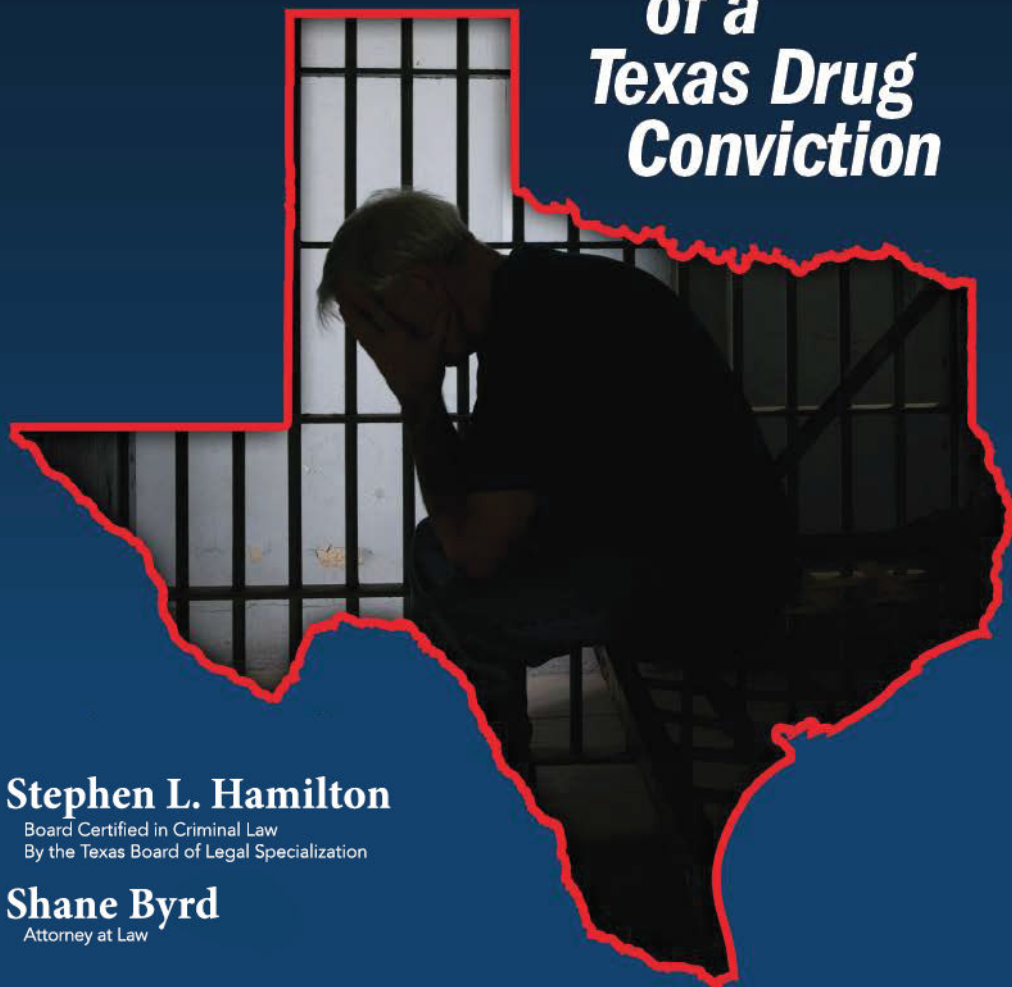


**PROTECT YOUR FUTURE
KNOW YOUR RIGHTS**

**What Plea Lawyers
Won't Tell You:** *the* **Real**
Consequences
*of a
Texas Drug
Conviction*



Stephen L. Hamilton

Board Certified in Criminal Law
By the Texas Board of Legal Specialization

Shane Byrd

Attorney at Law

PROTECT YOUR FUTURE ★ KNOW YOUR RIGHTS™

What Plea Lawyers Won't Tell You: *the* Real Consequences of a Texas Drug Conviction

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833-TexasJustice (833-839-2758).*

Stephen L. Hamilton, JD

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Preface

While not a do-it-yourself, get-out-of-jail-free defense manual for drug arrests, this book contains virtually everything you need to know if you or someone you love is arrested for possession of drugs in Texas.

This book serves as a companion guide to *A Citizen's Guide to a Drug Arrest in Texas* and contains more detailed information concerning drug "schedules" (how drugs are classified by the State of Texas) and penalty groups (drugs listed by penalty severity). It also explains the various minimum and maximum sentences for many of the more common drug offenses, including information on the various aggravating circumstances that can ramp up a charge or penalty to a higher degree.

It is designed to be a helpful supplement in terms of what you need to know if you or someone you love is arrested for possession of drugs in Texas.

We believe you are entitled to know EVERYTHING about what you're facing and how to assemble the best defense possible, whether or not you are a client. EVERYONE is entitled to a strong and passionate defense.

It is our hope that you'll never find yourself in need of either *A Citizen's Guide to a Drug Arrest in Texas* or this companion book. But because our considerable legal experience has shown us that an ounce of prevention is well worth a pound of cure, we urge you to take the time to read this and see how it pertains to your particular case. It's always a good idea to know what may lie ahead.

Trust us: forewarned really is forearmed.

Meet the Team at Texas Criminal Defense Group



Stephen L. Hamilton

Attorney Stephen L. Hamilton, a partner at Texas Criminal Defense Group, has been awarded the highest possible AVVO rating (10) and his counsel is highly esteemed by his peers. Stephen ranks among the fewer than 1% of practicing criminal attorneys across Texas who have achieved coveted board certification in criminal law by the Texas Board of Legal Specialization. He is a lifetime legal member of the National Organization for the Reform of Marijuana Laws (NORML), the National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.

Scientific certifications include completing Blood Testing Gas Chromatograph training (used to test blood for alcohol and/or drug levels) and solid-state forensic drug testing (the legal requirement for Texas lab technicians to establish and identify substances by their precise drug composition).

Stephen has tried over 100 cases to a jury and has obtained not guilty verdicts in cases ranging from traffic tickets to those carrying a punishment range of 25 years to life in prison. He wins cases through all available means: motions, negotiations, trials, and appeals.



Shane Byrd

Before becoming a partner at Texas Criminal Defense Group, Shane had a solid history as a successful local businessman and owner of three bond companies, National Bonding of Lubbock, Lone Star Bail Bond, and American Bail Bond. Shane worked for more than three decades to assist clients and their families navigate their way through the criminal justice system, liaising with attorneys, judges, clerks, and the courts throughout Lubbock and most of Texas before deciding he wanted to help his clients beyond getting them bonded out of jail. With his undergraduate degree in criminal justice, he pursued his dream of becoming a criminal defense attorney and graduated with his J.D. from Charlotte School of Law, Charlotte, North Carolina. Returning home to Lubbock, he worked

with the firm as of counsel and is now a partner at Texas Criminal Defense Group. He focuses his practice in the area of criminal defense. Shane's strong ties to the Lubbock community extend to ownership of a number of local businesses and the many events he has produced for Texas Tech students. As an active member of the community, he understands that good people make mistakes and is driven by his passion to protect the future of such persons and resolving their cases quickly and positively.

Introduction

A drug charge in Texas can be, and typically is, a serious offense, not something to dismiss lightly. Defending yourself against a drug charge should never be attempted without the advice and guidance of a licensed criminal defense attorney.

Knowledge is power

This book has been written to provide you with both general and specific information that is easy to understand— information that will help you, both when it comes time to find the right attorney and when you sit down with your attorney to discuss and construct your case. The more you know, the more you can help to build the best, strongest defense possible.

Never underestimate how important it is for you to understand what lies ahead for you. The more information you can gain by yourself, including what is in this book, the more time your attorney will have free to focus on your defense.

**Drug defendants
in Texas can
receive life
sentences!**

This book explains the ins and outs of the many types of drug charges in Texas. It also covers some of the circumstances that can add to the seriousness of the charges and might incur you a stiffer penalty.

We also list for you the various classifications of controlled substances and the penalty groups in which they lie.

Being prosecuted for a Texas drug crime can damage your life, sometimes forever. Often unfairly. If not handled correctly from the start, a drug conviction can be a ball and chain you're forced to lug behind you for the rest of your life.

You might never be able to cut yourself loose.

It's always harder to make up lost ground than when you start out knowing in what direction to go, and how to navigate the road ahead. That's why we wrote this book: to act as your compass. To help you get out ahead of any error in judgment you may have made.

Staying out of the system

At Texas Criminal Defense Group, we work hard to divert drug clients away from the criminal justice system whenever possible. We mount aggressive defenses to help our clients hold onto their jobs, their licenses, and their freedom. Because with a conviction or a guilty plea, you can lose all of them.

We are experienced lawyers, equipped to take a case to trial or negotiate it out of court, based on what our client wants. We make recommendations to our clients, based on our substantial legal experience with the Texas court system, but we always respect the right of our clients to choose which path they want to take.

But it doesn't stop there. If you are caught up in the cycle that traps many drug users—casual use that leads to dependence, which leads to selling drugs so you can afford to buy more—prison is not the answer to your problems, no matter what Texas politicians might think. You need help, not a jail sentence.

The attorneys at Texas Criminal Defense Group know what resources are available to help you regain control of your life. Why is this important? Because clients who commit to stop using drugs tend to impress judges and prosecutors. And if you can impress the prosecutor and the judge, you're well on your way to receiving leniency.

Participation in drug counseling and treatment is often the first step to obtaining a favorable resolution of drug charges. And we know what to recommend in your particular situation. Another benefit of participating in counseling and treatment is that it is often the first step in putting your life back on track.

From the moment you are arrested or merely contacted by the police concerning a drug crime, **YOU ARE AT RISK**. The police and prosecutors possess an enormous amount of power that you, as a private citizen, do not have.

Having an experienced drug defense attorney on your side is the only way to empower you. An attorney who knows how to use the law to your advantage can give you a fighting chance to avoid an unjust conviction or punishment.

The lawyers at Texas Criminal Defense Group are dedicated to helping our clients achieve the best results the criminal justice system can provide.

If you're caught in possession of drugs in Texas, no matter how small the amount, you're in serious legal trouble. There's a lot you need to know.

Let's get started.

Zero Tolerance in Texas

The first thing you need to understand is precisely why a drug charge is such a serious issue in Texas. Let's take a quick look.

Texas has earned a reputation for being tough on drug crimes. Prison populations in Texas have jumped, thanks to the “zero tolerance” attitude that politicians take when it comes to drug offenses. Even the sale of marijuana carries the potential for a life sentence in Texas.

That's no joke.

Texas arrests more than 70,000 people a year just for crimes involving marijuana. The number of arrests for marijuana possession alone here *tripled* between 2001 and 2010. That is what zero tolerance does.

Typically, the penalties vary for controlled substances based on the specific quantities involved and the type of drug crime committed: **possession** (you're caught with drugs on your person), **delivery** (you've sold or even just given drugs to someone else for free), **manufacture** (you're involved in farming or chemically producing a drug, whether for personal use or distribution), and **drug paraphernalia-related**. Certain controlled substances always include the charges of **Possession with Intent to Deliver** and **Manufacture**.

All of these vary in terms of seriousness of the charge and the sentences they carry. The difference between misdemeanor and felony charges really boils down to whether and how much jail time is involved, based on the degree of seriousness of the crime you're charged with committing. None of them should be taken lightly, because Texas takes none of them lightly.

