



**Collateral Consequences for Criminal Behavior in  
The State of Nebraska**  
*(A Desk Reference)*



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## Foreword

This handbook is intended to be a practitioner desk reference of general information regarding collateral consequences for criminal behavior. It is not intended to be fully comprehensive nor is it designed to replace individual practitioner research and analysis.

In order for it to be a useful tool certain information was abbreviated or omitted. For example; sentencing guidelines, juvenile and immigration consequences were omitted. Also, citations were abbreviated for the sake of readability.

Statutory citations refer to the consequence only. They do not reference the crime or infraction. As a result, practitioners should be aware that a federal law is likely to apply to a conviction of both federal and state law. The same is true of state law citations on federal or state grounds.

The heading “in general” refers to consequences that (at least in part) do not reference a specific crime. Instead these statutes contain general language requiring criminal background checks, good moral character and the like. These statutes do not always establish clear standards.

Certain materials and individuals were consulted during the drafting of this document. A special thank you goes out to all who assisted in the making of this document. Local Continuing Education and American Bar Association materials were also consulted. Although they are not always directly quoted they were integral background information, utilized to identify applicable law. In many instances these resources contain additional information that might be helpful for a practitioner. Practitioners are encouraged to consult these additional resources for practice pointers. Practitioners should be ever mindful of recent developments in the law.

## Table of Authorities

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## Ethical Considerations of Collateral Consequences of Criminal Conviction

A criminal defendant will usually seek post conviction relief through an ineffective assistance of counsel claim.<sup>1</sup> In part, this is because legal malpractice claims in criminal law are usually based on successful ineffective assistance of counsel claims.<sup>2</sup> Traditionally, the courts do not recognize a constitutional right to be advised of every consequence of a criminal conviction. Most jurisdictions have adopted the direct vs. collateral consequences rule.<sup>3</sup> Under this rule attorneys are deemed responsible for advising a client regarding the direct consequences of a criminal conviction.<sup>4</sup> The same attorney is usually not responsible for advising of collateral consequences.<sup>5</sup> Nebraska and Eighth Circuit cases have historically supported the direct vs. collateral analysis.<sup>6</sup> This analysis was somewhat uncontroversial until *Padilla v. Kentucky*.

### Padilla

Jose Padilla was a lawful permanent resident of the United States. He had lived in the United States for 40 years and had served in the Military during the Vietnam War.<sup>7</sup> Padilla pled guilty to the “transportation of a large amount of marijuana.”<sup>8</sup> He argued that the decision to plead guilty was based on the affirmative misadvice of his attorney who had told Padilla that he “did not have to worry about immigration status since he had been in the country so long.”<sup>9</sup> Padilla argued that if he had been given correct advice regarding the likelihood of deportation, he would have taken his case to trial.<sup>10</sup>

The lower court declined post conviction relief based on a determination that deportation was collateral and not a direct consequence of a criminal conviction. Because it was not a direct consequence, the court found that defense counsel had no duty to inform Padilla of the consequence.<sup>11</sup>

The United States Supreme Court granted certiorari. Many thought that the court would decide the case in Padilla’s favor based on the assertion that the attorney provided affirmative misadvice.<sup>12</sup> Before *Padilla* the courts had carved out an exception to the collateral consequences rule.<sup>13</sup> The affirmative misadvice exception allowed an ineffective assistance of counsel claim to succeed where the attorney gave erroneous information to a client, regardless of whether or not the consequence was directly related to the conviction.<sup>14</sup> The Supreme Court, however, skirted both the affirmative misadvice and the direct vs. collateral analysis.

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<sup>1</sup> Otto Wolff, *Legal Malpractice Primer*, Kentucky Bench and Bar 20-21 available at <http://www.kybar.org/30> search term “ineffective assistance of counsel” (last visited September 17, 2012) (January 2007).

<sup>2</sup> *Id.*; see also James L Buchwalter, *Adequacy of Defense Counsel’s Representation of Criminal Client Regarding Guilty Pleas—Coercion or Duress*, 19 A.L.R. 6th 411.

<sup>3</sup> Jenny Roberts, *Ignorance is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process*, 95 Iowa L. Rev. 119 at nt 15 (2009) (stating that different tests are employed by different courts to determine whether a consequence is direct or collateral)(quoting *Cuthrell v. Dir. Patuxent Inst.*, 475 F.2d 1364, 1366 (4th cir 1973) “The distinction between ‘direct’ and ‘collateral’ consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant’s punishment.”).

<sup>4</sup> *Id.* at 124 (stating that in most cases ‘direct’ consequences include “penal sanctions – such as jail or prison time, probationary period or a fine – which will result from the conviction”).

<sup>5</sup> *Id.*

<sup>6</sup> See *United States vs. Anderson*, 599 F.3d 854 (8th Cir. 2010)(quoting *United States v. Jackson*, 627 F.2d 883 (8th Cir. 1980) “Consequences of a plea that do not relate to the length and nature of a sentence are “not such a direct consequence(s) as need to be addressed prior to the acceptance of a guilty plea.”)(decided four days prior to *Padilla*).

<sup>7</sup> *Padilla v. Kentucky*, 130 S. Ct. 1473, 1477 (2010).

<sup>8</sup> *Id.* at 1478.

<sup>9</sup> *Id.* at 1475.

<sup>10</sup> *Id.* at 1478.

<sup>11</sup> *Id.* at 1476.

<sup>12</sup> See Roberts, *supra*.

<sup>13</sup> *Id.* at 134.

<sup>14</sup> Roberts, *supra* at 134.

## Collateral vs. Direct Consequences Analysis

In *Padilla* the court reasoned that the direct consequence vs. collateral consequence analysis was inappropriate, because deportation consequences are “particularly severe penalty(s).”<sup>15</sup> The court declined to rule on the appropriateness of the direct vs. collateral analysis in other cases.<sup>16</sup> Although deportation is a severe consequence it is not technically a criminal one. With this in mind the court found it difficult to classify the consequence as direct or collateral.<sup>17</sup> Instead the court only looked at the unique nature of deportation consequences, reasoning that “Preserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence.”<sup>18</sup> Because of the unique nature of immigration consequences, the court found the collateral vs. direct rule inapplicable.

However, the court did employ a traditional *Strickland* claim analysis.<sup>19</sup> As part of the two part test<sup>20</sup> the court looked to professional norms to satisfy the performance<sup>21</sup> prong of the test; whether “there (was) a reasonable probability that, but for the counsel’s unprofessional errors, the result ... would have been different.” Although not absolute, professional guidelines have been recognized by the court as “guides” for determining professional standards.<sup>22</sup>

Multiple professional associations had already developed guidelines suggesting that attorneys advise clients of the potential deportation consequences that could arise from a criminal conviction. These organizations include The National Legal Aid and Defender Association, The Department of Justice, The American Bar Association, a series of unnamed authoritative treatises, state and city bar publications, and practice manuals.<sup>23</sup>

The court determined that these guidelines supported the proposition that attorneys should advise their clients of immigration consequences.<sup>24</sup> The court also looked to its previous rulings which emphasized the significance of immigrant status.

## Affirmative Misadvice Exception

Some argued that because *Padilla* was allegedly given misinformation by his attorney, the “affirmative misadvice exception” should apply regardless of the collateral rule.<sup>25</sup> Many courts had previously recognized an exception to the direct vs. collateral consequences rule when an attorney had offered advice to the client that was erroneous.<sup>26</sup> In these cases courts have found that regardless of whether a consequence is a direct or collateral consequence of a criminal conviction, it is reversible error for an attorney to affirmatively misadvise a client.<sup>27</sup>

In *Padilla* the court reasoned that limiting the analysis to a narrow misadvice exception would “invite two absurd results.”<sup>28</sup> First, it would incentivize attorneys to “remain silent on matters of great importance.”<sup>29</sup> Such an incentive would be in conflict with ethical considerations that require attorneys to “discuss both the advantages and disadvantages of a plea

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<sup>15</sup> *Padilla*, 130 S. Ct. 1473 at 1481

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 1483 (quoting *INS vs. St Cyr*, 533 U.S. 289 (2001)).

<sup>19</sup> See *Strickland v. Washington*, 104 S. Ct. 2052 (1984) (establishing that to prevail the Defendant must establish that the trial counsel’s performance fell below an objective standard of reasonableness, and that the Defendant suffered prejudice as a result).

<sup>20</sup> Here the court only considered the first question, as the prejudicial question was not “passed on below.” See *Padilla*, 130 S. Ct. 1473 at 1487.

<sup>21</sup> See *United States v. Valenzuela-Lopez*, Case No. 8:05CR199 U.S. Dist. Lexis7587 (2012).

<sup>22</sup> *Id.* at 1482.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1484 (noting the solicitor general’s argument that counsel is not required to advise on “matters that will not be decided in the criminal case” but that when counsel does elect to advise it must provide accurate information).

<sup>26</sup> *Roberts, supra* at 134.

<sup>27</sup> *Id.*; *Padilla*, 130 S. Ct. 1473 at 1484 (citing *United States v. Couto*, 311 F.3d 179, 188 (2002); *United States v. Kwan*, 407 F.3d 1005 (2005); *Sparks v. Sowders*, 852 F.2d 882 (1998)).

<sup>28</sup> *Id.* at 1484.

<sup>29</sup> *Id.*

agreement with their client.”<sup>30</sup> The second concern was that this limitation would deprive those who most needed the assistance of counsel of the advice they most needed “even when it (was) readily available.”<sup>31</sup> It is important to note that both before and since *Padilla* courts have held that affirmative misadvice can alone satisfy the first prong of the *Strickland* test.<sup>32</sup> *Padilla* appears to broaden the exception to require that counsel “provide available advice about an issue like deportation.”<sup>33</sup> *Padilla* fails, however, to articulate any other consequence where the consequence is “like” deportation.

