

COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

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CHAPTER 11

Preface

The originator of the material for this article is Pamela J. Lakatos, a criminal defense lawyer from Plano, Collin County, Texas. She wrote an article entitled “*Ethical Pitfalls in the Practice of Law*” and presented it to the Dallas County Bar in January, 2007. We have taken Ms. Lakatos’ article, with her permission, and reorganized it somewhat, updated some areas and expanded others but by in large, it is her work-product. I am extremely appreciative and forever indebted to Ms. Lakatos for allowing us to use her article. I also want to thank Matt Harding, a second year law student of the University of Texas Law School, who is currently serving as an intern in the Felony Trial Division of the Cook County State’s Attorney Office in Chicago, Illinois, for his tireless research and contributions to this article. I could not have done it without him. Thank you Pamela and Matt.

Randy T. Leavitt

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COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS

A Texas woman pleads guilty to a misdemeanor in 1969, successfully completes two years of probation, and the charge is dismissed. She subsequently operates a child-care facility, in full compliance with licensing rules, until 1998; in that year, the Texas Department of Protective and Regulatory Services amends the licensing rule and attempts to revoke her license.

Although the Attorney General's Office declined to address the merits of this particular case, its conclusion was unequivocal: "The Texas Department of Protective and Regulatory Services may revoke the license of a child-care facility operator who was convicted of a criminal offense." Tex. Atty. Gen. Op. JC-0130, 1999 WL 972571 (Tex.A.G.)

The idea that a 29-year-old misdemeanor conviction could result in the loss of a person's livelihood seems counter-intuitive, if not down-right draconian. However, this example illustrates a reality that may be surprising to both lawyers and laymen alike: relatively old and minor criminal convictions can lead to a wide variety of major and unexpected collateral consequences.

When trying to discover all of the ramifications of a criminal conviction, one finds that it is not an easy task. The consequences are not laid out in one easy locatable statute but are scattered throughout various codes and statutes of the state. Restrictions for convictions range from constitutional provisions that "equal rights" do not apply to prohibitions against obtaining professional licenses or occupational permits and to other unknown restrictions found in the various codes of this state.

Although there is substantial overlap, these consequences can be roughly divided into three broad categories: financial consequences, restrictions on rights and privileges, and indirect criminal consequences. This paper attempts to identify and summarize some of the most common consequences.

I. FINANCIAL CONSEQUENCES

Criminal convictions can have serious and sometimes surprising indirect financial consequences for the offender. These are of course in addition to direct fines imposed as part of a criminal sentence. Potential financial consequences include loss of employment, loss of government funding or assistance, and asset forfeiture.

A. Employment

State and federal restrictions on certain government programs, contracts, and licenses can significantly impact the employability of ex-offenders. Many of these restrictions, even those imposed by

regulatory agencies, are virtually automatic. Felony convictions, and convictions for crimes of moral turpitude, can lead to the automatic revocation of and ineligibility for a wide variety of federal and state licenses. In the past, one could enter a plea to deferred adjudication and be assured that the offense could never be used against the client. This has changed. Now deferreds are routinely reported and used as the basis of sentence enhancements and disqualifications as to employment and immigration.

1. Texas Occupations Code § 53.021 allows licensing authorities to revoke, suspend, or deny licensure to anybody convicted of a felony or misdemeanor directly relating to the duties of the licensed occupation. As the opening case demonstrates, licensing bodies have wide latitude in this area, and even a very old conviction can be considered for licensure purposes. To illustrate the potential impact of this provision, the following is a (non-exhaustive) list of Texas occupations for which a license is required, taken from <http://www.acinet.org/acinet/licensedoccupations>.

- Athletic Trainer
- Attorney
- Tax Professional
- Emergency Medical Technician
- Pawnbroker
- Stenographer
- Occupational Therapist
- Physical Therapist
- Massage Therapist
- Midwife
- Underground Storage Tank Installer
- Long Term Care Nurse's Aide
- Nursing Facility Administrator
- Optician
- Polygraph Examiner
- Respiratory Care Practitioner
- Sanitarian
- Athletic Agent
- Teacher
- Barber
- Speech/Language Pathologist
- Professional Counselor
- Professional Engineer
- Hearing Instrument Fitter
- Fire Protection System Contractor
- Securities Dealer
- Architect
- Interior Designer
- Landscape Architect
- Chiropractor
- Land Surveyor
- Professional Medical Physicist
- Orthotist/Prosthetist

