

Gun Laws in Iowa: A Criminal Perspective

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I. Introduction

Myriad criminal law issues are implicated by the gun laws in Iowa. This presentation seeks to provide a short primer to practitioners whose clients face issues on this front.

II. Constitutional Law

United States Constitution, Amendment II:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Iowa Constitution:

The Iowa Constitution does not provide a state right to keep and bear arms.

Article VI concerning the state Militia provides that it will “be composed of all able-bodied male citizens, between the ages of eighteen and forty-five years,” and “shall be armed, equipped, and trained, as the general assembly may provide by law.” Iowa Const. art. VI, § 1.

III. Federal Legislation and Regulations

Gun Control Act of 1968. 18 U.S.C. § 921–931, 27 C.F.R. § 478.1 et seq.: Limits who may import, manufacture, or deal in firearms, who firearms may be sold to, who may possess firearms or ammunition, and types of firearms that may be made, sold, delivered, possessed, etc.

- Brady Act: requires background checks for firearm purchases and prohibits certain persons from receiving or possessing firearms
- Armed Career Criminal Act: imposes high mandatory minimums for possession of firearm or ammunition for violent felons;

National Firearms Act, 26 U.S.C. §§ 5801–5872, 27 C.F.R. § 479.1 et seq.: those weapons covered by the law must be registered with the ATF. Transfer of these firearms must be filed with the ATF and taxed accordingly. It also imposes taxes upon the transfer of the registered weapons. All persons applying to manufacture or transfer must undergo a background check by the ATF, including all responsible persons of a trust.

IV. State Legislation and Regulations

Iowa Code chapter 724 regulates the possession and permission to carry firearms in the state of Iowa. Covers who may possess and/or carry, what weapons may be possessed/carried, permit requirements and procedures, etc.

- Cannot carry outside home without a permit

Sentencing Enhancements: As with federal law, the use of a firearm can increase the punishment for other offenses

- § 902.7: In a forcible felony, possession, control, display, or armed with a dangerous weapon requires 5 year mandatory minimum.
- § 124.401(1): possession or control of firearm during violation doubles sentence length
- Assault crimes (chapter 708):
 - o Displaying weapon during assault
 - o Armed with intent to use *without justification*
 - o Warning shots at or into occupied building or vehicle

Iowa Administrative Code:

- Rule 571—51.3, —61 restricts the use and possession of firearms on game management areas, shooting range, state parks, recreation areas, etc.
- Rules 661—91.1–.9 relate directly to Iowa Code chapter 724:
 - o Provides definitions for statutory terms
 - o Rules regarding carry permits and applications

V. Justification

Iowa Code chapter 704 governs the use of force in defense, including the use of firearms. “Reasonable force” can be used in the defense of one’s self, another, or property.

- “Reasonable force” = no more than necessary to prevent injury or loss, must “reasonably believe” the action necessary
 - o Under certain circumstances, this may extend to the use of deadly force.
 - o “Warning shots” in the general direction of a person or vehicle falls within the statutory definition of “deadly force”. Iowa Code § 704.2.
- No duty to retreat from home or place of employment before using reasonable force. Iowa Code § 704.1
 - o Limited to action necessary to repel the attack, and does not extend beyond the home/place of employment.
- Unlike other states, Iowa has not adopted a general “Stand Your Ground” law.
- Not available to person participating in forcible felony or initially provokes use of force

VI. Iowa Case Law

State v. Howse, 875 N.W.2d 684 (Iowa 2016): stun guns are considered “dangerous weapons” for purposes Iowa Code chapter 724.

State v. Russell, 876 N.W.2d 813 (Iowa Ct. App. 2015) (table): charges of carrying weapons under § 724.4(1) is not a lesser included offense of carrying weapons on school grounds (§ 724.4B), and the offenses do not merge

Lebeck v. Marion Cty. Sheriff, 868 N.W.2d 202 (Iowa Ct. App. 2015) (table): sheriff’s office may rely on complaint to establish domestic relationship for an assault conviction to

determine if conviction falls within the misdemeanor crime of domestic violence disqualification provision under § 724.26(2).

State v. Nelson, 828 N.W.2d 325 (Iowa Ct. App. 2013) (table): In possession of an offensive weapon case under Iowa Code § 724.3, authorization to possess the weapon is an affirmative defense, with the burden on the defendant to prove authorization.

State v. Kidd, 562 N.W.2d 764 (Iowa 1997): In possession of an offensive weapon offense, each weapon possessed is a separate chargeable offense.

State v. Stallings, 541 N.W.2d 855 (Iowa 1995): reviewing justification and reasonable force instruction requirements

State v. Rupp, 282 N.W.2d 125 (Iowa 1979): upholding statute prohibiting possession of handguns by convicted felons.

VII. Current Issues in Practice

The U.S. Supreme Court has looked at ACCA enhancements recently. In 2015, the Court ruled in *Johnson v. United States*, 135 S. Ct. 2551 (2015), that ACCA's residual clause was unconstitutionally vague, and in 2016 held that ruling was retroactive in *Welch v. United States*, 136 S. Ct. 1257 (2016). That challenge has extended to related Sentencing Guidelines, to be argued before the Court in December 2016 in *Beckles v. United States*, No. 15-8544. Meanwhile, a series of decisions has limited the other clauses regarding qualifying predicate offenses and offenses with an element of violent force. *See, e.g., Mathis v. United States*, 136 S. Ct. 2243 (2016), *Descamps v. United States*, 133 S. Ct. 2276 (2013), *Johnson v. United States*, 559 U.S. 133 (2010). However, the Court also held "reckless" domestic violence misdemeanor offense convictions can disqualify the person from possessing firearms. *Voisine v. United States*, 136 S. Ct. 2272 (2016).

In 2016, Iowa passed a law relating to Firearm Suppressors: 2016 Iowa Acts ch. 1044 (codified at Iowa Code §§ 724.1A-1B). The law struck § 724.1(h) classifying suppressors as an offensive weapon. This law allows Iowa residents who do not fall within the "authorized" list of § 724.2 to own firearm suppressors within federal requirements.

Until the Hearing Protection Act, Iowa did not permit the possession of any NFA firearms or devices. Now, some are setting up gun trusts. These trusts allow the use and possession of NFA firearms by more than one person, though all must pass the ATF background check. Also allows for transfer of possession without incurring tax under the NFA, and prevents confiscation by ATF if owner is later deemed incompetent or no longer permitted to own.

Stun guns: In *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016), the U.S. Supreme Court held that Second Amendment protections extend to stun guns, relying on *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010). The

Iowa Supreme Court held stun guns qualify as “dangerous weapon” under the Iowa Code. *State v. Howse*, 875 N.W.2d 684 (Iowa 2016). Some federal courts apply sentencing enhancements for possession of stun gun during commission of an offense. *See United States v. Quiver*, 805 F.3d 1269 (10th Cir. 2015); *see also United States v. Gonzalez*, 2016 WL 4487898 (D.N.M. Aug. 2, 2016).

VII. Conclusion

The laws regarding guns and other weapons continue to evolve both by increasing what falls within weapons statutes and enhancements, and limitations in those same statutes. It is important for criminal law attorneys to keep abreast of developments and how they affect clients.