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IMPORTANT CONSEQUENCES FROM FELONY CONVICTIONS

(with thanks to the Dallas County Public Defender for sharing this with Dallas County Criminal Defense Lawyer colleagues)

Your conviction was for a felony, not a misdemeanor. The conviction makes you a felon. This will affect your life. **Please read this and keep it.**

1. **Felony Conviction Mandates DNA Sample.** Persons who have been convicted of a felony in Texas are required to submit a DNA sample that will be placed in law enforcement data banks. Tex. Gov't Code §§ 411.141 – 411.54. Such DNA collection statutes have been upheld as constitutionally permissible. *Johnson v. Davis*, 178 S.W.3d 230 (Tex. App. — Houston [14th Dist.] 2005); *In re D.L.C.*, 124 S.W.3d 354 (Tex. App. — Fort Worth 2003, no pet). The federal courts have upheld such DNA collection statutes. *Groceman v. United States Dep't of Justice*, 354F.3d 411 (5th Cir. 2004)(per curiam). The United States government may collect DNA from persons who have been arrested in connection with any federal crime or immigrants who have been detained by federal authorities. 42 U.S. Code § 14132(b).
2. **Felony Status Plus Acts Can Be a New Crime.**
 - ***Felony + Firearm = Crime.*** As a convicted felon, you cannot possess a firearm or ammunition for the rest of your life. If you possess a firearm or ammunition, you commit a federal crime and can be sent to prison. 18 U.S. Code § 922(g)(1). If you are “under indictment”, you may not ship or transport in interstate commerce or receive firearms or ammunition in interstate commerce. 18 U.S. Code § 922(n). “Under indictment includes serving a Texas felony deferred adjudication. *United States v. Valentine*, 401 F.3d 609 (5th Cir. Feb. 25, 2005). If your present felony involved drugs or violence, being hereafter convicted of illegally possessing a firearm would result in mandatory federal prison time. USSG § 2K2.1 (a)(4). Texas has a similar statute for a convicted felon who possesses a firearm. Texas Penal Code § 46.04.
 - **“Possess” Means “Control”.** “Possess: means more than having a gun or ammunition on your body. “Possess” is the ability to control. You control what is in your car, home, or place of work. Thus, you may not keep a firearm or ammunition in such places. This is so even though another person—spouse, child, relative, friend, or roommate—owns the firearm or ammunition.
 - **“Firearm: and “Ammo” Defined.** This law prohibits a felon from having all types of guns: revolver; pistol; shotgun; hunting rifle, or assault weapon, etc... If an explosive fires a projectile from the firearm, you cannot possess the gun. “Ammo” includes bullets and shotgun shells.
 - **Purpose Not Important.** You cannot have the firearm for any reason. You cannot have the gun for self-defense, hunting, or target practice. If you are a hunter, take up bow and arrow hunting. Go fishing.

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- **Prohibited in Business.** You cannot handle a firearm if you work in a pawnshop, sporting goods store, or a trade show. You cannot keep a firearm at work for protection.
- **Disposing of Present Guns.** If you now own or possess firearms, have a trusted family member or friend take and dispose of the guns. The guns cannot be sold to another felon—doing so would be a crime. Your trusted person cannot be a felon either.
- **Armed Career Criminal.** A person convicted of this firearm crime can be prosecuted as an armed career criminal if he has three prior convictions for a “violent felony” or serious drug offense. 18 U.S. Code § 924. Conviction gets you no less than 15 years in prison.
- ***A Felon Cannot be in the Insurance Business.*** A person convicted of a felony involving dishonesty or breach of trust cannot willfully engage in the business of insurance. Doing so is a federal crime. 18 U.S. Code § 1033.
 - **State Can Grant Permission.** There is an exception to this criminal law. A convicted felon can practice insurance if you disclose your conviction to your state insurance agency (e.g. Texas Department of Insurance) and the agency consents to your practice and specifically refers to the federal statute.
 - **Insurance Defined.** “Practice of Insurance” is broadly defined. The law covers selling insurance and adjusting insurance claims. The law covers all types of insurance: life; property; casualty; auto; crop, and worker’s compensation. It can cover insurance sold by storage facilities or rental car offices. c. **False Statement About Being a Felon.** In your life, you probably will be asked if you have been convicted of a felony. You may be questioned on a loan or mortgage application, a request to enter the armed forces, a job application, or a school loan or student scholarship application. State and federal laws make it a crime to make such a false, material statement in a variety of situations:
- **False Statement About Being a Felon.** In your life, you probably will be asked if you have been convicted of a felony. You may be questioned on a loan or mortgage application, a request to enter the armed forces, a job application, or a school loan or student scholarship application. State and federal laws make it a crime to make such a false, material statement in a variety of situations:
 - False statement to federal official. The official does not have to be a cop. 18 U.S. Code § 10001;
 - Fraudulent enlistment in the military by failing to disclose criminal history. 10 U.S. Code § 883;

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- Theft by deception in preventing another person from acquiring information likely to affect their judgment in a transaction. Texas Penal Code §§ 31.01(1)(C) and (3)(A), 31.03(b)(1).

