

TEXAS CRIMINAL DEFENSE GUIDE E-BOOK



NEAL DAVIS

LAW FIRM, PLLC

A close-up photograph of a black scale with two piles of white powder. The powder is piled on the scale's surface, and the background is blurred, showing green leaves and a pair of tweezers.

DRUG OFFENSES

nealdavislaw.com

©NEAL DAVIS. ALL RIGHTS RESERVED

CONTENTS

DRUG OFFENSES	3
WHAT IS A DRUG OFFENSE?	3
CHOOSING A DEFENSE ATTORNEY.....	3
DRUG OFFENSES: CHARGES.....	4
STATE DRUG OFFENSES	4
OVERVIEW.....	4
PUNISHMENT.....	4
DEFENSE STRATEGY.....	5
PROCESS.....	6
FEDERAL DRUG OFFENSES	7
OVERVIEW.....	7
PUNISHMENT.....	7
DEFENSE STRATEGY.....	7
PROCESS.....	8
DRUG OFFENSES: PROCEDURE	9
BOND CONDITIONS	9
DRIVER'S LICENSE PENALTIES.....	10
FORFEITURE	10
DRUG OFFENSES: FAQs.....	11

DRUG OFFENSES

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

WHAT IS A DRUG OFFENSE?

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

CHOOSING A DEFENSE ATTORNEY

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

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

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

DRUG OFFENSES: CHARGES

STATE DRUG OFFENSES

LAW

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



OVERVIEW

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

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



PUNISHMENT

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

Marijuana penalties, based on usable amount

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

Penalty Group 1a — Lysergic Acid Diethylamide (LSD)

- Less than 20 units — State Jail Felony — 6 months to 2 years in jail; fine up to \$10,000
- 20 to 80 units — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000
- 80 to 4,000 units — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000

4,000 to 8,000 units — 1st Degree Felony — 5 to 99 years in prison; fine up to \$10,000

More than 8,000 units — Enhanced 1st Degree Felony — 10 to 99 years in prison; fine up to \$50,000,000

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

[ul] Less than 1 gram — State Jail Felony — 6 months to 2 years in jail; fine up to \$10,000

1 to 4 grams — 3rd Degree Felony — 2 to 10 years in prison; fine up to \$10,000

4 to 200 grams — 2nd Degree Felony — 2 to 20 years in prison; fine up to \$10,000

200 to 400 grams — 1st Degree Felony — 5 to 99 years in prison; fine up to \$10,000

More than 400 grams — Enhanced 1st Degree Felony — 10 to 99 years in prison; fine up to \$50,000,000

Penalty Group 2 — Ecstasy, Phencyclidine (PCP), Mescaline

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

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

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

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



DEFENSE STRATEGY

Several defenses strategies are possible in drug cases.

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

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