## Conflict

An important element of the *Padilla* decision was the conversation between the concurrence and the majority opinion.<sup>34</sup> Justice Alito<sup>35</sup> in his concurrence questioned the extent to which an attorney should be required to advise of consequences. He suggested that in complicated matters like immigration an attorney might not be prepared to fully advise a client, but at a minimum should advise the client that an adverse consequence might exist.<sup>36</sup> The majority opinion answered Justice Alito’s concerns by stating that “In the instant case, the terms of the relevant immigration statute are succinct, clear, and explicit.”<sup>37</sup> The court further concluded that from reading the text of the statute *Padilla*’s attorney would have been able to easily deduce the probable consequences.<sup>38</sup>

## Post *Padilla*

An initial search of the Bloomberg BNA database, which consists of ethics opinions from the American Bar Association and the various 50 states, did not readily return any applicable ethics decisions related to collateral consequences. A search of Nebraska ethics opinions also did not readily produce any applicable results.

It appears that most courts have declined to apply the *Padilla* “unique nature of the consequence” standard in non-immigration contexts.<sup>39</sup> There have been a few outliers, however.<sup>40</sup> Eighth circuit cases appear to only contemplate immigration consequences.<sup>41</sup> Specifically, several Nebraska cases discuss *Padilla* in an immigration context.<sup>42</sup> Other courts have utilized the reasoning in *Padilla* to actually bolster the proposition that courts should give great deference to counsel.<sup>43</sup> Courts have also asserted that *Padilla* changes nothing in the *Strickland* test.<sup>44</sup> At least one expert has

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<sup>30</sup> *Id* (citing *Libretti v. United States*, 516 U.S. 29 (1995)); see also The ABA Model Rules of Professional Conduct R. 1.4.

<sup>31</sup> *Padilla*, 130 S. Ct. 1473 at 1484.

<sup>32</sup> See generally; *Asan v. United States*, Case No. 11 Civ. 5370, U.S. Dist Lexis 135989 (2011); *United States v. Fawziyeh Raki Masoud*, Case No. 03-CR-46, U.S. Dist Lexis 1508 (2012).

<sup>33</sup> *Padilla*, 130 S. Ct. 1473 at 1484.

<sup>34</sup> *Id.*

<sup>35</sup> Chief Justice Roberts joined with the Concurrence.

<sup>36</sup> *Id* at nt. 9, nt. 10.

<sup>37</sup> *Id* at 1483.

<sup>38</sup> *Id.*

<sup>39</sup> For a few examples of this type of case see *Donahue v. Souders*, Case No. 10-2761, 2011 U.S. Dist. LEXIS 52000 (D. Penn.) (Stating that “We fail to see how *Padilla*, limited as it is, assists us in resolving a question about the consequences of a SVP (sexually violent predator) designation”); *United States v. Shah*, Case No. H-06-428, H-10-3796, 2012 U.S. Dist LEXIS 44788 (D. Tex) (Possession of a firearm by an illegal alien); *United States v. Nathan*, Case No. H-05-226, H-10-1639, 2012 U.S. Dist. LEXIS 1299 (bank fraud case).

<sup>40</sup> *Commonwealth v. Abraham* 996 A.2d 1090 (stating that pension benefits are “intimately connected to the criminal process”) appeal granted in 9 A.3d 1133 (Pa. 2010) *Taylor v. State*, 698 S.E.2d at 285 (stating that registration as a sex offender is a “drastic measure”); See generally John E.D. Larkin, *A proposed Framework for Evaluating Effectiveness of Counsel Under Padilla v. Kentucky*, 34 Am. J. Trial Advoc. 565 (2011).

<sup>41</sup> *United States v. Rodriguez-Rivera*, Case No. 10-2761, 2012 U.S. Dist. LEXIS 83745 (D. Minn); *United States v. Viraj Dass*, Case No. 05-140, 2011 U.S. Dist. LEXIS 76506 (D. Minn).

<sup>42</sup> *United States v. Abraham*, 2011 U.S. Dist Lexis 99181 (D. Neb); *United States v. Perez*, 2010 U.S. Dist. Lexis 119665 (D. Neb); *United States v. Valenzuela-Lopez*, 2012 U.S. Dist Lexis 7587 (D. Neb).

<sup>43</sup> *Shah*, 2012 U.S. Dist. Lexis 44788 (quoting *Padilla* “it is all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.”); *United States v. McDougal*, Case No. 1:08cr91-HSO-RHW-5 2010, 2010 U.S. Dist. Lexis 118639 (D. Miss.)(noting that surmounting the *Strickland* bar is never an easy task); *United States v. Tharpe*, 2012 U.S. Dist. Lexis 128640, Case No 11-1066-JDB-egb, 08-10038-1-JDB (D. Tenn.).



utilized the *Strickland* analysis to argue that since “reasonableness is the very touchstone of *Strickland*” then it would be absurd not to apply *Padilla* in a narrow context.

Because of the sheer volume of collateral consequences that inevitably follow a criminal conviction, nearly every defendant who pleads guilty is able to allege that his attorney failed to advise him of some detriment that will follow his guilty plea. . . .if defense attorneys were required to inform defendants of every collateral consequence of a conviction, guilty pleas would last for days.<sup>45</sup>

## **Conclusion**

It is unclear just how much *Padilla* will alter the duty that attorneys have to counsel clients regarding collateral consequences. It may stand only as a unique carve out primarily for the immigration context. Thus far, courts seem hesitant to expand the application beyond the bounds of immigration. Such a narrow reading of *Padilla* would also be in keeping with the “reasonableness” aspect of the *Strickland* test. Ultimately, however, it is only through the test of time that the ramifications of *Padilla* will be made clear.

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<sup>44</sup> See *United States v. Serrato*, Case No. H-11-0169, 2012 U.S. Dist. LEXIS 100734 (D. Tex.).

<sup>45</sup> Larkin, *supra* at 595.

## Section I

## Individual Rights Consequences

Crime	Law <i>(Consequence Only)</i>	Consequence	Page
Any Felony <i>(Includes those charged, convicted or sentenced)</i>	Neb. Rev. Stat. § 29-112  §19-613  5 U.S.C 8331(20) 49 U.S.C. §44935-36 49 U.S.C. §114 49 CFR 1570.3	Public Office and Public Employees <i>(Including Certain Misdemeanors)</i>  City Counsel  Federal Workers  <i>(Conviction Defined)</i>	9
	§29-112 28 U.S.C. §865(B)(5)	Jury Duty	7-8
	§28-1229	Explosives <i>(Including Certain Misdemeanors)</i>	27-28
	§29-112	Voting Rights	10
	38 U.S.C. §1505(a) 24 U.S.C. §412	Military (pensions and benefits) <i>(Includes Misdemeanors)</i>	8
	45 CFR 2522.230(b)(2)	Ameri-Corps	10
	Pub. L. No. 108-159, 117 Stat. 1952(2003)  FCRA §1681e(b)	Consumer Reporting/Background Checks	7
Felony Punishable by 1+ year(s)	18 U.S.C. §922(g)(1)	Firearms <i>Includes Misdemeanors for Domestic Violence</i>	27

	10 U.S.C. §504 50 U.S.C. §456(m)	Military	
Felony Vulnerable Populations	45 CFR 2522.200- .206	Ameri-Corps	10
Drug Involvement and Related Offenses <i>(Includes state and federal law violations)</i>	22 U.S.C.A. §2714	Passport	9
	45 CFR 2522.230(b)(2)	Ameri-Corps	10
	Military.com	Military	8
Qualifying Offenses <i>(see right)</i>	Neb. Rev. Stat  Various Statutes	Public Officers/Employees	9
	§29-2290 §29-4106  §28-313 §28-314 §28-703 §28-319, 320, 386 §28-303-305 §28-311 §28-507 §28-324	HIV Testing DNA Generally  DNA Specific Crime <i>Kidnapping</i> <i>False Imprisonment of a Minor</i> <i>Incest of a Minor</i> <i>Sexual Assault</i> <i>Murder/Manslaughter</i> <i>Stalking</i> <i>Burglary</i> <i>Robbery</i>	7
	Various City Ordinances	Firearms	24

## Commercial Background Checks

Private industry companies will often purchase criminal records in bulk from local government agencies. This information is not regularly updated to reflect expunged records and other important changes to criminal record status. Landlords and employers will often turn individuals away if they have any sort of criminal record. Currently, the only way to remove expunged records from private industry databases is to contact companies on an individual basis. Many companies require that the individual provide them with the exact criminal information, as it appears in their databases. The only way to protect against this is to request a private industry criminal check before the record is expunged.

The Fair Credit Reporting Act (FCRA) is the only legislation which appears to address this matter. A 2003 amendment to the FCRA allows credit reporting agencies to maintain criminal records indefinitely. (Pub. L. No. 108-159, 117 Stat. 1952(2003). The FCRA does require that private industry companies maintain the most accurate information possible by following reasonable procedures. (FCRA §1681e(b)). Case law supports the assertion that technically accurate information can fail to meet the standard when it is misleading. (Koropoulos v Credit Bureau, 734 F.2d 37 (1984)).\*

## DNA and HIV Testing

An individual is required to give a DNA sample if they have been convicted of a felony after July 15, 2010 or have committed any of the qualifying offenses included below. (Neb. Rev. Stat. §29-4106, Neb. Rev. Stat §29-4106). The sample will be expunged when an individual produces a certified copy “of the final order reversing and dismissing a qualifying conviction” (Neb. Rev. Stat. §29-4109). Fingerprints will be collected for the purpose of verifying the identity of an individual. (Neb. Rev. Stat. §29-4107(2)).