There are three classes of misdemeanor charges and only one, Class C, does not involve jail time. However, because drug charges are taken so seriously in Texas, it is highly unlikely that yours will be classed as a Class C misdemeanor. It's virtually always *at least* a Class B, perhaps a Class A, which carries stiffer penalties. More than likely, however, it will be a felony charge.

For example, the possession of more than four ounces of marijuana (including “Spice” and other synthetic versions) IS A FELONY.

Most crimes involving drugs other than marijuana, regardless of how small the quantity, are felonies in Texas, even if possession is for personal use.

Drug possession convictions carry a host of consequences that can haunt you for the rest of your life—even if you somehow manage to avoid jail time.

**Most drug crimes
in Texas are
FELONIES, not
misdemeanors**

We at Texas Criminal Defense Group believe you should never take chances with your future. You need a solid, experienced attorney with an established history of successful drug defense behind you now. Your rights are too precious to hand over to just anyone.

Criminal charges are very serious

Don't kid yourself. If you face criminal charges, you need an attorney. And not just any attorney.

You need an experienced attorney with resources.

You need an attorney who possesses in-depth knowledge of the intricacies of the drug laws in Texas.

You need an attorney who can and will fight skillfully in your defense.

You need an attorney who has an experienced private investigator available to dig up whatever they can that might help you.

One poor decision should not be permitted to damage the rest of your life. You have options.

At Texas Criminal Defense Group, we help our clients navigate the legal system. We make appropriate strategic decisions to ensure the criminal charges our clients face will have the least possible impact on the rest of their life.

You don't have to go it alone. You should never even consider going it alone.

What Are the Charges?

Following your remand or release on bond or bail, criminal charges are filed by the prosecutor, based upon the severity of the charges.

Possession of a controlled substance

Possession, in Texas, is defined as having care, custody, control, or management of a controlled substance, which means the drug doesn't have to be physically on you when you are arrested. If it's under your care, it's considered to be yours. So, stowing a drug in a storage locker to which you have access, for example, is considered possession.

Informally, "simple possession" is a term that is frequently used to distinguish possession for one's own personal use from possession with intent to deliver. Texas law generally views the crime of possession to be less serious than that of possession with intent to deliver.

That said, being in proximity to a drug does not mean you possessed the drug (although the police might feel otherwise). As one Texas court put it, "being where the action is" does not constitute the crime of possession.

So, hanging out with drug users who are using in your presence does not mean you possessed the drugs. But if you did in fact use the drug, you can be charged with possession.

Taking a single puff of a joint that belongs to someone else and is being passed around means you've possessed it, even if just for a few seconds.

EVERYONE who partakes in a drug can be charged with possessing that drug

One of the things we focus on is that, to prove possession of a controlled substance, the prosecution must prove beyond a reasonable doubt that you *knowingly* or *intentionally* had it in your possession when you were not legally permitted to have it, either through lawful authority (being a licensed pharmacist or doctor, for example) or without a valid prescription.

"Knowingly" refers to your state of mind. It means that you must be aware of what you are doing and that it is against the law.

The prosecution must prove that the possession was either knowing *or* intentional but is not required to prove that it was both knowing *and* intentional. That's an important point, because all that's required is to

show that you knew the drug in question was illegal to have, not that you necessarily intended to do anything with it.

On the other hand, if drugs were found in your car, if they were not in plain view, and if you were not the only person who drives that car, we would exploit how difficult it is for the prosecution to prove that you *knowingly* possessed the drugs.

The penalty for simple possession depends upon the controlled substance involved in the offense and upon the quantity possessed. Most controlled substances are assigned to a penalty group, with the exception of marijuana. (See chapter 12 for more information on the more common penalty groups.)

If you are charged with possessing a drug that is not listed, contact us and we will explain to you what penalty is associated with possession of that drug.

Delivery of a controlled substance

The second most common drug crime in Texas is possession with intent to deliver a controlled substance. It means you intended to deliver drugs in your possession to someone else, *even if you had no specific buyer in mind*.

Deliveries can be **actual** (you physically hand drugs to another person) or **constructive** (you're in control of the drugs, such as if you're a manufacturer or supplier, but have someone else handle the actual delivery).

Actual delivery

An actual delivery occurs when you literally hand over a drug to someone. In Texas, just offering to sell someone a controlled substance is the same as your having given it to them. In these instances, one thing we zero in on is just how difficult it can be to prove intent when drugs weren't handed over vs. having proof that a drug changed hands.

Constructive delivery

Constructive delivery is when you own or control a drug and hand over that control to someone else without physically delivering the drug yourself. So, you could be charged with constructive delivery if you were handling the manufacture of a controlled substance and authorized someone else to sell it.

Depending on the circumstances, a constructive delivery can turn into an actual delivery. For instance, if you leave a drug in a storage locker and give the locker key to someone, that's constructive delivery. However, if that person then accesses the locker and picks up the drug, constructive delivery has now become actual delivery.

Whether you're selling drugs to make money or you take pity on a cancer patient struggling with the nausea that comes with chemotherapy and give them some marijuana to ease their symptoms, it's possession with intent to deliver.

Manufacture of a controlled substance

To manufacture means to produce or prepare a controlled substance, to propagate or cultivate a controlled substance that grows naturally (such as extracting opium from a poppy or refining it to produce a drug), or simply to package a controlled substance.

Although charges of manufacturing a controlled substance are far less common, the recent rise in methamphetamine production has led to a rise in prosecution for it. (Consider high school chemistry teacher turned meth manufacturer Walter White in the TV series *Breaking Bad*.)

The charge of manufacturing does not apply to marijuana, because marijuana is not listed in any penalty group. Growing marijuana simply comes under the charge of possession. (See chapter 4 for more on marijuana.) However, a manufacturing charge *can* apply to synthetic marijuana (THC), as it is listed in Penalty Group 2-A.

Drug paraphernalia: Delivery, possession with intent to deliver, or manufacture

If you knowingly or intentionally deliver, possess with intent to deliver, or manufacture with intent to deliver any drug paraphernalia to someone who intends to use it for drug-related use, that's a Class A misdemeanor. There are exceptions to this, which amp up the charge:

- If you were previously convicted of delivery, possession with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, it then becomes punishable by a jail sentence of 90 days up to one year; or
- If you are at least 18 years old and the drug paraphernalia is given to or intended for a person under 18 and at least 3 years younger than you, it becomes a state jail felony.

Precursor chemicals

A precursor is a chemical is used to create another chemical compound. For example, ephedrine, a common ingredient in cold medication, can be used to make methamphetamine and so it is labeled a precursor chemical.

Transferring or receiving such chemicals illegally are also drug crimes under Texas law.

Misdemeanors vs. felonies

Class C misdemeanor

The most minor of all possible charges is a Class C misdemeanor, where a criminal complaint will be filed against you in municipal or justice of the peace court. However, this lowest possible charge is unlikely if you are arrested for a Texas controlled substance offense, since very, very few drug crimes are ever judged to be that minor.

Class A or B misdemeanor

Class A and B misdemeanors are charged in a county court or a county criminal court and are subject to fines of \$2000 to \$4000 and sentences from 180 days up to an entire year in jail. In the event that you are charged with either of these misdemeanors, an additional document called an “information” will be filed, which details what crimes you are being charged with and the maximum penalties you face.

Felony

If you are charged with a felony, the complaint will be filed against you in the district court where the offense took place. Felony charges, depending on the degree, typically involve jail time of at least two years, and depending on the seriousness of the degree and the quantity of drugs involved, can range up to 99 years or life behind bars. Accompanying fines run as high as \$10,000, with significantly higher fines for manufacture or possession with intent to deliver when large quantities are involved.

- **State Jail Felony**
6 months to 2 years and up to a \$10,000 fine
- **Third Degree Felony**
2 to 10 years and up to a \$10,000 fine
- **Second Degree Felony**
2 to 20 years and up to a \$10,000 fine
- **First Degree Felony**
5 to 99 years and up to a \$10,000 fine, with minimum jail sentences rising to 10 or even 15 years and fines rising anywhere from \$50,000 to \$250,000 in circumstances involving manufacture and possession with intent to deliver when significantly large quantities are involved.

Making a bad situation worse

When certain situations exist, an otherwise straightforward charge may be viewed far more seriously.

Being caught with drugs in a drug-free zone is one example. Drug-free zones are basically areas where children tend to cluster, such as a daycare or youth center, a school, or on a school bus. Even if you didn't know you were in a drug-free zone, that's not a valid defense.

So, what otherwise would be a misdemeanor steps up to become a state jail felony, a typical state jail felony offense becomes a third degree felony, a third degree felony becomes a second degree felony, and so on.

When children are involved

When a child is involved in a drug-related crime, that also bumps up the severity of the charge, and the penalties increase. For example, if you deliver drugs to a minor, it's automatically considered to be a second degree felony.

The law also frowns upon using a child to commit a drug crime, such as if you asked a minor to sell or deliver drugs to someone. Or if you coerced or threatened them in order to get them to do it. If this is the case, you're automatically facing a first degree felony, no matter how minor the crime otherwise might be judged.

When injury or death results

If somebody was seriously injured or killed as a result of taking a controlled substance that you delivered, the charge against you automatically rises to a first degree felony.

Indictment

An indictment is a formal document listing the felony charges that have been filed against you.

You can be indicted before or after you are arrested. If you have not yet been booked, the court can issue an arrest warrant, based on the indictment, which orders the police to arrest you and bring you to court. Alternatively, the court can issue a summons ordering you to appear in court. If you fail to appear at the appointed time as ordered, a warrant for your immediate arrest will be issued.

If you're being charged with a felony, in some cases we may advise you to waive your Fifth Amendment right to indictment by a grand jury if a good agreement can be reached with the prosecutor. This is not often the case

but sometimes a pre-indictment agreement might be the best option. We would discuss the pros and cons of this agreement with you.

When you are served your charges, you will also be told when you need to appear in court for your arraignment.

Arraignment

An arraignment is when you appear in court to formally confirm that you are aware of the charges that have been brought against you and state for the record whether you are pleading not guilty or guilty. This is done in connection with all felony and Class A and B misdemeanor prosecutions.

Ideally, by the time of your arraignment, you will have long since retained an attorney to conduct an investigation and look at your case strategically before entering your plea.

If you have not yet arranged for an attorney to represent you, do so *now*. (Chapters 13, 14 and 15 list tips on how to find the best attorney for your situation.) Your arraignment can also be waived if your attorney thinks it's unnecessary, and a plea of not guilty is automatically registered on your behalf.

If you appear at your arraignment without a lawyer, the court will ask whether you plan to get one and *might* delay the arraignment to give you more time to find one. But waiting that long only hurts you by giving you less time to prepare a defense; it does not hurt the prosecution, which now has even more time to prepare its case against you.

In many cases, we advise pleading not guilty at the arraignment, even if you are guilty. This provides more time to work on your case and determine if your arrest was unlawful. In most counties in Texas, the judge will not accept a guilty plea at arraignment anyway. And you can always change your plea later, should you and your lawyer decide that pleading guilty makes the most sense in your particular situation.

Once you plead guilty, however, you can never change your plea back to not guilty, so it's not a decision to make lightly. Always consult an experienced defense attorney willing to fight for your rights before you consider entering a guilty plea.

What to do

Texas takes all these charges very seriously. So should you. Don't take chances. Hire a legal advisor who knows the ins and outs of drug charges and convictions to ensure your rights are protected from minute one.

