

**PROTECT YOUR FUTURE**  
**KNOW YOUR RIGHTS**

# **A Citizen's Guide to a Drug Arrest in Texas**



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By the Texas Board of Legal Specialization

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**PROTECT YOUR FUTURE ★ KNOW YOUR RIGHTS™**

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KNOW YOUR RIGHTS**

# **A Citizen's Guide to a Drug Arrest in Texas**

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**If you have been arrested and would like a free consultation, contact us at the numbers listed above.**

## **Stephen L. Hamilton**

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## **DISCLAIMER**

The information in this book does NOT constitute legal advice. You can only obtain sound legal advice from a lawyer who has been given the specific facts of your case. Every case is different. This book covers many of the various types of drug charges. Not all will apply to your situation.

Please note that our lawyers are happy to consult with you if you do decide to obtain legal advice. However, please understand that simply reading this book does not form an attorney-client relationship with our firm or with the author or any attorney listed.

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# Preface

While this book is not designed to be a do-it-yourself, get-out-of-jail-free defense manual for drug arrests, it does contain virtually everything 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. That includes you.

While we strongly recommend that you read this book from cover to cover, we realize that your situation might well be urgent. If so, you are no doubt anxious to jump right to the sections that pertain to your particular situation because you need specific information right away.

It is our hope that you'll never find yourself in need of this 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 the entire book, as you may find the tips and techniques we discuss throughout to be helpful. You may also find our companion book, *What Plea Lawyers Won't Tell You: the Real Consequences of a Texas Drug Conviction*, helpful.

Trust us: forewarned really is forearmed.

# Meet the Team at Hamilton, Hull & Rogers

Author Stephen L. Hamilton is the founding partner and lead trial attorney at Hamilton, Hull & Rogers. Stephen has been awarded the highest possible AVVO rating (10) and his counsel is highly esteemed by his peers. Stephen also ranks among the fewer than 1% of practicing criminal attorneys across Texas who have demonstrated mastery of the law by achieving coveted board certification in criminal law by the Texas Board of Legal Specialization.



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Stephen L. Hamilton

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Stephen is trained under the National Highway Safety Administration (NHTSA) guidelines to administer the Standardized Field Sobriety Tests (SFST) and subsequently completed training as an instructor. He also completed the training as a breath test operator of the Intoxilyzer 5000 breath test machine and is a certified breath test instructor and maintenance technician of the unit. He has attended the Robert F. Borkenstein course on Alcohol and Highway Safety: Testing, Research and Litigation taught at Indiana University,

the same course that Texas prosecutors' Intoxilyzer experts attend. In addition, Stephen has completed the Blood Testing Gas Chromatograph training in Chicago, and is skilled in the operation and use of the machine that Texas uses to test a person's blood for alcohol and/or drugs. Stephen has also completed the solid state drug testing class in Chicago, the training that lab techs in Texas undergo to test drugs, both illegal and legal. He is a founding member of the DUI Defense Lawyers Association and a member of the National College for DUI Defense, National Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyers Association, and several regional associations. He 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.

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## Meghan Rogers

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Born and raised in Floydada, Texas, Meghan Rogers earned her bachelor's and law degrees from Texas Tech University. Meghan previously worked in the Lubbock Criminal Defense Clinic, where she represented individuals charged with felony and misdemeanor criminal offenses. Co-author of the *Texas Administrative License Revocation Manual*, Meghan is a member of the Texas Criminal Defense Lawyers Association and a passionate believer in protecting the rights and freedoms of all individuals accused or convicted of a crime. A partner at Hamilton, Hull & Rogers, she now successfully practices criminal defense and criminal appeals.

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## Shane Byrd

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A successful local businessman and owner of three bond companies, National Bonding of Lubbock, Lone Star Bail Bond, and Garcia Bail Bond, Shane has 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. He soon realized that his passion for helping his clients extended beyond helping them get bonded out of jail. With his undergraduate degree from Texas Tech University 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 is now of counsel at Hamilton, Hull & Rogers and 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 a business owner, 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.

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## Tommy Hull

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A former Texas prosecutor, Tommy Hull is a native Texan, raised in the Texas hill country, and attended the University of Texas at San Antonio. After graduation from Texas Tech Law School, he joined the Midland County District Attorney's Office as a misdemeanor prosecutor. In less than a year he was promoted to felony prosecutor and, within months of that, named trial team chief prosecutor for a Midland County district court. As a prosecutor, before becoming a partner at Hamilton, Hull & Rogers, he was responsible for supervising all aspects of preparing and trying misdemeanor and felony criminal cases.

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## Mary Moretti

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Mary Moretti was born and raised in Houston. She graduated from Texas Tech with Highest Honors in 2006 and magna cum laude from Texas Tech Law School in 2012. While in law school, Mary earned the CALI and Jurisprudence awards multiple times, which are awarded to the student with the highest or second-highest grade in the class and was the Executive Managing Editor of one of Tech's prestigious law journals. After her first year of law school, Mary interned with the Harris County District Attorney's Office, in the Animal Cruelty Division, for ten weeks. During her final year of law school she was a student attorney in the Caprock Regional Public Defenders Clinic, representing the indigent against criminal charges and even winning a DWI acquittal in Armstrong County while still a student. Prior to coming to Hamilton, Hull & Rogers, Mary worked at the Kaufman County Public Defender's Office. As a public defender, Mary gained trial experience in all types of cases, including burglary, drug-related offenses, forgery, indecency with a child, and aggravated assault.

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## Brooke Hendricks-Green

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Brooke Hendricks-Green is a native West Texan from Odessa, Texas. She attended McMurry University in Abilene, Texas, on numerous academic scholarships and graduated magna cum laude after three years with a B.A. in Political Science, completed an internship in Washington, D.C., with former Representative Henry Bonilla, and studied in Costa Rica.

Brooke earned her J.D. from Texas Tech University School of Law, earning her 3rd year bar card which allowed her to begin practicing in court under supervision before she passed the bar. She interned with the Midland County District

Attorney's Office and worked for the Legal Aid Society of Lubbock while in law school.

After graduation, Brooke was offered a job as the sole juvenile prosecutor for the Midland County District Attorney's Office. She was promoted in under a year to be a felony prosecutor in the 238th Judicial District Court. Two years later, she was promoted to Chief of the Misdemeanor division before accepting the position of felony prosecutor at the Ector County District Attorney's Office. She was subsequently promoted to Chief Deputy District Attorney.

As a prosecutor, Brooke tried over 60 jury cases ranging from misdemeanor DWIs to felony Attempted Capital Murder and Murder. She is a member of the State Bar College of Texas, Texas Young Lawyers Association, the Midland County Bar Association, Ector County Bar Association, office holder in Midland County Young Lawyers Association, past President and current Vice President of Ector County Young Lawyers Association, Young Professionals of Midland, Kids in Court program, Junior Women's Association, Board Member for Red Cross of Southwest Texas and Midland Rape Crisis and Children's Advocacy Center, and volunteer judge for Midland Teen Court and Odessa Teen Court. She has received the Star Team Member award for the Midland RCCAC, TYLA 2014 Service to the Public Award for Small City Division for the ECYLA, and the 2014 Bob Black Leadership Award.

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### Mario Olivarez

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Mario Olivarez was born and raised in McAllen, Texas, and graduated from Texas A&M University in 2009. Upon graduation Mario worked for the Scholarships & Financial Aid Department at Texas A&M University for a year before leaving to attend Texas Tech University School of Law. Mario

was a member of the Texas Tech Administrative Law Journal and served as the journal's Executive Technology Editor during his final year. After his first year of law school, Mario interned with the Rio Grande Legal Aid office in Edinburg, Texas, assisting in a range of legal areas. Mario interned for the State of Texas Attorney General the following summer. In his last year of law school, Mario participated in the Texas Tech Criminal Defense Clinic, representing clients in Lubbock, Texas.

# Introduction

This book provides easy to understand information to help you, both in finding the right attorney and when sitting down with your attorney to discuss and construct your case.

The more you know, the more you can help to build the best, strongest case for your defense.

It is critical that you understand what lies ahead. Drug defendants in Texas can receive life sentences. The more information you gain by yourself, including what's in this book, the more time your attorney will have to focus directly on your defense.

We guide you through all of the stages—from being detained and questioned to searched and arrested—and then we take you through the various phases of a pre-trial investigation and the trial procedure itself.

Being prosecuted for a Texas drug crime can damage your life, sometimes forever. Often unfairly. For example, you might be using marijuana recreationally and responsibly—maybe even medicinally, with a prescription. If so, you do not deserve the dire consequences a drug conviction can bring. 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.

Take heart. You just need to know your options—and as quickly as possible. It's harder to make up lost ground than if 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 Hamilton, Hull & Rogers, 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.

If you are caught up in the cycle that traps many drug users—selling drugs to support your habit—you need help, not a jail sentence.

The attorneys at Hamilton, Hull & Rogers 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.

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, simply 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 in avoiding an unjust conviction or punishment.

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.

So, let's get started.

# What a Drug Conviction Means

"The County Jail looked like a tall, forbidding elementary school. Seven stories of dirty brown brick, one hundred years old and now operating at 330 percent of capacity."

– Richard Price, *Clockers*

You're not the only one who doesn't realize everything that lies ahead of you now that you're facing a potential drug conviction. Many police officers, prosecuting attorneys, judges, and even some defense attorneys don't realize all of the ramifications such a conviction can have on you. We do.

Once you have a criminal charge on your record in the State of Texas, the only way to get it expunged from your record is if the Governor of Texas agrees to grant you a pardon.

Think that's likely? Think again.

Receiving a pardon from the State Governor for any crime, never mind for drugs, is virtually unheard of. You will likely have a drug charge on your permanent record for the rest of your life. And that's true even for possessing the smallest amount.

## **What happens if you're convicted?**

To start, if you're convicted, the State of Texas can (and almost always does) suspend your driver's license for as much as six months. That's right. For six months you won't be able to rent or legally drive a car—any car.

If you have a commercial driver's license, you could lose it indefinitely. So, if you're a driver by trade, whether it's a bus driver, long-distance rig driver, or even a construction equipment operator, you'll kiss that job goodbye. You'll find yourself looking for a new job—possibly a whole new career, and one you don't like nearly as much. There's no going back.

What if you have to drive to get to work? You could lose your job if you can't get there.

And can you afford to lose your job when all the fines associated with your charges come raining down on you, demanding to be paid?

Now, imagine having to undertake a job search with a criminal record and no driver's license. How do you think potential employers will view you with a drug charge hanging over your head the rest of your life? You need to take action now.

And don't kid yourself into thinking they won't find out just because you keep it a secret. Background checks are standard operating procedure these days. Few employers will ever trust you enough to hire you when they see a drug arrest on your record.