- ∂ Kidnapping (Neb. Rev. Stat §28-313)
- ∂ False Imprisonment of a Minor (Neb. Rev. Stat §28-314)
- ∂ False Imprisonment (Neb. Rev. Stat §28-315)
- ∂ Incest of a Minor (Neb. Rev. Stat. §28-703)
- ∂ Sexual Assault (Neb. Rev. Stat §28-319, 320, 386)
- ∂ Murder/Manslaughter (Neb. Rev. Stat §28-303-305)
- ∂ Stalking (Neb. Rev. Stat §28-311)
- ∂ Burglary (Neb. Rev. Stat §28-507)
- ∂ Robbery (Neb. Rev. Stat §28-324)

When a person has been convicted of certain crimes related to sexual assault or if sexual contact is an element of an offense, the court shall order a test for Human Immunodeficiency Virus (HIV), if the test is requested by the victim. (Neb. Rev. Stat. §29-2290).

## Jury Duty

Under Nebraska law, any person sentenced to or punished for any felony is not competent to be a juror unless the sentence is reversed, annulled or the Board of Pardons restores the privilege. (Neb. Rev. Stat. §29-112). Individuals convicted of a felony in another state are also ineligible, unless their civil rights have been restored in the applicable state. (Neb.

Rev. Stat. §29-113). Federal jury service excludes both those that are charged with and those that are convicted of a federal or a state felony, unless civil rights have been restored. (28 U.S.C. §865(b)(5)).

## **Military Service**

Military applicants are subject to careful screening and are to be of good moral character. Individuals that have been convicted of a felony are not permitted to enlist in the armed services. Under Nebraska law, adjudication by a juvenile court shall not disqualify a juvenile from military service. (Neb. Rev. Stat. §43-280).

An otherwise disqualified applicant may request a waiver for enlistment purposes. (10 U.S.C. §504). Waivers are approved on a case by case basis. Potential waiver issues must be reported to the applicant's recruiter.

A waiver is necessary in the event of,

- A conviction or adverse disposition for a felony offense.
- Two convictions or adverse dispositions for driving while impaired due to any substance or any condition that affected judgment or driving ability, regardless of the technical or legal definition of the term.
- Pleas of Nolo Contendere
- Certain Civil Convictions or dispositions including;
  - Six or more minor traffic offenses punished by a fine of \$100 or more.
  - Three or more non-traffic offenses.
  - A combination of three traffic and non-traffic offenses.
  - Two, three or four misdemeanor offenses
  - One DUI or DWI.
  - Any offense punishable by a fine of \$100 or more.
  - Any offense that involves contributing to the delinquency of a minor.
  - Any offense that involves spousal or child abuse.
  - Any sex related crime.
  - Any offense where confinement was ordered.

[http://www.military.com/Recruiting/Content/0,13898,rec\\_step07\\_DQ\\_law,,00.html](http://www.military.com/Recruiting/Content/0,13898,rec_step07_DQ_law,,00.html)

Veteran's benefits are forfeited when a person is found guilty of mutiny, treason, sabotage, or convicted of certain offenses related to espionage, treason, or rendering assistance to an enemy of the United States. (10 U.S.C. §504, 38 U.S.C. § 6104, 38 U.S.C. §6105(a) and (b)). Pensions may be denied to an individual that is incarcerated as the result of a felony conviction, after 60 days. In some cases, forfeited benefits may be paid to the children or spouse of the incarcerated. (38 U.S.C. §1505, 38 U.S.C. § 6104, 38 U.S.C. §6105(a) and (b)). An individual who has been convicted of a felony is also ineligible to be a resident of an armed services retirement home. (24 U.S.C. §412).

## Passport

A person's passport will be revoked and subject to ineligibility after conviction for a felony (and in some cases a misdemeanor) drug offense. The ineligibility period applies while the individual is incarcerated, on parole or on other supervised release. (22 U.S.C.A. § 2714).

## Public Office and Public Employees

When the sentence is not reversed or annulled, any person sentenced to or punished for any felony is considered to be incompetent to hold any office of "honor, trust, or profit" within the state of Nebraska. (Neb. Rev. Stat. §29-112). An individual that receives a warrant of discharge from the Board of Pardons shall be restored to civil rights and privileges as determined by the board. City council members that are convicted of a crime during their term of office shall forfeit office. (Neb. Rev. Stat §19-613).

Any applicant for any kind of civil service, must be of good moral character. (Neb. Rev. Stat. §19-1831). Once employed, an individual must continue to exhibit "good behavior". (Neb. Rev. Stat. §19-1832). Failure to do so, can result in discharge, suspension, demotion, denial of benefits, or loss of "other privilege." The commission of a felony or misdemeanor, which affects an employee's ability to perform their duty is expressly stated as a cause for dismissal. (Neb. Rev. Stat. §19-1832(5)). Other possible grounds for action are articulated in the statute. (Neb. Rev. St. §19-1832(1-4)).

Nebraska statutes also set forth specific crimes for which specific public employees/officers can be dismissed. Among them are the following professions;

- ∂ County Clerk or Treasurer (Neb. Rev. Stat. §19-1104)
- ∂ Justice or Judge (Neb. Rev. Stat §24-722(4))
- ∂ Sheriff (Neb. Rev. Stat. §23-1701.01(a))
- ∂ County Officers (Neb. Rev. Stat. §23-2001)

Federal law also prohibits federal employment based on certain criminal convictions.\* The affected employment is usually law enforcement or transportation related. Examples of regulated employment are;

- ∂ Airport Security Screener (49 U.S.C. §44935-44936, 49 U.S.C. §44936(b)(B))
- ∂ Commercial Motor Vehicle Operator's License (49 U.S.C. §31310).
- ∂ Locomotive Operator License (49 U.S.C. §20135, 49 C.F.R. §240.115)
- ∂ Broadcast License (47 C.F.R. §73.4280)
- ∂ Grain Warehouseman Sampler, Technician, Sampler, etc. (7 U.S.C. §85)

Convictions obtained during employment are sometimes treated differently than those obtained pre-employment which are disclosed during the application process.

A felony conviction is an absolute bar to employment as a federal law enforcement officer (5 U.S.C. §7371, 5 U.S.C. §8331(20)). Other federal employees and contract employees, such as janitors and culinary employees, must subject themselves to criminal background checks. Here the consequences of a criminal conviction are less clear.

A Conviction typically includes any finding of guilt, as well as pleas of nolo contendere. (49 CFR §1570.3). Federal conviction definitions usually exclude those convictions that have been expunged, pardoned or overturned on appeal.(49 CFR §1570.3, 49 C.F.R. §1570.3)

### **Ameri-Corps**

An individual must submit themselves to a criminal background check during the Ameri-Corps application process. (45 CFR §2522.205). Once admitted to the program an individual must be released for cause if they are convicted of a felony drug related crime during their term of service. (45 CFR §2522.230). An individual that has been convicted of murder or is required to be registered on a state or national sex registry is also disqualified from service. (45 CFR 2522.206(a)(b)). An Ameri-Corps participant must also be a lawful permanent resident of the United States. (45 CFR §2522.200(d)).

### **Voting**

When the sentence is not reversed or annulled, any person sentenced to or punished for any felony is not qualified to vote, unless two years have passed after the sentence is completed. At that time restoration of voting rights is automatic. (Neb. Rev. Stat. §29-112). An individual that is convicted of a felony in another state is also deemed ineligible to vote. (Neb. Rev. Stat. §29-113).

### **Immigration**

Because of the complex nature of Immigration status, this issue is not addressed in this document. For information on immigration consequences please refer to the Federal code. (8 U.S.C. §1227(a)). Practitioners would also benefit from consulting the additional sources listed below.\*\*

### **Secondary Sources;**

American Bar Association Criminal Justice Section, *Adult Collateral Consequences Project*, available at <http://isrweb.isr.temple.edu/projects/accproject/> then find "select a state" and find "Nebraska" on drop down menu.

Bob Creager, General Overview and Miscellaneous Consequences, Presentation Materials from The Nebraska Criminal Defense Attorney's Association: Collateral Consequences of Criminal Convictions (March 6, 2009)(on reserve with the University of Nebraska Law School).

\*Logan Danielle Wayne, *The Data-Broker Threat: Proposing Federal Legislation to Protect Post Expungement Privacy*, 102 J. Crim. L. & Criminology 253 (2012).

\*This information is taken directly from the American Bar Association's report; *Collateral Consequences of Conviction in Federal Laws and Regulations*. It is strongly recommended that practitioners reference this report for complete information. (ABA Collateral Consequences, *supra*. 18-37).

\*\* Amy Peck, immigration Consequences, Presentation Materials from The Nebraska Criminal Defense Attorney's Association: Collateral Consequences of Criminal Convictions (March 6, 2009) (on reserve with the University of Nebraska Law School).

Kevin Ruser, *Immigration Consequences of Criminal Convictions*, available at <http://www.ncpa.ne.gov/> (last visited October 2012).