What Are Controlled Substances?

Simply put, a controlled substance is a drug that cannot be possessed legally without a legitimate prescription. Think of narcotics, for example. Some controlled substances (e.g., marijuana) may be available by prescription in other states but because they cannot legally be prescribed in Texas, that makes them illegal to possess here for any reason—no exceptions.

So, having a prescription doesn't necessarily mean it's legal!

All controlled substances are drugs, but not all drugs are controlled (restricted) substances. Over-the-counter medications, for example, are drugs but they are not controlled substances, because they are not regulated—that is, they are readily accessible to you without much, if any, limitation.

Additionally, certain drugs are regulated in Texas but still are not classified as controlled substances. To illustrate, alcohol is also a drug, but Texas legislature does not define it as a controlled substance. That said, it is still controlled in the sense that you cannot purchase or publicly consume it unless you are at least 21 years old. But it is not a controlled substance that is restricted among the adult population.

How much is too much?

If you've got an ounce of cocaine on you, and it's cocaine that's been cut with something other than a controlled substance, like baby powder or corn starch, for example, you're still considered to be carrying an ounce of a controlled substance. This is particularly important with substances like marijuana. Why?

If your pot is in the form of a chocolate bar or brownie, your degree of possession is based not on how much pot is in the brownie, *but on how much the brownie weighs*.

A 4-oz. brownie equals a felony record!

Consider the difference between carrying a six-ounce chocolate bar vs. six ounces of pot. As far as Texas is concerned, it's one and the same. And it's a felony.

So, if you sold 50 grams of something that's 99% inositol and 1% powder cocaine, you'd be subject to the same maximum sentence as someone who sold 50 grams of 100% pure cocaine. And while judges can elect to consider drug purity when imposing a sentence, the fact that a drug has been diluted rarely influences a Texas judge to impose a more lenient sentence.

Drug paraphernalia

Drug paraphernalia generally refers to products used to grow, manufacture, package, or ingest a controlled substance, including marijuana. Drug paraphernalia could include anything from sandwich bags that can hold illicit drugs right down to a garden hoe allegedly used to cultivate marijuana plants. Items potentially used to ingest drugs, such as pipes or bongs, are also considered to be drug paraphernalia. Even making a makeshift pipe from an empty beer or soda can could be charged as criminal “manufacturing.”

It is important to understand the potential consequences of such a seemingly minor drug paraphernalia conviction. Although a simple possession charge is a misdemeanor and only punishable by a fine, it still means that you now have a criminal record that will follow you.

So, while it might seem easiest to pay the fine in a hasty attempt to put the entire situation behind you, there are significant collateral consequences. (See chapter 10 for more details on additional consequences of a drug conviction.) Having a criminal record can create problems when you want to apply for employment, obtain a professional license or security clearance, or merely vacation in a foreign country.

Delivery, possession with intent, and manufacturing drug paraphernalia are Class A misdemeanors but *only* if the charge is a first offense and *only* if delivery was made to either an adult or a minor less than three years younger than you. Any delivery of paraphernalia to a minor who is more than three years younger is a felony—that’s not negotiable.

A second offense that does not involve a minor carries a minimum 90-day sentence. The best way to avoid being exposed to the harsh consequences of a second offense is to avoid conviction of a first offense. The same is true of charges of manufacturing or delivering paraphernalia. If the product you made or sold could be used for a legitimate purpose, it may be difficult for prosecutors to prove your intent.

Delivery, possession with intent to deliver, and manufacturing charges also require proof that the accused knew that the recipient intended to use the item as drug paraphernalia. In our experience, the prosecution having to prove both the seller and buyer’s intent can make convictions difficult to obtain.

Marijuana

An entirely different set of Texas laws apply to marijuana. Does that mean it's a lot less serious to be caught with marijuana? *No!*

Everything you might need to know concerning marijuana possession and delivery could fill a book. (In fact it has: we published *A Citizen's Guide to a Marijuana Arrest in Texas*, which can be found on our website.)

Possessing marijuana is not the same as possession of a controlled substance, but charges for marijuana possession and intent to deliver still range from misdemeanors to felonies, just as they do for controlled substances, and sentences of **life imprisonment for marijuana** are possible.

With the exception of synthetic marijuana, marijuana-related crimes are classified separately, but should never be shrugged off as less serious. They're not.

Growing marijuana

Penalties depend upon the nature of the crime and the amount of marijuana involved. Unlike the delivery of other controlled substances, if you give someone a small quantity of marijuana without demanding to be paid for it, that carries a lesser penalty than had you sold someone the same quantity.

While Texas law doesn't actually distinguish between simple possession and possession with intent to deliver where marijuana's concerned, if you are caught in possession of a large quantity of marijuana, the law assumes your intent was to deliver it to others rather than use it yourself.

Manufacturing—which, in the case of marijuana, means growing or cultivating the plants—comes under the same umbrella as simple possession, and so it carries no additional penalty in the way manufacturing controlled substances do. However, even if you have not yet harvested the plants to create a consumable drug, you are still considered to be in possession of marijuana.

Penalties

Although Texas no longer classifies marijuana as a narcotic, state law continues to authorize harsh sentences for marijuana delivery. Unlike most jurisdictions, Texas law authorizes a life sentence for the possession of sizable amounts of marijuana. Texas law also imposes a minimum sentence for delivery of such magnitude.

The penalty for delivering marijuana depends upon the amount delivered and, if less than a quarter-ounce was involved, whether it was sold, be it for cash or something else.

Mature stalks and sterilized seeds are excluded when weighing marijuana, but again, if your pot is in, say, a chocolate bar or brownie, possession is based not on how much pot is in the brownie but on how much the brownie itself weighs. Chew on that for a moment.

What we're saying is that what would otherwise weigh in as a small fraction of an ounce, a misdemeanor charge, has suddenly ballooned into four ounces because possession of chocolate, flour, butter, and sugar has suddenly put you solidly in felony territory. Talk about leaving a bad taste in your mouth.

Marijuana quantities

If you're caught with a quarter ounce or less and you gave away the marijuana and received nothing in exchange, it's a Class B misdemeanor. If you were given something of value in exchange for the marijuana, it's a Class A misdemeanor.

Over a quarter ounce, up to 5 pounds is a state jail felony, while more than 5 pounds up to 50 pounds is a second degree felony.

Between 50 and 2,000 pounds is automatically a first degree felony. And anything over that is punishable by a prison sentence of at least 10 years, and up to life imprisonment.

Marijuana crimes involving children

If you involved someone under the age of 18 in growing or selling marijuana, the level of your offense is increased by one degree, unless you've already been charged with the highest offense, a first degree felony.

If you involved someone under the age of 18 through the use or threat of force, the charge against you will automatically be raised to a first degree felony, no matter how much lower the charge would have been otherwise.

Higher maximum penalties may also apply if you gave or sold marijuana to a minor.

Community supervision

With limited exceptions, the court has the authority to suspend your sentence, if it's less than 10 years, and to place you on community supervision (probation) instead.

If your offense is classified as a state jail felony, the court *must* suspend your sentence and place you on community supervision (probation) if your crime involved no more than one pound of marijuana, and you have no prior felony convictions.

If you have been arrested in connection with marijuana, we urge you to read our comprehensive book, *A Citizen's Guide to a Marijuana Arrest in Texas*, and discuss any questions with us or another experienced criminal defense attorney.

Prescription Drug Offenses

Drug crimes extend beyond illegal substances to prescription fraud, from unauthorized use of prescriptions or possession of prescription forms to improperly issuing prescriptions, with charges based on the drug involved.

A skilled local lawyer is one familiar with the programs available in your jurisdiction which could be viable options to jail time, should you be convicted.

Texas Criminal Defense Group performs skilled legal drug defense throughout Texas, and staffs 5 regional offices to ensure you get the best, most exhaustive defense possible.

We employ investigators to uncover every detail of what went down and use our comprehensive scientific training to determine precisely what substance was involved to ensure you are not convicted for something you haven't actually done.

Let's examine what you're looking at if you've been or will be charged with a prescription drug-related offense.

Criminal charges

Controlled substances are classified by type into schedules. Chapter 11 explains which drugs fall within each schedule. These are charged as follows:

- Schedule I or II drugs are a second degree felony
- Schedule III or IV drugs are a third degree felony
- Schedule V drugs are a Class A misdemeanor

Other offenses:

- Possession of a blank prescription form or an unauthorized prescription for a Schedule II or III drug is a state jail felony.
- Delivery of a blank prescription form or an unauthorized prescription for a Schedule II drug is a second degree felony.
- Possession of an unauthorized prescription for a Schedule IV or V drug is a Class B misdemeanor.
- And delivery of an unauthorized prescription for a Schedule III, IV or V drug is a third degree felony.

Simulated substance offenses

A simulated controlled substance is essentially a lookalike, imitation, or fake drug. Most often, it is not a drug at all, such as passing off baking soda or baby powder as cocaine.

A counterfeit controlled substance on the other hand is an actual controlled substance made to mimic a legitimately manufactured one. Fake pills are manufactured and given an identical mark to that of the licensed manufacturer.

Delivery or manufacturing with intent to deliver a simulated controlled substance

Selling a bundle of baking soda claiming it's cocaine is an example of delivering a simulated controlled substance. That and manufacturing it are both state jail felony charges.

Other dangerous substances

Occasionally, drug charges involve drugs that are classified as dangerous (requiring a prescription) but they are not on the list of controlled substances, e.g., Xanax.

Illegally possessing a dangerous drug is a Class A misdemeanor, while delivering, offering to deliver, or manufacturing a dangerous drug is a state jail felony.

Depending upon the offense and (in some cases) whether you have been convicted of the same offense in the past, the crime is generally a Class A or Class B misdemeanor.

Volatile chemicals

Texas criminalizes the recreational use of certain legal substances that are not categorized as controlled substances or dangerous drugs, labeling them as "abusable volatile chemicals." Sniffing glue and aerosols fall under this category. These are Class B misdemeanors.

It's also illegal to sell such chemicals to anyone under 18. If you're caught doing so and you're not licensed to generally sell such items, it's a state jail felony. If you are licensed, it's typically a misdemeanor, unless you've been convicted of doing so previously.

Every case differs, from the type and amount of drugs involved to the circumstances surrounding their arrest. Even which county you're arrested in can make a difference, as some take a harder line than others in terms of sentencing, opting for jail time over community service, for example.

Popular Police Myths Debunked

Myth #1: If you're not Mirandized, all charges must be dropped

This is a common myth, likely due in part to watching too many crime shows on television where, in the interest of drama and storytelling, facts like this get distorted.

First: You don't have to wait to be Mirandized to assert your rights. They're yours, no matter what, and you're entitled to them at any time, not just when you're being arrested.

Second: If you're brought in simply for questioning, **the police aren't required to read you your rights** or remind you not to incriminate yourself or suggest you get an attorney. Despite that, anything you say can legally be used against you, and they will, if they can.

Third: It's not true that if for some reason the police fail to read you your rights in the form of a Miranda warning, they cannot prosecute you. That is FALSE.

Certainly, your attorney can vigorously argue that this procedural mishap is cause to get your charges dismissed. But the reality is that if the evidence against you is substantial enough to suggest that you committed this or another drug offense, and if any statement you made to the police isn't the only evidence against you—that your statement isn't necessary to convict you—then your charges will likely stand and you will be prosecuted.

