

# THE ADVOCATE

*A Publication of Gambone Law – PA (215) 755-9000 - NJ (856) 793-7429*

Newsletter



## **COLLEGE ROOMMATES AND CONSTRUCTIVE POSSESSION**

The college and graduate semester has started and thousands of students have moved on to campus or perhaps off campus with a new roommate. Most of these young men and women have never lived anywhere else but in their family home and have no experience living with a stranger. No person moves into a college dorm, an apartment or a house with the thought that one or more of the persons living in that same residence could be involved in a criminal activity especially one involving illegal drugs, narcotics or even a gun or firearm. A criminal issue, however, sometimes develops from this very situation.

### **The types of criminal possession – Actual vs. Constructive Possession**

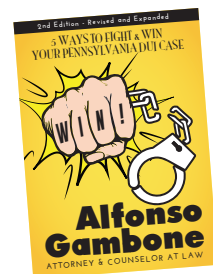
It is important to understand that the laws in Pennsylvania, New Jersey, New York and around the country are similar with regards to illegal possession. The law defines possession as actual or constructive. Actual possession is when illegal substance, item or contraband is found on one's person such as in their pocket. Constructive possession is when the items is found in the area of the person's immediate control. Our law firm has previously represented individuals who have been charged with illegal possession of a gun or firearm that was found in a residence shared by two or more people, such as a college dorm room, or an off campus house or apartment.

In a few rare cases, a person will take responsibility for the illegal item, but in many cases, a person will seek to blame another individual living there or refuse to make any statements incriminating themselves. In New Jersey and Pennsylvania, multiple persons can be charged with

constructive possession of the same illegal item if it is found in the area of immediate control. In addition, a person faces a possible conspiracy charge in some cases, especially those involving illegal drugs and narcotics. If you're found in constructive possession of an item, you will face the same criminal penalties as a person found in actual possession of the item.

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## **HAZING IS A CRIME! HOW SCHOOL FRATERNITY AND SORORITY INITIATION "REQUIREMENTS" CAN LEAD TO CRIMINAL FELONY CHARGES FOR YOUR COLLEGE STUDENT**

The start of a new school year brings opportunities to make new friends and form new relationships. Many college students want to join clubs which have informal "hazing" rules which require them to perform tasks

or other often embarrassing events. This isn't obviously school endorsed and flies below the school administration's radar despite most of them knowing that it occurs on and off campus.

### **Where do hazing incidents typically occur?**

Hazing can occur at the high school and the college level but we often see or hear about in the latter. Most of these incidents involve the excessive consumption of alcohol, drugs and even a combination of both. It also appears that most of these incidents involved male clubs or fraternities. Students often want to gain acceptance and therefore put themselves at risk. In recent years, students at Bowling Green University, Virginia Commonwealth University, Cornell University and Penn State have died due to alcohol poisoning.

### **Does it matter if the student charged with hazing never intended to cause harm or death of another student?**

All of these incidents were obviously and tragically avoidable. None of those students charged in connections with these deaths, intended to cause the death of their fellow students. Intent to cause death, however, is not an element in a hazing charge. The prosecution must only establish beyond a reasonable doubt that the defendant causes, coerces, or otherwise induces another person to engage in a behavior subjects the person (victim) to a risk of emotional

or physical harm or is otherwise deleterious to the person's health.

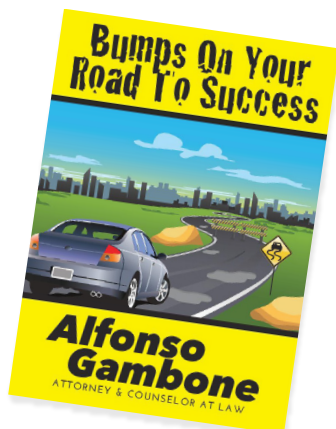
### **Fraternities & Sororities – Are there any benefits?**

There are clear advantages for student who choose to make "Greek Life" a part of their college experience despite criticisms from some who believes that it diverts a student's focus and hinders academic performance.

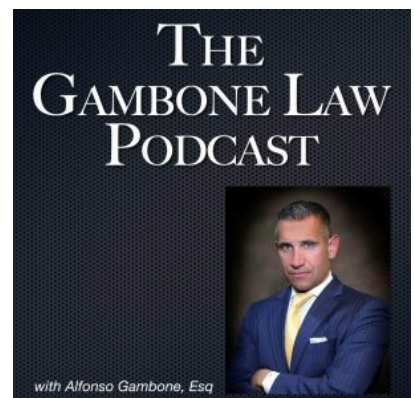
These fraternities and sororities offer students a network of friends while in school and connections that last a lifetime. Even respected publications like Forbes magazine believe it's a smart move. It is estimated that as many as 9 million students across the country join these organization each year! One study found that over 50% of students seeking admission to a club or team experienced some form of hazing.