Be truthful if you are asked if you have been convicted of a felony. You can explain the facts of your crime: you were young and foolish; peer pressure; you accepted responsibility and pleaded guilty; and you have since been a model citizen etc...

3. ***Impact of Felony Convictions on Future Crimes and Removal (Deportation).*** You do not need another felony conviction. The courts will hit you much harder for another felony conviction, as shown by these laws.

- **Repeat and Habitual Offenders.** Texas law increases prison time for felons who commit a new felony. Texas Penal Code § 12.42. Generally, Texas law will increase a felony to the next higher level. Example: a third degree felony is increased to a second-degree felony.
 - **Repeat offender.** A felon who commits a first-degree felony will be considered a “repeat offender.” The least sentence a first-degree felon, “repeat offender,” gets is 15 years in prison.
 - **Habitual Offender.** A felon with two prior felonies who commits a new felony will be considered an “habitual offender.” The least sentence an “habitual offender” with a first-degree felony gets is 25 years in prison. But a convicted habitual offender will get life for these crimes.
 - Aggravated sexual assault;
 - Aggravated kidnapping if the intent is to commit a sexual assault; or
 - Burglary if the intent is to commit a sexual assault.

If you move from Texas, the situation may be worse. Some states have “three strikes laws”; commit a third felony and you get an automatic life sentence.

- ***Sentencing Guidelines for Federal Crimes.*** Like Texas, the United States has criminal laws, especially drug laws. **In federal courts, a felon is sentenced under the U.S. Sentencing Guidelines. These guidelines set a sentence. There is no wheeling and dealing on plea bargains in federal court as in Texas courts. Each crime has an “offense level.” The offense level of the crime increases with the severity of the crime, the injury to the victim, the quantity of the drugs, if weapons are involved or the amount of money involved in a scheme.** The guidelines also consider your

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- “Criminal History.” Your “Criminal History” category give you points for every crime you commit. Under USSG § 4A1.1, your criminal history category is increased for these acts:
 - Each crime; or
 - Committing your new federal offense while on probation or parole or federal supervised release.

These guideless also have a “criminal offender” for federal offenses just like Texas has severe sentences for an habitual offender.

- **Mandatory Minimums for Repeat Drug Offenders.** State and federal laws increase prison terms for repeat drug offenders. As a general rule, a repeat drug offender prosecuted in federal court would face a mandatory minimum prison term without probation or parole. The greater the quantity of the drug, the greater the prison time.
- **Removal (Deportation) and Immigration Problems.** If you are an alien and have been convicted of a felony and, in some cases, a misdemeanor, you probably will be removed from the United States, that is, you will be deported. Certain convictions mandate removal, 8 U.S. § 1227(a)(2), and, by reference, 8 U.S.C. § 1101(a)(43)(aggravated felonies). These deportable offenses include aggravated offenses, firearm offenses, and drug trafficking offenses. A “conviction” includes deferred adjudication. 8 U.S.C. § 1101(a)(48)(A). Federal law gives very heavy sentences for removed (deported) felons who illegally reenter the United States. See generally, *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473 (2010).

4. **Impact on Jobs.** Your felony conviction may bar you from certain jobs as a matter of Texas law.

- **Vehicle Inspector.** Texas Transportation Code § 548.405(a)(7);
- **Peace Officer.** A convicted felony cannot be a peace officer. Texas Government Code § 415.058;
- **Law Enforcement.** A convicted felon cannot be a law enforcement officer, county jailer, or public security officer. Texas Occupations Code § 1701.312 and 1701.001;
- **Commissioned Security Officer.** Texas Occupations Code § 1702.163(b);
- **Athlete Agent.** Texas Occupations Code § 2051.105.

For a complete review of the impact of a conviction on federal jobs, see the 20-page handout located on the Internet at http://www.justic.gov/pardon/collateral_consequences.pdf