- Private Investigator/Security Guard
- Veterinarian
- Licensed Vocational Nurse (LVN)
- Interpreter for the Deaf
- Chemical Dependency Counselor
- Firefighter
- Law Enforcement Officer
- Cosmetologist
- Pesticide Applicator
- Fish Farmer
- Code Enforcement Officer
- Insurance Adjuster
- Insurance Agent
- Water Well Driller
- Air Conditioning/Refrigeration Contractor
- Auctioneer
- Boxing Promoter
- Child Care Administrator
- Funeral Director/Embalmer
- Landscape Irrigator
- Optometrist
- Real Estate Broker
- Real Estate Inspector
- Acupuncturist
- Dental Hygienist
- Dentist
- Dietician
- Marriage/Family Therapist
- Perfusionist
- Psychologist
- Physician
- Registered Nurse (RN)
- Pharmacist
- Plumber
- Podiatric Physician
- Certified Public Accountant
- Social Worker
- County Librarian

Texas laws on the subject are helpfully summarized in a booklet entitled “*Statutory Restrictions on Convicted Felons in Texas*,” published by The Friends of the State Law Library. The booklet can be obtained for \$10.00 from the State Law Library by calling (512) 463-1722. Relevant federal laws can be found at Susan M. Kuzma, *Federal Statutes Imposing Collateral Consequences Upon Conviction* 10–11 (2000), available at http://www.usdoj.gov.pardon/collateral_consequences.pdf.

2. Crimes of Moral Turpitude

In most instances, before a conviction can be used to deprive one of a particular right or privilege it must qualify as a felony or crime of moral turpitude. Convictions for crimes of moral turpitude can affect a person’s ability to be licensed, obtain security clearances, and be employed. Moral turpitude is:

- a. The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita;
- b. Conduct that is base, vile, or depraved; and
- c. Something that is inherently immoral or dishonest. See *Ludwig v. State*, 969 S.W.2d 22, 28 (Tex.App. – Forth Worth 1998, pet. ref’d).

What follows is a list of crimes that have been defined as being ones involving moral turpitude or those that have not:

- Issuance of a bad check – not a crime of moral turpitude unless it was done with intent to defraud. *Dallas County Bail Bond Board v. Danny Mason*, 773 S.W.2d 586 (Tex.App. – Dallas, 1989). *Caveat:* Even though this is not considered a crime of moral turpitude, many employers will automatically deny employment because this statute is under the “Fraud” section of the Penal Code.
- Criminally negligent homicide is not a crime of moral turpitude. *Arnold v. State*, 36 S.W.3d 542, 546-547 (Tex.App. – Tyler 2000)
- Prostitution involves moral turpitude. *Holgin v. State*, 480 S.W.2d 405 (Tex.Crim.App. 1972)
- Theft is a crime of moral turpitude. *Benshaw v. State*, 88 S.W.2d 495 (1935)
- Driving While Intoxicated is not a crime of moral turpitude. *Stephens v. State*, 417 S.W.2d 286 (Tex.Crim.App. 1967)
- Swindling involves moral turpitude. *Sherman v. State*, 62 S.W.2d 146 (1933)
- Making a False Report is a crime of moral turpitude. *Lape v. State*, 893 S.W.2d 949, 958 (Tex.App. – Houston [14th Dist.] 1994, pet. ref’d)
- Assault by a man against a woman is a crime of moral turpitude. *Hardeman v. State*, 868 S.W.2d 404, 405 (Tex.App. – Austin 1993, pet. dism’d)
- Indecent Exposure is a crime of moral turpitude because “by his intent to sexually arouse either himself or another, acts upon motives of baseness, vileness, and depravity.”

- Polk v. State*, 865 S.W.2d 627 (Tex.App. – Fort Worth 1993)
- Bigamy by a lawyer is a crime of moral turpitude, not by non-lawyer. *Ruhe v. State Bar*, 1994 Tex.App. Lexis 3948, 1994 WL 649395 (Tex.App.—Dallas 1994) (unreported)
 - Misdemeanor marihuana possession is not crime of moral turpitude. *Hernandez v. State*, 976 S.W.2d 753, 756 (Tex.App. – Houston [1st Dist.], pet denied, 980 S.W.2d 652 (Tex.Crim.App. 1998)
 - Failure to Identify is a crime of moral turpitude. *Lape v. State*, 893 S.W.2d 949, 958 (Tex.App. – Houston [14th Dist.] 1994, pet. ref'd)
 - Unlawfully carrying weapon not crime of moral turpitude. *Thomas v. State*, 482 S.W.2d 218, 219 (Tex.Crim.App. 1972)
 - Resisting arrest does not involve moral turpitude. *Williams v. State*, 449 S.W.2d 264, 265 (Tex.Crim.App. 1970)
 - Criminal Mischief does not involve moral turpitude. *Gonzalez v. State*, 648 S.W.2d 740, 742 (Tex.App. – Beaumont 1983, no pet.)
 - Criminal Trespass does not involve moral turpitude. *Hutson v. State*, 843 S.W.2d 106, 107 (Tex.App. – Texarkana 1992, no pet.)
 - Use of abusive language to police officer does not involve moral turpitude. *Hartford Accident & Indem. Co. v. Williams*, 516 S.W.2d 425, 428 (Tex.Civ.App. – Amarillo 1974, writ ref'd n.r.e.)
 - Delivery of a Simulated controlled substance is a crime of moral turpitude. *United States v. Ekpin*, 214 F. Supp. 2d 707, 714-715 (U.S. Dist., 2002)
 - A conviction for the misdemeanor offense of violation of a protective order will be considered a crime of moral turpitude when the underlying, uncharged offense is one of family violence or the direct threat of family violence. *Polk v. State*, 865 S.W.2d 627, 630 (Tex App. – Fort Worth 1993)
 - Failure To Stop And Render Aid (sometimes) *Tate v. State Bar of Texas*, 920 S. W. 2d 727 (Tex. App. Houston [1st Dist.] 1996, writ denied)