The same goes for landlords, who routinely do background checks before taking on a new tenant. One drug charge on your record will most likely prevent you from renting a

decent home. From the landlord's perspective, you're just not worth the risk.

Even if you're a homeowner, you've most likely got a mortgage. What will happen if you lose your job, particularly in this economy? A simple possession charge could result in your being unable to find another job and pay off your mortgage. You could lose your home. Good luck trying to find a place even to rent then, with a criminal charge on your record.

## **What else could go wrong?**

- Obtaining a passport will prove difficult, if not impossible. (You can kiss goodbye those Mexican and Caribbean getaways, never mind any thoughts of starting over in another country.)
- You may no longer be eligible to apply for loans—property, school, car, personal, or business loans, for example—or be unable to receive any form of government assistance, like welfare or even unemployment. Every year, it seems, more laws are passed restricting financial aid to anyone who's been convicted of a drug offense.
- If you are a college or university student at the time of your arrest, you could be expelled and lose any federal financial aid you've been receiving.
- If you are not a citizen of the United States, a drug conviction could get you deported or deny you Naturalization. If you have a “green card,” a drug conviction (even if it's deferred), could prevent you from renewing it when your current card expires.

If that happened, you would have to exit the United States or, if you attempted to remain here illegally, it would subject you to further criminal prosecution.

And that's just part of the fallout that can follow you for the rest of your life. Is it worth all that? And if it's already just happened to you, is it worth taking the chance to handle things yourself when your life hangs in the balance?

## **Legalization of marijuana**

Recently, in unprecedented fashion, a considerable number of states in the U.S. have reduced the severity of their marijuana laws, lowering penalties and eliminating jail time. Some merely issue a citation—comparable to a parking ticket—for possession of small amounts of marijuana likely intended for personal use (that is, vs. larger amounts that someone might intend to distribute—to share or sell to others). Indeed, many states have designated the enforcement of marijuana laws their lowest priority.

Twenty-three states and the District of Columbia, as of August 2015, have legalized marijuana when prescribed for medical purposes. Of those, Washington, Colorado, Oregon, Alaska, and even our nation's capital have gone so far as to legalize it for adult recreational use. Now, that's quite a shift!

Is Texas one of those twenty-three states? Definitely not!

# Know Your Rights

"What is it about the government and its agents and employees that they can lie to us with impunity, but we risk being sent to jail if we lie to them?"

– Andrew P. Napolitano, *Lies the Government Told You: Myth, Power, and Deception in American History*

Being arrested for a drug crime can be a frightening experience. Whether or not you are innocent, if you're smart, you're worried about more than just your arrest. You're thinking about your job, your reputation, and your future.

Nobody wants to be taken away in handcuffs. You need to know what to do. And what NOT to do. You need to insist upon your rights.

The absolute first words out of your mouth the very minute you find yourself arrested by the police—or even simply questioned—should be: *I am invoking my right to remain silent and speak to a lawyer.*

However, you have a third right, one that is often overlooked. But it might very well be a right you need to insist upon right from the start—if the police insist on searching you.

That's right. There are three rights you need to remember.

1. You have the right to **refuse to consent to a search**.
2. You have the right to **remain silent**.
3. You have the right to **representation by legal counsel**.

Just about everyone nowadays is familiar with the second and third rights, as those are the ones covered in the Miranda Warning. It says that you have the right to consult an attorney BEFORE you speak to the police and to have that attorney with you when you are being questioned, both initially and at any time in the future.

If you answer ANY questions without an attorney present—because anything you say can and will be used against you—you are still entitled to stop AT ANY TIME and demand an attorney.

## **You MUST assert your rights!**

Is asserting your rights a scary thing to do? Yes. Not because it gets you into more trouble—because it won't. You have our word on that.

It's because there is the possibility, should any circumstantial evidence be relatively strong, that you could be arrested when you do. And being arrested is a scary experience for anyone.

That said, asserting your rights doesn't automatically mean they'll immediately arrest you. But the police have the right to hold anyone without charging them for up to 72 hours. That can be a very effective means of intimidating you into incriminating yourself.

Don't panic! Your lawyer will do everything in their power to ensure you are released if held without cause, or bailed out if you have been processed.

Remember: they know the ins and outs of the legal system in ways that you likely don't.

Nobody wants to be hauled off to jail. In a single instant, your very real fears for your future—your finances, your family, and your career—can eclipse everything else and cause you to panic.

And that panic makes us blurt out things we shouldn't.

This is particularly true if this is your first arrest and you don't already know an attorney to call. You will feel lost, in desperate need of information and guidance. An added complication might be that you're facing the unpleasant prospect of detoxing in custody.

Take a deep breath. What is paramount is that you keep your cool, be polite, refuse to answer questions, volunteer nothing, and confidently assert your rights.

## **How to invoke your rights**

We cannot stress enough the vast importance of remembering—and insisting upon—these rights from the first minute you are stopped.

This begins with staying silent if an officer starts to ask you questions. By all means cooperate, by handing over your driver's license and registration if you are pulled over, for example. Be polite and behave calmly. But that's as far as

you should go. If the officers ask any questions, tell them that you are invoking your right to speak to your attorney.

If an officer says to you, “You are not under arrest,” that’s fine. But you STILL must state clearly to the officer that you are invoking your right to remain silent AND speak to an attorney!

Let’s take a closer look now at each one of your rights so you are comfortable and confident that asserting your rights is not going to hurt you. Because it won’t.

# Your Rights Regarding Searches

"Is that a gun in your pocket or are you just glad to see me?"

– Mae West

The Fourth Amendment to our U.S. Constitution specifically grants each individual within its borders—whether or not they are citizens—the right to avoid being subjected to any unlawful search and seizure.

This legal right also extends to your home and even your vehicle, as long as the police officer is not in possession of a search warrant. And even then it has to specify what precisely they are authorized to search.

If the officer says they're going to get a warrant, or that one is on the way, you have the right to (and should) refuse consent until the alleged warrant arrives.

Read the warrant for yourself to ensure that: a) it is a real warrant; and b) the police limit their search strictly to what is specified in the warrant and no more.

If the police sense you're unsure about asserting your rights, they may insist on searching places they're not authorized to search. And if they find anything and you have permitted

them to search by not protesting or stating your refusal, it can and most certainly will be used against you.

An **arrest warrant** does allow the police to enter the premises and to search for the person named in the warrant if they aren't the one standing at the door, but that is all—unless incriminating evidence is lying in plain sight. *Refuse to let them set foot inside your home, even just inside the door, if all they have is an arrest warrant for you!*

A **search warrant** allows the police to enter and to search for specified evidence of a crime, but is limited to the locations outlined in the warrant.

Without a warrant, you are well within your rights to tell them they must stay outside. When there is no warrant, if you do not want to talk to them at all, you can close the door. Do it politely but firmly.

## **Searching your vehicle**

Under most circumstances, the police do not need a warrant to search your vehicle IF they have probable cause to believe that your car contains illicit drugs or other evidence of a crime. You may not be able to prevent them from proceeding to search it, but you must explicitly state to them that you do not consent to their search. If you do this, anything they find can be challenged by a skilled attorney.

## **Pat-downs**

As a general rule, the police cannot search your person (your body or the clothes you're wearing) unless you have either been arrested or consented to the search. Even if you are

supremely confident that you have nothing to hide, it is a mistake to consent to a search.

The police are permitted to frisk you for weapons if they have reason to believe that you might be armed. The police almost always believe that someone involved in a drug crime is armed, and so frisks are common in drug cases.

If the police encounter something that they claim feels like contraband while they are patting you down, they are entitled to seize it. For example, if they squeeze a bulge in your pocket and decide that it feels like a bag of marijuana, they can remove it from your pocket. Those searches can be challenged in court since whether something “feels like” contraband is pretty vague.

## **Your right to refuse**

Many people feel unjustifiably intimidated in this kind of situation. And because they don’t know they are permitted to refuse or they’re afraid to insist, they spontaneously give the police permission to search their car or home.

Perhaps they feel they have nothing to hide and that consenting to a search will help them by making them seem innocent. (It doesn’t.)

Perhaps they are frightened that they’ll be punished or treated more harshly if they say no to the police. (They won’t.)

Perhaps they don’t think they have the right to say no when addressing law enforcement officials. (They do.)

Most people admit that they consented to a search because they thought it would help their situation if they were seen to be as cooperative as possible. (It didn't help one bit.)

## **NEVER consent to a search**

Why? Because we can often challenge the legality of a search, whether it's a search of your person, your car, your home or other location—whatever and wherever—and demand that the evidence obtained be suppressed.

Why is that important? For a very important reason:

**REFUSING CONSENT TO A SEARCH  
CAN LEAD TO ALL CHARGES AGAINST YOU  
BEING DISMISSED!**

And that's what you want, right?

It's what we want.

If the only evidence they have is the evidence they seized illegally, they cannot use it to convict you and the police will be forced to release you.

This kind of challenge can only succeed, however, if you did NOT consent to the search. You only hurt yourself by agreeing to a search.

When we defend clients in court, we are legally permitted to force the State to prove that drugs or other evidence of a crime was lawfully obtained.

If you grant an officer permission to conduct a search—and not saying no is the same as saying yes—you give prosecutors

the justification they need to use such evidence obtained during a search against you.

If, on the other hand, you did not consent to a search, we now have the ability to successfully challenge the methods used by the police to obtain the evidence and potentially get that evidence thrown out of court so it cannot be used against you.

Be smart. Immediately invoke your right to remain silent and speak to an attorney.

Let's talk now about that right of yours to remain silent.

# Your Right to Keep Quiet!

"I was constantly amazed by how many people talked me into arresting them."

– Edward Conlon, *former NYPD officer and author*

One of the toughest things to do when confronted by a police officer for suspicion of a crime is to remain silent. It's human nature to want to protest your innocence, to talk yourself out of a bad situation before it gets any worse.

Why should you stay silent? Because, as the Miranda warning states:

**Anything you say can AND WILL be used against you.**

The problem? Despite your best intentions, it's what you say that invariably makes a bad situation worse. And the more you talk, the more you potentially incriminate yourself—even if you're innocent!

Too many people talk their way into a criminal conviction by thinking that the police will not arrest them if they just explain their situation. The police know this. They encourage it. And it doesn't change anything. You are still a suspect.

What's worse is that people often make statements that a prosecutor later uses against them. The statements might be incriminating or they might seem false.

And here's another trap: even if what you say is something you believe to be true, if it turns out that you are mistaken, the prosecution will make you out to be a liar for giving a false statement to the police. It won't matter that it was unintentional.