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5. ***Impact on Civil Rights.*** The Texas Constitution article XVI, § 2 requires the Texas Legislature to pass laws to exclude from office, to serve on juries, and to vote those persons “convicted of bribery, perjury, forgery, or other high crimes.” Texas has passed such laws that affect your civil rights as a convicted felon.
 - ***Voting in Texas Elections.*** *You* are not a qualified voter in Texas even if you have not been finally convicted of a felony (e.g. still on probation or deferred adjudication) or, if so convicted, even if you have been fully discharged from your sentence. Texas Election Code § 11.02(4). The United States Constitution states that state law shall govern the ability to vote in a federal election (e.g., President, U.S. Senator, U.S. Congressman). U.S. Const. art. I § cl 1 § 2, cl 1, and § 4 and Art. II, § 1, cl 2, and amendment XVII.
 - ***Cannot Run for Public Office in Texas.*** To run for public office in Texas, a candidate must have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities. Texas Election Code 141.001.
 - ***Cannot Serve on a Jury.*** As a convicted felon, you are disqualified to serve as a petit juror in Texas. Texas Government Code § 62.102. A person cannot serve on a criminal jury in Texas if “he has been convicted of theft or any felony.” Texas Code of Criminal Procedure art. 35.16. Article 35.19 states that no felon can be a juror in a criminal case for such a violation even though both parties consent. Similarly, unless one has received a Presidential pardon, conviction in federal or state court of a crime punishable by imprisonment for more than one year disqualifies an individual from serving on a federal grand or petit jury. 28 U.S.C. § 1865(b)(5).
 - ***Cannot Be Executor of Estate.*** A person is not qualified to be executor or administrator of a deceased person’s estate if he or she is a “convicted felon: under state or federal law, “unless such person has been duly pardoned, or his civil rights restored, in accordance with law.” Texas Probate Code § 78.
6. ***Loss of Financial Aid for Education Because of Drug Offenses.*** Federal law, 20 U.S.C. § 1091(r), precludes federal financial aid to college students convicted of federal or state drug offenses. The period of suspension of aid varies from one year for simple possession and two years for sale for first time offenders. The period of suspension increases with repeat offenders and can result in permanent suspension of aid. Reinstatement requires taking an approved drug rehabilitation course and passage of at least two no-notice urinalysis tests. Failure to answer the question of prior drug offenses is considered an admission to conviction. Lying about a conviction on an application constitutes a false official statement, a federal offense under U.S.C. § 1001.

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7. **Preventive Law Tips.** This paragraph will give you some preventative law tips to stay out of trouble.

- Commonly Violated Laws. Here are several laws that most citizens do not know exist:
 - **Evading arrest or detention by police is a crime.** This means you are trying to escape or get away from a cop who chases after you. If you use a car, the crime is a state jail felony. Texas Penal Code § 38.04.
 - **Misidentifying yourself, your home address, or date of birth to a peace officer is a crime. Texas Penal Code § 38.02.**
- **Everything You Need to Know You Learned in Kindergarten.** There are many rules—many do's, many don'ts—but these can be boiled down to five simple rules of good citizenship. They are not hard to understand or to follow. In fact, they are basic:
 - **Be honest.** Do not lie. Do not cheat. Have integrity and character. Do the right thing.
 - **Respect the person and property of others.** Do not hit, shoot, stab, strike, kill, rape, or molest another person, especially a child. You also must respect a person's dignity and peace of mind. Do not call a person names, indulge in racial or ethnic slurs or sexual harassment, or make remarks about one's femininity, masculinity or ancestry. Do not steal from anyone. Do not damage or destroy the property of another.
 - **Obey the laws.** The law says do not use illegal drugs and do not drink and drive. It's that simple—do not break the law. Few things can be more destructive than drugs and alcohol. Using them is throwing money down a rat hole. Persons who want to share their drugs and alcohol with you just want to share their misery.
 - **Work hard.** Life is hard. You want to make it easier by getting a good education and a good job. Stay in school and get your diploma. Get as much education and training as you can. Get a good job. Show up to work on time. Work hard. Do not throw your money away on foolish things like drugs, alcohol, and gambling.
 - **Be loyal.** Be loyal to your country, your family, and yourself. Love your family and your kids and support them. Be a good provider. If you are divorced and have children, be loyal to your kids and provide them child support. Take care of yourself. You may have had some hard knocks in life; if so, be better than what has happened to you. Take care of your health. Exercise. Watch what you eat. If you have a drug or alcohol problem, get help. AA works wonders. Give up smoking—save the money you would spend burning up a cigarette.

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Do not have displaced loyalty. Do not help your friends commit crimes. Most friends who want to do criminal acts are afraid to act alone. Do not go along. Remember the law will judge you just as guilty as the wrongdoer if you aid or help another person commit a crime. Self discipline is better than discipline from the criminal justice system. If you break the rules, remember that the “rules of the game” call for a penalty.

8. ***If You Get into Trouble.*** You may fail to strictly heed this advice. So, if you get into trouble again, follow this preventative law advice:
- **Assert your right to silence and demand an attorney.** If you **are guilty, do not** make a verbal or written statement to police. A verbal statement can often hurt you as bad as a written statement. Assert your Miranda rights to **remain silent** and ask immediately for an attorney.
 - Do not consent to a search of anything, not your car, home, cell phone, or computer. If the peace officer says he will just get a search warrant, still **do not consent**. If the peace officer says he already has a warrant, tell him to use the warrant but you do not consent to a search. A search conducted by a warrant may be bad. If you also consent to a search, you give peace officers a second shot at a legal search.
 - Keep your mouth shut about any alleged crime. Especially do not talk about the alleged crime to an inmate in jail. Talk only to your lawyer. Jail phone calls are recorded!

Laws change and usually to make them more harsh. Legal advice today may not be valid tomorrow. If in doubt about a particular matter or for an update on the law, contact me.

You can overcome these obstacles! You have this one life to live. Take care of your Freedom and your Family.

Best wishes,

David Scoggins

**Texas and Federal Criminal Defense
For Over 35 Years**