pre-addressed-prepaid envelope

- b. This request for appeal will generate an automatic “stay” order which acknowledges the appeal was received and that the appellant’s can continue to drive pending the appeal. You can also request a “no stay” which permits the appeal process but the revocation will go into effect on the 10th day. This decision is client dependent.
 - c. Request the Department of Inspection and Appeals issue a subpoena duces tecum to the arresting officer and jail requesting everything including (and especially) video.
 - d. The initial DOT hearing will be scheduled about 30 days into the future. You may request a continuance of this first hearing if you have a scheduling conflict or you are awaiting discovery to be produced from the subpoena. The first continuance is automatically granted. The second hearing will be scheduled approximately 30 to 45 days later but continuance of the second hearing is rare.
 - e. At arraignment you can demand speedy trial. In that event you will likely get a suppression hearing before the DOT matter proceeds to the appeal hearing. There is the potential that you will achieve a suppression of the test result prior to the end of the DOT appeal process which means your client will not lose their license (assuming there is no conviction by trial)
- J. Generally in any case you will want an exhaustive list of any and all prior convictions within the last 6 and 12 years. Six years for “barment” considerations and 12 years for OWI enhancement purposes.

III. Immigration

- A. Immigration has become something that all of us need to know to at least understand when we need to know. *Diaz v. State*, 896 N.W.2d 723 (Iowa 2017).
- B. Many presentations have been and will continue to be given on immigration matters as it relates representing people in criminal prosecutions. While no presentation on secondary consequences would be complete without a reference to immigration. Attached is a simple reference which should at least help you know when you need to know more.

IV. Professional Licensing

A. Two Important Applicable Rules of Professional Conduct

1. Iowa Rule of Professional Conduct 32:8.3 (attached)
2. Iowa Rule of Professional Conduct 32:8.4 (attached)

B. Legal Analysis of Whether a Criminal Violation is a Conduct Violation

1. Iowa Rules of Professional Conduct 32:8.4 expressly requires that the criminal act “have a nexus with the lawyer’s honesty, trustworthiness, or fitness to practice law.” Iowa R. Prof’l Conduct 32:8.4(b); *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Blessum*, 861 N.W.2d 575, 588-89 (Iowa 2015); *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Templeton*, 784 N.W.2d 761, 767 (Iowa 2010).
2. The mere commission of a criminal act does not necessarily reflect adversely on the fitness of an attorney to practice law. *Iowa Supreme Ct. Att’y Disciplinary Bd. v. Templeton*, 784 N.W. 761, 767 (Iowa 2010)
3. There cannot be too much attention focused on the moral quality of the conduct. *Iowa Supreme Ct. Att’y Disciplinary Bd v. Schmidt*, 796 N.W.2d 33, 40 (Iowa 2011).
4. Reflecting adversely on an attorney’s fitness has been defined by the Iowa Supreme Court as that which “reveals character defects, which affect the lawyer’s ability to deal with important controversies and confidential information that lessen public confidence in the legal profession.” *Iowa Supreme Ct. Att’y Disciplinary Bd v. Blessum*, 861 N.W.2d 575, 589 (Iowa 2015)(citing *Iowa Supreme Ct. Att’y Disciplinary Bd v. Keele*, 795 N.W.2d 507, 512 (Iowa 2011)).

C. Factors considered in determining whether or not the criminal conduct amounts to a violation of disciplinary rules (each case must be decided on its own facts):

1. The lawyer’s mental state;
2. The extent to which the conduct demonstrates disrespect for the law or law enforcement;
3. The presence or absence of a victim;
4. The extent of actual or potential injury to a victim; and
5. The presence or absence of a pattern of criminal conduct.

D. Examples of criminal conduct that have resulted in finding of an ethical violation:

1. Domestic Violence: Domestic abuse assault on wife reflected adversely on an attorney's fitness to practice law, resulting in a violation, primarily due to the fact the victim was seriously injured and because attorney's repeated violations of a no-contact order demonstrated a lack of respect for the law. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Axt.*, 791 N.W.2d 98, 101-02 (Iowa 2010); Domestic violence resulted in a violation primarily due to the fact that it was a conscious decision to act on hostility and assault his wife rather than walk away, he further showed disrespect for law enforcement by preventing a 911 call, lying to a neighbor and breaking steel cage in patrol car, and that wife and children had been victimized. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Schmidt*, 796 N.W.2d 33, 41 (Iowa 2011); see also *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Deremiah*, 875 N.W.2d 728, 737 (Iowa 2016).² (domestic assault, trespass causing bodily injury/property damage)
2. OWI: Convictions for OWI and possession of cocaine reflected adversely on attorney's fitness to practice, resulting in violation due to the fact there was property damage, threat of harm to others, pattern of criminal conduct, and disrespect for law enforcement based on responses to police intervention. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Cannon*, 821 N.W.2d 873, 877 (Iowa 2013); Conviction for OWI-Third offense reflected adversely on attorney's fitness to practice, resulting in violation due to the fact that it evidenced a pattern of criminal conduct and grave risk of injury to others. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Weaver*, 812 N.W.2d 4, 11-12 (Iowa 2012); *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Khowassah*, 837 N.W.2d 649 (Iowa 2013)(Conviction for OWI 2nd Offense reflected adversely on attorney's fitness to practice law as operating while intoxicated created a grave risk of potential injury to others).