B. Loss of Funding and Assistance

A criminal conviction can result in the loss of funding in two main ways: ineligibility for or revocation of education funding, and ineligibility for or revocation of federal assistance programs.

1. Education Funding
Several forms of educational funding are unavailable to those convicted of certain offenses:

- a. Basic federal education grants are unavailable to those who are incarcerated in federal or state penal institutions. *see, The Violent Crime Control and Law Enforcement Act of 1994*, Pub.L.No. 103-322, 20411, 108 Stat. 1796(1994).
- b. Students who have been convicted of “any offense under any Federal or State law involving the possession or sale of a controlled substance” can become temporarily or permanently ineligible for federal loans or grants, under the Drug Free Student Loans Act of 1998, 20 USC 1091(r), 2002. That statute contains a table outlining the length of ineligibility, ranging from a one-year period for a first possession offense to an indefinite period for a third possession, or second sale, offense.

There are some limitations to these provisions, however.

- i. Convictions that have been dismissed or expunged, and juvenile court delinquency findings, do not disqualify a candidate, per 20 USC 1091(r) (2) (B).
 - ii. The disqualification ends if the conviction is reversed.
 - iii. A student whose eligibility has been suspended may resume eligibility before the end of the eligibility period if the student successfully completes a drug rehabilitation program that is approved by the Secretary of Education and includes at least two unannounced drug tests.
- c. State education funding can also be lost as a result of criminal convictions.
 1. Pursuant to Texas Education Code § 54.633, one who commits a felony or Class A misdemeanor, or an offense under Chapter 481 of the Health and Safety Code (the Texas Controlled Substances Act), forfeits a prepaid higher education scholarship. This includes the offenses of possession of marijuana, possession or delivery of drug paraphernalia, and falsification of drug test results.

2. One is not eligible to receive a TEXAS grant or TEXAS II grant for two years after completing a sentence for a felony or an offense under Chapter 481 of the Health and Safety Code, per Education Code §§ 56.304 and 56.354. Moreover, Education Code §§ 56.305 and 56.355 render one ineligible to continue to receive a TEXAS grant or a TEXAS II grant if already receiving one when convicted. This apparently would include Class B and C misdemeanors under the Texas controlled Substance Act.
 3. Many schools have adopted “zero tolerance” policies which cover any type of criminal offense, not only those offenses that occur on campus or at sponsored activities. Thus, any criminal conviction or deferred adjudication may be grounds for disciplinary action or loss of school benefits. Most universities have disciplinary codes that allow for denial of degrees and expulsion for violations of criminal statutes. *See, Institutional Rules on Student Services and Activities*, Chapter II, Student Discipline and Conduct, University of Texas (2008-09)
2. Food Stamps and other Federally Funded Assistance Programs

Narcotics convictions can result in the loss of federal assistance in four ways:

- a. Federal law imposes a lifetime ban on food stamps and federally funded public assistance for drug felons unless a state elects otherwise, under 21 USC 862a (2002). Texas does not opt out, and imposes the federal ban in its entirety.
- b. Federal law imposes mandatory ineligibility for federal health care benefits for those convicted of distribution offenses under 42 USC 1320a-7 (1999). There does not appear to be any exceptions. However, § 1320a-7(f) and (g) provide for appeals and applications for early termination.
- c. Federal grant, licenses contracts, and other benefits are restricted as to drug offenders under 21 USC 862.
 - i. Section (a) provides that, in the discretion of the court, individual convicted of a first federal or state drug **distribution** offense may be rendered ineligible for all federal

benefits for up to five years after conviction, and second offenders for up to ten years; third offenders are permanently ineligible as a mandatory sanction.

- ii. Under section (b), in the discretion of the court, individuals convicted of a first federal or state drug **possession** offense may be rendered ineligible for all federal benefits for up to one year, and second offenders for up to five years; and third offenders are mandatorily ineligible permanently. Section (b) sanctions may be waived if a person declares himself an addict and undergoes treatment, or is declared rehabilitated.
- d. Federal housing policies allow for the exclusion of drug offenders from federally subsidized or funded housing, per 42 USC 1437(1)(b) (2002). In fact, drug related activity alone may result in eviction from public housing, even in the absence of a conviction. Indeed, the existence of an illegal drug user in a household will cause the entire household to be evicted and barred from public housing under 42 USC 1437(d) (1) (5).