## Family Consequences

<b>Crime</b>	<b>Law</b> <i>(Consequence Only)</i>	<b>Consequence</b>	<b>Page</b>
In General	Neb.Rev.Stat. §28-718 §43-107(b)(i-vii)	Adoption	14
	§43-3709 42 U.S.C. §13013	Special Advocate Volunteer	15
	42 U.S.C. §629i(b)(2)	Children of Prisoners Mentoring	15
	§71-1903(1-3)	Foster Care	14
	§43-292(7) ASFA	Termination of Parental Rights	15
	§30-2602.02 Neb. Ct. R. 6-1449(A)(1))	Guardianship Rights	15
Sex Offender		Child Custody and Visitation	14
Registered Sex Assault	§28-311		
First Degree	§28-319.01		
Second and Third Degree	§28-320		
Assault of a Child	§28-320.01		
Use of a Computer	§28-320.02		
Exception and Modification	§43-2933(1)(b) §43-2933(3)		
Drug Usage	§ 43-292(4)	Termination of Parental Rights	15

Sentence Resulting in Incarceration exceeding 15 months.	§43-292(7) ASFA	Termination of Parental Rights	15
Reports of Child Abuse or Neglect	§28-715 §28-718	Tracking System Central Register	16
Reports of Vulnerable Adult Abuse or Neglect	§28-376	Central Registry	16
Crimes Against Children	§28-320.01	Child Custody and Visitation	14
Murder Vol. Manslaughter Felony Assault Juvenile Subjected to (abuse, bodily injury, etc.)	§43-292(7-10)	Termination of Parental Rights	15

## Adoption

As part of the adoption process, a national criminal history check of the Central Child Abuse or Neglect Registry must be conducted. (Neb. Rev. Stat. §28-718). The purpose of the search is to determine whether there is a history of behavior which is “injurious to or which may endanger the health or morals of a child.” (Neb. Rev. Stat. §43-107(b)(i-vii)). Federal law also requires background checks for receipt of grant funds. (42 U.S.C. §671(2a)).

## Child Custody

Child custody, visitation, unsupervised parenting time, or other access to a child will not be granted in any one of the following circumstances;

- ∂ The individual is required to register as a sex offender for an offense that would make it contrary to the best interests of the child. (Neb. Rev. Stat. §43-2933(1)(a)).
- ∂ The individual is convicted of an offense where the victim was a minor. (Neb. Rev. Stat §43-2933(1)(a)).
- ∂ Convicted for child enticement, (Neb. Rev. Stat. §28-311)
- ∂ Convicted of first degree sexual assault of a child. (Neb. Rev. Stat §28-319.01)
- ∂ Convicted of second or third degree sexual assault of a child. (Neb. Rev. Stat §28-320.01) .
- ∂ Convicted of second or third degree sexual assault. (Neb. Rev. Stat. §28-320)
- ∂ Use of a computer to commit sexual assault (Neb. Rev. Stat. §28-320.02)
- ∂ The child was conceived as a result of a violation under section Neb. Rev. Stat §28-319. (Neb. Rev. Stat. 43-2933(2)).

These parental rights will not be granted if *anyone residing in* the person’s house is;

- ∂ Required to register as a sex offender as the result of a crime where the victim was a minor or
- ∂ For an offense that makes it against the best interests of the child.

Exceptions exist when;

- ∂ The court finds that it is not contrary to the best interests of the child (Neb. Rev. stat. §43-2933(1)(a))
- ∂ A change in circumstances (Neb. Rev. Stat. §43-2933(3))

The following may also apply; (Neb. Rev. Stat. 43-2934(3)).

## Foster Care

The Department of Health and Human Services must complete an investigation to determine whether the character of an applicant (or any member of the applicant’s household) is such to “ensure the proper care and treatment of children.” This investigation includes a National Criminal History record search. (Neb. Rev. Stat. §71-1903(1)).

## **Mentoring Children of Prisoners**

In certain cases, when an individual is unqualified to be an adoptive parent or participate in foster care services, that individual may also be disqualified from participating in programs that mentor the children of prisoners. (42 U.S.C. §671(2), 42 U.S.C. §629i(b)(2)).

## **Termination of Parental Rights**

Parental rights can be terminated utilizing a number of legal theories. Under the Adoption and Safe Family Act of 1997 (ASFA) parental rights can be terminated when a child is placed in foster care for 15 out of the last 22 months. Nebraska law adopts the ASFA standard. (Neb. Rev. Stat. §43-292(7)). In Nebraska, the parental rights of individuals who are convicted to serve a sentence of more than 15 months might be affected.

Parental rights can also be terminated if a court “of competent jurisdiction” has found a parent guilty of the following;

- ∂ Murder of a child sibling or another child of the parent;
- ∂ Voluntary Manslaughter of a child sibling or another child of the parent;
- ∂ Aiding and abetting, attempting, conspiracy, of solicitation to commit murder or voluntary manslaughter of a child sibling or another child of the parent;
- ∂ Committed Felony Assault that has resulted in serious bodily injury to the child subject of the petition, a child sibling, or another child;
- ∂ Inflicting, by other than accidental means, serious bodily injury or
- ∂ Subjected juvenile to aggravated circumstances, including, but not limited to abandonment, torture, chronic abuse, or sexual abuse (Neb. Rev. Stat. §43-292).

Parental rights may also be terminated because of habitual drug use or debauchery. (Neb. Rev. Stat. §43-292(4)).

## **Guardianship Rights**

New rules require that individuals submit four reports ten days prior to a guardianship/conservatorship hearing. (Neb. Rev. Stat. §30-2602.02(2))

- ∂ Credit Report;
- ∂ Sex Offender Registry;
- ∂ Criminal History Background Check;
- ∂ Central Child Abuse, Neglect Registry;
- ∂ Central Adult Abuse, Neglect Registry. (Neb. Rev. Stat. 30-2602.02, Neb. Ct. R. 6-1449(A)(1))

The court may waive these requirements for good cause. An individual may also be required to obtain a surety bond, if the estate is worth more than \$10,000. (Neb. Ct.R.6-1441)

## Special Advocate Volunteers

Federal law requires that grant receiving institutions screen special advocate volunteers. (42 U.S.C. §13013(c)(2)). In order to serve as a court appointed special advocate an individual must pass a criminal history check. A check of the central register of child protection and a check of the individual's driving record must also be performed. (Neb. Rev. Stat. 43-3709 (2(a-c))).

## Child Abuse/Neglect Central Registry

The Department of Health and Human Services maintains a central registry of child protection cases. This registry is classified into three sections, court substantiated, court pending, and agency substantiated. (Neb. Rev. Stat. 28-720). Agency substantiated cases must be based on formalized investigation and supported by a preponderance of the evidence. (Neb. Rev. Stat. §28-720(3)). Appearance on the central registry can have an effect on employment, guardianship eligibility, adoption, etc. Unsubstantiated claims are maintained in the department's tracking system. (Neb. Rev. Stat. §28-715). Individuals may contact DHHS directly to verify whether they are on the registry. They may also work with DHHS representatives to have their record expunged.

## Adult Protective Services Central Registry

Any substantiated report of an individual who has allegedly abused, neglected, or exploited a vulnerable adult shall be recorded in the registry. (Neb. Rev. Stat. §28-376). Appearance in this registry can have an effect on employment, guardianship eligibility, adoption, etc.

### **Secondary Sources:**

Adult Collateral Consequences Project, *supra*.  
American Bar Association Commission on Effective Criminal Sanctions, *Internal Exile; Collateral Consequences of Conviction in Federal Laws and Regulations*, (2009).  
Creager, *supra*.

\* It is important to note that the DHHS is currently promulgating rule changes which are designed to make these processes more clear. It is not currently known when these rule changes will take effect.

Section III

## Public Assistance Consequences

<b>Crime</b>	<b>Law</b> <i>(Consequence Only)</i>	<b>Consequence</b>	<b>Page</b>
General	§71-15,163 §71-15,134  §43-3201(2)  24 CFR 982.553  20 CFR 404.1506 42 U.S.C. §402(x)(1)(A)(i-ii)  21 U.S.C. §862a(a)  §71-2226  §71-2227  §68-906	Public Housing  McGruff House  Federal Public Housing Assistance  PPCA  Social Security Benefits  Temporary Assistance to Needy Families/Food Stamps  Commodity Supplemental Food Program (CSF)  Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)  Medical Assistance Program (Medicaid)	20        21
Felony	20 CFR 404.1506  42 U.S.C. §1383 (a)(2)(B)(ii)(IV)	Social Security Benefits	21
Fugitive Felon	42 U.S.C. §1382(e)(4)(A)(i) 42 U.S.C. §402(x)(1)(A)(iv)	Social Security Benefits  <i>Disability</i> <i>Old Age</i>	21
Fraud or Fraudulent Statements	§71-15,138(1) §71-2228 §71-2229(2)	Public Housing Benefits Public Benefits CSF and/or WIC	20

	§68-936(2)	Medicaid	
Probation/Parole Violation	42 U.S.C. §1382(e)(4)(A)(ii) 42 U.S.C. §402(x)(1)(A)(v)	Social Security Benefits <i>Disability</i> <i>Old Age</i>	21
Evidence of Criminal Activity Regardless of Conviction	24 CFR 982.553(c)	Federal Public Housing Assistance	20
Drug Offense (any household member)	24 CFR 982.553(b)(1)(A-B)	Federal Public Housing Assistance	20
Drug Offense (in violation of federal or state law)	42 U.S.C. §1437n(f)  §20-322(5)  21 U.S.C. §862a(a)(2) §68-1017.02  21 U.S.C. §862(a)(1)  20 U.S.C. §1091(r)  21 U.S.C.S 862(a)(1) 21 U.S.C.S 862(b)(1)(A)(i) 21 U.S.C.S 862(b)(B) 21 U.S.C.S 862(d)	Federal Public Housing Assistance  Fair Housing  Food Stamps  Temporary Assistance to Needy Families  Federal Financial Aid  <b>All Federal Benefits</b>  <b>Defined</b> (excludes SS and Veteran's benefits)	20   21  21  22  20
Sex Offender	24 CFR 982.553(a)(2)(i) 52 U.S.C. §13663  42 U.S.C. §402(x)(1)(A)(iii)	Federal Public Housing Assistance  Social Security Benefits	20
Sexual Assault	UNL Code of Conduct	University of Nebraska Discipline	22
Alcohol Abuse	24 CFR 982.553(b)(1)(B)(3)  UNL Code of Conduct	Federal Public Housing Assistance  University of Nebraska Discipline	20
Current Involvement			