That said, any statement you made without having been reminded of your rights will not be included in the evidence presented against you in a trial.

This is yet another reason why it's critical to have a licensed criminal defense attorney beside you, one who knows not just the legal system inside out but also the prosecutor and court officials, who will advise and defend you.

Myth #2: The police can't lie to you

We talk about this in detail in *A Citizen's Guide to a Drug Arrest in Texas*, where we discuss the right to remain silent. Too many people mistakenly believe the police aren't allowed to lie to you when they question you.

Wrong!

The police are not only permitted to lie; they are encouraged to deceive you in any way that might encourage you to admit to wrongdoing, to incriminate yourself.

They are allowed to tell you all sorts of things, including claiming how things will go very badly for you if you refuse to talk, if you refuse to admit to what they think you're guilty of—or might be guilty of—or that they can ensure things go more easily for you if you just admit to something.

You, on the other hand, will be in serious trouble if you say anything and they decide you're not telling the truth. You are NOT allowed to lie to the police. You ARE allowed to keep your mouth shut, however.

Keep reminding yourself that they're not required to speak the truth. And that you're entirely within your rights not to speak at all.

Myth #3: Police must honor the deals they offer

Police do not have to honor the deals they offer. Why not? Because they're not authorized to make deals.

No matter what kind of deal they offer, they don't have to deliver, even if you've done what they asked. If they say they're authorized to make a deal, it's only because they're permitted to lie—to tell you anything they think will make you incriminate yourself. No police officer, from a patrolman to the chief of police, can offer you a deal that is legally enforceable. Only the prosecutor has the authority to make a deal with you.

And the prosecutor is in no way obligated to honor that offer. The prosecutor will simply thank you for making their job easier and your “deal” will disappear like a wisp of smoke. And there's not one thing you—or your attorney—can do about it.

Myth #4: The “good” cop

Everyone is familiar with the good cop/bad cop scenario. Watch any film where a suspect is being questioned and the technique is so obvious that you wonder how anyone could fall for it. Well, they do. And it's a lot easier to fall for it than you might think.

First off, anyone who's under arrest is naturally apprehensive, even frightened, particularly if it's their first time. Combine your fear with your eagerness to blurt out your innocence to a sympathetic police officer who says they understand your situation and is there to see justice is served and help you to establish your innocence. Now, you talk.

Why? Human nature. In your mind, how can you best establish your innocence? You explain, of course. Surely, they'll keep whatever you tell them in the strictest confidence—they just promised you they would. They've already assured you that they only want what's right.

Don't believe them!

Even if the police officer seems sincere and concerned for you, their job is not to help you if you're innocent. That officer might be the nicest person in the world, but they're not there to help you. That's your attorney's job.

Politely say you're not going to make any sort of statement without first consulting your attorney and then having them present during questioning.

Your attorney is your advocate. The police officer who is looking to arrest you is most decidedly not. When it comes to your defense, the only "good guy" is your attorney.

Myth #5: Police can legally search you without a warrant

Can you physically prevent a police officer from searching you? No. And we strongly advise against resisting. But that doesn't mean it's legal.

Any search performed without a search warrant or probable cause (such as witnessing you firsthand with drugs in your possession) is not legal.

That doesn't mean you can stop them from searching you. But your attorney will argue the search was illegal to get any evidence uncovered during the illegal search tossed, so it can't be used against you as evidence.

Our Constitution's Fourth Amendment specifically protects citizens from illegal search and seizure:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

That means that you have the right to be free of unreasonable searches and seizures and that no search warrant can be issued unless sufficient probable cause can be shown.

Also, any search warrant must detail precisely what property is to be searched and what items can be seized. If it only says the garage, they cannot search the house.

If it lists only a person, they cannot search a vehicle or premises. Not unless, that is, there's either evidence in plain sight, such as if they witnessed you stuffing drugs into your pocket or saw drug paraphernalia through a window.

Unless you (foolishly) give consent, they have a warrant, or probable cause exists, a skilled attorney will argue that the search was illegal, violated your rights, and that any and all evidence seized as a direct result of that illegal search cannot be used against you in a trial.

Do's & Don'ts If You're Arrested

Here are some of the tips we at Texas Criminal Defense Group share with our clients on how to cope with being arrested and begin building a solid defense right away.

If you're arrested, with or without a warrant, there are strategic steps you need to take to bolster your defense.

- **DO *identify yourself honestly*.** There is no justifiable reason to refuse to correctly identify yourself when asked by police to do so. Just don't answer any other questions.
- **DO *remain silent*.** Whether or not the police have read you the Miranda warning, you **ALWAYS** have the right to remain silent and seek counsel. Never answer questions or volunteer information until you've spoken with a practiced defense lawyer.
- **DO *invoke your right to talk to a lawyer*.** If you don't yet have a lawyer, get one. Call someone you trust to find one. (You don't have to keep them if you don't want to.) The sooner you "lawyer up," the sooner you'll have someone knowledgeable and experienced at your side to help you.
- **DON'T *lie to police officers*.** If you lie about your identity or anything else, you will be charged with an additional crime. They will check your identity to make sure they're arresting the right person, so identify yourself honestly and immediately invoke your right to remain silent. If you lie to the police, the prosecution will use this against you.
- **DON'T *try to talk your way out of the situation*.** You can't talk your way out of an arrest. If the police come to arrest you, they're already convinced you're guilty. Remember: *Anything you say can and will be used against you*. The only thing you should say after you confirm your identity is that you're invoking your right to remain silent and consult with your lawyer.
- **DON'T *flee or struggle with the arresting officer*.** Resisting arrest only leads to more criminal charges against you. Any attempt to flee is seen as an admission of guilt. You risk police brutality and excessive use of force that could result in serious bodily injury. And the magistrate is likely to set a high bail because you're now seen as a flight risk.

The hours, days, even months after your arrest can be overwhelming and disorienting. During this time, you'll be forced to jump through hoops, explain yourself, both in legal proceedings and in your personal and professional lives, and make major lifestyle adjustments from losing your driver's license to kicking a drug habit.

Throughout this process, your lawyer will guide you, keep you informed, and help you to make strategic decisions designed to obtain the best possible outcome. Meanwhile, the law firm's paralegals are there to help you navigate the tangled bureaucracy of the criminal justice system.

At Texas Criminal Defense Group, we ensure our support staff is available to help our clients when they're preparing for court, telling them when to check in, how long things will take, and even arranging required drug tests when you're released on bond. It's a huge comfort to our clients to know someone's always there to answer their questions.

Our lawyers and legal staff are all on call to answer any questions and help defendants as best we can. Make sure your legal team does the same. Anything less is just not acceptable. This is just too important—it can affect your entire life if not handled correctly and thoughtfully from the start.

If your license has been suspended due to drug-related charges, ideally your defense attorney's firm will staff paralegals to help you pull together the correct paperwork and documentation to apply for a provisional license.

From the moment of your arrest, if you follow our suggestions and listen to the advice of your attorney, you can make informed decisions to benefit you in the long run—even if your rights are ignored by the police. No matter what happens, if you're arrested, remain silent, retain a defense attorney, and know your options.

When someone is arrested on drug charges, they may be ordered to submit to a drug test or participate in a drug treatment program as a condition of their release. This can mean anything from attending Narcotics Anonymous (NA) meetings to spending inpatient time in a drug treatment clinic.

If you're out on bond and have been ordered to submit to a drug test, be smart. *Don't do drugs.* It's as simple as that.

You need to get any and all drugs out of your system. A negative (i.e., favorable) result on a drug test will strengthen your defense and your mitigation package, which consists of everything that points to your being a decent person who deserves a break. (We explain mitigation packages in our companion volume, *A Citizen's Guide to a Drug Arrest in Texas*.)

At the risk of stating the obvious, it will be a condition of your release not to commit more crimes, drug-related or otherwise. You want to make it as hard as you can for them to put you away, so why hand them the hammer to nail your coffin shut?

Sentencing

More often than not, sentencing is performed by the judge. If you plead guilty as part of a plea bargain negotiation, the judge will always be the one to pronounce sentence.

There are a number of considerations that factor into deciding a sentence, such as how serious the offense was, any history of criminal activity on your part, and the perceived need to protect society from drug crimes in the future. Note that your mitigation packet, which contains anything that puts you in a good light, such as community volunteer work for example, plays a major role in sentencing.

Drug crimes involving very large amounts of a drug often carry a longer minimum sentence than an ordinary first degree felony. And a record of prior criminal convictions can, in some cases, increase the maximum penalty.

Minimum sentences

Texas felonies carry a minimum sentence, but in most cases, the judge is not required to impose any prison sentence at all. The judge can instead impose a term of community supervision. If the judge does impose a jail sentence, they cannot sentence someone to a term that's less than the minimum, but the judge can suspend all or part of the sentence and place the defendant on community supervision. In that sense, the minimum sentence is not the kind of "mandatory" sentence that a convicted defendant is always required to serve.

A true mandatory minimum sentence nevertheless exists when the crime carries a statutory minimum of more than 10 years. Judges cannot impose community supervision for those crimes. They also lack the power to stay (suspend or postpone) a sentence of longer than 10 years. A minimum sentence of more than 10 years is effectively a mandatory minimum sentence that a defendant will always be required to serve if the defendant is convicted.

Several serious drug crimes in Texas are subject to a mandatory minimum sentence. A minimum sentence of 15 years applies to crimes involving the delivery, possession with intent to deliver, or manufacture of large quantities of controlled substances in Penalty Group 1. (See chapter 12 for an explanation of penalty groups.) When the crime involves large quantities of LSD, those crimes, as well as possession, carry a 15-year minimum sentence. Other drug felony penalties can be enhanced to require a minimum 15-year sentence when a repeat offender is convicted. Finally, the "three strikes" law in Texas requires a minimum sentence of 25 years for certain third felony convictions.

FELONY SENTENCES

Felony	Maximum Sentence	Type of Controlled Substance
First degree	5 years to life; fine up to \$10,000	All
Second degree	2 to 20 years; fine up to \$10,000	Penalty groups 1 & 1A
Third degree	2 to 10 years; fine up to \$10,000	Penalty Group 2
State jail	180 days to 2 years; fine up to \$10,000	Penalty Group 3

MISDEMEANOR SENTENCES

Misdemeanor	Maximum Sentence	Type of Controlled Substance
Class A	Up to 1 year; fine up to \$4,000	Any not listed in Penalty Groups 1, 1A, 2, 2A, or 3 (excluding marijuana)
Class B	Up to 180 days; fine up to \$2,000	Any not listed in Penalty Groups 1, 1A, 2, 2A, or 3 (excluding marijuana)
Class C*	No jail; fine up to \$500	<i>See note below*</i>

** Class C misdemeanor charges, which carry no jail time, are rarely, if ever, assigned to drug-related crimes in Texas, and so no specific controlled substances are allocated to this level of charge.*

It is important to point out here that charges of distributing more than a quarter of an ounce of marijuana to someone, or possessing more than four ounces of an illegal controlled substance, typically carry a higher range of sentences.

Fortunately, the legislature has, for most cases, created statutes that permit a judge or jury to suspend all or part of this mandatory minimum jail time—if less than 10 years—in favor of probation.