For a thorough discussion of the effect of criminal convictions on federal benefits, see General Accounting Office, Report to Congressional Requesters, *Drug Offenders: Various Factors May Limit the Impacts of Federal Laws That Provide for Denial of Selected Benefits* (September 2005).

C. Asset Forfeiture

Asset forfeiture is a possibility in both state and federal courts, especially in narcotics cases. Both civil and criminal forfeiture statutes vary widely by jurisdiction, but are often very broad, applying not just to cash and automobiles, but homes and businesses as well.

1. Some jurisdictions attempt to seize the homes of sex offenders who commit offenses in their houses on the basis that they are instrumentalities of crime.
2. In *U. S. v. Bentancourt*, 422 F.3d 240 (5th Cir. 2005), the defendant’s interest in a five million dollar lottery win was forfeited because he

could not show he made money except by dealing cocaine.

3. DWI felons can have their vehicles forfeited, as can sex offenders who use their vehicles in the commission of a sexual performance by a child or criminal solicitation of a minor. *See, e.g., City of New Brighton v. 2000 Ford Excursion*, 622 N.W.2d 364 (Minn.App. 2001) (upholding vehicle forfeiture for a DWI offense).

D. Surcharges

As of September 1, 2003 the Legislature passed new legislation that imposes surcharges upon individuals who have certain convictions and license suspensions. These charges apply only to offenses that occurred after September 1, 2003. This is covered by the Driver Responsibility Program as set out in Chapter 708 of the Transportation Code.

Surcharges for certain convictions: Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated. The amount of the surcharge under this section is \$1,000 per year, except that the amount of the surcharge is: \$1,500 per year for a second or subsequent conviction within a 36-month period; and \$2,000 for a first or subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.16 or more at the time the analysis was performed. The surcharge is for three years only. A surcharge for conviction of driving while license invalid or without financial responsibility shall be assessed at \$250 per year. (includes Sections 521.457, 601.191, or 601.371)

II. RESTRICTIONS ON RIGHTS AND PRIVILEGES

Perhaps the most serious collateral consequence of a criminal conviction is the potential restriction of various rights and privileges of the offender. Although there are many such potential restrictions, this paper focuses on the following: restrictions on firearm ownership; temporary or permanent loss of one's driver's license; loss of one's passport; loss of certain civil rights; loss of child custody; and mandatory sex offender registration. Notably absent from this list are immigration consequences, which are beyond the scope of this paper. For immigration consequences see Marina Gureia Marmolejo's article. Chapter 10, *Immigration and Deportation Issues for Criminal Practitioners*, Advanced Criminal Law 2009, TexasBarCLE

A. Possession of Firearms

Both state and federal law restrict the possession of firearms for certain convictions. For instance, Texas law prohibits a convicted felon from possessing a firearm. § 46.04 Tex. Penal Code. Therefore, one that has been convicted of any felony, whether placed on community supervision or not, violates both state and federal law if he/she possess a firearm unless they have been discharged from probation with an order setting aside the conviction and releasing them from all penalties and disabilities pursuant to art. 42.12 § 20 Tex. Code Crim. Proc. Although under these circumstances it is clear they are not in violation of state law it is not so settled under federal law.

1. State Law: It is important to recognize the impact that an order discharging a person from probation (community supervision) has on an individual's right to possess a firearm both from a federal and state perspective. Pursuant to Art. 42.12 §.20 Tex. Code Crim. Proc., after a defendant has satisfactorily completed one-third of the original community supervision or two years, whichever is less, the court may reduce the term of community supervision and discharge the defendant. If the court does so *it may* set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the complaint, information or indictment, who shall thereafter be released from all penalties and disabilities. (There are two exceptions not applicable to firearms). *See* Art. 42.12 § 20(a)(1)(2) Tex. Code Crim. Proc. Therefore, if a defendant receives an "early discharge order" pursuant to art. 42.12 § 20, then he is not subject to the restrictions of §46.04(a) Tex. Penal Code – felon in possession offense. On the other hand, if one only completes probation and the court does not enter an art. 42.10 §20 order, then it can be argued that the defendant's civil rights have not been restored and he is subject to both the federal and state restrictions regarding felons in possession of weapons. *See Cuellar v. State*, 70 S.W. 3d 815 (Tex. Crim. App. – 2002)

Also, 46.04(b) Tex. Penal Code makes it a class A misdemeanor for a person convicted of a misdemeanor family violence assault (22.01 Tex. Penal Code) to possess a firearm before the fifth anniversary of the later of: (1) the release from confinement or (2) the date of discharge from probation. It is questionable whether an art. 42.12 § 20 Tex. Code Crim. Proc. discharge would be a defense to prosecution under this section since the statute specifically prohibits possession until five years after release from community supervision.