In case after case, we see people—even those who are genuinely innocent of the crimes of which they are accused—talking themselves into criminal convictions simply by not knowing when to shut up. Instead, they talk to the police, foolishly hoping to gain sympathy or, worse, they're foolish enough to think they can outsmart the police.

Police officers are professionals. They've heard it all. You're not going to talk them out of doing their job. It's what they've been trained to do, what they get paid to do. In fact, the more you protest, the guiltier you look.

Anything—*anything!*—no matter how innocuous it may sound to you, WILL be used against you in any way possible. When the police have a warrant for your arrest, they don't care whether you're innocent or guilty. It's not their responsibility to determine whether you're actually guilty or not. The fact that they are arresting you means they already believe you are guilty.

You cannot talk your way out of an arrest, but you CAN talk your way into a conviction.

Don't assume you're clever enough to convince them to release you. You will never talk your way out of an arrest, so don't bother trying.

Stay silent!

Identifying yourself correctly and saying that you want an attorney is ALL you should say to your arresting officers or the officers questioning you. Make sure you tell the police IMMEDIATELY that you are invoking your right to remain silent.

If you have been arrested in conjunction with drugs, that means they suspect you of being guilty of a drug-related crime. If you have been called in for questioning on anything concerning drugs, it's because they already suspect you are somehow involved in a drug-related crime.

By talking to the police, you lose.

Period. No exceptions.

If you *deny* guilt, they will assume you're lying.

If you *admit* guilt, you have just convicted yourself.

There is just one question that we, as criminal defense attorneys, agree that you should answer, and that is to confirm your identity. The police want to make sure they are arresting the right person.

If they ask you to identify yourself, tell them your name. Tell them only your name. Don't volunteer your address or any other personal information whatsoever! To any other question, respond politely but firmly that you will not answer without first having a lawyer present.

## The sin of omission

Even what you *don't* say when you talk to the police can be used against you. For example, if you omit facts or details when you talk to the police, no matter how inconsequential, either because you overlooked them or they seemed minor or irrelevant, and those facts and details later turn out to have *any* bearing on the circumstances, the prosecutor can—and will—make it appear as though you deliberately lied, that you were trying to hide something.

Congratulations. Now you look even guiltier!

All because you volunteered to talk when it is completely within your rights to remain silent.

Here's something else to think about. If you willingly speak to the police, you have absolutely no control over how they document their version of events—how accurately they write down what you said. And now it's a "he said/she said" situation.

And who do you think the court is going to believe?

They may distort or misunderstand your words. They may "forget" answers you give that do not conveniently support your guilt. By the time they get around to writing their report, you may not recognize the statement they claim you gave.

If you later testify that the report is wrong, the prosecutor will paint you as a liar.

If it comes down to your word against that of the police officer, are you willing to put your fate in their hands? Are you willing to accept the odds that the jury will believe you instead of the officer?

## **Recorded statements**

Sometimes such conversations are recorded, but if you were to discover that, even with a recording, their version of what you said differs from what you remember, you would have to prove that the recording had been tampered with or edited in some way.

So, again, if your statement is used in court, the accuracy of your statement now rests on your word against the police officer's version of events.

*Will the court believe you?*

*Or will they believe the police?*

Remember: the police are not on your side. It is not their job to figure out whether you are guilty or innocent. And they're not obligated to treat you as innocent until proven guilty.

It's their job to suspect you of being guilty, to execute your arrest, and then turn you over to the judicial system. Only then does the issue of whether you are innocent or guilty come into play. You have to wait for the judicial system to decide whether you're guilty or not. At that point, the police department's job is essentially done.

To get you to that point, they are permitted to use deception as an interrogation tactic, to trap you into saying something that will make you appear guilty.

That's right. While it is illegal for you to lie to them, it's perfectly legal for them to lie to you. And they will. And that means they can exaggerate the seriousness of your situation in order to frighten you into protesting your innocence.

Worse, they might convince you to admit to a lesser offense by telling you it's the only way to dodge a bullet and avoid being convicted for a more serious one.

We call this the self-inflicted wound. If you do this, you've just shot yourself in the foot.

It's much easier for a competent attorney to make sure you don't injure yourself when you refuse from the very start to say anything unless your attorney is present.

Bite down. Don't shoot your mouth off. Do it for your own safety.

Remain silent! That's the best preventive medicine.

### **It's only questioning; you're not under arrest**

If the police suspect your involvement in a crime involving the delivery or possession of a controlled substance but don't have sufficient evidence to justify an arrest, they can bring you in for questioning.

The idea is to get you talking in the hope that you will respond to their questions by confessing or incriminating yourself. Your statement then provides them with a reason to arrest you.

But that's not all! The police might tell you that they only want to question you when they already have probable cause to arrest you.

Why? Because they aren't required to Mirandize you if you're just there for questioning. However, if they put you

in custody, they must inform you of your rights before they ask you any questions.

The police generally do not want to remind you that you have the right to remain silent, to talk to a lawyer before you answer any questions, or to have a lawyer present during the questioning, because the last thing they want is for you to exercise those rights. It makes their job a lot harder when you do.

Sometimes the police will tell you that you are not a suspect or that they just want to confirm information they already have. Those statements may or may not be true. They are also irrelevant.

You might not be officially labeled a suspect when you are questioned, but you might become a suspect later. Recognize that talking to the police can and possibly will get you into trouble. NEVER do it without getting legal advice first.

The police may tell you that things will go much better for you if you cooperate, that refusing to talk to them and answer their questions will make things worse for you. That just isn't true. The police want to make things better for themselves and the prosecutor, not for you.

The best person to advise you is a licensed criminal defense attorney. Having one on your side can mean the difference between sitting in jail, sweating your fate, and walking away, a free individual.

Let's look now at why it's so important to have an advocate at your side, fighting for your rights. Someone who knows how the system works and the players involved.

# Your Right to Legal Representation

“Has he come armed, then?” she asked anxiously. ‘Has he brought a pistol or a sword?’ Ian shook his head... ‘Oh, no, Ma’am!’ he said. ‘It’s worse. He’s brought a lawyer!’”

– Diana Gabaldon, *Voyager*

Your right to speak to an experienced, board-certified criminal defense attorney is equally (and arguably more) important as refusing consent to a search and remaining silent, in terms of protecting your interests and ensuring the best possible outcome.

They go hand in hand. When you assert your right to remain silent, you must add that you insist on speaking to an attorney before saying anything else.

When you spell it out for them by saying: “I will not speak to you without having a lawyer present,” they MUST stop asking you questions. The conversation is over until your attorney arrives.

If you are called in for questioning, always bring an attorney with you so that your attorney can ensure your rights are protected, including your primary right not to incriminate yourself.

If you are suspected of a drug crime or might become a suspect, your lawyer will likely advise you not to talk to the police under any circumstances.

If you are a witness to a drug crime, your lawyer will still likely advise you not to speak to the police until they have had an opportunity to talk to the police or prosecutor first.

More often than not, your lawyer will likely tell you to decline any and all requests to make a statement.

## **Making a statement**

If you do make a statement to the police, you should ALWAYS have a lawyer at your side. Police detectives rely on intimidation and deception as interrogation tactics. They are less likely to do so, or do so successfully, if a lawyer is by your side. A lawyer will protect your rights and will end the interview if the police violate them.

## **I can represent myself**

Too often we get panicky calls from people who have been arrested for possession of marijuana, or something else they view as relatively minor, and who were initially convinced that they could save themselves the expense of an attorney by representing themselves.

*Ouch.*

Many people mistakenly assume their drug charge is not serious. They delude themselves by thinking, "I'll just talk to the judge and prosecutor myself," as if they're talking about a friend whose car they just accidentally dented.

Sadly, these individuals are now in over their heads. They have no idea of the life-changing consequences they face because they thought they knew enough to defend themselves after watching all those seasons of *Law and Order*.

We don't watch *Law and Order*. We live it.

You think you can negotiate successfully with the prosecutor? It's their job to prosecute people—it's what they're trained to do for a living. Their career success is determined by how many criminals they put away, not by how many they let escape. If it were really that easy, nearly every defense lawyer's client would walk without much effort.

Make no mistake: the prosecutor is NOT on your side.

"But," you're thinking to yourself, "the judge isn't looking to put me away just for having a few drugs, or for being an addict. A judge is impartial, right? They're there to listen."

Wrong again.

Yes, the judge's job is to be impartial—to be an impartial party standing between the defense and the prosecution. She/he is NOT your advocate. Only a defense lawyer can advocate for you.

You cannot attempt to explain your situation and expect them to care or be sympathetic.

## **Criminal charges are very serious**

Don't kid yourself. This is why we say the information provided in this book is not a do-it-yourself manual. 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 Hamilton, Hull & Rogers, 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.

# Finding the Right Attorney

"To me, a lawyer is basically the person that knows the rules ... We're all throwing the dice, playing the game ... but if there's a problem, the lawyer is the only person who has read the inside of the top of the box."

– Jerry Seinfeld

You're in a jam. You've just been arrested and now you have to make one of the most important decisions of your life—and you have to do it from inside a jail cell.

You look around, anxiously. How are you supposed to find not just any lawyer but the *right* lawyer?

We cannot urge you strongly enough to take full advantage of this constitutional right. The sooner you retain an attorney to jumpstart your investigation, the better your odds become. If you don't already have an attorney when you are arrested, start looking for one immediately.

We'll go into considerable detail in this chapter, breaking down the key components in a superb attorney (and their firm) and then, in the following chapter, we list the things we consider to be red flags—things to avoid.

But first, when you do reach out to someone from jail, whether it's a potential attorney or just a friend or family member, we know how easy it is to blurt out details of your situation when you are feeling panicked.

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### **IMPORTANT:**



- *All phone calls from jail are recorded. Anything you say on the phone 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!* If the person you're talking to tries to get you to tell them what happened, just say:

*I'm sorry, but I cannot discuss that on the phone. I'm calling because I need an attorney to get me out of jail. Will you help me?*

The sole purpose of that phone call is to find a lawyer who can get you out of jail. Call your loved ones, ask them to get a lawyer for you without explaining the details of your

situation, and focus on getting a bond or bail set and getting out of jail—and remaining silent. That's it!

Once you make your call and have set the wheels in motion to get a lawyer, it's time to sit quietly and wait. Don't speak one word to anyone about your charges or crimes while you are in holding. Save it for your lawyer.

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**IMPORTANT:**



- *You're not obligated to keep that attorney*

Start shopping around, if you're unsure. 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 that you are happier with.

Choosing an attorney is arguably the most important decision you will have to make in this legal process. There are several key things to look for in identifying a great attorney, and certain red flags to avoid.