### **Administrative & Criminal Consequences**

While a college or University can obviously suspend or even expel a student who takes the "pledging" or process too far, hazing is actually a crime. In Pennsylvania, hazing, a misdemeanor of the 3rd degree, is defined as "any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student or which willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for contin-



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ued membership in, any organization operating under the sanction of or recognized as an organization by an institution of higher education.”

In addition, Pennsylvania requires each college or university to provide or adopt a program for the enforcement of the Commonwealth’s anti-hazing law. The State permits such penalties to include fines, the withholding of diplomas or transcripts, imposition of probation, suspension or dismissal from the school.

44 of the 50 states have anti-hazing laws in place, the strength and breadth of the laws vary significantly. Pennsylvania and New Jersey have adopted the Timothy Piazza’s anti hazing law following that student’s death on the Penn State Campus.

### Lifelong Consequences for Hazing Crimes

Criminal charges, however, unlike a University’s sanctions can potentially follow a student for the rest of his life. Remember, you can’t expunge a felony or misdemeanor conviction in Pennsylvania and New Jersey requires a substantial waiting period. Hazing can be graded as a felony charge in most cases; it is much more serious than a summary offense like underage drinking or disorderly conduct.

Further, hazing can just be one of many charges against a student such as included third-degree murder, involuntary manslaughter, and even aggravated assault in addition to hazing. In most situations, these hazing incidents involve the overconsumption of alcohol. In the Penn State case for example, one of the fraternity brothers charged in the death of Piazza pled guilty to four counts of hazing and five counts relating to unlawful acts involving liquor in the deadly injuries Piazza sustained following a night of heavy drinking and hazing. He was sentenced to three months of house arrest and 27 months of probation for his part in the hazing death of Piazza.

While this is an extreme case, it demonstrates that hazing isn’t limited to minor criminal charges. Even if the student isn’t charged with a felony, a criminal record of any kind can seriously limit a young person’s option later in life. If you have questions about hazing, or any criminal issues give our office a call.

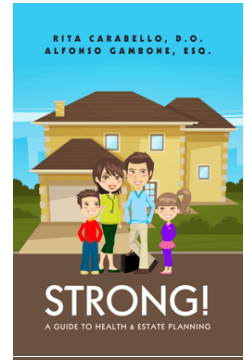
### Questions?

Our law firm is ready to answer your questions. If we can’t answer it, we will direct you to an attorney who focuses his or her practice in that area.



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## FAMILY MEDICINE UPDATE

### Flu Shots – What you need to know about it

**Flu shots are appropriate for most people.**

- Different flu shots are approved for people of different ages. Everyone should get a vaccine that is appropriate for their age.
- Pregnant people and people with certain chronic health conditions can get a flu shot.

### People who **SHOULD** speak to their doctor about a flu shot include:

- People with severe, life-threatening allergies to any ingredient in a flu vaccine (other than egg proteins) should not get that vaccine.
- People who have had a severe allergic reaction to a dose of influenza vaccine should not get that flu vaccine again and might not be able to receive other influenza vaccines.
- If you have an allergy to eggs or any of the ingredients in the vaccine. Talk to your doctor about your allergy.
- If you ever had Guillain-Barré Syndrome (a severe paralyzing illness, also called GBS). Some people with a history of GBS should not get a flu vaccine.
- If you had a severe allergic reaction to a previous dose of any other flu vaccine, talk to your health care provider.
- If you are not feeling well, talk to your doctor about your symptoms.

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**COLLEGE ROOMMATES AND CONSTRUCTIVE POSSESSION – (Continued)****The Illegal Possession of Drugs and Firearms can be felony offenses in Pennsylvania and New Jersey**

With regards to drugs, a substantial amount of an illegal substance like a drug or narcotic can lead to an additional charge of possession of intent to distribute (PWID) if there are certain circumstances surrounding the discovery, which would include the following:

- large amounts of money,
- digital scales and
- other means to sell and distribute the substances.

Keep in mind that the illegal possession of a drug or narcotic is misdemeanor offense whereas possession with the intent to distribute is a felony offense. With regards to firearms, while Pennsylvania does not maintain any mandatory minimum sentencing, New Jersey does main-

tain such sentencing under its Graves Act; most illegal firearms offenses are felony crimes in Pennsylvania and New Jersey.

**What are the possible defenses to a constructive possession argument?**

If you're a roommate in a college dorm or some other shared residence, it is very important that if you suspect that your roommate is involved in some type of illegal activity, you attempt to get a new roommate or move out. If this is not possible, do everything to separate yourself from the illegal activity, including keeping your personal belongings in a separate room and do not allow the roommate who is engaging in criminal activity to co-mingle his or her belongings with yours. Further, never leave your driver's license or any other identifying item near or in the

area where the illegal substance or firearm is located.

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