Additionally, a conviction will affect a person's ability to obtain a concealed handgun license. Tex. Gov. Code § 411.172 et seq. *see, Tune v. Department of Public Safety*, 23 S. W. 3d 358 (Tex.2000).

Texas law allows a convicted felon to possess a gun at his/her residence after five years has passed since the release from confinement or community supervision, parole or mandatory supervision, whichever date is later. Tex. Penal Code 46.04 **However**, Texas rules do not necessarily control federal laws. See *U.S. v. Daugherty*, 264 F3d 513 (5th Cir. 2001). (.But see federal section 2.c. below).

2. Federal law: Federal restrictions may be even more restrictive.

a. Federal law bans the possession, shipping, receiving, or transporting of a firearm or ammunition by one who is convicted of an offense with a maximum punishment of more than one year in prison. 18 USC 922(g) and (n). Moreover, one cannot acquire firearms or ammunition while under indictment for such an offense. A person is under indictment if they have been placed on deferred adjudication pursuant to art. 42.12(13) Tex. Code Crim. Proc. because their indictment is still technically pending.

b. A defendant who has been convicted of a misdemeanor crime of domestic violence is prohibited from possessing, shipping, receiving, or transporting a firearm. 18 USC 922(g)(9).

c. Interestingly, state law can affect federal restrictions: If a felon has had his civil rights restored by the convicting jurisdiction, and the felon is not expressly deprived of the right to possess a firearm elsewhere under state law, he can legally possess a gun. In 1986 Congress enacted a statute that modified an earlier Supreme Court decision, *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 103 S. Ct. 986, 74 L. Ed. 2d 845 (1983), that held that federal law determined what constitutes a conviction for felon in possession purposes. The current statute now reads “[w]hat constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceeding were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had his civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights provides that the person may not ship, transport, possess, or receive firearms” 18 USC § 921 (a)(20). See, e.g., *United States v. Dupaquier*, 74 F.3d 615, 617 (5th Cir.1996). In *Caron v. United States*, the Supreme Court held, however, that if a state law has **any** exception to the restoration of rights regarding firearms, then the felony conviction

prohibits one from possessing, transporting etc. firearms. 524 U. S. 308, 118 S. Ct. 2007 141 L. Ed. 2d 303 (1998). Such was the holding in a 5th Circuit case where the court upheld a conviction of a §922(g)(1) violation (felon in possession), wherein the defendant had successfully completed his Texas probation but had not had his conviction set aside and had not received a full restoration of his rights under art. 42.12 § 20 Tex. Code Crim. Proc. See *United States v. Daugherty*, 264 F. 3d 513 (5th Cir.-2001). Daugherty’s discharge order had merely recited that his probation term had expired and had been satisfactorily fulfilled and that he was discharged from probation. *Daugherty* at 514 FN 1. Thus his conviction for being a felon in possession was affirmed.

B. Driver’s License Restrictions

Texas imposes a wide variety of suspensions upon final conviction for various offenses. Below are numerous examples and periods of suspension:

1. Graffiti § 28.08 Tex. Penal Code—discretionary one year suspension for conviction or probation Tex. Transp. Code § 521.320;

2. Racing § 545.420(a) Tex. Transp. Code-mandatory one year suspension. If under 18 must perform 10 hours of community supervision and can have an occupational license only for attendance to school. § 521.350 Tex. Transp. Code.

3. Acquiring motor fuel without payment-theft, § 31.03 Tex. Penal Code-coupled with an affirmative finding pursuant to art. 42.019 Tex Code Crim. Proc.-automatic 180 suspension first offense, 1 year for second offense. § 521.349 Tex. Transp. Code;

4. Furnishing alcohol to a minor § 106.06, Alcohol Beverage Code-automatic 180 day suspension first offense, 1year second offense. § 521.351 ex. Transp. Code;

5. Possession of fake driver’s license, allowing another to use one’s driver’s license, possessing more than one driver’s license, falsifying information on an application for a driver’s license, or use of a driver’s license to represent one is over 21 when they are not, § 521.451 and § 521.453 Tex. Transp. Code-mandatory but duration determined by the court, suspension for not less than 90 days nor more than 1 year. § 521.346 Tex. Transp. Code;

6. Fake license plate or Safety inspection certificate, § 502.409 (a)(4) and § 548.603(a)(1) Tex. Transp. Code,-automatic 180 days suspension. § 521.4366 Tex. Transp. Code;

7. Criminally negligent homicide (with a motor vehicle) § 19.05, Evading arrest or detention § 38.04, Intoxication assault § 49.07, DWI with a child passenger § 49.045, Intoxication manslaughter § 49.08 Tex. Penal Code, and any state jail felony with a motor vehicle offense involving personal injury or death-automatic one year suspension. § 521.341 Tex. Transp. Code;

8. Tampering with a government record-motor vehicle registration or license plate § 37.10 Tex. Penal Code-automatic two year suspension. § 521.3466 Tex. Transp. Code;

9. DWI (minor under 21) § 49.04 Tex. Penal Code-automatic 1 year suspension § 521.344 Tex. Transp. Code. However, compare art. 42.12 § 13(n)(1)Tex. Code Crim. Proc.-90 days up to one year if set by the court. Note: DPS will automatically suspend for one year, unless the defendant is required not to operate a motor vehicle unless it is equipped with an ignition interlock device; § 521.342 Tex. Transp. Code;

10. Purchase or attempt to purchase, possession or consumption of alcohol by a minor § 106.071 Alcohol Beverage Code-automatic 30 days suspension first offense, 60 days second offense and 180 days third offense. A prior order of deferred disposition is considered a conviction for enhancement purposes. § 106.071(f)(2); However, a deferred disposition on the first offense does not require suspension.