Drug Activity	24 CFR 982.553(a)(2)(ii)	Federal Public Housing Assistance <b>Permissive</b>	20
	24 CFR 982.553(a)(2)(ii)(1)	University of Nebraska Discipline	22
	UNL Code of Conduct 2.4		
	Violent Criminal	24 CFR 982.553(a)(2)(ii)(2)	Federal Public Housing Assistance
Other	24 CFR 982.553(a)(2)(ii)(3-4)	"Currently" <b>Defined</b>	
	24 CFR 982.553(a)(2)(ii)(4)(C)(2)		
Exceptions	24 CFR 982.533(d)	Federal Public Housing Assistance	20
	42 U.S.C. §1382(e)(4)(C)	Social Security Benefits	21
	42 U.S.C. §1383(a)(2)(B)(iii)(IV)	Federal Financial Aid	22
	20 U.S.C. §1091(r)(2)		
Gambling	UNL Code of Conduct 4.23	University of Nebraska Admission	22
Hazing	UNL Code of Conduct	University of Nebraska Disciplinary Sanction	22
Indecent Exposure	UNL Code of Conduct	University of Nebraska Admission Disciplinary Sanction	22
Theft	UNL Code of Conduct	University of Nebraska Admission Disciplinary Sanction	22
False Alarm	UNL Code of Conduct	University of Nebraska Admission Disciplinary Sanction	22
Traffic Violations	UNL Code of Conduct	University of Nebraska Admission Disciplinary Sanction	22



## Public Assistance

Participation in state public assistance programs are often contingent on eligibility requirements prescribed by federal law, because federal monies are utilized to administer those programs. (Neb. Rev. Stat. §71-2228, §71-2229(2), §68-936(2)). Because of the large number of federal programs and federal regulations that exist, it is difficult to quantify all of the possible implications of a criminal conviction. All federal benefits are denied to any individual convicted of any federal or state drug or drug trafficking offense. (21 U.S.C. §862(a-b)). Exceptions to this rule include benefits to long-term drug treatment programs, retirement, welfare, Social Security, health, disability, housing, and veteran's benefits. (21 U.S.C. §862(d)). The term "Federal Benefit" typically applies to grants, loans, professional licenses, commercial licenses, etc.

## Public Housing

**Mandatory prohibition** from federal public housing programs is required in the following situations:

- ∂ A member of the household is subject to lifetime registration under a state sex offender registration program; (24 CFR §982.553(a)(2)(i))
- ∂ Any household member is currently engaged in the use of any illegal drug use; (24 CFR 982.553(b)(1)(A))
- ∂ Any household member engages in a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents; (24 CFR 982.553(b)(1)(B))
- ∂ Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety or right to peaceful enjoyment by other residents;\*\* (24 CFR 982.553(a)(4)(C)(3))
- ∂ Conviction of manufacturing methamphetamine on the premises. (42 U.S.C. §1437n(f))

**Permissive prohibition** from federal public housing programs is authorized in the following situations:

- ∂ Any member of a household is determined to have engaged in criminal activity, regardless of arrest or conviction;\* (24 CFR 982.553(c))
- ∂ Determination that any household member currently;\*\*\* or has recently participated in,
  - Drug related criminal activity, (24 CFR 982.553(a)(2)(ii)(1))
  - Violent criminal activity, (24 CFR 982.553(a)(2)(ii)(2))
  - Other criminal activity which might threaten the health, safety, or right to peaceful enjoyment by other residents or people residing in the immediate vicinity, (24 CFR 982.553(a)(2)(ii)(3))
  - Other criminal activity which might threaten the health or safety of the owner, property management staff or other persons performing administrative functions on behalf of a public housing authority, (24 CFR 982.553(a)(2)(ii)(4))

Local housing agencies may establish criteria for selecting residents based on circumstances, actions, or characteristics. (Neb. Rev. Stat. §71-15,134). State law requires that law enforcement agencies cooperate with local housing agencies in the process of screening applicants for local assistance. (Neb. Rev. Stat. §71-15,163). This information is not limited to criminal history. (Neb. Rev. Stat. §71-15,163).

Local Housing Agencies may terminate a lease for fraud, material misrepresentation or omissions made by any member of a household. (Neb. Rev. Stat. §71-15,138).

\*By preponderance of the evidence

\*\*Reasonable Cause to believe

\*\*\*Currently engaged in criminal activity that the person has engaged in recently enough to justify a reasonable belief that the behavior is current. (24 CFR §982.553(a)(2)(ii)(4)(C)(2))

### **Temporary Assistance to Needy Families (Food Stamps/SNAP)**

An individual convicted of any felony offense related to possession, use, or distribution of a controlled substance is not eligible for federally funded food stamp or other temporary assistance to needy families. (21 U.S.C. §862a(a)(1-2). This should not affect assistance to other family members. (21 U.S.C. §862a(b)).

### **Social Security Benefits**

Social Security benefits are divided into two major categories of benefits; old age benefits and disability benefits. Both categories are impacted by criminal convictions.

**Disability Benefits** are not available to individuals that flee prosecution, custody, or criminal confinement. (42 U.S.C. §1382(e)(4)(A)(i)). Individuals that violate conditions of probation or parole are also ineligible. (42 U.S.C. §1382(e)(4)(A)(ii)). The commissioner may, for good cause, consider an individual eligible if the crime for which they were convicted is not drug related or a violent crime. (42 U.S.C. §1382(e)(4)(C)).

**Old Age Benefits** are not available to the following;

- ∂ Individuals that are confined in jail, prison, or other correctional facility; (42 U.S.C. §402(x)(1)(A)(i))
- ∂ Individuals that are confined at public expense pursuant to a finding that the individual is a sexual predator or is sexually dangerous; (42 U.S.C. §402(x)(1)(A)(ii))
- ∂ Individuals that are fleeing prosecution, custody, or confinement (42 U.S.C. §402(x)(1)(A)(iii))
- ∂ Individuals violating terms of probation or parole (42 U.S.C. §402(x)(1)(A)(iv))

In addition to these restrictions, the Social Security Administration (SSA) will not consider disabilities that arise out of the commission of a felony. (20 CFR §404.1506(a)). Neither will the SSA consider disabilities that arise during or are aggravated by confinement in prison. (20 CFR §404.1506(b))

## Federal Financial Aid

An individual that obtains a felony drug conviction during a period of enrollment for which the student is receiving financial aid is not eligible to receive financial assistance for the following period(s) of time,

### Possession

First Offense	One Year
Second Offense	Two Years
Third Offense	Indefinite

### Sale

First Offense	One Year
Second Offense	Indefinite (20 U.S.C. §1091(r)(1))

Financial aid includes;

- ∂ Grants
- ∂ Loans
- ∂ Work Assistance programs

An exception exists for individuals that are considered to be rehabilitated. Rehabilitation is defined as;

- ∂ Completion of a qualifying drug rehabilitation program
- ∂ Successful Passage of two unannounced drug tests
- ∂ The setting aside or reversal of conviction (20 U.S.C. §1091(r)(2))

## University of Nebraska Code of Conduct

Disciplinary proceedings may be instituted against any student or campus organization that is charged with a violation of law that is associated with the code of conduct. (University of Nebraska Code of Conduct 3.5). Any off campus activities sponsored by or related to the university are also under university disciplinary jurisdiction. (University of Nebraska Code of Conduct 3.4). Other off campus behavior is not a part of the university disciplinary jurisdiction unless the behavior adversely affects the educational interests of the university. Off campus behavior that violates criminal law or involves falsification may be considered to be misconduct that adversely affects the educational interests of the university. (University of Nebraska Code of Conduct 3.5). University disciplinary proceedings may be conducted "prior to, simultaneously with, or following civil or criminal proceedings off-campus" (University of Nebraska Code of Conduct 3.5). The honor code in full is available at <http://stuafs.unl.edu/ja/code/three.shtml>.

Disciplinary sanctions can include but are not limited to;

- ∂ Written Warning; (University of Nebraska Code of Conduct 5.1)
- ∂ Restitution; (University of Nebraska Code of Conduct 5.2)
- ∂ Probation; (University of Nebraska Code of Conduct 5.4)
- ∂ Specified Behavioral Requirement; (University of Nebraska Code of Conduct 5.5)
- ∂ Suspension; (University of Nebraska Code of Conduct 5.6)

ð Expulsion. (University of Nebraska Code of Conduct 5.7)

The University of Nebraska Omaha also has a similar code of conduct. The code of conduct can be viewed in PDF format <http://registrar.unomaha.edu/doc/catalogs/02-03.pdf>. The UNO code of conduct appears less restrictive with regards to off campus behavior. (University of Nebraska Omaha Code of Conduct Preamble). The University does reserve the right to adjudicate any off campus behavior that affects university interests. The University of Nebraska Kearny has adopted a code of conduct similar to the other two universities. UNK's code of conduct usually only applies to conduct which occurs on campus.

