

TEXAS CRIMINAL DEFENSE GUIDE E-BOOK



NEAL DAVIS

LAW FIRM, PLLC



DRUG OFFENSES

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DRUG OFFENSES

The purpose of the Neal Davis Law Firm E-book series is designed to provide basic, accessible information that is relevant to those who have been charged with a particular type of crime. Those facing charges will be better prepared to make informed decisions if they understand the nature and implications of the charges against them, and have more clarity about what the court process will involve.

WHAT IS A DRUG OFFENSE?

Drug charges can range from a misdemeanor, such as possession of marijuana, to a first-degree felony of manufacturing or delivering drugs. Even a misdemeanor drug conviction can lead to loss of employment, reputation, and professional and driver's licenses. Depending on the amount of the drug and circumstances surrounding the charge, a first-degree felony drug offense can have the same sentencing range as a murder charge.

CHOOSING A DEFENSE ATTORNEY

When charged with a drug offense, it is crucial to consult a qualified attorney as soon as possible. Special factors in a drug case can include:

- How the police prepare and conduct their investigations
- Whether the police used legal search and seizure methods
- How to persuade a prosecutor or grand jury to dismiss the case before trial

If you would like a free consultation to discuss your situation with a qualified attorney, please [contact our office](#) as soon as possible.

DRUG OFFENSES: CHARGES

STATE DRUG OFFENSES

LAW

Drug offenses are found in Chapter 481 of the Texas Health and Safety Code, known as the Controlled Substances Act. A person commits the offense of drug possession if they “knowingly or intentionally possesses a controlled substance” unless they have a valid prescription for it. A person commits the offense of manufacturing or delivering drugs if they “knowingly manufacture, deliver, or possess with intent to deliver a controlled substance.”



OVERVIEW

Texas law prohibits both the possession and trafficking of drugs. Possession occurs when a person knowingly or intentionally possess a drug or other “controlled substance” without a valid prescription. This applies not only to street drugs but also to prescription drugs and synthetic drugs. Trafficking crimes occur when a person knowingly manufactures or delivers drugs, or if they possess drugs with the intent to deliver them to someone else.

Three factors generally determine the seriousness of the offense: (1) the type of drug(s), (2) the amount of drug(s), and (3) any aggravating circumstances, such as having drugs in a posted drug-free zone like a school, using or displaying a firearm during commission of the offense, or possessing drugs with the intent to deliver.



PUNISHMENT

Most drugs are classed into penalty groups based on drug type and amount, with the exception of marijuana, which has its own group.

Marijuana penalties, based on usable amount

- Less than 2 ounces — Class B Misdemeanor — Up to 6 months in jail; fine up to \$2,000
- 2 to 4 ounces — Class A Misdemeanor — Up to 1 year in jail; fine up to \$4,000
- 4 ounces to 5 pounds — State Jail Felony — 6 months to 2 years in jail; fine up to \$10,000
- 5 to 50 pounds — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000
- 50 to 2,000 pounds — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000
- More than 2,000 pounds — 1st Degree Felony — 5 to 99 years in prison; fine up to \$50,000

Penalty Group 1a — Lysergic Acid Diethylamide (LSD)

- Less than 20 units — State Jail Felony — 6 months to 2 years in jail; fine up to \$10,000
 - 20 to 80 units — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000
 - 80 to 4,000 units — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000
- 4,000 to 8,000 units — 1st Degree Felony — 5 to 99 years in prison; fine up to \$10,000
- More than 8,000 units — Enhanced 1st Degree Felony — 10 to 99 years in prison; fine up to \$50,000,000

Penalty Group 1 — Cocaine, Heroin, Methamphetamine, Ketamine, Oxycodone, and Hydrocodone (over 300 mg)

- [ul] Less than 1 gram — State Jail Felony — 6 months to 2 years in jail; fine up to \$10,000
- 1 to 4 grams — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000
- 4 to 200 grams — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000
- 200 to 400 grams — 1st Degree Felony — 5 to 99 years in prison; fine up to \$10,000
- More than 400 grams — Enhanced 1st Degree Felony — 10 to 99 years in prison; fine up to \$50,000,000
- ### Penalty Group 2 — Ecstasy, Phencyclidine (PCP), Mescaline

- Less than 1 gram — State Jail Felony — 6 months to 2 years in jail; fine up to \$10,000
- 1 to 4 grams — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000
- 4 to 400 grams — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000
- More than 400 grams — 1st Degree Felony — 5 to 99 years in prison; fine up to \$10,000

Penalty Groups 3 and 4 — Valium, Xanax, Ritalin, Hydrocodone (less than 300 mg), Dionine (morphine), and Buprenorphine (an opioid)

- Less than 28 grams — Class A Misdemeanor — Up to 1 year in jail; fine up to \$4,000
- 28 to 200 grams — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000
- 200 to 400 grams — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000
- More than 400 grams — 1st Degree Felony — 5 to 99 years in prison; fine up to \$10,000

Aggravating factors, such as possessing drugs in a drug-free zone or using or exhibiting a firearm, generally enhance the punishment by one level.