11. Drug offenses under the Texas Controlled Substance Act-automatic 180 days minimum suspension and must complete a drug education program before the suspension is lifted. §521.372 Tex. Trans. Code. For offenders under the age of 21, the period of suspension ranges from 180 days to 1 year and the court determines whether a drug education program will be required. § 521.342 Tex. Transp. Code;

12. A minor's license can be suspended on receipt by the Texas Department of Public Safety of an order to suspend issued by a juvenile court under § 54.042 of the Texas Family Code or a court under § 106.115 of the Alcoholic Beverage Code. Finally, a juvenile held in contempt of court can also lose his license. § 521.3451 Tex. Transp. Code. Additionally, convictions for most

of the offenses under the Alcoholic Beverage Code will result in suspensions for minors.

13. Multiple traffic violation can result in suspension, § 521.292 and 37 Tex. Admin. Code § 15.82;

14. Offenses involving commercial driver's license see § 522.081 Tex. Transp. Code and 37 Tex. Admin. Code § 15.82;

15. Certain Sex Offenses, § 521.348-if required to register pursuant to Chapter 62 Tex. Code Crim. Proc. and they fail to apply for a renewal as required by art. 62.060 Tex. Code Crim. Proc. their license is revoked until at such time as they come into compliance.

Despite its length, this list is necessarily incomplete. For a comprehensive list of suspensions see Ken Anderson & John Bradley, Texas Sentencing §9(b), Fourth Edition, LEXIS Law Pub.

C. Loss of Passport Privileges

The federal government retains broad discretion in denying and revoking the passports of convicted offenders.

1. An offender may not receive a passport if he crossed an international boundary or used the passport in committing the offense, per 22 USC 2714(a)(1), (b)(1) (2000).

2. An issued passport may be revoked, even for misdemeanor drug offenses, if the government finds that the offense should give rise to such disqualification, per 22 USC 2714 (b) (2) (2000).

D. Civil Rights and Privileges

Criminal convictions can result in the loss of several civil rights under Texas law.

1. Voting

A convicted felon may not vote in a public election. A conviction is considered final whether the sentence is imposed or suspended, as long as it is not on appeal. Tex. Election Code § 11.002(4). §11.002(4)(A) and (B) state that this ineligibility lasts until the offender has been pardoned, or has "fully discharged the person's sentence, including any term of incarceration, parole, or supervision, or completed a period of probation ordered by any court."

2. Public Office

A defendant convicted of a felony may not run for, or be appointed to, public elective office in Texas.

Probation counts as conviction. The offender is barred for life unless pardoned “or otherwise released from the resulting disabilities.” See Texas Election Code § 141.001(4).

3. Jury Service

A person convicted of, or currently charged with a misdemeanor theft or any felony may not serve on a petit jury. This also applies to one who is serving deferred adjudication. § 62.102(7) Tex. Gov’t. Code and art. 35.15 Tex. Code of Crim. Proc.. These same restrictions apply to service on a grand jury. Tex. Code of Crim. Proc. art. 19.08. *see, Hoffman v. State*, 922 S.W.2d 663 (Tex. App. Waco 1996, pet. ref’d) and *Volkswagen of America, Inc. v. Ramirez*, 79 S.W.3d 113 (Tex. App.- Corpus Christi 2002) (reversed on other grounds) suggest that Code of Crim. Proc. §42.12(5)(c), removes this ineligibility. However, *Dempsey v. Beaumont Hosp., Inc.*, 38 S.W.3d 287 (Tex. App.-Beaumont 2001) and *R.R.E. v. Glenn*, 884 S.W.2d 189 (Tex. App.- Fort Worth 1994) take the view that only an executive pardon can remove the ineligibility.