[http://www.unk.edu/uploadedFiles/Student\\_Affairs/vcsa/Student\\_Code\\_of\\_Conduct.pdf](http://www.unk.edu/uploadedFiles/Student_Affairs/vcsa/Student_Code_of_Conduct.pdf).

**Secondary Sources;**

Adult Collateral Consequences, *supra*.

Creager, *supra*.

Internal Exile, *supra*.

Section IV  
**Firearm Consequences**  
*(and Related)*

<b>Crime</b>	<b>Law</b> <i>(Consequence Only)</i>	<b>Consequence</b>	<b>Page</b>
In General	18 U.S.C. §922(g)	Firearms and Ammunition	27
	18 U.S.C. §921(a)(3)	<b>Defined</b>	
	18 U.S.C. §921(a)(17)(A)	<b>Defined</b>	
	§69-2410(2)(c) §69-2411(1)	Purchase of Firearm	27
	28-1229 18 U.S.C. § 842(d)	Explosives	27
	§69-2430(3)(a) §69-2431	Concealed Weapons Permit	28
	18 U.S.C. §931	Body Armor	28
Felony	§69-2433(4)	Concealed Weapons Permit	28
	§28-1229(2)(b)	Explosives <i>(convicted in any court)</i>	27
Crime Punishable by Imprisonment of greater than one year.	§18 U.S.C. §922(g)(1)	Firearms and Ammunition <i>(Includes convictions in any court)</i>	27
	§18 U.S.C. §921(a)(20)(A-B)	<b>Exceptions</b>	
	§18 U.S.C. §921(a)(33)(B)		
Indictment			

(to ship or receive firearms or ammunition in commerce)	§18 U.S.C. §922(n) §28-1229(2)(c) §40 U.S.C. §842 (d)(3)	Firearms and Ammunition  Explosives (unlawful to distribute to)	27
Intentional or Negligent Killing While Hunting	§37-616	Game and Fish License	28
Misdemeanor	§18 U.S.C. §922(g)(9) §69-2433(5) §28-1229(2)(h)	Firearms and Ammunition (convicted in any court in relation to domestic violence)  Concealed Weapons  Explosives	27  28  27
False or Fraudulent Statements	§69-2430(2)	Concealed Weapons Permit	28
Unlawful use of  Firearm Controlled Substance	§18 U.S.C. §922(g)(3) §69-2433(8) §28-1229(2)(e) §40 U.S.C. §842 (d)(5)	Firearms and Ammunition  Concealed Weapons Permit  Explosives (unlawful to distribute to)	27  28  27
Fugitive From Justice	§40 U.S.C. §922(g)(2) §40 U.S.C 842. (d)(4)	Firearms and Ammunition  Explosives (unlawful to distribute to)	27
Parole/Work Release	§69-2433(9)	Concealed Weapons Permit	28

Domestic Violence	18 U.S.C. §922(g)(9)	Firearms and Ammunition	27
	18 U.S.C. §921(a)(33)	<b>Defined</b>	
	§28-1229(2)(h)(i)	Explosives <i>(Includes convictions in any court)</i>	27
	§69-2433(5)	Concealed Weapons Permit <i>(includes all crimes of violence)</i>	28
Illegal Alien	18 U.S.C. §922(g)(5)	Firearms and Ammunition	27
	§69-2433(10))	Concealed Weapons Permit	28
Dishonorable Discharge from the Armed Services	18 U.S.C. §922(g)(6)	Firearms and Ammunition	27
Injury of Person or Property	§69-2443 §69-2440	Revocation of Conceal Carry Permit	28
Possession by a Prohibited Person	§28-1206	Deadly Weapon	
Defenses/Exceptions	18 U.S.C. §925(c)	Firearms and Ammunition Petition	27
	§69-2417	Selling to a prohibited individual	

## Firearms and Ammunition

City, state, and federal law each restrict the rights of an individual to possess or purchase firearms. Federal laws that prohibit an individual from possessing a firearm also prohibit individuals from possessing ammunition, as well. (18 U.S.C. §922(g)). Included among the federal restrictions are individuals convicted, in any court, of a crime punishable by more than one year. (18 U.S.C. §922 (g)(1)). Individuals convicted of a domestic violence misdemeanor are also prohibited from possession. (18 U.S.C. §922(g)(1) and (9)). Exceptions to this rule exist for state misdemeanors that are punishable by law for less than two years and certain white collar crimes. (18 U.S.C. §921(a)(20)(A) and (B)). Individual aliens, unlawfully present in the United States are also prohibited from firearm possession. (18 U.S.C. §922(g)(5)).

State Law requires that licensed merchants perform a criminal background check on individuals attempting to purchase a firearm. (Neb. Rev. Stat. §69-2410(2)(c)). Cities have also enacted ordinances which limit the ability of individuals to possess firearms within their city limits. (See; Lincoln, Ne, Ordinance 9.36.100; Omaha, Ne, Ordinance Sec. 20).

Examples of these restrictions include:

- ∂ Unlawful Discharge of a firearm
- ∂ Violation of the Uniformed Controlled Substances Act
- ∂ Furnishing a minor with firearms, ammunition, or weapons
- ∂ Domestic Assault
- ∂ Assault
- ∂ Unlawful Intrusion
- ∂ Criminal Intrusion
- ∂ Criminal Trespass
- ∂ Resisting Arrest
- ∂ Concealing the death of another person

In the State of Nebraska an individual that is a fugitive from justice or has been previously convicted of a felony is guilty of possession of a deadly weapon by a felon when they possess a firearm. This is a class III felony. (Neb. Rev. Stat §28-1206).

## Explosives

Nebraska law limits the ability of the state patrol to issue a permit to use or store explosives. An individual is not an eligible applicant for a permit when the person is;

- ∂ Charged with a felony, (Neb. Rev. Stat. §28-1229(c))
- ∂ Convicted of a felony, (Neb. Rev. Stat. §28-1229(b))
- ∂ Convicted of certain misdemeanors (including domestic violence) in any court is not eligible for such a permit, (Neb. Rev. Stat. §28-1229(2)(b)(c)(h) and (i))
- ∂ An unlawful alien, illegally present in the State of Nebraska, (Neb Rev. Stat. §28-1229(2)(j))



- ∂ An unlawful user of depressant, stimulant, or narcotic drugs. (Neb. Rev. Stat. §28-1229(2)(e))

Under federal law, it is unlawful to distribute explosive material to an individual that is under indictment or who is convicted of a felony. (18 U.S.C. §842(d)(2-5)). It is also unlawful to distribute to an individual that is a fugitive from justice or an unlawful user of a controlled substance. (18 U.S.C. §842(d)(2-5)).

### **Body Armor**

An individual convicted of a felony that is a crime of violence is barred from purchasing, owning, or possessing body armor. (18 U.S.C. §931)(a)(1-2). An exception exists when such armor is necessary for employment purposes. (18 U.S.C. §931)(b)(1).

### **Concealed Weapons Permit**

An individual is not a qualified applicant for a concealed weapons permit if they have been convicted of a felony in this state or any other. (Neb. Rev. Stat. §69-2433(4)). An individual is also disqualified from receiving a concealed weapons permit when the individual is;

- ∂ Convicted of a misdemeanor crime of violence, (Neb. Rev. Stat. §69-2433(5))
- ∂ Convicted of a violation relating to firearms or unlawful use of a weapon, (Neb. Rev. Stat. Stat. §69-2433(5))
- ∂ On parole, probation, house arrest or work release, (Neb. Rev. Stat. §69-2433(9))
- ∂ Not a citizen of the United States. (Neb. Rev. Stat. §69-2433(10))

An individual that causes injury to person or property with a handgun may have their permit revoked. (Neb. Rev. Stat. 69-2443(4)). Individuals may also have their permits revoked for false or misleading statements. (Neb. Rev. Stat. 69-2430(2)).

### **Hunting and Gaming Permits**

An individual's hunting and gaming permits can be revoked for certain violations of game and fish law. These violations include taking species during closed season, taking in excess of established limits, killing or causing injury to livestock with a firearm or bow and arrow, and being a habitual offender of game law. (Neb. Rev. Stat. 37-614).

#### **Secondary References:**

Adult Collateral Consequences, *supra*.

Vanderslice, *supra*.

Keith Williams, *The Top 10 Things You Need to Know About Federal Gun Law*, available at

<http://www.ncids.org/Defender%20Training/2005%20Spring%20Conference/Federal%20Gun%20Law-Paper.pdf> (last visited July 2012).

Section V  
**Licensing Consequences**  
 (Vehicle Associated)

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Third Offense	§53-181(1)(c)	Operator's License or Permit <i>(Permissive Revocation for 12 months)</i>	
<b>Driving Under the Influence</b> <i>(.02 violation)</i>	§60-6,196 §60-6,211.01 §60-6,197.03	Operator's License <i>(Mandatory Revocation)</i>	

## Operator's License

Federal law requires the revocation or suspension of an individual's license who is convicted of a drug offense or violation of the Controlled Substances Act. The license must be suspended or revoked for at least six months. (23 U.S.C. §159(a)(3)(A)(i)(I-II).

State Law authorizes any judge to order the revocation of an individual's operating license if the person has violated (1) a state law that pertains to the operation of a motor vehicle or (2) any city or village ordinance that pertains to the operation of a motor vehicle in a manner that engagers life limb or property. The term of revocation shall not be less than 10 days or more than one year. Exceptions to this provision include Driving Under the Influence and other statutes that have a greater mandatory penalty. (Neb Rev Stat §60-496).