## What to look for in a law firm

Why do we stress looking for a law firm rather than simply a lawyer? Because, frankly, the last thing you want is a one-man show.

One attorney cannot possibly do everything needed to represent a client, from filing motions to tracking down witnesses, to reviewing discovery, to performing a comprehensive investigation, including background checks—not to mention court appearances and making time to sit down with you repeatedly.

Now, add several clients to that pot and imagine the frantic, exhausted stirring that a single lawyer must do, without anyone to help them. Many of these one-man shows don't even have staff to answer the phone. So, now, add having to stop to answer every phone call to that list of responsibilities.

Need we say more? You need a skilled, experienced, cohesive team, one with lots of hands to look under every rock in order to save your skin.

Here is what you want in a law firm representing you in Texas:

- **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.** At least one attorney in the firm should have extensive prosecution experience, someone who can anticipate the prosecution's strategy and prepare for it, who knows with certainty when the prosecution's case is weak and what to zero in on.
- **At least one firm member possesses scientific training.** You need a law firm with attorneys who can process the raw data in lab reports, understand the science, techniques, and instruments of drug testing, and know how to shrewdly evaluate the scientific evidence in your case. You need a firm whose attorneys have invested significant time, money, and energy into educating themselves on the science of drug charges.

- **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.

Criminal law is complex and nuanced, and when it comes to controlled substances, both legal and illegal, it is always changing.

- **The firm has a private investigator on staff.** 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.
- **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 also 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 and the law firm's staff should always be accessible, approachable, and helpful.

You should never feel pressured to retain the lawyer you find first to get you out of jail or work with a law firm you don't feel comfortable with.

What you want is professionalism and experience. That is 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 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 that, you'll be moving forward with far greater ease.

## **How to identify a superb attorney**

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

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

There are many things that only experience can provide, 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, whether good or bad, is not an attorney you want defending you.

If you are going to 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, and lab results are always subject to error. And those results can make or break your case. If you are

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 really 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 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 is 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—that would be downright bad for their reputation.

Endorsing another attorney means they are 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 are 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 and their work are 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. What's that? Good question. That's an important consideration so let's take a closer look at what it is.

## AVVO rating

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 ingredient 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.

## **Your contribution 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 chapter 15, 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 make the best 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 him or her. 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 absolutely everything concerning your case.

You should be apprised of the specifics of the charges being brought against you and 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* your case is a good or bad case, and make sure you fully understand what the prosecution is offering you *before* you show up to negotiate a deal.

If your attorney brushes aside your questions with “We’ll talk about it in court,” run for the hills. A competent attorney would NEVER put you in that position. You are entitled to know what you are getting yourself into BEFORE you make decisions that could and likely will affect you for the rest of your life.

When an attorney assesses the potential outcome of any case, they should always make it clear that no outcome is guaranteed. Their assessment should always be accompanied by an “I can’t say with any certainty.” If an attorney takes a

look at your case and immediately decides that you're either doomed or it's in the bag, don't waste another minute. Find 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 at least an 8 (preferably 9 or 10)
- They give you homework
- They keep you informed
- They do not promise outcomes

# What Attorneys to Avoid

"And whether you're an honest man, or whether you're a thief, depends on whose solicitor has given me my brief."

– W.S. Gilbert

It's not easy to find a skilled defense lawyer at a moment's notice, one you can trust to fight for you. It's a huge decision. Your life depends on it. 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?

## 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

## What should you know to avoid?

- Cheap Lawyers

In this business, you really do get what you pay for. Right now, you're 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. You can't 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 the firm lacks 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. To do so is downright unethical. No one can ever guarantee a home run before seeing the pitch. Witnesses recant, disappear, or are simply unreliable. A juror harbors a secret bias against you. The police or prosecution inadvertently or willingly conceals information that would prove favorable to your case.

No ethical lawyer would promise what is impossible to guarantee. If an attorney promises that he or she will get your charges dropped, drop the attorney instead.

The same goes for an attorney who tells you from the start that you're going to strike out before conducting a full evaluation of your case. An attorney who dismisses any chance 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 well-honed 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.

# Being Arrested

"I'm trusting in the Lord and a good lawyer."

– Oliver North

Being arrested is a scary prospect.

A part of that fear is the fear of the unknown—not knowing what to expect, what's going to happen, and in particular what's going to happen to you. So, it's a good idea to familiarize yourself with the process. Knowledge is power, as they say.

If the police see you doing something suspicious, such as handing ("delivery of") an apparent controlled substance to another individual, they can and will most likely arrest you on the spot.

A police officer can only arrest you if there is probable cause that you have committed a crime. Probable cause simply means that there is enough evidence to *suggest* that a crime has been committed. Probable cause is not proof against you—it is simply a strong indication or likelihood that a criminal act has occurred, one that the court agrees is worth investigating.

Police can also detain you for questioning for up to 72 hours, without a warrant and without actually arresting you, if there is sufficient reason to suspect you have committed a crime.

## **Probable cause**

Probable cause is NOT the same as suspicion. Probable cause must be based on all of the circumstances, including evidence that is reasonably reliable. For example, an uncorroborated tip from an unreliable informant generally is not enough to establish probable cause.

This is yet another instance where legal expertise can make a huge difference in how your arrest plays out.

If probable cause did not exist when you were arrested, an experienced criminal defense attorney can argue to have any and all evidence suppressed that was seized during the “unwarranted” arrest—to have it thrown out—so that it cannot be used against you.

## **Arrest warrants**

If the police investigate you for a drug crime based on a tip from an informant or on complaints about your suspicious behavior, and their investigation produces enough evidence to justify arresting you, they can ask a court to issue a warrant for your arrest.

In order to obtain a warrant, the police provide a judge with a list of the evidence they have gathered during their investigation. If the facts clearly fail to establish probable cause and a judge issues a warrant anyway, a skilled attorney will challenge your arrest.

Why is this important? Because a successful challenge prevents any evidence that is obtained during or because of the arrest—including any statement you make if you forget

rule number one, to always remain silent—from being used as evidence against you. That's a huge advantage.

Sometimes the police include information that is inaccurate, biased, or misleading. If their doing so was intentional, and they can't show probable cause without having distorted the facts, it is then possible for a skilled defense attorney to successfully challenge your arrest. And if your arrest is thrown out, then, again, evidence collected as a result of your arrest can get tossed out too.

This is where an attorney who has a private investigator available comes in handy. Court-appointed Legal Aid attorneys, for example, as well as many others, do not have skilled investigators at their disposal and typically do not have sufficient available time themselves to investigate the charges against you.

Whether there are flaws in the warrant or mistakes in police procedure when arresting you, an experienced attorney with a solid team behind them can potentially get evidence against you suppressed. A knowledgeable, skilled criminal defense lawyer will know whether your rights have been violated and jump in to protect you.

It is important to note that an arrest warrant does NOT authorize the police to search your home. Only a search warrant gives them that right. However, they are permitted to walk through your home to look for you and anyone who might threaten their safety.

They are entitled to seize any evidence they observe that is in plain view. Never leave drugs or drug-related items lying around where they can be seen by anyone who walks through the room or spotted through a window or doorway.

If a police officer comes to your door without a warrant, you are NOT required to let the officer enter your home. If the officer has a warrant for your arrest, don't resist the officer's attempt to arrest you. Step outside.

Do not run or hide.

Why? Because no matter how scary the situation might be, resisting arrest or hiding from an officer who has a warrant makes it a lot more difficult for your attorney to argue for a reasonable bail to be set.

Trying to evade arrest also makes your case more difficult to defend.

## The police are looking for you

What happens if you hear there's a warrant out for your arrest before you are actually arrested? Perhaps the police came to arrest you when you weren't at home. Maybe someone you know has already been arrested for the same drug crime. What should you do?

You are not required to turn yourself in if a warrant has been issued. However, just like not resisting arrest, surrendering yourself increases your chance that reasonable bail will be set in your case. If you surrender yourself, you are not viewed as a flight risk.

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### IMPORTANT:



- *Never surrender without first consulting with a criminal defense attorney.*

Let the attorney arrange your surrender. Your attorney will:

- explain the arrest process to you
- remind you to insist upon your rights
- make sure you know not to say the wrong thing (and that you remain silent!) when you are arrested
- follow your case to ensure that a bail hearing is scheduled promptly

They can negotiate with the prosecutor to recommend your release without requiring any bail money.

Your lawyer might also want to begin an investigation of the facts immediately, while the memories of eyewitnesses are still fresh.

The sooner you talk to a criminal defense attorney, the better your chances are.

## **Warrantless arrests**

The police can arrest you without a warrant if they witness you committing a crime. For example, if an officer sees you give or take money for drugs, they can arrest you on the spot, without having to request and wait for a warrant.

But the police don't always have to see you commit a crime to arrest you without a warrant. If there's a legitimate risk that you will run, or destroy evidence in connection with a felony, that risk might justify your being arrested, even if no officer saw you commit a crime. A skilled lawyer can examine

what happened to determine whether a warrantless arrest can be challenged.

If you are arrested without a warrant, you must be taken before a magistrate to establish probable cause. If the charge is a misdemeanor, you must appear before the magistrate within 24 hours of your arrest. If the charge is for a felony, the police have up to 48 hours to take you before a magistrate.

If the police fail to do this within the required time period, you must be released on bond. In certain instances, such as if an officer fails to hand over a copy of the police report concerning the felony you've been accused of committing to the magistrate within that time period, this can be extended to up to 72 hours, but no longer.

If that happens and you're released, it does NOT mean you are necessarily off the hook. The State can file charges later, at which point you'll still need an attorney.

It simply means you do not have to sit in jail for an excessive period of time waiting for the State to file charges against you. It does, however, give you more time to sit down with your lawyer and figure out how to tackle your situation most effectively.

Proactive is always better than reactive.

If probable cause cannot be established, the magistrate will order your immediate release. However, it's important to note that this does not happen very often. In most cases, the magistrate will agree that probable cause exists, approve your arrest, and decide whether or not to set bail for your release.

# Do's & Don'ts When Arrested

"You are remembered for the rules you break."

– Douglas MacArthur

Here are some of the tips that we at Hamilton, Hull & Rogers always share with our clients on how to cope with being arrested and begin building a solid defense right away.

If you are arrested, either with or without a warrant, you can start making strategic decisions that will aid in your defense and prevent the prosecution from gaining fodder to use against you.