² In *Deremiah* the Court emphasized the attorney's area of practice. "A competent family lawyer must be able to recognize and effectively deal with situations involving domestic abuse...A lawyer engaged in the practice of family law who engages in acts of domestic abuse may be less effective in screening similar incidents of abuse experienced by clients."

3. Drugs: Attorney convicted of drug-related offenses resulted in an ethics violation because it was not isolated, but part of ongoing substance abuse problem that resulted in two drug convictions, and attorney's course of conduct showed disrespect for rule of law and for law enforcement officials, and his disrespect for the law would lessen public confidence in the legal profession. *Iowa Supreme Ct. Att'y Disciplinary Bd. v. Roush*, 827 N.W.2d 711 (Iowa 2013)

E. Practical Considerations and Related Collateral Issues the Practitioner Should be Aware Of

1. A guilty plea, even if entered pursuant to *Alford*, has the effect of estoppel on the issue of criminal conduct and precludes any argument otherwise.
2. A criminal conviction that is reported to the Board of Professional Ethics and Conduct WILL result in a complaint and, at least, a minimal general investigation concerning the law practice. Oftentimes, these investigations reveal collateral matters that result in additional charges of violations.
3. The chain of events can advance to a civil lawsuit, with collateral estoppel implications there as well. In evaluating a criminal conviction that resulted in finding of violation of the professional rules of conduct, and what impact that had on subsequent civil lawsuit, a District Court Judge found: "After surveying the available authority, the court concludes that there is no reason for a *per se* rule against giving lawyer disciplinary proceedings preclusive effect in subsequent civil proceedings, including the offensive use of the doctrine." Thereafter, the District Court precluded the defendant attorney from relitigating a litany of very specific factual matters as a result of the findings in the disciplinary proceedings.
4. The criminal conduct, and subsequent disciplinary finding of a violation, while not related directly to the practice of law, can serve as the springboard to civil litigation or even inflammatory backdrop with which to present to a jury. An otherwise marginal legal malpractice claim can become nearly indefensible.
5. Most criminal convictions and disciplinary sanctions are public and can well result in more complaints, loss of clients, etc...
6. The Fifth Amendment will not insulate a lawyer in a disciplinary proceeding.

V. Miscellaneous

A. International Travel

1. Travel to Canada
2. Precheck with TSA and Global Re-entry

B. Diversion Programs

C. Sex Offender Registry

1. Like Immigration this is a massive matter. Attached is a form that will at least identify what convictions will result in a sex offender registry and the time periods.
2. Also note – that depending on the underlying facts the Department of Corrections can require an individual to register.



IMMIGRATION CONSEQUENCES OF CONVICTIONS SUMMARY CHECKLIST – DACA Supplement

Criminal bars relating to DACA temporary administrative status program (Updated June 16, 2017).

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SOME OTHER OFFENSES/CONDUCT THAT CAN LEAD TO A DENIAL OF PROSECUTORIAL DISCRETION TO GRANT DACA STATUS

- Convictions or other information indicating that the applicant is a threat to national security or public safety. DHS considers that such a threat includes, but is not limited to, gang membership, participation in criminal activities, or participation in activities that threaten the U.S.

DISPOSITIONS THAT AVOID AUTOMATIC DISQUALIFICATION

- Juvenile dispositions do not bar DACA (but adult convictions of juveniles may do so)
- Expunged convictions do not bar DACA

IMPORTANT: Potential DACA applicants who may wish to seek LPR or other formal lawful admission status in the future should also consider the Criminal Inadmissibility Grounds on the reverse side because a conviction triggering inadmissibility, even if it does not bar DACA, could affect the person's future ability to obtain formal lawful status

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) IS BASED IN PART ON:

- ◆ entry into the U.S. as a child under age 16 before June 15, 2007
- ◆ continuous residence in the U.S. since June 15, 2007
- ◆ currently in school, high school degree or GED, or honorably discharged veteran