## Mandatory Revocation

The Court and the Director of the department are required to revoke the operator's license of any individual convicted\* of the following;

- ∂ Manslaughter resulting from the operation of a motor vehicle, (Neb. Rev. Stat. §60-498(1))
- ∂ Use of a motor vehicle in the commission of a felony, (Neb. Rev. Stat. §60-498(3))
- ∂ Driving Under the Influence, (Neb. Rev. Stat. §60-498(2))
- ∂ Failure to render aid as required by law, (Neb. Rev. Stat. §60-498(4))
- ∂ Certain false or misleading statements regarding motor vehicles, (Neb. Rev. Stat. §60-498(5))
- ∂ Certain reckless driving charges, (Neb. Rev. Stat. 60-498(6-7))

For a complete breakdown of reckless driving charges and consequences see the previous table.

If, through the use of a motor vehicle, an individual is the proximate cause of another's death, and is driving under the influence or with a revoked license then Nebraska law requires that the individual's operating license be revoked for a minimum of one year. (Neb. Rev. Stat. 28-306(b)). If the individual is the proximate cause of another's death and has a previous conviction for driving under the influence or previous conviction for driving with a revoked license then that individual's license shall be revoked for fifteen years. (Neb. Rev. Stat 28-306(c)).



## Authorized Revocation

The Court or Director **may** revoke an operator's license upon conviction for the following;

- ∂ The individual was the driver in an accident resulting in death, personal injury, or serious property damage, (Neb. Rev. Stat. §60-499 (2))
- ∂ Habitual reckless or negligent driving, (Neb. Rev. Stat. §60-499(3))
- ∂ Habitual violation of traffic laws, (Neb. Rev. Stat. §60-499(4))
- ∂ Incompetence to drive a motor vehicle, (Neb. Rev. Stat. §60-499(5))
- ∂ The individual permitted the unlawful or fraudulent use of (their) license, (Neb. Rev. Stat. §60-499(6))
- ∂ Commission of fraud in the application for operator's license, (Neb. Rev. Stat. §60-499(6-9)).
- ∂ Revocation or suspension of license by a non-resident, (Neb Rev. Stat §60-499(10)).

The court **may** impound a license for a drug offense as follows;

First Offense	30 Days
Second Offense	90 Days
Third Offense	12 Months (Neb. Rev. Stat. §28-416(18))

## Miscellaneous Offenses

The owner of a vehicle that is operated or towed on a public highway without proper insurance is guilty of a Class II misdemeanor. It is presumed that the owner knows of the vehicle's operation. The owner's operator's license, registration and license plates shall be suspended until he or she complies. (Neb. Rev. Stat. §60-3,167). Compliance requires the payment of a fee and proof of insurance. (Neb. Rev. Stat. §60-505.02, §60-528).

### Graffiti

An individual convicted for unauthorized application of graffiti may have their license suspended for up to one year. (Neb. Rev. Stat. §28-524(5)). These individuals may also be required to undergo counseling. (Neb. Rev. Stat. §28-524(4)).

### Fleeing Arrest

An individual that utilizes a motor vehicle to flee arrest may have their operator's license revoked for up to one year. (Neb. Rev. Stat §28-905(2)(b). If the individual has been previously convicted of the same offense, the flight results in death, or it involves reckless driving, revocation is mandatory for a period of two years. (Neb. Rev. Stat. §28-905(3)).

### Driving When License is Revoked

An individual that operates a motor vehicle while their license is suspended or revoked shall have their license revoked for a period of one year. (Neb. Rev. Stat. §4,108(1)(a)). The

effective date of revocation is the date selected by the court. (*State v. Fuller*, 722 N.W. 2d 868). A second or third offense is punishable by a period of two years. (Neb. Rev. Stat. §4,108(1)(b)). The individual may not drive for any reason. Any vehicle being operated by the individual is a public nuisance and may be impounded for ten to thirty days. (Neb. Rev. Stat. §60-4,110). The actual owner of the vehicle may recover costs of impoundment civilly or (in a criminal action) the court can order the individual operator to pay restitution in an amount equal to impoundment expenses. (Neb. Rev. Stat. §60-4,110(4)). This statute is operative July 19, 2012.

### **Not Licensed During a Revocable Offense**

If an individual commits an offense that would otherwise require the revocation or suspension of a license, then the individual shall not receive a license until they provide and maintain proof of financial responsibility. (Neb. Rev. Stat. §60-526). A second offense is punishable by two years of revocation. No motor vehicle shall be registered to that individual until they provide proof of financial responsibility.

### **Commercial Driver's License**

An individual is disqualified from operating a commercial vehicle for one year after the first conviction of the following;

- ∂ Driving Under the Influence; (Neb. Rev. Stat. §60-4,168(1)(a), §60-196)
- ∂ Driving Under the Influence of a Controlled Substance, (Neb. Rev. Stat. §60-4,168(1)(b))
- ∂ Leaving the scene of an accident, (Neb. Rev. Stat. §60-4,168(1)(c))
- ∂ Using a commercial motor vehicle in the commission of felony, (Neb. Rev. Stat §60-4,168(1)(d))
- ∂ Driving a commercial motor vehicle after their CDL is suspended, revoked or canceled, (Neb. Rev. Stat. §60-4,168(1)(e))
- ∂ Causing a fatality through the negligent or criminal operation of a commercial vehicle. (Neb. Rev. Stat. §60-4,168(1)(f))

If one of these violations occurs during the transport of hazardous material then the individual will be disqualified from driving a commercial vehicle for three years. If an individual is convicted or administratively determined to have committed a second violation that individual shall be disqualified from driving a commercial vehicle for life. (Neb. Rev. Stat. §60-4,168(2-3)). If an individual falsifies information on the application or a commercial driver's license, that person will be disqualified from operating a commercial vehicle for sixty days. (Neb. Rev. Stat. 60-487(2)).

Certain serious traffic violations (such as willful reckless driving) are also grounds for mandatory disqualification, but only after multiple offenses. (Neb. Rev. Stat. §60-4,168(4-8)). Texting while driving is deemed a serious traffic violation, effective October 27, 2013. (Neb. Rev. Stat. §60-4,168(8)(i)). Exceptions exist for emergencies. (Neb. Rev. Stat. §60-6,179.02(2)).

A prosecutor, court, or the Department of Motor Vehicles must not prevent the conviction of an individual with a commercial driver's license. This includes; masking, deferring imposition of judgment, allowing an individual to enter into a diversion program, or otherwise preventing the conviction from appearing on the driver's record. This includes any violation in any type of motor vehicle, except for parking violations. (Neb. Rev. Stat. §60-4,147.01).

### **Seasonal Commercial Driver's License**

An applicant for a Seasonal Commercial Driver's License shall have a valid operator's license for one year prior to application. (Neb. Rev. Stat. §60-4,146.01(2)). The operator's license must not have been subject to any revocation, suspension, or cancellation of any type. (Neb. Rev. Stat. §60-4,146.01(2)(a)(ii)).

### **Notification Requirements**

An individual who possesses a commercial driver's license must inform the department when a conviction regarding motor vehicles occurs in another state. (Neb. Rev. Stat. §60-4,159). An individual must also inform their employer of any motor vehicle conviction within thirty days of conviction. (Neb. Rev. Stat. §60-4,159(2)). An individual whose commercial driver's license is suspended, revoked, canceled, or in some other way restricted, in any state, for any reason, must inform their employer before the end of the following business day. (Neb. Rev. Stat. §60-4,159(3)).

### **Juvenile Offenses**

Although this document does not directly address juvenile consequences of criminal behavior, certain Juvenile offenses are punishable by operator's license or permit revocation. Please see the attached chart for detailed statutes and corresponding consequences.

### **Provisional Operator's Permit**

A provisional operator's permit may be revoked under Neb. Rev. Stat. §60-496, just as a traditional operator's license would be. In addition to those provisions a Provisional operator's permit may be revoked for the following;

- o Driving During Restricted Hours,  
(Neb. Rev. Stat. §60-4,120.02(3)(a), §60-4,120.01)
- o Driving with more than one passenger that is under nineteen years of age and is not an immediate family member,  
(Neb. Rev. Stat. §60-4,120.02(3)(b), §60-4,120.01)
- o Use of a wireless communication device while operating a motor vehicle.  
(Neb. Rev. Stat. §60-4,120.02(3)(c))

The holder of a provisional operator's permit is not eligible for an ignition interlock permit. (Neb. Rev. Stat. §60-4,120.02).

## State Identification Card

A judge may order a state I.D. canceled if the application for the card contains false, fraudulent statements, incorrect or incomplete information. (Neb. Rev. Stat. §60-4,181).

## Car Insurance

An automobile liability policy can be cancelled if a policy holder or a member of that person's household regularly operates the insured vehicle and is subject to the following limitations;

- ∂ Operator's license has been revoked or suspended; (Neb. Rev. Stat. §44-515(1)(c)(i))
- ∂ Operator's license is subject to mandatory revocation or suspension; (Neb. Rev. Stat. §44-515(1)(c)(iii-iv))
- ∂ The individual has been convicted of certain offenses where revocation is possible; (Neb. Rev. Stat. §44-515(1)(c)(iv))
- ∂ The individual has been convicted of automobile theft; (Neb. Rev. Stat. §44-515(1)(c)(ii))
- ∂ The individual has been convicted of larceny of an automobile. (Neb. Rev. Stat. §44-515(1)(c)(ii))

Cancellation is not the exclusive remedy available to an insurer under this statute. (*Glockel v. State Farm*, 400 N.W.2d 250).