Your mitigation packet, which your attorney will share with the court, will weigh heavily into whether you are granted this consideration. Submit

character references, show every conceivable concrete contribution you have made to society, and be sure to document your employment, particularly if it has been steady.

This is your final chance to share the circumstances of your life to the judge and jury so they can see who you are as a person before they carry out sentencing. Make it count!

Jail sentences less than 10 years can be suspended IF the court feels your character merits it

Alternatives to Jail

A drug conviction in Texas is considered a serious offense. Depending on the magnitude of the offense—the amount of drugs in question, for example, and whether there are additional factors that cause the Court to view the offense as even more, well, offensive—many drug charges in this state can result in imprisonment as well as a hefty fine.

When we represent clients on drug charges, our primary goal is to avoid a conviction. However, depending on the circumstances and the gravity of the offense, that's not always possible. When all other avenues have been exhausted, and a client faces sentencing, we make our most persuasive argument to minimize or avoid jail or prison.

Mandatory sentences became popular during the “get tough on crime” era that began in the 1980s, which did nothing to reduce drug crime. While Texas drug laws are still tough, Texas has been thankfully recently moving away from the “lock ‘em up” mentality. In 2007, some nonviolent offenders began being sent to treatment facilities rather than prison. The result? The crime rate in Texas has dropped.

We believe that lengthy incarceration for nonviolent criminals does not reduce crime. We want our clients to move forward, to turn things around when drug use has affected their lives, to have hope in turning things around. And we believe that alternatives to jail are part of that path, so we fight hard to obtain one of the following options for our clients who face possible jail or prison time:

- Drug Court (supervision and drug treatment program participation which can lead to charges being dismissed)
- Community supervision (probation)
- Deferred adjudication (probation granted after pleading guilty or no contest—meaning you aren't arguing innocence—without a conviction being recorded unless you fail to adhere to all the terms of your probation, which gives you the chance to avoid a conviction on your record altogether)
- Court-ordered treatment
- Electronic monitoring
- Work release program
- Community service

Let's take a look at each of these and what they mean for you.

Drug Court

This progressive program has been adopted by a number of Texas counties. If you're invited to participate, you're evaluated to determine whether you have a substance abuse problem that might be better addressed through treatment vs. incarceration. Drug Court, typically 12–18 months, involves intense community supervision (probation) and one or more treatment programs. If selected, you'll be required to provide frequent urine samples to confirm you're no longer using drugs.

Here, you regularly appear in front of a Drug Court judge to establish whether you've been faithfully complying with your probation terms, and your supervisor updates the judge about your progress and any setbacks.

If you have not been fully compliant (e.g., you've missed one or more treatment sessions or your urine sample reveals continued drug use), the judge decides whether to continue your Drug Court participation or send you back to be incarcerated.

If you successfully complete Drug Court, the charges against you may be dismissed, which means this offense won't become part of your permanent record.

Community supervision

Commonly referred to as probation, community supervision is a viable option for most drug crimes, either instead of a sentence or in exchange for part or all of a suspended sentence.

If you have been convicted by a jury, it can recommend a suspended sentence with community supervision if you've never committed a previous felony, and the judge must comply. However, only a judge can award you probation if you already have a felony record, something we consider when deciding whether to elect for a jury trial vs. a bench trial, where the judge serves as both judge and jury.

Deferred adjudication

A deferred adjudication grants you community supervision (probation) *before* you're convicted of a crime. In this instance, if you plead guilty or no contest (meaning you accept the sentence without actually admitting guilt), the Court postpones any conviction while you are put on probation. If you complete community supervision successfully, the charge against you is dismissed. If you don't, or you commit another crime while on probation, you must then return to court for sentencing. Since you've already pled either guilty or no contest, there will be no trial. The judge will enter a conviction against you and impose a sentence.

More often than not, we negotiate a deferred adjudication as part of a plea bargain. Unlike probation, deferred adjudication is a possibility in cases

where the crime you committed carries a minimum sentence of 10 or more years, but it's not a likely possibility. And it won't be granted if you're a repeat offender who commits a drug crime in a legally defined drug-free zone, that is, on a school bus or within 1000 feet of a primary or secondary school, daycare facility, or youth center.

The risk with deferred adjudication is that, in order to receive it, you must waive your right to trial and any possibility of being found not guilty by a jury. However, for those not wanting to risk taking their case to trial and who will obey their supervision conditions, the chance of a dismissal with no conviction makes this an attractive option.

Court-ordered treatment

Even if you are only convicted of a Class A or B misdemeanor, and not a felony, you face a possible fine and/or jail sentence. But Court-ordered treatment is a possible alternative. Here, the judge can elect to send you to a treatment facility for up to 90 days instead, if all of these conditions apply:

- Addiction is seen to be the reason behind your committing the crime
- An approved treatment facility is available and agrees to admit you
- You are deemed mentally competent

Electronic monitoring

House arrest is another alternative to spending time behind bars. This typically involves wearing a GPS ankle bracelet at all times that alerts authorities when you stray outside your restricted area but permits you to spend your time sentenced at home, or possibly even on the job, via work release, so you can continue working.

Work release

We can potentially negotiate county jail sentences or any confinement that's part of a community supervision sentence to be limited to nonworking hours, enabling you to continue to work while serving your sentence.

Community service

We may try to negotiate community service if you're convicted of a drug crime to replace some, or all, of your jail sentence, as long as a jury hasn't imposed a sentence requiring you to spend time in jail.

Here, we argue that such a sentence provides you an opportunity to contribute to the community in a positive and constructive way, by providing an unpaid valuable service rather than spending time in jail. Community service can sometimes be combined with work release.

Additional Penalties & Consequences

Convictions for drug crimes have both direct and collateral consequences. Direct consequences are those imposed by a court as a form of punishment, such as incarceration and fines. Direct consequences are comparable to totaling your car, having it crushed beyond recognition, whereas collateral consequences are when you wake up the next morning and discover you've got whiplash and can't sit up or get out of bed.

Collateral consequences are not court-imposed when you are convicted. Instead, they're that unanticipated unpleasant side effect, which in this case is your inability to do or possess certain things as a result of having been convicted of a drug crime. Collateral consequences include being denied eligibility for certain financial benefits, a passport, or green card, for example.

Let's take a closer look at some of these direct and collateral consequences. Some will likely come as an unpleasant surprise.

Direct consequences

Fines

All drug convictions carry the possibility of your having to pay a fine.

The court takes into consideration your ability to pay a fine before imposing one on you, however. So, if you genuinely do not have sufficient resources to pay a fine, you cannot be imprisoned for not being able to pay it. However, you can be punished for deliberately refusing to pay a fine when the Court decides that you can afford to do so.

We negotiate payment schedules for our clients in this situation, so that any fine can be paid over time, if need be, so it poses less of a hardship.

Jail or prison sentences

All drug crimes, except those rare ones classified as Class C misdemeanors, carry with them the possibility of jail time, spanning from 180 days to life imprisonment. Imprisonment may, at the discretion of judge or jury, be replaced with one or more of the alternative sentences covered in the previous chapter, such as probation, treatment center participation, and/or community service.

Court costs

If you are convicted, you will be required to repay the Court for costs incurred during your trial. You need to know that these costs are fixed by law and not negotiable.

Forfeiture

The State of Texas can seek the forfeiture of certain assets if you are convicted of a drug crime. This is specifically to prevent you from benefiting from any criminal activity—it is NOT designed to be an arbitrary part of your punishment.

For example, understandably, any controlled substances found in your possession at the time or as a result of your arrest will be seized. But other assets that could be seized, which you might not have considered, include:

- Any property—land, buildings, vehicles, weapons, or any other type of asset—used or intended to be used in the commission of a drug felony. If, for example, you own a building that you use to manufacture drugs in, whether it's your home or another building, the government can take it from you.
- Proceeds, such as cash and other valuables, gained from the commission of a drug felony, such as any cash you may have received from selling drugs.
- Property you acquired with the proceeds gained from the commission of a drug felony. If money you made from selling drugs was used, e.g., to buy a car or house, they can be confiscated.

When property is seized, you have the right to file a claim for its return and receive a hearing. The property will be returned if it is judged not to be contraband. If the property was clearly used in the commission of a drug crime, however, we wouldn't advise admitting ownership of the property as it might give the prosecution additional evidence to prove a criminal charge.

Collateral (additional) consequences

A sizable number of both federal and state laws generate collateral consequences when you're convicted of a drug crime. Since they are not direct consequences of a conviction, the court doesn't warn you about them before you enter a plea of guilty or no contest. You should nevertheless be aware of them because they might have a significant impact upon your life and your decision to plead guilty.

Federal collateral consequences

Federal statutes that impose consequences on drug convictions have been justly criticized when more harmful crimes are not subject to the same harsh consequences. Just a few of the benefits you can be denied are:

- Student federal loan and grant eligibility
- Immigration status and eligibility
- Military enlistment
- Federal benefits, including TANF (Temporary Assistance for Needy Families), SNAP (food stamps), and housing assistance
- Loss of a commercial license
- Loss of certain veteran benefits

Texas (state) consequences

In addition to those consequences imposed by the federal government, Texas imposes even more that you should know about, depending upon the type and severity of the crime you are convicted of. Some of the more common ones include:

- Driver's license suspension of 180 days (a commercial license can be permanently suspended if the drug felony involved the use of a motor vehicle)
- Denial of all voting privileges in public elections
- Five-year ban on obtaining a concealed weapon carry permit (federal law prohibits anyone with a felony conviction to ever possess a firearm)
- Expulsion from school/university
- Loss or denial of most professional licenses
- Ban on holding any form of public office
- Denial of permit to sell alcoholic beverages
- Ban on working certain types of jobs

As you can see, a drug conviction in the state of Texas ripples across potentially every aspect of your life, long after the sentence has been served. It's not something to dismiss casually.

Always make sure you have a highly skilled legal team behind you to protect you as much as possible from this otherwise inevitable fallout.

Drug Schedules

Texas classifies drugs as controlled substances, whether legal or illegal, and ranks them according to seriousness in relation to their potential criminal abuse. These rankings are referred to as “schedules.”

Therefore, the penalty for a drug crime depends upon which controlled substance schedule the drug is listed in.

Schedule I

These drugs are both highly addictive and have either no accepted medical use for treatment throughout the United States or it’s been judged that they cannot be used safely, even under medical supervision. Drugs represented in Schedule I include LSD, Ecstasy/XTC, and marijuana.¹

Schedule II

These drugs can be legally prescribed but have a high potential for abuse that could potentially lead to addiction. Cocaine, methamphetamine, and most narcotics can be found listed in Schedule II.

Schedule III

These are drugs with an accepted medical use that could be abused but are considered less of a risk than those listed in Schedules I and II. Schedule III drug abuse can result in moderate physical dependence or high psychological dependence. Vicodin is an example of a Schedule III drug.

Schedule IV

These drugs are essentially the same as Schedule III in that they have an accepted medical use yet are vulnerable to potential abuse, but these are seen to pose less of a risk and create a lower level of dependency. Valium is a Schedule IV drug.

Schedule V

These drugs present even less serious risks than those classified in the first four schedules. Cough suppressants with very low concentrations of codeine are an example of a Schedule V drug.

¹ Note that while marijuana has been approved for medicinal use at the time of this writing in 29 states, and recreational use in 9 other states and D.C., this does not affect federal law, and marijuana is still classified as a Schedule I controlled substance (though not listed in any Penalty Group).