4. Ramifications of early discharge

Once a person has been convicted of a felony in Texas numerous restrictions apply to that individual even after successful completion of community supervision, sometimes for life. Professors Dix and Dawson have recognized that the consequences of a dismissal of a charge pursuant to art. 42.12 § 20 Tex. Code Crim. Proc. (early discharge) are quite limited. They explain “that §20 operates to restore civil rights-to vote, serve on juries, and hold public office-that were lost by the conviction or accusation of crime. However, the dismissal is not an expunction and does not preclude other collateral consequences of a criminal conviction.” George E. Dix and Robert O. Dawson, *Texas Practice: Criminal Practice and Procedures* § 40.136 (2d ed. 2001)

In a dissent in *Cuellar v. State*, 70 S.W.3d 815, 834, (Tex. Crim. App.-2002). Judge Keasler summarizes the lingering impacts a successfully completed probation has on an individual, “[s]ignificantly, regardless of the language of § 20 removing all penalties and disabilities, there are a number of statutes that impose various restrictions on a person who has successfully completed his community supervision. Specifically, this person still cannot change his name until two years after his community supervision has expired, Tex. Family Code § 45.103, cannot practice law until after five years...Tex. R. Govern. Bar Adm’n IV, Rule IV(d)(2), cannot work at a bingo establishment until ten years after...Tex. Occ. Code 2001.105(a)(6), cannot obtain a lottery license until ten years...Tex. Gov’t Code § 466.155(a)(1)(A), and cannot be a corrections officer until ten years after

his community supervision has expired. Tex. Occ. Code §1701.312(b), 1702.371. These time-limited restrictions are not the only limitations. For the rest of his life he cannot be a bail bond surety or a peace officer... and cannot obtain a license to carry a concealed handgun (*citations omitted*). He may be denied a license as a speech pathologist or audiologist. (*citations omitted*) Further, ... he still must register as a sex offender for the rest of his life, if he has committed a sex offense.”

E. Divorce and Child Custody

Convictions of family violence, including both physical and sexual abuse, can have serious consequences in regard to divorce and child custody issues. “Family violence” is a term of art, defined by Texas Family Code § 71.004.

1. If the court is considering sole or joint conservatorship, and there is evidence of abusive physical force by a party against the party’s spouse; child’s parent; or any person younger than 18 years of age, and it was within a 2 year period before the suit was filed or during its pendency, then the court shall consider the evidence, per Texas Family Code § 153.004(a).
2. If there is evidence of a history or pattern of physical or sexual abuse by one parent directed at another parent, a spouse, or a child, then the court may not appoint joint managing conservatorship, per Texas Family Code § 153.004(b). Likewise, the court may not appoint joint managing conservators (JMCs) if one parent became pregnant due to a sexual assault by the other parent, regardless of the prior relationship of the parents, under TFC § 153.004(b).
3. If the court is considering access to a child and it has been shown by a preponderance of the evidence that there is a history or pattern of family violence during the two years preceding the date of filing the lawsuit, then the court may not allow a parent to have access to the child unless the court finds that: access would not endanger the child’s physical health or emotional welfare and would be in the best interest of the child; and the court renders a possession order to protect the safety and well-being of the child and any other person who has been the victim of family violence committed by the parent, per TFC § 153.004(d).
4. A finding of a history of family violence removes the rebuttable presumption that the appointment of parents as JMCs is in the best interest of the child, per TFC § 153.131.

5. If a conservator has been convicted of, or placed on deferred adjudication for, indecency with a child, sexual assault, or aggravated sexual assault, then this is a material and substantial change of circumstances sufficient to justify a temporary order and modification of an existing order regarding conservatorship or possession and access to a child, per TFC § 156.104(a).

6. A party may obtain a protective order if there are facts and circumstances of family violence, per TFC §§ 82.009, 83.001(a) and (b), 85.001(a)(2), and 85.001(b) and (c).

F. Sex Offender Registration

State and federal law both impose significant restrictions and requirements on sex offenders.

1. People convicted of certain sexual offenses may be required to register, per Texas Code of Criminal Procedure art. 62.

2. The Adam Walsh Act (42 USCS § 16901) states, among other things, that anyone who must register as a sex offender gives up any right of electronic privacy, requiring them to make their “computer, other electronic communication or data storage devices or media” available to police examination without a warrant at any time. It also creates a national sex offender registry to be run by the FBI, with “relevant information” on each person. It funds a series of pilot programs, lasting up to three years, to tag sex offenders with tracking devices that would let them be monitored in real time. The devices include a GPS downlink (to provide exact coordinates), a cellular uplink (to transmit the coordinates to the police), and two-way voice communications. Additionally, the duty to register is imposed for life for most sex offenses.

3. Recently, Texas Governor Rick Perry vetoed a House Bill that would allow those convicted of indecency with a child for “Romeo and Juliet” type cases to petition for exemption from the state sex offender registry. For more information, see <http://governor.state.tx.us/news/veto/12604/>.

III. INDIRECT CRIMINAL CONSEQUENCES

Two major indirect criminal consequences of convictions are conditions attached to probation and enhanced punishment for subsequent offenses.