## Vehicle Registration and Impound

Whenever an individual's license is suspended or revoked, the department shall also suspend all registrations in the name of that individual, unless otherwise required by law. (Neb. Rev. Stat. §60-524(1)). If the individual was not the owner of the vehicle being utilized at the time of the violation then the department is also required to suspend the license of and all registrations in the name of the actual owner. (Neb. Rev. Stat. §60-524(2)).

If an individual is not licensed during the commission of a revocable offense, operating a vehicle on the highways without a license, or operating an unregistered motor vehicle, then no motor vehicle shall be registered in the name of the individual, until that individual provides and maintains proof of financial responsibility. (Neb. Rev. Stat. §60-526).

If a vehicle is operated by an individual with a suspended, revoked, or impounded license then the motor vehicle may be impounded at the expense of the owner. (Neb. Rev. Stat. §60-4,110(1)) . The owner may recover impound fees from the driver. (Neb. Rev. Stat. §60-4,110(4)).

## Water Craft

An individual that utilizes a water craft to evade arrest or citation shall be ordered not to operate any vessel for a period of one year. (Neb. Rev. Stat. §28-905).

## Handicapped Parking Permit

Individuals convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. (Neb. Rev. Stat. §18-1738).

### Appeal

An individual whose license is revoked for driving under the influence may appeal the decision. (Neb. Rev. Stat. §60-498.04). Any person aggrieved by an order to cancel, suspend, revoke or refusal to renew any operator's license may appeal the decision. (Neb. Rev. Stat. §60-498.04). The revocation of a commercial driver's license can be appealed as well. (Neb. Rev. Stat. §60-4,170).

### Exceptions

In certain cases an individual whose operator's license has been revoked can qualify for a medical hardship driving permit. (Neb. Rev. Stat. §60-4,130.01, §60-4,130.02). Such a permit is not valid for purposes of operating a commercial motor vehicle. (Neb. Rev. Stat §60-4,130.01(3)). The permit authorizes an individual to drive from his or her residence or place of employment to a hospital, clinic, doctor's office or other similar location. (Neb. Rev. Stat. §60-4,130.01(3)). The permit shall be revoked for unlawful use of the permit. (Neb. Rev. Stat. §60-4,130.01(4-5)).

In certain cases an individual whose operator's license has been revoked can qualify for an employment driving permit. (Neb. Rev. Stat. §60-4,129). Such a permit is not valid or the purposes of operating a commercial motor vehicle. (Neb. Rev. Stat. §60-4,129(3)). Such a permit is valid for purposes of driving to and from work and driving during the normal course of employment if the vehicle is necessary to such employment. (Neb. Rev. Stat. §60-4,129(3)).

### **Secondary Sources;**

Adult Collateral Consequences, *supra*.

Section VI  
**Various Licensing Consequences**  
 (Professional)

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Fraud or Dishonesty	<p>§38-178(1,6,12)</p> <p>§64-101(6)</p> <p>§69-1207(c)</p> <p>§71-1367(5)</p> <p>§71-1919(f)</p> <p>§88-885.12(1-2)</p>	<p>Health Care Professions</p> <p>Notary</p> <p>Debt Management Service <i>(Suspend/Revoke)</i></p> <p>Cremation</p> <p>Child Care</p> <p>Real Estate Broker/Salesperson</p>	<p>46</p> <p>45</p>
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*Applies to multiple professions defined under this title.			

## Professional Licensing

Professional licensing statutes have a far-reaching impact. It is difficult to identify each and every professional license that exists. This section contains a sampling of professions that are impacted by professional licensure, permits, certificates and the like. It is not an all inclusive list. It is important to note that the violation of a criminal statute may have a different impact on an individual applying for initial licensure and an individual seeking to maintain licensure.

Additionally, many organizations are impacted by professional licenses and the eligibility of their volunteers, officers and employees. An individual may be required to comply with a professional licensure statute even if they are not a direct license or permit holder. Certain professions preclude covered individuals or organizations from working with others that do not comply with professional licensure statutes.

∂	Motor Vehicle Fuels	(Neb. Rev. Stat. §66-729(3))
∂	Debt Management Business	(Neb. Rev. Stat. §69-1205)
∂	Private Detective	(Neb. Rev. Stat. §71-3205(4))
∂	Cremation	(Neb. Rev. Stat. §71-1367)
∂	Child Care	(Neb. Rev. Stat. §71-1912(1))
∂	Grain Dealers	(Neb. Rev. Stat. §75-903.02)
∂	Grain Warehouse	(Neb. Rev. Stat. §88-528.01)
∂	Health Care Professions	(Neb. Rev. Stat. §38-121(3))

Reporting requirements often require that an individual proactively report criminal incidents. It is important to note that many professional standards are vague and utilize terms like “good character”, “other sufficient cause” or “moral fitness”.

∂	Motor Vehicle Fuels	(Neb. Rev. Stat. §66-729(1-6))
∂	Debt Management Business	(Neb. Rev. Stat. §69-1205)
∂	Barber	(Neb. Rev. Stat. §71-212(1))
∂	Cremation	(Neb. Rev. Stat. §71-1367(2))
∂	Private Detective	(Neb. Rev. Stat. §71-3205(3))
∂	Agriculture Equipment Dealer	(Neb. Rev. Stat. §87-705(c))

How these vague terms are interpreted is not typically recorded in statute. Guidance can often be found in the administrative code or attorney general opinion. Certain administrative rules are required to be submitted to the Secretary of State’s office. (Neb. Rev. Stat. §84-901.01, §84-902). Interpretation of The Nebraska Administrative Code and other policies is often a subjective process. In order to ascertain specific policies, the professional licensing agency, board or department should be contacted directly.

## Permits and Other Authorizations

Permit holders and other authorizations (such as registration) are subject to many of the same limitations that professional license holders are. This includes organizational eligibility

and the status of other permit holders that an individual works with or for. An individual's permit may be contingent on the ability to qualify for another professional license or permit (such as bonding or a motor vehicle operating license). It is important to know each and every permit that an individual holds.

- ∂ Pawnbroking (Neb. Rev. Stat. §69-202)
- ∂ Manufactured Homes (Neb. Rev. Stat. §71-4609)

## **Banking**

Federal Law precludes individuals from working in certain industries, including banking and finance. An Individual convicted for a crime involving dishonesty is not qualified to work in a depository institution for ten years following a conviction. (12 U.S.C. §1829(a)(1)(A)(iii)) Certain exceptions exist. (12 U.S.C. §1829(a)(B)) Nebraska law reinforces these provisions and broadens them. (Neb. Rev. Stat. §8-702(2)(b) and (3), §8-1103(9)(a))

## **Health Care Professions**

In the state of Nebraska, health related professions are all governed by the Uniform Credentialing Act. (Neb. Rev. Stat. §38-121) Statute defines broad grounds for disciplinary action. (Neb. Rev. Stat. §38-178) Specific boards establish rules and policy and adjudicate specific cases. Boards may specify additional grounds for disciplinary action. (Neb. Rev. Stat. §38-126(1)(iv)) The Department of Health and Human Services enforces board action. The department may also adopt additional rules.(Neb. Rev. Stat. §38-126(4)) The following is a list of professional categories currently governed by the statute. (Neb. Rev. Stat. §38-121)

- ∂ Acupuncture
- ∂ Asbestos Abatement
- ∂ Audiology
- ∂ Body Art
- ∂ Cosmetology
- ∂ Dental Hygiene
- ∂ Emergency Medical Services
- ∂ Funeral Directing and Embalming
- ∂ Lead-Based Paint Abatement
- ∂ Massage Therapy
- ∂ Medical Radiography
- ∂ Mental Health Practice
- ∂ Nursing
- ∂ Occupational Therapy
- ∂ Osteopathy
- ∂ Pharmacy
- ∂ Podiatry
- ∂ Radon Detection
- ∂ Veterinary Medicine
- ∂ Water Wells
- Alcohol and Drug Counseling
- Athletic Training
- Speech-Language Pathology
- Chiropractic
- Dentistry
- Electrology
- Esthetics
- Hearing Aid Dispensing
- Practical Nurse
- Medical Nutrition Therapy
- Medicine and Surgery
- Nail Technology
- Nursing Home Administration
- Optometry
- Perfusion
- Physical Therapy
- Psychology
- Respiratory Care
- Public Water Operation
- Environmental Health Specialist

- ∂ Marriage and Family Therapist                      Professional Counselor
- ∂ Social Worker    Genetic Counseling

Certain businesses that are governed by the Uniform Credentialing Act

- ∂ Body Art    Cosmetology
- ∂ Emergency Medical Services                      Esthetics
- ∂ Funeral Directing                                      Massage Therapy
- ∂ Nail Technology

### Federal Licensure

Federal benefits may be denied to any individual that is convicted of a drug offense, under Federal or State law. (21 U.S.C. §862(a), 21 U.S.C. §862(b)). Benefits include grants, contracts, loans, and professional licenses. (21 U.S.C. §862(d)). The ineligibility period is as follows;

#### Drug Trafficker

First Offense	Permissive	Up to 5 years
Second Offense	Permissive	Up to 10 years
Third Offense	Mandatory	Permanent (21 U.S.C. §862(a))

#### Drug Possession

First Offense	Permissive	Up to 1 year
Second Offense	Permissive	Up to 5 years (21 U.S.C. §862(b)).

Exceptions exist for individuals convicted of drug possession that declare themselves to be addicts and commit themselves to long term treatment programs. (21 U.S.C. §862(b)(2)). For more detailed information on Federal Licensure see Section I infra.

#### **Secondary Sources;**

- Adult Collateral Consequences, *supra*.
- Internal Exile, *supra*.

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