Penalty Groups

Most illicit drugs in Texas are listed in one of four basic penalty groups, two of which have subcategories. Each penalty group carries a maximum (and sometimes minimum) sentence, based upon the quantity involved.

It's not possible to list all the drugs and their derivatives here, so we have limited it to the most familiar ones. Check with us, or your lawyer, if you're not sure which penalty group the drug you've been charged with belongs to.

The most serious controlled substances are classed as Penalty Group 1 and so they carry the severest penalties. However, although the substances classed under the other penalty groups are considered less serious, the charges that accompany possession and other related crimes for these drugs are by no means insignificant.

Except for LSD, penalties are determined by drug weight, including anything added to dilute it, even if the additive is not a controlled substance, as explained in chapter 3.

Excluding marijuana, possession of a drug not listed in any penalty group is typically a Class B misdemeanor.

Delivery, possession with intent to deliver, or manufacturing of any controlled substance not listed in a penalty group, again excluding marijuana, is a Class A misdemeanor.

Penalty Group 1

This group includes cocaine, heroin, hydrocodone, ketamine, methadone, methamphetamine, morphine, opium, oxycodone, rohypnol, and their many derivatives.

If you are convicted, you could be fined anywhere from \$10,000 to \$100,000 and sentenced to a state jail felony, from six months to two years, right up to an enhanced first degree felony, which can carry a sentence of 10–99 years or life in a state prison, depending on the quantity of the drugs involved and the circumstances.

Charges for Possession

Quantity	Criminal charge
< (less than) 1 gram	State jail felony, punishable by 6 months to 2 years and up to a \$2,000 fine
1 to <4 grams	Third degree felony, punishable by 2–10 years and up to a \$10,000 fine
4 to <200 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
200 to <400 grams	First degree felony, punishable by 5–99 years and up to a \$10,000 fine
400+ grams	First degree felony, punishable by 10–99 years, or life, and up to a \$100,000 fine

Charges for delivery, possession with intent to deliver, or manufacture

Quantity	Criminal charge
< (less than) 1 gram	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
1 to <4 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
4 to <200 grams	First degree felony, punishable by 5–99 years and up to a \$10,000 fine
200 to <400 grams	First degree felony, punishable by 10–99 years, or life, and up to a \$100,000 fine
400+ grams	First degree felony, punishable by 15–99 years, or life, and up to a \$250,000 fine

Crimes involving lesser quantities that also involve injury, death, or a minor (under 18) increase in penalty as follows:

Basic charge	Enhanced charge
State jail felony ⇒	Third degree felony
Third degree felony ⇒	Second degree felony
Second degree felony ⇒	First degree felony

Lesser-quantity crimes, when involving a minor (under 18) who was coerced or threatened in order to ensure their involvement, **are automatically charged as first degree felonies**. Delivery to a child can also carry higher maximum penalties.

Penalty Group 1–A

Lysergic acid diethylamide (LSD) and its analogs.²

Penalty Group 1–A penalties are the same as Group 1 above: If convicted, you could be fined up to \$10,000 and sentenced to a state jail felony, from six months to two years, right on up to an enhanced first degree felony, which carries a minimum sentence of 10 years (or 15 years, if the abuse units total more than 8000) up to 99 years, or life, in a state prison, depending on the circumstances and the quantity of the drugs involved.

Charges for possession

Quantity (in dosage/ abuse units)	Criminal charge & penalties
< (less than) 20	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
20 to <80	Third degree felony, punishable by 2–10 years and up to a \$10,000 fine
80 to <4000	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
4000 to <8000	First degree felony, punishable by 5–99 years and up to a \$10,000 fine
8000+	First degree felony, punishable by 15 years to life and up to a \$250,000 fine

² LSD (along with its analogs) is classified separately because it is sold by dose vs. weight.

Charges for delivery, possession with intent to deliver, or manufacture

Quantity (in dosage/abuse units)	Criminal charge & penalties
< (less than) 20	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
20 to <80	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
80 to <4000	First degree felony, punishable by 5–99 years and up to a \$10,000 fine
4000+	First degree felony, punishable by 15–99 years and up to a \$250,000 fine

Penalty Group 1–A drugs are measured in “abuse units,” typically a single dose, whether delivered via capsule, tablet, sugar cube, the gummed back of a stamp, or any other delivery mechanism.

If delivered on blotter paper, Texas law defines each and every perforated square as one abuse unit. If the sheet of paper is not perforated, each quarter-inch square of paper qualifies as an abuse unit. In liquid form, 40 micrograms equals one abuse unit.

Lower-quantity crimes, if involving injury, death, or a minor (under 18), are enhanced as follows:

Basic charge		Enhanced charge
State jail felony	⇒	Third degree felony
Third degree felony	⇒	Second degree felony
Second degree felony	⇒	First degree felony

Lower-quantity crimes, if involving a minor (under 18 who was coerced or threatened in order to ensure their involvement, **are automatically charged as first degree felonies**. Delivery to a child can also carry higher maximum penalties.

Penalty Group 2

This group includes hallucinogenic drugs, such as Ecstasy/ XTC, mescaline, PCP, psilocin/psilocybin (psychedelic mushrooms), synthetic marijuana (THC), and their counterparts, including comparable designer drugs, and most amphetamines.

Possession can result in fines as high as \$10,000 to \$50,000, depending on the amount in your possession, and jail time ranging from six months to two years for quantities totaling less than one gram (0.035 ounces), up to 5–99 years in state prison for 400 grams (about 14 ounces) or more.

Charges for possession

Quantity	Criminal charge
< (less than) 1 gram	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
1 to <4 grams	Third degree felony, punishable by 2–10 years and up to a \$10,000 fine
4 to <400 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
400+ grams	First degree felony, punishable by 5–99 years and up to a \$50,000 fine

Charges for delivery, possession with intent to deliver, or manufacture

Quantity	Criminal charge
< (less than) 1 gram	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
1 to <4 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
4 to <400 grams	First degree felony, punishable by 5–99 years and up to a \$10,000 fine
400+ grams	First degree felony punishable by 10–99 years, or life, and up to a \$100,000 fine

Less severe crimes, if involving injury, death, or a minor (under 18), increase as follows:

Basic charge		Enhanced charge
State jail felony	⇒	Third degree felony
Third degree felony	⇒	Second degree felony
Second degree felony	⇒	First degree felony

Less severe crimes, if involving a minor (under 18) who was coerced or threatened in order to ensure their involvement, **are automatically charged as first degree felonies**. Delivery to a child can also carry higher maximum penalties.

Penalty Group 2–A

The controlled substances in the very recent classification penalty group 2–A are synthetics, with synthetic cannabinoids known by a variety of street names, including Spice and K2, as well as “bath salts,” often marketed under such street names as Blue Silt, Cloud Nine, Ivory Wave, and Mephedrone.

Although the penalty group lists specific synthetic cannabinoids, it also includes any synthetic that has the same effect on people.

Synthetic cannabinoids are a relatively new drug. New drugs typically provoke exaggerated claims of the harm they can do and, unfortunately, some judges pronounce harsh sentences, hoping it might somehow serve as an effective deterrent. (It hasn’t yet.)

If you have been arrested for a drug crime pertaining to Penalty Group 2–A, speak to us or your attorney about the kind of charges and penalties you may be facing.

Less severe crimes, if involving a minor (under 18) who was coerced or threatened in order to ensure their involvement, **are automatically charged as first degree felonies**. Delivery to a child can also carry higher maximum penalties.

Penalty Group 3

This penalty group contains depressants, many of them barbiturates. Overall, the group includes Alprazolam (Xanax), Amobarbital, anabolic steroids, Clonazepam (Rivotril), Diazepam (Valium), Lorazepam (Ativan), Methylphenidate (Ritalin), Nitrazepam, Pentobarbital, peyote, Secobarbital, and Sulfonmethane.

In this group, any amount less than 28 grams is considered a Class A misdemeanor, bringing penalties of up to a year in county jail and fines not to exceed \$4,000. On the other end, within this penalty group, possession of over 400 grams will be charged as an enhanced first degree felony, resulting in 5–99 years in state prison and fines of up to \$50,000.

Charges for possession

Quantity	Criminal charge
< (less than) 28 grams	Class A misdemeanor, punishable by up to a year in jail and a fine of up to \$4,000
28 to <200 grams	Third degree felony, punishable by 2–10 years and up to a \$10,000 fine
200 to <400 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
400+ grams	First degree felony, punishable by 5–99 years or life, and up to a \$50,000 fine

Charges for delivery, possession with intent to deliver, or manufacture

Quantity	Criminal charge
< (less than) 28 grams	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
28 to <200 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
200 to <400 grams	First degree felony, punishable by 5–99 years or life, and up to a \$10,000 fine
400+ grams	First degree felony punishable by 10–99 years, or life, and up to a \$100,000 fine

Less severe crimes, if involving injury, death, or a minor (under 18), increase as follows:

Basic charge	Enhanced charge
State jail felony ⇒	Third degree felony
Third degree felony ⇒	Second degree felony
Second degree felony ⇒	First degree felony

Less severe crimes, if involving a minor (under 18) who was coerced or threatened in order to ensure their involvement, **are automatically charged as first degree felonies**. Delivery to a child can also carry higher maximum penalties.

Penalty Group 4

This group consists of compounds and preparations containing small amounts of narcotics that have been combined with one or more non-narcotic active medicinal ingredients, such as acetaminophen with codeine (e.g., Tylenol 3).

While being the lowest class of drugs in terms of danger, potential abuse, and concentration, Penalty Group 4 is not without severe ramifications. Mere possession of 400 grams or more is a first degree felony charge that carries 5 to 99 years or life in state prison and a fine of up to \$50,000, while lesser amounts can still mandate 6 months to 20 years in jail or prison and fines ranging up to \$10,000.

Charges for possession

Quantity	Criminal charge
< (less than) 28 grams	Class B misdemeanor, punishable by up to 6 months in jail and up to a \$2,000 fine.
28 to <200 grams	Third degree felony, punishable by 2–10 years and up to a \$10,000 fine
200 to <400 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
400+ grams	First degree felony punishable by 5–99 years or life and up to a \$50,000 fine

Charges for delivery, possession with intent to deliver, or manufacture

Quantity	Criminal charge
< (less than) 28 grams	State jail felony, punishable by 6 months to 2 years and up to a \$10,000 fine
28 to <200 grams	Second degree felony, punishable by 2–20 years and up to a \$10,000 fine
200 to <400 grams	First degree felony, punishable by 5–99 years or life and up to a \$10,000 fine
400+ grams	First degree felony punishable by 10–99 years or life and up to a \$100,000 fine

Less severe crimes, if involving injury, death, or a minor (under 18), increase as follows:

Basic charge	Enhanced charge
State jail felony ⇒	Third degree felony
Third degree felony ⇒	Second degree felony
Second degree felony ⇒	First degree felony

Less severe crimes, if involving a minor (under 18) who was coerced or threatened in order to ensure their involvement, **are automatically charged as first degree felonies**. Delivery to a child can also carry higher maximum penalties.

Finding Legal Representation

If you don't already have an attorney when you're arrested, start looking for one immediately. Or have a close friend or family member find one for you. Right now you need someone just to handle your bond/bail and arraignment. If you have doubts about the long term and how good a fit they are for you, you can always hire someone else later to handle the real case once you're arraigned.