- **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 the right to seek counsel. Never answer questions or volunteer any information until you have spoken with a board-certified defense lawyer.
- **DO invoke your right to talk to a lawyer.** If you don't yet have a lawyer, get one. Call a trusted friend or

family member and have them find one. (You don't have to keep them if you don't want to.) The sooner you "lawyer up," the sooner there will be someone knowledgeable and experienced standing 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 are arresting the right person, so identify yourself honestly and immediately invoke your right to remain silent. Plus, if you lie to the police, the prosecution will use it against you.
- **DON'T try to talk your way out of the situation.** You will never talk your way out of an arrest. If the police have come to arrest you, they are already convinced of your guilt. Remember: anything you say can and will be used against you. The only thing you should say after confirming your identity is that you are invoking your right to remain silent and consult with your lawyer.
- **DON'T flee from, or struggle with, the arresting officer.** Resisting arrest will only lead to more criminal charges being brought against you. Your attempt to flee will be considered an admission of guilt. You risk being subjected to 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 have just demonstrated that you are a flight risk.

At Hamilton, Hull & Rogers, 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.

From the moment of your arrest, if you follow our suggestions and listen to the advice of your attorney, you can begin to make informed decisions designed to benefit you in the long run—even if your rights are ignored when dealing with the police. No matter what happens, the minute you find yourself arrested you should remain silent, retain a defense attorney, and know your options.

# Complicating Factors

"Johnny, you don't know what a few months in jail can do to you, man. You get mean in jail, I just don't wanna see that happen to you like it happened to me, man. Understand?"

– S.E. Hinton, *The Outsiders*

The prospect of being arrested is distressing enough but your individual situation may also include things that make your current situation even more stressful.

## Going through withdrawal

Facing detoxing or withdrawal from illegal drugs while in custody is not a pleasant prospect. Going through or facing the pain of withdrawal can make you feel vulnerable, even desperate, and you might blurt out something to the police that you should not say.

Always wait and speak to your lawyer, and only your lawyer, about this. Your attorney will counsel you on what can be done in this situation and protect your rights.

## Testifying

What should you do if the police want you to testify against someone else?

The police might decide that you are more valuable to them if they can hook you into testifying against someone they view as a bigger fish. Maybe they caught you having bought drugs and want you to testify against the dealer. Maybe you've been selling small amounts of drugs to your friends and they want you to testify against whomever is supplying you with the drugs.

Often, police make all kinds of promises, including assuring you that as a witness you will not be arrested or prosecuted. Sounds tempting, doesn't it?

The problem? The police aren't authorized to make deals. And they are permitted to lie to you. So even though they make you those promises, not only can they not be relied upon but they're also not even obligated to stand behind their promises. Don't take the bait.

If the police pressure you to testify against someone and you agree without first speaking to your attorney who will ensure that the prosecutor will uphold the deal, you've just flushed away any guarantee that they'll hold up their end of the bargain.

Only a prosecutor can make you a deal that holds water. Promises by police of special treatment, reduced charges, or lesser sentencing in exchange for your testimony are a potential leaky lifeboat. It might look like your only chance at survival, but it may do nothing more than delay the inevitable—full prosecution against you.

And what will you do if the prosecution decides your testimony wasn't anywhere near as incriminating as they had hoped? What if you testify against someone who gets off?

Testifying is a public declaration of someone else's guilt, which carries tremendous risks, especially if the prosecutor decides to renege on the deal and prosecute you anyway.

If the prosecution decides that you didn't cooperate fully or that you were withholding information, they can and likely will back out of any deal they made with you and you'll find yourself being prosecuted anyway. The only thing you will have gained for your trouble is the reputation of being a snitch.

At Hamilton, Hull & Rogers, we sit down with our clients and examine all the aspects and ramifications of taking such steps BEFORE they decide what to do. We ensure that our clients understand the full scope of what they are being asked to do and what risks they are taking.

Always ensure your attorney takes the time to do this so that you are comfortable with the decision you're making and that no surprises lie around the next corner, waiting to trip you up. If your attorney doesn't do this, it's time to get another, more experienced attorney, one who is truly advocating for you and cares about the outcome—who cares about you and how this will affect your life.

We are always completely upfront with our clients concerning all the benefits and perils of becoming an informant in order to help them assess what their best options are. This is not a time for surprises.

Don't take chances. Have your attorney talk to the prosecutor to negotiate a deal. An experienced criminal defense attorney knows what to do to ensure your deal is enforced. They'll have your back.

Hamilton, Hull & Rogers simply want to ensure you are making this choice from a fully informed position and that you have a lawyer on your side, looking out for your rights.

If the police pressure you to testify, don't cave—ask to speak to an attorney. And say nothing more.

## **Being subpoenaed**

What if instead of negotiating your testimony, the prosecution subpoenas you to force you to testify? Always refuse to make any statement on the grounds that you do not want to incriminate yourself. But you need to know that your refusal does not constitute a free pass. By granting you immunity from self-incrimination, the prosecution can force you to testify.

Granting you immunity means that anything you say won't be held against you. Also, if self-incrimination isn't a risk for you when testifying, you can't claim you have the right to avoid answering their questions. You will have to answer or be tossed in jail.

Before you testify, you need to talk to an experienced criminal defense attorney. Why? Because granting you immunity does NOT make you immune to prosecution.

Many witnesses mistakenly believe that if they're promised immunity, they'll just walk away after testifying and their problems are over.

**WRONG!**

Granting you immunity in exchange for your testimony is not the same as giving you a "Get Out of Jail Free" card. All it

does is prevent the prosecution from using your testimony against you in any subsequent criminal proceeding. You can still be tried for your crimes!

Not only that: if the prosecution promises you immunity but the judge doesn't enter the correct order, your promise of immunity will sink like a stone. And you might sink right along with it.

Your attorney, on the other hand, can and will ensure that the judge enters the correct order to grant you immunity. And they will counsel you as to how to testify correctly in a way that ensures your rights are protected.

Why do you need legal advice before testifying? It's no big deal, right? Or so you tell yourself. Maybe it's "just" in front of a grand jury. That's not the same as testifying in court, right? And they're impartial, right? Sadly, no.

A startling 2014 two-part feature in the *Houston Chronicle* on how a grand jury browbeat a witness into recanting a suspect's alibi stated: "Texas grand jurors don't just inquire. They interrogate. They intimidate. They appear to abandon their duty to serve as a check on overzealous government prosecution and instead join the team."<sup>1</sup>

Is that really something you want to face on your own, without getting legal advice first? We don't recommend it. Don't roll the dice. Go for the sure thing—talk first to a knowledgeable attorney who knows all the rules.

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<sup>1</sup> "A disturbing glimpse into the shrouded world of the Texas grand jury system" by Lisa Falkenberg, *Houston Chronicle*, July 17, 2014, updated April 20, 2015, <http://www.houstonchronicle.com/news/columnists/falkenberg/article/A-disturbing-glimpse-into-the-shrouded-world-of-5626689.php?cmpid=twitter-premium&t=7436fa9ed6d4bfc38c>.

## Becoming an informant

Instead of asking you to testify, police may try to convince you to become an informant. They may want to arrest your dealer or, if you were dealing drugs yourself, arrest your supplier. They may want to arrange buys of larger and larger amounts of drugs, perhaps from more than one source, so they can arrest them all.

Again, the police can make promise after promise to you without having to honor a single one of them. You can do all they ask based on those promises and, once you're done, you may find yourself going down right alongside those you just helped to prosecute.

When the sharks start circling and you feel yourself starting to panic, remember one thing: speaking to an experienced criminal defense attorney before you agree to serve yourself up on a plate to the police can mean the difference between protecting yourself and getting chewed up and spat out.

There are significant dangers to you in acting as an informant. Never minimize the risks. Your attorney can spell them all out for you. You should never make such an important, life-affecting decision without knowing all the risks. And the only one you can count on to tell you of all the risks is your attorney.

If the police promise you a reduced charge or even immunity, it's not because they think you're a better person for agreeing to become an informant. In their eyes, you are just as guilty whether you help them or not. And they're going to come after you for your alleged crimes after you've done all you can to help them. That's their job.

But it's not your job to make their job easier.

When they've arrested everyone they can, based on the evidence you supply, you will likely then be arrested yourself. You may even end up being incarcerated in the same jail or prison as those you informed against. We urge you not to ignore these risks.

If the police pressure or try to coax you into cooperating, shake your head and say, "I want to speak to my lawyer first. And I want my lawyer present when I talk to you."

No matter what threats or promises the police make, stick to your guns. Do NOT make ANY admissions or statements to the police.

Even if you want to cooperate, you should do so only AFTER your lawyer has done everything possible to protect your rights. Often after learning about the potential dangers associated with becoming an informant, many people prefer to risk criminal prosecution instead.

The decision is ultimately up to you, but it is not a decision you should EVER make without legal advice. You wouldn't let someone operate on you without first knowing that they're a licensed surgeon and without knowing all the risks ahead of time.

Don't put your life in the hands of the police. Talk to a board-certified attorney.

# Booking and Bail

“I’ve never had a problem with drugs. I’ve had problems with the police.”

– Keith Richards

In Texas, if you’re arrested for a drug crime, you’re usually booked immediately and jailed. All of your personal property is inventoried and placed into a locker, and the booking officer asks you a series of questions in order to fill out a form. Most of these questions are about details to identify you—height, weight, address, tattoos or other distinguishing marks, etc. They’ll also ask you about any medical conditions you have that might require attention while you’re in jail.

Once that’s done, you’re photographed, fingerprinted, and possibly searched.

## Dealing with the booking officer

Despite our repeated advice to remain silent and not volunteer anything beyond confirming your identity to police, there is one other time that you will need to speak to the police. That is when you are being booked. Let’s take a look at precisely what pieces of information you must share, and what others are best saved until *after* you talk to your lawyer.

## What not to say during booking

While it is quite safe for you to answer identifying questions such as height, weight, and identifying marks, bear in mind that you may not want to reveal your home address if there are drugs or anything there that might link you to a drug crime at that location. Think carefully before you answer this question. Note that if you were arrested at your home, or you were stopped when behind the wheel of a vehicle and produced your driver's license when asked, they have already confirmed where you live.

If you are facing detoxing or withdrawing from illegal drugs while in custody, ***this is NOT something you want to confess to the police!*** Always wait and speak to your lawyer about this. If they ask any questions about your health or mental state that can potentially link you to drug use, just refuse to answer them. Ask to speak with your attorney instead.

If you are arrested without a warrant, you can expect something to happen within 24 to 72 hours. In the meantime, we cannot stress strongly enough how important it is for you to remain silent—not to talk to police about the events you are accused of and not to talk to anyone else—and that includes your cellmates. Speak ONLY to your lawyer.

Always exercise your right to speak to a lawyer before discussing ANY aspects of your arrest or what led up to it, no matter how innocuous it might seem to you at the time.

This is not the time to gamble on the security of your future by saying something you can't take back.