DEFENSE STRATEGY

Several defenses strategies are possible in drug cases.

One defense is if the defendant did not actually possess the drugs. For example, someone might have know there were drugs in a car, but they didn't put them there and they're not in the car. He has no care, custody, or control of the drugs.

Another defense is that the defendant did not knowingly possess drugs. For example, say that during a traffic stop, police find a cigarette box with marijuana in it in the center console of a car in which the defendant is a passenger. The defendant's friend owns the car and was driving. The defendant never knew there was a cigarette box with marijuana in the center console.

Another defense is that, even if the defendant knowingly possessed drugs, police obtained their evidence illegally through unlawful search or seizure methods. Any evidence that police obtain outside legal search and seizure methods cannot be used as evidence against a defendant in court.

In synthetic drug cases, a common defense is that the defendant did not know the illegal chemical was part of the drug. For example, someone did not know that the K2 Spice, Bath Salts, etc., contained synthetic cannabinoids.



PROCESS

Drug charges commonly result one of three sets of circumstances.

- (1) Drugs are discovered while a defendant is being detained or arrested for some other charge (e.g., during a traffic stop).
- (2) The accused is arrested by police conducting an undercover “buy-bust” operation.
- (3) The accused is named by someone who is cooperating with the police, usually to avoid or reduce charges, and sometimes for cash. The testimony of cooperating witnesses is one of the leading causes of innocent defendants being convicted.

FEDERAL DRUG OFFENSES

LAW

Federal drug laws are grouped under Title 21 (Food and Drugs), Chapter 13 (Drug Abuse Prevention and Control) of the United States Code, also known as the Controlled Substances Act. Section 841 states in part: “(a) ... it shall be unlawful for any person knowingly or intentionally (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or (2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.” Section 844 further states: “(a) ... It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized...” The laws lay out detailed penalties for different levels of offenses. Nearly all offenses require mandatory prison time.



OVERVIEW

Under federal law, it is a crime to possess illegal drugs, and it is also a crime to manufacture them, deliver them, or possess them with the intent to deliver them, or engage in any drug conspiracy.

Federal drug cases are unique because the same act or behavior can incur many different charges. Drug possession, drug trafficking, drug manufacturing, and drug conspiracy are all separate forms of charges that can be applied to the same individual or group of individuals, for the same actions.

Most commonly, federal drug cases are charged as conspiracies. To establish a drug conspiracy, the government only has to prove two things: (1) an agreement between two or more people to violate a federal drug law, and (2) that each co-conspirator knew of the unlawful agreement and joined in it.



PUNISHMENT

The sentencing range for federal crimes depends on the type of drug and the amount, as well as other factors. For example, possessing 500 grams or more of cocaine, 50 grams or more of pure methamphetamine, or 1,000 kilograms of marijuana or marijuana plants, has a mandatory sentence of at least ten years in prison. Aggravating factors can increase the punishment range. For example, using or exhibiting a firearm during commission of the offense will increase the punishment.



DEFENSE STRATEGY

Several defense strategies exist in drug cases. One defense is if the defendant did not knowingly possess the drugs.

For instance, say a passenger in possession of drugs exits a car and leaves the drugs behind, and the driver is later stopped by police who find the drugs. The driver could be accused of possession without ever knowing the drugs were there.

Another defense is if police used unlawful search or seizure methods to confiscate drugs or other evidence. Even if a person knowingly possessed the drugs, any evidence that police obtain illegally cannot be used in court against a defendant.

When dealing with drug conspiracy cases, stating that the defendant did not enter any agreement or take any steps to further a conspiracy is a defense.

In synthetic drug cases, a common defense is that the defendant did not know the illegal chemical was part of the drug. For example, he did not know that the K2 Spice, Bath Salts, etc., contained synthetic cannabinoids.



PROCESS

Unlike in State court, there is no assumption of bond for federal drug crimes. Defendants facing drug charges in federal court are likely presumptively detained under 18 U.S.C. 3142. This means they will NOT receive a bond in court.

DRUG OFFENSES: PROCEDURE

BOND CONDITIONS

For most State drug offenses, a defendant is entitled to bond pending resolution of the case. Texas Code of Criminal Procedure Article 17.15 states the factors that courts must consider in setting a bond:

[ul] The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

The power to require bail is not to be so used as to make it an instrument of oppression.

The nature of the offense and the circumstances under which it was committed are to be considered.

The ability to make bail is to be regarded, and proof may be taken upon this point.

The future safety of a victim of the alleged offense and the community shall be considered.

Texas appeals courts have held that other factors can be considered. These factors include the defendant's work record, community ties, family ties, length of residency, prior criminal history, conformity with any prior bonds, and the existence of any outstanding bond.

The trial court must set a reasonable bond. If the bond is unreasonable, then the defendant can appeal. Some courts, such as those in Harris County, typically set a bond amount that is double the street value of the drugs. These are frequently successfully appealed.