We cannot caution you strongly enough against discussing any details of your case with anyone, no matter how minor you think they are, over the phone when you're in jail. This includes talking to a potential attorney or one you've already hired. Wait until you're alone and face to face, and your attorney confirms that anything you say is confidential.

**Never discuss
ANYTHING
about your case
over the phone—
to ANYONE!**

ALL PHONE CALLS FROM JAIL ARE RECORDED AND WHAT YOU SAY CAN AND WILL BE USED AGAINST YOU!

Your conversations, even with potential lawyers, are NOT protected by attorney-client privilege. Far from it! The most damning evidence against defendants often arises from what is recorded on these calls.

Calling an attorney from jail is fine, but it is definitely NOT the time to explain the details of your circumstances. Never, never, NEVER talk about the facts of your case or situation on a recorded line. Don't share your version of what happened, apologize, admit wrongdoing, or say ANYTHING regarding the charges being levied against you.

We cannot stress this strongly enough. Save that conversation for face-to-face meetings, and only when your lawyer assures you that you can talk freely and in complete confidence— *not before!*

Remember this when hiring an attorney

This is worth repeating: After your attorney gets you released on bond/bail, if you have concerns about them in any way, from their skills to their availability to the quality of their support team, you are not obligated to keep them as your attorney to the end.

That's right. You are not obligated to keep them!

Start shopping around. We do, however, recommend that you don't terminate the first lawyer's services until you're confident that you've found and hired someone else you're happier with.

Choosing an attorney is arguably the most important decision you will have to make in this legal process—at the very least it is the first important decision you need to make. Remember that in choosing a lawyer, you are choosing someone to advocate for you—you're choosing a confidant, an investigator, and a representative.

And while we go into this in greater depth in *A Citizen's Guide to a Drug Arrest in Texas*, there are several key things to look for in a law firm and certain red flags to avoid.

What to look for in a law firm

- **At least one member of the firm is board certified in criminal law by the Texas Board of Legal Specialization.** Your particular lawyer does not have to carry this certification, but at least one member of the team ought to have it. If no one in the firm is board certified, we strongly suggest you look elsewhere.
- **At least one member of the firm is a former prosecutor.** Again, this doesn't have to be your attorney, but at least one attorney in the firm should have extensive prosecution experience because it provides your firm a look inside, a better understanding of how the prosecution works and thinks.

A firm that boasts a former prosecutor can anticipate the prosecution's strategy and prepare for it. They will know with certainty when the prosecution's case is weak and what to zero in on.

- **At least one firm member possesses certified scientific training.** Since your charges deal with an illegal controlled substance, it is critical to have a law firm with attorneys who can competently process the raw data found in lab reports, who understand the science, techniques, and instruments of drug testing, and who know how to shrewdly evaluate the scientific evidence in your case.

You want attorneys representing you who have invested significant time, money, and energy into educating themselves on the science of drug charges. The more they know about the science behind your case, the better they can defend you.

- **The firm focuses on criminal law.** This is one time you want to stay away from general practitioners. The last thing you need is a lawyer who has a divorce case in the morning, a property case in the afternoon, and a drug case in the evening.

You want a firm that specializes in criminal law precisely because it is complex and nuanced. Criminal law—especially when it comes to controlled substances, both legal and illegal—is always changing.

If you're going to come out of this frightening situation in the best possible way, you need to find a law firm sharply focused on criminal law.

- **The firm has a private investigator at hand.** The most effective law firms have regular access to a private investigator. Skimping on the investigation aspect of trial preparations is like taking a final exam without having studied or done your homework. A smart law firm knows the importance of having a private investigator on staff, ready to launch an investigation on your behalf.
- **The firm is well organized.** A good law firm makes it easy for you to work with them. You should be able to reach your attorney 24 hours a day, seven days a week. The best, most professional law firms have an after-hours answering company staffed by individuals who possess each attorney's direct numbers for immediate contact.

These firms have a secure text and messaging service in place so clients can communicate freely with their attorneys without fear of surveillance. Their staff is competent and helpful, with paralegals who are diligent in getting the right documents to clients on time and keeping them informed on what to do and when.

- **You feel at ease with and confident in them.** These are the people pledging to look out for your best interests. These are the people to whom you must tell everything and trust they will use the information you give them to help you. These are the people you need to protect your rights and ensure the best possible outcome for you.

If you don't feel good about your law firm, don't waste time. Look elsewhere. You should feel comfortable in your attorney's presence, confident in their abilities, and the law firm's staff should always be accessible, approachable, and helpful.

Never feel pressured to retain the lawyer who gets you out of jail or work with a firm you don't feel comfortable with. What you want is professionalism and experience. That's not asking too much.

You want a law firm with a variety of lawyers who operate in different roles and specializations—all within the field of criminal law.

You want a law firm with scientific expertise.

You want a law firm that knows how the other side—the prosecution—thinks and reacts.

You want a law firm that is committed to providing you the best, most comprehensive defense you can find.

Once you have identified firms that comfortably provide you with these assurances, it's time to assess your individual attorney. Let's look now at how to do that.

Identifying a Superb Attorney

There are some fundamental ways to establish whether your attorney is indeed superb, much as we discussed how to identify a strong law firm in the previous chapter.

The keywords here are **experience** and **credibility**. The attorney you want to directly handle your case should have extensive experience working with drug charges, including in taking cases to trial.

There are many things that only experience can give, and the risks you face battling drug charges in Texas are such that you need to hire someone who's seen it all before and has an established track record of success.

**experience
+ credibility
= superb attorney**

First off, you should feel comfortable with them, starting from the get-go, from the time of your very first meeting.

There is a tremendous amount of trust in an attorney-client relationship and the success of your case relies to a great degree on your ability to be perfectly candid with each other. If you don't feel comfortable talking with your attorney, how can they possibly do a superb job defending you?

A skilled, professional criminal defense lawyer is not interested in judging you. They are only interested in learning absolutely everything about your situation so that they can defend you to the best of their ability. They have chosen to become a criminal defense attorney because they believe everyone, no matter what their situation, is entitled to the best defense available and to ensure their rights are not violated. So you must find an attorney that you feel comfortable disclosing EVERYTHING to.

No attorney can predict the future, and an experienced attorney knows that a good outcome can inexplicably come from a weak case and that a strong case can sometimes end less favorably than anticipated. No one knows how a case will end until it's over—there are just too many variables.

Can they perform a thorough investigation?

A good attorney conducts an aggressive investigation, keeps you informed of your options, and helps you to make the best decision to achieve the best possible outcome based on the strength of your case and the strength of the case against you. The outcome is never certain and any attorney who claims that the outcome of your case is certain, be it good or bad, is not an attorney you want defending you.

To ensure you emerge from this in the best way possible, your lawyer should understand not only the laws regarding drug possession and delivery but also the culture and attitudes in the legal world that go along with them.

An experienced lawyer is also familiar with the different local prosecutors and judges and has a good sense of how they think and operate.

Do they know the science behind drug cases?

You want an attorney who knows the laws and nuances of drug possession and delivery charges *and* who is knowledgeable in the science behind it.

When it comes to drug cases, understanding the underlying science is crucial. Lab results are always subject to error; errors that can make or break your case. If you're facing drug charges, the last thing you want is an attorney who either doesn't know enough to realize that lab findings are never infallible or shrugs and chooses to accept lab results at face value. That kind of attitude closes the door on a whole host of strong defense options.

A sharp attorney possesses both the know-how to analyze the raw data of any laboratory test results and an up-to-date working knowledge of the lab instruments used. They also know to take a hard look at the lab itself and the staff performing the tests.

Does this truly matter? Yes. Because drug charges are based on the fact that the drugs you were caught in possession of were indeed the precise illegal controlled substances that the law claims them to be. You might not even realize yourself that what was in your possession is not actually the drug you thought it was.

If there is a shred of reasonable doubt that these substances were actually the illegal controlled substances the law claims them to be, a skilled attorney will know how to uncover that fact and can discredit the lab findings. Would you want to overlook the possibility of that happening?

The science of controlled substance charges is by no means simple. If it were, every drug defense attorney out there would (we would hope) undergo training. To learn the science takes extensive time, effort, training, and commitment, because it involves mastering the science involved, understanding the intricacies of how a lab operates, and knowing how and why each scientific procedure is performed.

Attorneys who are willing to take the time to complete forensic science training and invest the money and effort in this are diligent, tenacious, and committed to excellence in their field. In other words, by definition, they're superb. And isn't that who you want fighting for you?

What kind of reputation do they have?

You need an attorney who is well respected and has a good reputation. In this era where reviews can be found posted on just about anything, lawyers are no exception. What's even better is that it's possible to find reviews of attorneys not just by their clients but also by other attorneys. (We'll tell you where to find these in just a moment.) If other attorneys have good things to say about yours, then you have found the right representation.

Attorneys are arguably the best at distinguishing between unskilled lawyers and skilled ones, and they have no reason to endorse one who isn't good—it's just plain bad for their reputation. Endorsing another attorney means they're banking their own credibility on your attorney's skills. If that's not a good sign, we don't know what is.

If other attorneys think highly of your potential attorney and, even better, seek your potential attorney's advice on their tough cases, you've found the ideal person to represent you.

Your attorney should maintain good rapport not just with peers but also with past clients. Often, the most telling opinions are those of others who have been in your situation before and emerged successful. Ask for and read the testimonials of past clients of every attorney you consider. If possible, ask to contact them and speak to them directly. Most clients are willing to voice their opinion, good or bad. You want to hear what they have to say.

You wouldn't just hire someone off the street for a job without references, and you shouldn't just hire any lawyer without references either.

Steps to identify a superb lawyer

Let's look at some specific ways of finding out how superb your attorney really is.

A superb attorney is one who has invested time, money, and energy into expanding their knowledge base and improving their craft. A superb criminal defense attorney makes time to periodically attend classes and training sessions on the current nuances of the charges they defend against.

If you're facing drug charges, you want a lawyer who has attended these kinds of defense trainings, as well as training in the precise lab instruments used to test for both drugs in urine and the drugs themselves. Skimping on the science is, in our opinion, inexcusable.

A superb attorney will provide you with testimonials from their peers endorsing the work they do.

Perhaps the most straightforward way to gauge how esteemed they are, and how good the work they do is seen to be, is to insist on an attorney who has achieved an "A" rating through the Martindale-Hubbell peer review

assessment. This rating is an objective indicator that attests to both their professional ability and how high their ethical standards are, based on evaluations given by peers—other members of the Bar and judiciary. We recommend you only consider attorneys who have achieved an “A” rating.

Your ideal attorney should also have a high AVVO rating. That’s an important consideration. AVVO is a mathematical method, an algorithm, developed by attorneys, law professors, and other legal workers, that rates attorneys based on information collected from their websites, profiles, and other background material attesting to their grasp of the law and overall performance. Ratings range from 1 (which equates to “use extreme caution when dealing with this attorney”) to 10 (the cream of the crop).

When looking for representation, your best bet for a successful outcome is to go with an attorney with a high AVVO rating, ideally at least 8. (We prefer 9s and 10s, although this is by no means the only criterion on which to base your choice of attorney.)

Why? Because while the AVVO rating is not everything, it’s a very useful filtering tool in finding a qualified attorney. The AVVO takes *objective* factors into consideration, while *subjective* factors, such as communication skills, advocacy ability, judgment, and understanding of the laws, are not factored into this rating the way they are in the Martindale- Hubbell rating.