And contrary to what you may have been led to believe, you aren't necessarily limited to a single phone call in order to obtain legal counsel. You're not out of luck if you

get no answer or someone's voicemail. Typically, you will be afforded the opportunity to make as many phone calls as it may take to reach someone.

Not every prisoner knows this. And that's one reason why we make reaching Hamilton, Hull & Rogers so easy. Our phones are monitored round the clock, 24/7, every single day of the year, whether it's business hours on a workday or right smack in the middle of a holiday.

Law enforcement knows no days off and crises always seem to happen when it's least convenient to reach help. Rest assured that you can reach us at 800-456-STEVE no matter what time of the day or night you call.

## **Who else you should never talk to**

While you are in holding, keep your lips sealed. You can make small talk with the people you are locked up with but do NOT say anything about the crimes you were arrested for, and say nothing that could be interpreted as an admission that you use—or have ever used—illicit drugs.

The reason? Because jails are full of snitches. Everyone in there is looking for a way to make a deal that would somehow improve their own situation. And if you don't give them what they want, they are often not beyond fabricating something in order to secure a deal for themselves.

Say nothing! If you disclose information about your crimes or drug use to a fellow inmate, it can be used against you. The key here is to give them zero—*zilch!*—to use against you.

Jails are also populated by inmates jokingly referred to as “jailhouse lawyers.” These inmates will try to convince you that they know precisely how to handle your case.

We don’t care if the person in the cell with you turns out to be a criminal defense attorney. Do you really want to take legal advice from someone who’s been arrested? Wait until you sit down privately with your own lawyer to discuss what happened and formulate a defense.

## **How long it takes**

Within the first 72 hours, you should be taken before a magistrate to determine your release. If you were arrested without a warrant, the magistrate will either find that there was no probable cause for your arrest and release you or, more likely, that there was indeed probable cause. If you are not remanded (meaning held without bail, which typically is only done in cases where you are deemed to be either a serious flight risk or a danger to society), the magistrate will set a bond amount.

If you were arrested on the basis of a warrant, probable cause will have previously been established by a magistrate, so bail will be set based on the warrant.

How serious your charges are and how likely you are to voluntarily appear in court (vs. fleeing the jurisdiction) will weigh heavily on the conditions of your release.

If a warrant for your arrest has been issued, the best thing any law firm can do at this moment is to arrange for a “book and release,” so that the bond is posted at the same time that you turn yourself in.

We do this for our clients all the time. This way you ideally spend only as much time in jail as it takes to book in, do the booking process, and be released. In most cases you don't go into general population and are in jail for only a few hours.

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 (favorable) result on a drug test will strengthen your defense and your mitigation package, which consists of everything that points to you being a decent person who deserves a break. (More about mitigation packages in chapter 15.)

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?

## **Release on bond**

If you've been arrested without a warrant, you must be released on bond unless a magistrate reviews the arresting officer's sworn affidavit to determine whether probable cause exists against you. This has to be done either:

- within 24 hours following a misdemeanor arrest, or
- within 48 hours following a felony arrest

Your release can be postponed for up to 72 hours if a magistrate authorizes the postponement.

If you're taken before a magistrate, the magistrate can order your release if you were arrested without a warrant and without sufficient probable cause. In most cases, however, the magistrate will find that probable cause exists and set bail. If an arrest warrant was issued that led to your arrest, probable cause will have already been established and the magistrate will set bail without further investigation.

## **Personal bonds**

In most cases, a magistrate can release you on a personal bond, which doesn't require you or someone else to post money or other security to guarantee that you'll reliably appear in court later on. If your arrest is related to a serious drug crime, only the judge assigned to your case may be able to order release on a personal bond.

If you are arrested for a Texas drug crime, you have a better chance of securing your prompt release on bond if you are represented by a lawyer.

Whether you're released on a personal bond or need to pay cash bail depends upon how serious the charges are and the likelihood that you'll appear in court when required to do so. If you don't appear to be a flight risk (particularly if you have a job, house, and children), you stand a better chance of being released on a personal bond than someone who has no ties to the community.

## **Bond conditions**

If you're released on bond, the court will set the conditions of your bond, including your needing to appear in court when necessary. In drug cases, you may also be required to submit to drug tests or to participate in drug treatment as a condition of your release. Other conditions may also be set, including that you commit no crimes and use no drugs after being released.

If the magistrate requires cash to secure your release and you can't raise it yourself, you might be able to post a "surety bond." You pay a fee to a bail bondsman, usually a percentage of the bond amount, and they pay the cash on your behalf, which they get back after you later appear in court. It's a bit like an insurance policy—you pay a one-time premium and they front you the money to get you released.

# Pre-trial Phase

"Mom and dad probably told you I've been arrested. I'm innocent. I want you to know that."

– Dianne Harman, *Cornered Coyote*

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

## Misdemeanors

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 level of charge is unlikely if you are arrested for a Texas controlled substance offense, since very few drug crimes are judged to be that minor.

Class A and B misdemeanors are charged in a county court or a county criminal court and are subject to fines of \$2000–4000 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.

## Felonies

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 (first degree, second degree, and so on), typically involve jail time of at least two years and, depending on the seriousness of the degree and the amount of drugs involved, can range up to 99 years or life behind bars. Accompanying fines run as high as \$10,000 or even higher in certain aggravated circumstances.

If you're charged with a felony, your charges will be determined by a grand jury. It is important to understand that while you may be asked to testify in front of the grand jury, this is not an opportunity for you to present a defense against the charges and your attorney will not be permitted to speak in your defense. The proceedings are merely to determine whether there appears to be sufficient cause to warrant prosecuting you for the crime(s) for which you are being charged. Also, unlike a criminal trial, this jury does not have to be unanimous: if only nine of the twelve grand jurors find enough evidence to charge you, that is considered good enough in Texas.

Grand juries were originally designed to protect us from unwarranted prosecutions. A grand jury is intended to be neutral in determining whether the evidence indicates you've committed a felony; but, in reality, the grand jury is controlled by the prosecution, as that newspaper story in chapter 10 revealed. A prosecutor tells the grand jury what crimes to charge and the grand jury typically does what the prosecutor wants. While nine of the twelve grand jurors must agree on the charges, it is not difficult for the prosecutor to find those nine votes.

## **Indictment**

If (or more likely when) the grand jury votes to charge you with a felony, the formal charging document is called an indictment (also known as a “true bill”). An indictment returned by the grand jury is filed in the district court or criminal district court in the county where the grand jury is sitting.

The grand jury can also decide not to indict you by returning a “no bill.” That rarely happens and it does not prevent a subsequent grand jury from returning an indictment against you that charges the same offenses. Double jeopardy does not apply to grand jury hearings.

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.

In some cases, we may advise you to waive this 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 such an agreement with you, based on your specific situation.

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. Your arraignment can also be waived if your attorney thinks it is not necessary. In that instance, a plea of not guilty is automatically registered on your behalf.

If you appear at your arraignment and you are not represented by a lawyer, the court will ask whether you plan to obtain representation. The court might delay the arraignment, if necessary, to give you more time to arrange for legal representation, but this is by no means a reason to delay choosing an attorney. A delay only hurts you, because it gives you less time to prepare a defense; it does not hurt the prosecution, because you've handed it more time to prepare to prosecute you.

In many cases, we advise entering a plea of not guilty, even if you are guilty of the charge(s) against you. This gives us (or whoever your attorney is) more time to work on your case, including determining whether your arrest was lawful or unlawful.

You can always change your plea later, once your lawyer has had the chance to negotiate with the prosecutor, should you

and your lawyer decide that pleading guilty makes the most sense in your particular situation.

Once you plead guilty, however, you cannot change your plea back to not guilty, so it is not a decision that should be made lightly. Always consult an experienced defense attorney willing to fight for your rights before deciding to enter a guilty plea.

In most counties in Texas, the judge will not accept a guilty plea at arraignment.

## Motions

Ideally, your defense attorney has been working on your behalf from the time of your arrest. Once the arraignment is over, that is when your attorney will file motions to challenge the evidence, procedures, and possibly even the charge itself. These call attention to any of your rights that may have been violated during the police investigation, questioning, and/or your arrest.

Your attorney may file a motion to delay the trial or request a change in venue—changing the location where your case will be heard. They do this if there exists a concern that, for whatever reason, having your case heard in the current location will prejudice your case or have a negative effect (bias) on the outcome in any way.

Your attorney may file a motion to call attention to the fact that the statute you violated was unconstitutional to begin with.

A motion may also be filed to have your case dismissed based on a claim of outrageous misconduct on the part of the government and/or law enforcement officials.

The judge does not determine your innocence or guilt based on these motions. Motions simply draw attention to defects and misconduct that potentially exist in your case and ensure that any and all illegally obtained evidence is suppressed so that it cannot be used against you during a trial.

It is the filing of such motions in which superior, skilled defense attorneys can really flex their trained muscles to protect you from any missteps. The investigators they employ will research the circumstances surrounding your having been detained and arrested to ensure that a complete picture of what did and did not happen can be established. This is when we scrutinize all the facts surrounding your arrest to determine where the case against you is weak or possibly even fabricated.

Other common motions that defense attorneys file regarding evidence include those seeking “discovery,” which is to discover precisely what evidence the State possesses to incriminate you. You’re entitled to know what they have against you in order for your lawyer to mount a comprehensive defense on your behalf.

One recent law that expands your right to see firsthand the evidence against you is the Michael Morton Act, which went into effect on January 1, 2014. This law permits you and your legal team to learn about, view, and make copies of most of the prosecutor’s documents.

Why did they need a new law for this? Well, regrettably, prosecutors often still have to be backed up against the wall before sharing everything. While the U.S. Constitution

has long been viewed as requiring the prosecution to turn over any evidence that supports a defendant's innocence, prosecutors across the country have been caught more than once concealing such evidence.

To protect you, Texas enacted a new law, the Michael Morton Act, to make it more difficult for prosecutors to withhold any witness statements, police reports, and other evidence that could lead to a verdict of not guilty.

When your lawyer files this motion, it's to force them to fully comply. It is your defense attorney's job to ensure that this motion is filed on your behalf.

Your defense attorney may decide to file a number of motions in your case. Motions are one of the primary weapons in the drug defense attorney's arsenal. Let's take a look at one example.

## **Motions to suppress evidence**

If evidence vital to the prosecution's case appears to have been obtained illegally, whether by an illegal interrogation or illegal search, an experienced defense attorney will request that all related evidence be suppressed, making it impossible for the prosecution to use it against you in any way, shape, or form to prove your guilt. We've had many such instances where the evidence we successfully had suppressed forced the prosecution to dismiss all charges.