But certain convictions will generally prevent non-citizens from obtaining DACA:

One felony conviction

- Any federal, state or local offense that is punishable by imprisonment for a term exceeding one year
- ◆ Does not include state immigration-related offenses

One "significant misdemeanor" conviction, including:

- An offense punishable by imprisonment of one year or less but greater than five days (regardless of sentence actually imposed) that is:

- ◆ Domestic violence
- ◆ Sexual abuse or exploitation
- ◆ Burglary
- ◆ Unlawful possession or use of a firearm
- ◆ Drug distribution or trafficking
- ◆ Driving under the influence

NOTE: The above list may include certain offenses that are not classified as misdemeanors in the convicting jurisdiction, e.g. domestic violations or driving under the influence traffic infractions, if punishable by more than five days in prison

- Any other offense punishable by imprisonment of one year or less for which the person received a sentence of time in custody of more than 90 days
- ◆ Suspended sentences do not count towards the 90 days

Three misdemeanor convictions

- Three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct

- ◆ Includes only federal, state, or local offenses punishable by imprisonment of one year or less but greater than five days (thus, may include certain low level offenses not classified as misdemeanors if punishable by more than five days in prison)
- ◆ Does not include minor traffic offenses (such as driving without a license)
- ◆ Does not include state immigration-related offenses

Note: Anyone who has had contact with the criminal legal system who is considering an application to initiate or renew DACA status should proceed with caution. There is uncertainty about how the DACA criminal bars will be applied under the Trump administration, and there are some preliminary indications that any contact with the criminal legal system may lead to heightened scrutiny of the application

Registerable Offenses	Lifetime Registry	10-Year Special Sentence	Lifetime Special Sentence
Sex Abuse 1st Degree	Sex Abuse 1st Degree	Misdemeanor or Class D Felony conviction for following offenses	Class C Felony or higher conviction
Sex Abuse 2nd Degree	Sex Abuse 2nd Degree		Sex Abuse
Sex Abuse 3rd Degree	Sex Abuse 3rd (709.4(1)(a))		
Indecent Exposure	Lascivious acts with a child (709.8(1)(a) or (b))	Lascivious acts with a child	Lascivious acts with a child
Harassment if sexually motivated	Assault with intent to commit sex abuse	Indecent exposure	Indecent exposure
Stalking if sexually motivated	Burglary 1st (713.3(1)(d))	Assault with intent to commit sex abuse	Assault with intent to commit sex abuse
Indictable violation of Chapter 708 against a minor and if sexually motivated	Kidnapping if sexual abuse committed during offense	Indecent contact with a child	Indecent contact with a child
Pimping if against or involving a minor and sexually motivated	Murder if sexual abuse committed during offense	Lascivious conduct with a minor	Lascivious conduct with a minor
Pandering		Sexual exploitation by a counselor, therapist, or school employee	Sexual exploitation by a counselor, therapist, or school employee
Indictable offense of Chapter 726 if against or involving minor and sexually motivated		Sexual misconduct with offenders and juveniles	Sexual misconduct with offenders and juveniles
Dissemination or exhibition of obscene material to minor		Sexual abuse of corpse	Sexual abuse of corpse
Telephonic dissemination of obscene material to minor		Invasion of privacy-nudity	Invasion of privacy-nudity
Rental or sale of hard-core porn if delivered to a minor		Incest	Sexual exploitation of a minor
Admitting minors to premises where obscene material is exhibited		Sexual exploitation of a minor	Sexual exploitation of a minor
Receipt or possession of child pornography			
Material containing child pornography			
Misleading domain names on internet			
Misleading words or digital images on internet			
Failure to file a factual statement about an alien individual			
Transmitting information about a minor to further criminal sexual conduct			
Lascivious acts with a child			

Attempted murder if sexually motivated
Penetration of the genitalia or anus with an object
Kidnapping is sex abuse committed during offense
Kidnapping of a minor if sexually motivated
Burglary 1st if sex abuse committed during offense
Burglary 1st if sexually motivated
Attempted Burglary 1st if sexually motivated
Burglary 2nd if sexually motivated
Attempted burglary 2nd if sexually motivated
Burglary 3rd if sexually motivated
Attempted burglary 3rd if sexually motivated
Human trafficking if sex abuse or assault with intent to commit sex abuse is committed or sexual conduct or contact is element of offense
Purchase or sale of individual if sexually motivated
Child stealing if sexually motivated
Enticing a minor if includes intent to commit sexual abuse, sexual exploitation, sexual contact, or sexual conduct toward a minor
Solicitation of commercial sexual activity
Sex trafficking of of children
Aggravated sexual abuse
Sexual abuse of a minor or ward