Defendants usually hire a bonding company to post the bond. Bonding companies typically require that the defendant pay ten percent of the total bond amount, and put up some collateral to make sure the defendant does not jump bond (e.g., fail to appear in court). For example, if the trial court sets a \$20,000 bond, a bonding company would charge \$2,000 and require the remaining bond amount to be secured by property, such as a house. A defendant should not just hire any bonding company. Like any business, some bonding companies are reputable and some are not.

In setting a bond, a court may impose certain bond conditions over and above the amount of bond a defendant must post to be released. A defendant charged with drugs, for example, may be required to turn in his passport, have an electronic monitor or curfews, and take drug tests, depending on the seriousness of the offense. An expert defense lawyer will often be able to successfully negotiate minimal conditions of bond so that a defendant is not unduly restricted while his case is pending.

Unlike in State court, defendants facing drug charges in federal courts are usually presumptively detained under 18 U.S.C. 3142. This means they do NOT receive a bond in a federal court.

DRIVER'S LICENSE PENALTIES

Someone convicted of a State drug offense can have their driver's license suspended for 6 months and be required to complete a 15-hour drug education class. Failure to take this class can result in the revocation of the individual's driver's license beyond the original suspension.

FORFEITURE

Both Texas and federal law permit property associated with criminal activity to be forfeited. For example, the government can seize cash, cars, firearms, and other personal property, as well as real property, if they were bought with proceeds of criminal activity. In limited circumstances, the government can also seize property that was involved in the illegal activity, such as a truck used to transport drugs.

DRUG OFFENSES: FAQs

Q: I have been arrested for a drug offense. What should I do?

A: You should immediately contact an experienced attorney to protect your rights. If you can afford the bond and an attorney, then post the bond as well. If you cannot afford both, then spend your money on an attorney. Bond is a short-term gain; hiring the right attorney carries long-term consequences.

Q: I'm an emotional wreck and can't handle the stress of this situation. What can I do?

A: The emotional toll of a drug allegation can be overwhelming. Getting to a reputable mental health provider can help you deal with the stress. Over his many years of handling these cases, Neal has developed strong personal relationships with outstanding mental health experts. He can refer you to someone who can help you through this time.

Q: How long will it take before the case is over?

A: A drug case can take anywhere from a few months to two years to resolve. Prosecutors in larger counties (such as Harris County and surrounding counties) have many cases to address, and they prioritize older cases over newer ones. An effective defense investigation often takes time, and includes thoroughly investigating informants, obtaining any video or audio, inspecting drugs, and interviewing witnesses. Cases are set for trial depending on their age, and if the defendant is in custody. If a defendant is suspect in a newer case and is also out on bond, his case will not be at the front of the line to be tried quickly.

Q: I hired a lawyer, but no longer have any confidence in him. What do I do?

A: It is not unusual for a person to hire a lawyer shortly after being accused of a crime -- sometimes because the lawyer is inexpensive -- and later make the unfortunate discovery that the lawyer is not adequately qualified to handle a case as serious and complicated as a drug offense case. At this point, there is no question that it is wisest to hire a more qualified lawyer to step in and take over the case. This happens frequently. The new lawyer contacts the first lawyer, and informs them of the client's decision. The new lawyer then handles the case from that point forward.

Q: I've talked to several lawyers. How can I feel certain I'm choosing the right one for my case?

A: This is an important question. You should hire the lawyer you feel is the most qualified, and with whom you feel most comfortable. Examine the lawyer's experience. Has he or she practiced for just a few years, or for many years? Have they handled many of these types of cases? What is their record of success? Also, consider the lawyer's credentials and their ratings. Have they won awards? Are they Board Certified in Criminal Law? Look at the lawyer's peer ratings. Among the most reputable and prestigious ratings are an AV Rated by Martindale Hubbell and admission into the Best Lawyers in America. Client reviews are helpful, assuming they're legitimate. Do NOT hire an attorney based on price alone. Hiring an attorney because of a low price can cost you your freedom, your career, your family relationships and your reputation.

Q: How much will this cost?

A: The short answer to "how much is the cost" may not be satisfying: it depends. Many factors, from the experience, qualifications, and ability of the criminal lawyer, to the charges and the complexity of the case, determine the fee. Some cases may, aside from attorney fees, require expenses for experts and investigation. The custom and practice of Texas criminal attorneys is to generally charge a flat fee. We typically charge one fee to handle the case up to the point of it being

set for trial, then an additional fee if the case is set for trial. The client is responsible for any expenses, such as experts, and any bond. The benefit of a flat fee is that clients know, at the outset, how much to pay an attorney, and there will not be any surprise monthly billing statements based on hours spent.

Q: What can you guarantee?

A: Ethically, no attorney can guarantee any outcome, but we can guarantee we will do everything we can to achieve the best possible outcome. While each case is different and involves its own unique set of facts, we've had a proven track record of obtaining extraordinary results in all types of cases. We're proud of our record of dismissals in misdemeanors and felonies in State and federal court.