And, although the AVVO is purely objective, the AVVO website features a helpful section where past clients can post feedback about an attorney’s performance, ability, and interpersonal skills, giving you the extra nuance that you need before making a decision. There, you can assess potential attorneys based on not just their AVVO rating but also past client testimonies.

Another important consideration, if the drug charges against you are for marijuana, is whether or not your attorney is a member of NORML, the National Organization for the Reform of Marijuana Laws. NORML is an organization very active in marijuana legal reform and keeps its members up to date on emerging legal issues and changes in law relating to marijuana defense issues in each state as well as in the federal realm. If your lawyer is a superb drug defense lawyer, he/she is a member of NORML.

How to contribute to your defense

You want an attorney who gives you homework. You need to be invested in the outcome of your case, not sitting back waiting for someone else to deliver a miracle. You do not want an attorney who does absolutely everything for you.

Why? Because it’s just not possible. If you’re not being asked to contribute, then everything that can possibly be done isn’t getting done. For example, your attorney should stress to you the importance of your getting rehabilitated and producing clean urine samples if you’re a user, which also contributes to assembling the most comprehensive mitigation packet possible.

We discuss mitigation packets in greater detail in our companion book, *A Citizen's Guide to a Drug Arrest in Texas*, but basically it's about collecting information that puts you in the best light possible when negotiating your case with the prosecutor outside of court in order to obtain leniency.

You know best who will provide superior character references for you, what your relationships were like, both on the job and personally, and what contributions and good works you may have made to your community. A good attorney will not expect—or permit—you to rely solely on them. This is a team effort. And you're a member of this team, not a spectator.

Does your attorney communicate with you?

A skilled attorney will keep you in the loop on *everything* concerning your case.

You need to know the specifics of the charges being brought against you and be given the police reports and discovery items to review so that you can discuss the ins and outs with them. Only by doing this can you make informed key decisions with regard to your defense strategy.

The best lawyers explain precisely *why* yours is a good or bad case, and make sure you fully understand what the prosecution's offering *before* you negotiate a deal.

If your attorney pushes aside your questions by saying: "We'll talk about it in court," run for the hills. A competent attorney would **NEVER** put you in that position. You're entitled to know what you're getting yourself into **BEFORE** you make decisions that might affect you for the rest of your life.

When an attorney assesses a case's potential outcome, they should make it clear that no outcome is guaranteed. Their assessment should always be accompanied by: "I can't say with any certainty." If an attorney looks at your case and decides right then that you're either doomed or it's in the bag, immediately find yourself another attorney.

If you've found an attorney who meets all these criteria, congratulations. You've found yourself a truly superb attorney.

If your attorney is all this **AND** is one whom other attorneys turn to when they have a particularly difficult case or have hit a roadblock, you've hit the mother lode. Hire them!



How to Recognize a Superb Attorney:

- You feel comfortable with them from the very first meeting
- They have years of experience with clients facing similar charges
- They have related scientific training
- They have achieved an "A" Martindale- Hubbell peer review rating indicating that their peers hold them in high esteem
- They have received excellent reviews from other clients
- They have an AVVO rating of 8 (preferably 9 or 10)
- They give you homework
- They keep you informed
- They do not guarantee outcomes

Red Flags to Run From

We have talked about what characterizes a superb attorney, so by now you know what to look for. But, like many things in life, it's not just what to look for that matters but also what to look out for.

Do you know the red flags that indicate that an attorney's way of doing business isn't necessarily in your best interest?

We at Texas Criminal Defense Group believe that it's important to weigh the bad as well as the good in order to make fully informed decisions.

With that in mind, let's zero in on some of the more significant red flags to be on the alert for, so that you can avoid getting saddled with poor or mediocre representation.

It's daunting to have to find a skilled defense lawyer at a moment's notice, one you can trust to fight for you. It's a huge decision. You need someone in whose hands you can trust your future. Your life depends on it.

What should you know to avoid?

- **Cheap lawyers**

In this business, you really do get what you pay for. When searching for the best attorney to represent you, don't let money become your main concern. Right now, you are facing fines, jail time, and hidden penalties that will affect the rest of your life—your reputation, your risk of a permanent criminal record, your future job, education, and home-owning prospects. It's really hard to put a price on that. You need to focus on protecting YOU.

- **Answering machines**

If you get an answering machine every time you call, either it's a firm that lacks sufficient coverage or you're dealing with a one-man show. You don't want either. Why? Because one person cannot possibly do everything necessary to conduct an effective investigation and build a strong case and still have sufficient time left to navigate you through the bureaucratic aspects of the legal system. Likewise, how can a law firm that can't figure out how to answer your calls be a firm with your best interests at heart?

- **No dedicated private investigator**

Some attorneys want you to track down and talk with witnesses yourself. Think *Titanic*—it's time to abandon ship! A skilled private investigator conducting your investigation is a real life preserver and can sometimes mean the difference between surviving and going

under. Relying on an amateur (or you) to conduct comprehensive investigations and background checks is like relying on a leaky life raft. Without the investigative results of a private investigator, you might find yourself treading water to stay afloat or, worse, drowning. Our advice? Keep swimming.

- **Promise makers**

No attorney can ever guarantee an outcome. Not only is it not possible but, to put it bluntly, it's downright unethical to make such promises to clients. No one can ever guarantee a home run before seeing the pitch. Uncertainties arise. Witnesses recant, disappear, or are simply unreliable. A juror harbors a secret bias against you. The police or prosecution inadvertently or willfully conceals information that would prove favorable to your case.

No ethical lawyer will ever promise what they are unable to guarantee. If an attorney promises that they will get your charges dropped, drop the attorney instead.

Conversely, an attorney who tells you from the start that you're going to strike out, that there's no hope for you before conducting a full evaluation of your case, is also making you a promise—a promise that they will fail to represent you. The same way winners win, losers lose. The core reason to hire an attorney is to have them build the strongest, most strategic case possible. An attorney who dismisses any chance of a good outcome for you right off the bat, without even taking a swing, has already walked. Look for one who's willing to step up to the plate and go to bat for you.

- **General practitioners**

This is one time when expertise is priceless. You want someone with highly specialized skills in—and knowledge of—criminal law to represent you in court. What you *don't* want is a jack of all trades who's a master of none. Criminal law is nuanced and detailed and constantly changing. A general practitioner will lack focus and understanding and this could cost you gravely.

Finding an attorney to defend you is not the time to cut corners or be overly frugal. This is your life. Your freedom and your future are on the line.

- Find someone with sterling references from clients and peers.
- Find someone you feel comfortable talking to and working with.
- Find a law firm with at least one board-certified attorney and one former prosecutor.
- Find someone with scientific training who has invested significant time and effort in their craft and continues to educate themselves in their field.

Yes, this will take some effort and investigation on your part. But by keeping these alerts in mind, you have a heads up on a lot of other people in your

shoes. You know what to look for— the kind of attorney you want in your corner investigating your case and advising you throughout the process.



Red Flags

- Bargain basement prices—you get what you pay for
- Answering machines instead of a real person when you call
- No private investigator on staff or on call
- Promises on outcomes
- General practitioners—no specialization means no expertise

Lawyer Up!

It bears repeating: Drug charges in Texas are serious. You need a serious lawyer to prepare your defense.

The lawyers at Texas Criminal Defense Group are committed to providing clients with an aggressive defense that best suits their needs. In some cases we avoid a conviction entirely.

In other cases, it means positioning ourselves to negotiate from a position of utmost strength in order to secure an outcome that avoids the worst consequences that a conviction can bring.

Some cases are won by filing motions that use the law to the client's advantage. In other cases, we expose the weaknesses in the government's alleged evidence to win a verdict of "Not guilty."

We tailor our strategy to your case after conducting a thorough investigation of the facts and law. If you must eventually decide between a trial and a negotiated resolution, we will make sure that your decision is a smart one, with a full understanding of the risks and advantages of each potential course of action.

The criminal defense lawyers at Texas Criminal Defense Group are dedicated professionals. They have earned the respect of Texas judges, prosecutors, and other defense attorneys, as well as a litany of kudos and appreciation from past clients.

Our lawyers meet regularly to brainstorm every case we handle, and we have paralegals and an investigator on staff to assure your case receives the careful attention it deserves.

No drug case is too big or too small. No matter how seemingly minor the charge is, it is always a big deal to the person being charged. Don't ever underestimate how important it is to clear your record whenever possible. We believe that every person charged with a crime is entitled to respect. We will give the same loyal representation to you that we afford every client, regardless of whatever crime they claim you've committed.

We know what's at stake in a drug prosecution. Your freedom, your reputation, and your dignity are what are important. The law presumes that every client is innocent. So do we.

Our job is to protect your rights and to assure your fair treatment in a criminal justice system that too often views people as mere statistics.

If you are questioned or arrested by the police or charged with a drug crime, every minute counts. You need legal representation immediately to deal with bail and other immediate concerns and to begin an investigation before valuable evidence is lost.

In conclusion

By now, having read this book, you have a stronger grasp of the charges and penalties here in Texas. And if you have already read our companion book, *A Citizen's Guide to a Drug Arrest in Texas*, you have a good insider's perspective on the processes of the criminal justice system and some possible defense measures you and your attorney can take. (If not, ask us for a copy.)

You are now confident that you understand not only your rights but also why they are important and how critical it is that you do not let your guard down—ever. You know **NEVER** to talk to or trust the police because you now appreciate that they're not on your side.

In this book, you have a firm and informative guide as to how to choose the right attorney to best represent you and stand up for your rights in court. These same attributes are what we insist upon in the attorneys in our firm.

At Texas Criminal Defense Group, our attorneys maintain superb AVVO ratings and have received strong endorsements from their peers. We do whatever it takes to ensure we meet each and every criterion on that list of "must haves."

We possess years of experience defending clients against drug charges, conducting thorough investigations in conjunction with skilled private investigators, and doing our utmost every day to serve our clients' best interests.

This is what we want you to have. This is what you deserve.

If you find yourself facing drug charges in Texas and are unsure how to proceed, we can help. We're always available to sit down and discuss your case with you.

We believe so strongly in this that we make it possible to contact us 24 hours a day, 7 days a week, every day of the year. Arrests aren't limited to Monday to Friday, 9 to 5, and neither are we.

Try us. Call 833-Texas-Justice (833-839-2758). There's always someone at the other end to answer your call.

For more information about our team, the firm and its multiple convenient locations, and our services, along with numerous helpful articles on drug-related offenses and controlled substances, please visit our website at texascriminaldefensegroup.com.

If you or a loved one ever find yourself arrested for possession of drugs in Texas, this book is a must-read!

Attorneys Texas Criminal Defense Group believe in empowering people to make the best decisions when confronted with potentially life-altering events caused by a drug arrest. Everyone is entitled to a strong and passionate defense. That is why they have written this book. It will arm you with information about drug arrests in Texas and how to assemble the best defense possible.

ABOUT THE AUTHORS



Stephen L. Hamilton

Attorney Stephen Hamilton is the founding partner and lead trial attorney at Texas Criminal Defense Group. Stephen ranks among the fewer than 1% of practicing criminal attorneys across Texas who have achieved coveted board certification in criminal law by the Texas Board of Legal Specialization. He has been awarded numerous awards, and his counsel is highly esteemed by his peers. He is a lifetime legal member of the National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.

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