## **How motions work for you**

Generally speaking, we file motions designed to protect you both before and during your court case to protect your rights

from being violated by the police. (The fact that we are able to file these motions at all generally discourages police from such misconduct.)

Some examples of such violations of your rights are:

- Being stopped when the police officer who stopped you didn't have reason to suspect that you were committing a crime.
- Stopping your vehicle without evidence that you had committed a traffic offense.
- Being frisked without reasonable concern that you might be armed and dangerous.
- Being searched before you were arrested, or searching your premises or vehicle at the time of your arrest, without there being an appropriate search warrant on hand.
- Searching your vehicle without your consent.
- Entering or searching your home without a warrant or consent.
- Illegally searching your home when all they have is an arrest warrant, or arresting you without probable cause.
- Being questioned after an arrest without being Mirandized (read your rights).
- Insisting on questioning you after you have invoked your right to a lawyer and/or to remain silent.

- Being questioned after you've hired a lawyer, when your lawyer is not present.
- Extorting a confession from you by subjecting you to violence or threats of violence.

If your rights have been violated in any way, a skilled defense attorney will move to suppress any and all related evidence and challenge the charges filed against you.

## **Pre-trial preparations**

In order to recommend whether to take your case to trial or plea bargain, your attorney must gauge the strength of the evidence against you. This is where an expert legal team comes into play.

## **Discovery**

We talked briefly about the motion for discovery in the previous section. You and your defense attorney are entitled to know ("discover") precisely what evidence is being used to incriminate you in order to mount a solid defense.

A top-notch attorney, utilizing their private investigators, will move to uncover all such evidence on your behalf. That brings us to the subject of investigation and how it can support and strengthen your case.

## **Investigations**

An expert criminal defense attorney doesn't sit back and wait to find out what the prosecutor has before preparing

your case. That's just one part of defense preparation. Why? Because you can never assume that the police investigation has uncovered all there is to know.

We've already discussed how the police aren't responsible for determining whether you're innocent or guilty. They collect what they think is damning, evidence that supports their actions and your guilt, and the investigation typically stops right there. It's up to the defense to conduct a more thorough investigation, one that uncovers evidence and circumstances that support your innocence or, at the very least, weakens the prosecution's case.

An investigator working for a defense attorney may discover witnesses overlooked or ignored by police, witnesses that may know something that is vital to your defense.

An investigator will also uncover whether police informants were where they claimed to be. After all, if it can be proven that they weren't where they said they were, how could they have seen what they claimed to have seen?

In some cases, expert witnesses are needed. For example, if a witness claims to have seen you involved in a drug transaction, an expert witness could detail all the potential problems with such eyewitness identifications.

In some cases, we might hire a defense expert who can counter the testimony given by police officers who consider themselves to be "drug recognition experts." As part of our defense preparation, we identify expert witnesses who might help your case.

## **Scientific investigation**

Back in chapters 6 and 7, we talked about how important it is when searching for a strong criminal defense attorney to ensure that they possess the necessary scientific knowledge and training to triple-check the science. Only an attorney with such credentials can competently question any and all lab results.

Why is this important? Because mistakes get made. Lab assistants may be distracted or even not properly qualified to perform tests that prove or disprove your guilt. The tests performed might not be the right ones.

To us, it is inconceivable that any defense attorney would accept lab results as gospel. Everything that is potentially damaging to your case is open to debate as far as we are concerned. You deserve the best and most comprehensive defense possible. That's why members of our legal team receive such scientific training. It can mean the difference between your landing in jail and walking away after being declared innocent.

# Should You Go to Trial?

"A jury consists of twelve persons chosen to decide who has the better lawyer."

– Robert Frost

As your defense investigation winds down, and after motions have been filed and resolved, that is the time to decide whether or not you should take your case to trial. The decision is always yours to make. Your attorney will sit down and discuss all the pros and cons, all the strengths and weaknesses in your case, so that you can make an informed decision as to which route appears most advantageous for you.

This is a critical decision because once you declare your intent to take your case to trial, there really is no turning back. At that point, the prosecution turns its focus away from settling out of court to becoming your full-fledged courtroom adversary, and you risk facing the maximum penalty for the crime(s) you stand accused of.

That said, you shouldn't decide not to go to court simply because you fear the proceedings. This is one of those key times when a board-certified criminal defense attorney's experience and judgment come into play.

Certainly, you should never allow anyone to convince you to plead guilty to a crime you didn't commit or try to negotiate a lesser sentence vs. risk going to trial if you are innocent.

And if you have been falsely accused or wronged by law enforcement officials, it is better to stand up for yourself and do what is right.

Even if you decide to pursue negotiating a plea bargain, you always want to have first prepared the strongest possible defense. Why? Because it naturally allows your attorney to negotiate a plea bargain from a position of strength.

## Plea-bargain

If you decide to plea-bargain instead of going to court, your attorney will negotiate with the prosecutor to try to get some or all of your charges dismissed or reduced to lesser offenses.

Most cases are settled out of court. The key issue for you when making this decision is: *Can the prosecution prove my guilt if my case goes to trial?*

If the answer to this is yes, you risk being found guilty and subjected to the maximum penalties. You'll know by now whether the prosecution has a strong case against you. You will be at the mercy of the judge and the emotions of the jury. That's nothing to sneeze at.

It's important to note that if all of the motions your lawyer filed to suppress evidence, or challenge the arrest or charges, were denied, that isn't the end. If the trial court made a mistake, including not granting your motions, a skilled law firm can appeal that decision after the trial, and have the circumstances re-evaluated. (We know, because we have done this successfully numerous times. It can be done.)

On the other hand, if the prosecution's case appears weak and your attorney's motions have been granted, you have the

option to take your case to trial or to negotiate out of court to either reduce or dismiss the charges. A prosecutor will rarely take a case to trial unless he/she is confident of winning. That potentially gives you the upper hand in negotiations.

We must spell out here one more risk of going to trial. Even if your case appears strong, there is always the risk of being found guilty regardless. However, standing up for yourself when your rights have been violated or if you were wrongly accused, especially if the prosecution will not negotiate with you, is a solid rationale for wanting your day in court.

### **When to change your plea to guilty**

Glancing back, you entered a plea of not guilty at your arraignment either because you were innocent or to buy your attorney more time to work on your case. By electing to plea-bargain, you can at this time choose to change your plea to guilty.

Why would you do this? Because negotiations may reveal that by doing this, your attorney can secure a more favorable outcome for you. Sometimes it's downright impossible to negotiate concessions from the prosecution without first entering a guilty plea.

Your attorney will discuss with you whether it might prove more favorable for you in the long run to change your plea to guilty, either to the current or a subsequently reduced charge, in exchange for a much better outcome than you could ever hope to get if found guilty after a trial.

Plea agreements are also an opportunity for your attorney to show the prosecutor how weak their case is, that if you go to court, they'll have a tough fight ahead of them. At this point, your attorney will also share with the prosecutor the

mitigation packet you've put together. While we talk about this in greater detail in chapter 15, these packets are, in short, designed to show you're not a danger to your community. They include character references and any strong ties you have to your community in hopes of achieving a more favorable result.

If you can show that you are going to treatment, AA, or NA, and if you can provide a clean urinalysis—especially if this is your first criminal charge—a skilled negotiator could get your charges reduced and potential jail time suspended in favor of probation.

Once your plea agreement has been negotiated and put in place, you surrender your right to trial and enter into the agreed upon arrangement. This challenging time in your life will be virtually behind you now and you will be ready to move forward.

The only thing remaining is the formal sentencing. We should point out that, although judges are not technically required to honor plea agreements, they virtually always do. Speaking pragmatically, were every case to go to trial, the judicial system, already overburdened, would grind to a halt. Judges recognize and accept this better than anyone.

# Going to Trial

"If you're going through hell, keep going."

– Winston Churchill

Okay, so, you and your lawyer together have decided that your best option is to take your case to trial. You have certain rights, aptly referred to as trial rights, designed to ensure that you receive a fair trial and which give you the option to appeal if these trial rights were not met.

Later, if you receive a guilty verdict and any of your trial rights were violated, you could have grounds for a retrial or appeal.

The jury must be an impartial body representative of your peers, so jurors are interviewed to make sure they don't carry any biases that would affect the outcome of the trial.

## What to expect at trial

At the beginning of the trial, the judge will explain the charges brought against you. Then, both the prosecuting attorney and the defense attorney will make opening statements.

Following opening statements, the prosecution will begin calling witnesses and present their evidence. The defense attorney can then cross-examine each prosecuting witness,

asking questions regarding what they have said and their involvement in the incident, with the intent to poke holes or reveal weaknesses in the prosecution's case.

Cross-examination is a skill, and a good attorney will use cross-examination to discredit witnesses or bring doubt to the truth or validity of any testimony.

When the prosecution has finished calling witnesses and presenting evidence, the prosecution rests and it is now the defense's turn to call witnesses and present evidence.

In some cases, the defense will not call any witnesses in an attempt to showcase the weakness of the prosecution's case. (And the prosecution cannot call you as a witness or question you in court unless you choose to testify in your own defense.)

At other times, the defense will call witnesses and the prosecutor is then given the choice to cross-examine each one.

When the defense has called all of their witnesses and presented all of their evidence, the defense then rests. The judge will then explain the laws regarding the charges to the jury, followed by closing arguments from the prosecution and defense.

The jury then adjourns to the designated jury room to privately discuss the verdict: guilty or not guilty. They are permitted to take as much time as they need, but they cannot find you guilty unless they do so unanimously, among all twelve jurors.

## **The verdict is in**

Naturally, if you are found innocent, the trial is over and you are free to go.

If you are found guilty, you will then be sentenced, which is when your penalty will be decided. Now, prior to jury selection, you would have been given a choice as to whether you prefer to be sentenced by the judge or the jury. Your attorney would have advised you, to help you decide what to do, based on his or her experience and familiarity with the local judges and the court system.

With our long history of trying these cases in Texas, we have the advantage of knowing the local judges and their sentencing styles, so we have become quite skilled in recommending whether to let a particular judge sentence our client or not. Ideally, your lawyer will possess the same level of experience with the local judges.

## **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. Judges (or juries) base this decision upon 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 plays a major role in this stage of the trial, weighing heavily on consideration of an appropriate sentence.

During the sentencing hearing, the defendant has the right to testify. Because you have already been found guilty and your penalty is being decided, this is NOT a point where you want to mess up.

We work with our clients to ensure they are able to appropriately and adequately communicate their feelings to a judge, or jury, during the allocution phase. What you say is, of course, ultimately your choice—it's individual, personal—but we will ensure that you are prepared for the prosecutor's cross-examination and all the little tricks they use to try to make you appear insincere.

