



GOURLEY
REHKEMPER
LINDHOLM, PLC

When good people need great lawyers

Robert Rehkemper
440 Fairway Dr., Suite 210
West Des Moines, IA 50266
(515)226-0500
rgrehkemper@grllaw.com

TOP 5 THINGS YOU MAY NOT KNOW ABOUT IOWA OWI LAW

1. Being found not guilty or having an OWI charge dismissed does not save the person's driving privileges.

- *Bankson v. Iowa Dept. of Transp.*, 444 N.W.2d 515 (Iowa App. 1989)
 - “Each of the events relative to rescission of the revocation of license under [section 321J.13\(4\)](#) concern the chemical test. If the court holds the chemical test invalid or inadmissible or if there is a failure under the “reasonable grounds” test, [section 321J.13\(4\)](#) may be employed. But the court order relied on does not dismiss this action on either of those grounds. We are unable to read into the statute something that clearly was not intended.”

2. The Iowa Department of Transportation will attempt to disqualify a person's driving privileges under Iowa's OWI laws for operating a vehicle with prescription medications in their system even if the prescription was prescribed to that person and the person was following the directions of their physician.

- It is the Iowa Department of Transportation and the Iowa Attorney General's position that the “prescription drug defense” set forth in Iowa Code § 321J.2(11) does not apply to license revocation proceedings.
 - “The affirmative defense set forth in Iowa Code Section 321J.2 Does not apply to administrative revocations under Iowa Code Section 321J.12.” *Dykstra v. Iowa Department of Transportation*, Polk County Case # CV45526, Respondents (Iowa Department of Transportation) Brief.
 - 321J.2(11) states:
 - 11. a. This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined

in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

- b. When charged with a violation of subsection 1, paragraph “c”, a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in [section 155A.3](#).

3. There is no time limit or restriction on the Iowa Department of Transportation to impose a suspension for test failure or an out of state drunk driving conviction or license suspension event.

- Classic example is accident – urine or blood is obtained – lab returns results – officer sits on results or never gets to it and it ends up on back burner until year or two later.
 - Longest known delay was 7 years!!!
- Another example is where an Iowa resident gets charged with OWI out of state while attending college. Serves the suspension in that state but Iowa does not process it until years later and suspends the person’s Iowa Driving privileges after they have moved back to Iowa and have started their post-college career.

4. A person can be convicted of OWI and have their driving privileges suspended for simply sleeping in a vehicle that is running.

- *State v. Wiezorek*, 786 N.W.2d 520 (Table), 2010 WL 2090835 (Iowa App) (Sleeping in a vehicle parked in a private parking lot that has its engine running is “Operation” for purposes of Iowa’s drunk driving laws even though the evidence was that the vehicle was never driven by the defendant while intoxicated)

5. People are routinely convicted and have their driving privileges suspended for smoking pot 2-4 weeks prior to being stopped by police.

- Iowa Code § 321J.2(1) A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:
 - c. While **any** amount of controlled substance is present in the person, as measured in the person's blood or urine.
- Iowa Code § 321J.1(4) "Controlled substance" means any drug, substance, or compound that is listed in section 124.204 or 124.206 **OR ANY METABOLITE** or derivative of the drug, substance, or compound.
- THC metabolites remain detectable in a person's urine for up to 30 days after last use of marijuana.
 - It is possible to test for the ACTIVE metabolite of THC in blood which correlates to impairment but Iowa does not do this.