A. Conditions of Probation

1. Courts have broad power to impose conditions upon probationers. A court may impose any condition of probation that is reasonable and designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the probationer. Every criminal practitioner knows that conditions may

include a requirement that the probationer not consume alcohol during the period of probation, that one attend drug or alcohol treatment programs, perform community service, or attend any programs that the court deems appropriate. They may also, however, include a prohibition against using a computer or accessing the internet for the period of probation. See *Tex. Code Crim. Pro. Art. 42.12 § 11(a)*; *United States v. Crandon*, 173 F.3d 122 (3d Cir. 1999).

One extreme example of a condition of probation was discussed in *Bennett v. State*, 665 S.E.2d 365 (Ga. App. 2008). In *Bennett*, the court indicated that until Georgia law was changed in 2006, “a defendant convicted of aggravated child molestation [could be ordered] to undergo chemical castration as a special condition of probation.” *Bennett*, 665 S.E.2d at 386. Similarly, a Louisiana case holds that certain offenders are not eligible for probation or parole “unless certain conditions, such as sterilization, are imposed” *State v. Dagenhart*, 908 So.2d 1237, 1242 (La. App. 2d Cir. 2005). A local Texas judge recently ordered a probationer not to procreate during her term of community supervision. Fortuitously, the probationer was pregnant at the time of her sentencing!

2. There are some limitations on the conditions a court may impose, however: A Texas case holds that courts have the power to “impose conditions of probation which are reasonably related to the treatment of the probationer and the protection of the general public.” *Fielder v. State*, 811 S.W.2d 131, 134 n.2 (Tex.Crim.App. 1991). By contrast:

To be found invalid, a condition of community supervision must: (1) have no relationship to the crime; (2) relate to conduct that is not in itself criminal; and (3) forbid or require conduct that is not reasonably related to the future criminality of the defendant or does not serve the statutory ends of probation.

Belt v. State, 127 S.W.2d 277, 281 (Tex. App. – Fort Worth 2004).

In Texas, however, it is important to note that a defendant “must complain at trial to conditions he finds objectionable” in order to preserve the error on appeal. *Speth v. State*, 6 S.W.3d 530, 534 (Tex.Crim.App. 1999).

B. Punishment Enhancement

A criminal conviction can have a serious impact on an offender’s punishment, both for the current offense and for future offenses. Unsurprisingly, the circumstances and features of a criminal act can profoundly affect the offender’s punishment for that

act; what is surprising is the extent to which this is true:

1, Current offense

a. Allegations that the offense occurred in a drug free zone can result in a significantly increased sentence, and this sentence may not be run concurrently with punishment for a conviction under any other criminal statute. See Texas Health and Safety Code § 481.134.

b. Defendants convicted of certain offenses (including felonies in which a deadly weapon was used or displayed) are not eligible for mandatory supervision (parole), per Tex. Gov. Code § 508.149.

2. Provisions such as these can add years of actual jail time spent in prison. There are two ways in which prior criminal convictions can affect future punishment:

a. When faced with a range of punishments for a given offense, a judge may consider an offender's past criminal acts when deciding the severity of his sentence. This is true even if the offender was not convicted of the past criminal act, provided the judge finds sufficient evidence to believe that he is guilty. TEX. CODE CRIM. PRO. art. 37.07 § 3(a)(1).

b. Some statutory schemes allow increased punishment or create entirely new offenses for repeat offenders.

c. A conviction, deferred adjudication, or successfully-completed probation for misdemeanor assault family violence can be used to enhance a subsequent family violence offense to a third degree felony. TEX. PEN. CODE §22.01(b)(2).

d. A previous sexual assault can be used to enhance a subsequent sexual assault so that the punishment is a mandatory life sentence. TEX. PEN. CODE §12.42.

A state conviction can sometimes subject a defendant to a federal sentence, and the sentences may be stacked with respect to both state and federal time.

In the federal system, the existence of a prior state or federal conviction may subject a client to a new federal offense for which he may otherwise have been ineligible, or may escalate the sentence faced in federal court for subsequent charges under the federal sentencing guidelines. See U.S.S.G. Section 4A1.1 (Criminal History Category).

- **Note**, however, that *United States v. Booker*, 543 U.S. 220 (2005) made the federal sentencing guidelines advisory rather than mandatory. Subsequent cases have made clear that federal judges must place the offender and the offense on the sentencing guideline grid, but then have discretion to deviate from the guidelines (in either direction) as much as they deem appropriate.

These results may not seem especially surprising or unjust, but they do illustrate the serious consequences of criminal convictions.

CONCLUSION

Criminal convictions carry with them a wide range of serious collateral consequences, including indirect legal ramifications; financial penalties; and loss of rights and privileges. Although some of these consequences are common and intuitive, many are quite surprising. As noted earlier in this paper, offenders are often not informed of the full range of potential consequences of their convictions and, indeed, their imposition is often at the government's discretion. This lack of information, combined with uneven enforcement, means that most criminal defendants and many lawyers do not have a realistic and comprehensive idea of the consequences of a potential conviction. Therefore, a significant duty should be imposed upon lawyers to inform clients about the myriad possible consequences, direct and indirect, of a criminal conviction.