What you do NOT want to do here is make excuses for your behavior in order to attempt to justify it or deny responsibility for your actions. This is when you really need to step up to the plate.

You want to acknowledge that what you did was wrong, take full responsibility for your actions, express remorse, and mention plans for the future that indicate you are moving forward and upward, not falling back into your old habits. That is what the court wants to hear.

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

Share with the judge and jury what your plans are to better yourself (therapy, treatment, church, community service, for example) and make up for what you have done. Remember, the perceived threat of what it might mean to set you loose on an unsuspecting society weighs heavily into sentencing. You want to demonstrate with sincerity that you understand the rules and guidelines of our society, have empathy and compassion, and intend to actively take steps to ensure that you won't commit more drug crimes.

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 it's 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!

# Mitigation: What's in Your Favor

"I busted a mirror and got seven years bad luck, but my lawyer thinks he can get me five."

– Stephen Wright, comedian

When we aggressively investigate the validity of any case against our clients, mitigation is a part of our strategy from the very beginning.

"Mitigation" is about reducing the charges brought against you, and the penalties. For Hamilton, Hull & Rogers, this means doing everything in our power to get as many of the charges against you dropped as possible, such as reducing a delivery charge to a possession charge. We employ every defense option available that can lessen the charges and penalties you face.

In most cases, if the possession or delivery was not a large amount of drugs, or if this is your first offense, even if you plead guilty, we will do everything in our power to convince the Court not to sentence you to serve prison time. The Court has the power to substitute other sentences such as house arrest, community service, or other alternatives, unless the charge you face carries a minimum 10-year sentence.

What we do is start putting together what's called a mitigation packet. This is a collection of documentation on your behalf,

including character references, records of any community service you have performed, information concerning your job, your family—basically anything that puts a human (sympathetic) face on your case file.

If you do eventually decide to settle your case by plea-bargaining, we want to show the prosecutor and judge that you're more than just a case file—you are a person.

## **What kind of person are you?**

A big part of the sentencing decision is predicated on how likely the judge and prosecutor believe you are to commit another crime vs. how likely you are to learn from this incident and take steps to better yourself and your life.

If you can show, for example, that you have undergone or are seeking drug treatment, perhaps that you have begun regularly attending AA or NA meetings, this will put you in a positive light.

If you can provide a clean urinalysis after your arrest, it will demonstrate that you are not currently using drugs, which will also work greatly in your favor.

If you have solid ties to the community in the way of family, home ownership, long-term employment, etc., it can convince the judge and prosecutor that you do not pose a flight risk. If you did not resist arrest and have been generally polite and reasonable throughout the process, this will also help you considerably.

By sharing character references and providing documentation of your contributions to society, you allow them to see the

full scope of who you are, the whole person, the one beyond the crimes you have been accused of.

If you face multiple charges, we negotiate with the prosecutor to drop as many of the charges as possible, including reducing any more serious delivery charge to a less severe possession charge. Most cases are resolved through plea-bargaining, the negotiations conducted between the defense and prosecuting attorneys.

Negotiating from a position of strength is naturally always the best option because it gives you greater leverage over the prosecution. If they understand that they risk more by taking the case to trial, they'll hesitate—they do not want to lose.

Instead, they'll negotiate so they don't walk away completely empty-handed. In every case we handle, we aim for the sweet spot—an aggressive investigation paired with tactful mitigation strategies. That, combined with our keen negotiation skills, put the odds for each of our clients solidly in the defendant's favor.

# Alternatives to Jail

"How many of us readers say this quote and mean it: 'If I knew what I know now, life would be different...'"

– Robert Reed

A drug conviction in Texas is a serious offense. Depending on the circumstances, many drug charges can result in imprisonment on top of a hefty fine.

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 your innocence—with an actual conviction being recorded until and 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**

Drug Court evaluates you to determine whether you have a substance abuse problem that might be better addressed through treatment than incarceration. Drug Court typically runs 12 to 18 months and involves intense community supervision (probation) and participation in one or more treatment programs. Frequent urine samples are conducted to confirm that you're no longer using drugs.

If you successfully complete Drug Court, you may get the charges against you dismissed, which means you will no longer risk this offense becoming part of your permanent record.

## **Community supervision**

If convicted by a jury, they can insist on a suspended sentence with community supervision if you have never committed a previous felony, and the judge must comply. If you already have a felony record, only a judge can award community supervision as an alternative.

## **Deferred adjudication**

A deferred adjudication essentially delays any conviction. 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 is no further opportunity for a trial. The judge can only enter a conviction against you and impose a sentence.

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 our clients who do not want to risk taking their case to trial and who will obey the conditions of their supervision, the possibility of scoring a dismissal with no conviction makes this option an attractive one.

## **Court-ordered treatment**

Even if you are convicted of a Class A or B misdemeanor, and not a felony, you face a possible fine and/or jail sentence. (Class C misdemeanors do not carry a jail sentence.) The judge can elect to send you to a treatment facility for up to 90 days instead, if certain conditions apply.

## **Electronic monitoring**

This typically involves wearing a GPS ankle bracelet at all times to alert authorities when you stray outside your restricted area, and may permit you to continue working.

## **Work release**

A county jail sentence or any confinement as part of a community supervision sentence that's limited to nonworking hours, allowing you to continue to work while serving your sentence.

## **Community service**

If a jury hasn't imposed a sentence requiring you to spend time in jail, community service may be substituted for any potential jail time.

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 spend time in jail. Community service can sometimes be combined with work release.

# Further Consequences

"The legalization of marijuana is not a dangerous experiment - the prohibition is the experiment, and it has failed dramatically, with millions of victims all around the world."

– Sebastian Marincolo, PhD and author

Convictions for drug crimes have both direct and collateral consequences. Direct consequences can be compared to being hit by a bomb whereas collateral consequences would be like being affected by the subsequent fallout. Direct consequences are those imposed by a court as a form of punishment, such as incarceration and fines.

Collateral consequences are not court-imposed when you are convicted. Instead, they're the fallout, 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 may likely come as an unpleasant surprise.

## **Direct consequences**

### **Fines**

All drug convictions carry a potential fine. If you lack sufficient resources, you cannot be imprisoned for not being able to pay. However, you can be punished for deliberately refusing to pay a fine if 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 Class C misdemeanors, carry the possibility of jail time, 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.

### **Court costs**

If you are convicted, you will be required to repay the Court for costs incurred during your trial. These costs are fixed by law, and so no attorney can negotiate them for you.

### **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. This includes any controlled substances and other property—vehicles, land, buildings, even your home—if they figure into the crime committed.

## **Collateral (additional) consequences**

A number of federal and state laws inflict 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. However, we do want to ensure you are aware of them because they might have a significant impact upon your life and upon any decision to plead guilty.

### **Federal collateral consequences**

Federal benefits you can be denied include:

- 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**

Depending upon the type and severity of the crime you are convicted of, the State of Texas imposes consequences as well, including:

- 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 (note that 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, preferably with at least one board-certified attorney, behind you to protect you as much as possible from this otherwise inevitable fallout.

# Appeal & Subsequent Proceedings

"The amount of money and of legal energy being given to prosecute hundreds of thousands of Americans who are caught with a few ounces of marijuana in their jeans simply makes no sense..."

– William F. Buckley, Jr.

If you are found guilty, you have the right to appeal that conviction. You also have the right to appeal any sentence you are given if it appears unfair in any way.

If there were errors made by the prosecution or judge during your trial, you may be able to get your conviction reversed and have the court order a new trial.

You also have options should new evidence come to light that would have supported your defense or, for example, if you were coerced to plead guilty.

Strict deadlines to file an appeal can and often do apply, so you need to move quickly to challenge a conviction or sentence. Not every case is eligible to be considered for appeal—specific legal grounds must exist.

When we handle an appeal, we move quickly to file the appropriate paperwork, carefully research the issues at

hand, and draft documents detailing our client's position and what supports the application of an appeal in this case.

When granted the opportunity, we schedule an oral argument and present our argument directly to the justices assigned to decide whether an appeal is warranted. This also provides them the opportunity to ask questions and gain any necessary clarifications on precisely what we are disputing.

## **The final appeals option**

If all other appeals have been unsuccessful, we may be able to take your case to be heard in front of a federal court, depending on the grounds that were filed for the appeal.

Federal court only hears appeals based on federal grounds, such as when you have been denied your right to due process and failed to receive a fair trial.

## **Attempting an appeal on your own**

Handling any appeal on your own, without the skilled counsel of an expert criminal defense lawyer, is never advisable. In particular, federal appeals are a complex undertaking and trying to do this on your own is a recipe for disaster. Any mistake you make will get your appeal dismissed and you will lose any recourse you might have otherwise had.

Always hire a criminal defense lawyer who is skilled in post-conviction proceedings.

# Lawyer Up!

"It is strange the way that someone who wants to find you guilty can start to make you believe in your own guilt, even when you know you are innocent. I was afraid I would condemn myself by mistake."

– S.J. Parris, *Heresy*

By now, having read this book, you have gained an insider look at the processes of the criminal justice system and what lies ahead.

You now 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 they are not on your side.

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

The lawyers at Hamilton, Hull & Rogers 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.

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 every available course of action.

## **Serious lawyers for serious cases**

The criminal defense lawyers at Hamilton, Hull & Rogers are dedicated professionals. In addition, Stephen Hamilton is board certified in criminal law. 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.

No drug case is too big or too small. Never underestimate the importance of clearing your record whenever possible. 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 the crime you are accused of.

Your freedom, your reputation, and your dignity are what is 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 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.

At Hamilton, Hull & Rogers, 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.

If you find yourself facing drug charges in Texas and are unsure of how to proceed, we can help. We are 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 twenty-four hours a day, seven 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 800-456-STEVE. 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 <http://www.attorneyhamilton.com>.

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

Attorneys Stephen Hamilton, Meghan Rogers, and Shane Byrd 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 AUTHOR



Attorney Stephen Hamilton is the founding partner and lead trial attorney at Hamilton, Hull & Rogers. 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.

*"Stephen fights to win and cares about his clients. He is not afraid to go to trial and defend the rights of citizens. He has defended the worst of the worst and the best of the best, yet he puts his heart into every case."* — Glen Neeley, Attorney, Ogden, UT

*"Stephen Hamilton is a rare talent. As a board certified criminal law specialist, Steve's knowledge of the law places him in the top 1% of our profession."* — Grant Scheiner, Criminal Defense Attorney, Houston, TX

*"Mr. Hamilton is a proven winner. This trait is often underestimated in our society, but absolutely necessary in the courtroom. If you want to win the big one, are you going with a cut rate attorney or the best? When it counts, you better retain Stephen Hamilton."*

— Michael Wysocki, Attorney in Dallas, TX

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