

# DRUG CRIMES

## Drug Abuse • Substance Abuse • Cannabis • Drug Use Controlled Substance

### Drug Possession & Drug Sales are Illegal

In California, crimes involving illegal drugs or controlled substances can be any of the following:

- Possession for Personal Use
- Possession of Drugs for Sale
- Trafficking (transporting, buying, selling)
- Distributing
- Cultivating or Manufacturing
- Conspiracy to do any of the above

#### The Most Common Types of Illegal Drugs/Controlled Substances

(In California, controlled substances are narcotics, stimulants, opiates, depressants, hallucinogens, and anabolic steroids. It's illegal to possess them without a prescription.)

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| <ul style="list-style-type: none"><li>• Barbiturates</li><li>• Cannabis (Marijuana)</li><li>• Cocaine</li><li>• Crack Cocaine</li><li>• Ecstasy (MDMA)</li><li>• Hashish (and Hashish Oil)</li><li>• Heroin</li><li>• Prescription painkillers or stimulants without a prescription</li></ul> | <ul style="list-style-type: none"><li>• LSD</li><li>• Mescaline</li><li>• Meth/Methadone</li><li>• Morphine</li><li>• Opium</li><li>• PCP</li><li>• Steroids</li></ul> |
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## **California Drug Crimes**

Under California Law, there are four main types of drug charges:

### **DRUG POSSESSION**

For most controlled substances, possession for personal use is a felony. Misdemeanor charges include marijuana (cannabis) possession, being under the influence of a drug, and possession of drug-related items called paraphernalia (pipes, bongs, etc.).

To be convicted, the prosecution must prove that you knew about and controlled the drug in question. Even if you didn't have drugs on you when you were arrested, you can be convicted if drugs were found in your car, house, or purse.

### **DRUG POSSESSION FOR SALE**

It is a felony to possess or buy illegal drugs that you intend to sell. The prosecution doesn't have to prove that you sold them—just that you intended to sell them. Money need not change hands to be convicted of drug possession for sale.

Intent to sell can be proven by evidence such as drug packaging (small bundles), weighing scales, cutting agents, people coming to/going from your home at all hours, fortified windows, conversations with police informants, undercover officers, or wiretapped telephone (cell, portable or landline) conversations.

### **DRUG TRAFFICKING**

California drug traffic laws prohibit the transporting, importing and selling/distribution of controlled substances. Transporting, importing, or selling drugs is a felony, unless you're arrested with less than 28.5 grams of marijuana (cannabis) and the marijuana is for your own personal use then it is a misdemeanor. You can also be charged and convicted of trafficking if you aided, abetted, and conspired with anyone to sell or purchase illegal drugs.

### **MANUFACTURING DRUGS**

In California, it is a felony to:

- Plant, cultivate (grow, care for) or harvest marijuana
- Manufacture illegal drugs (such as methamphetamine or rock cocaine)  
or possess the chemicals necessary to manufacture illegal drugs.

## **Drug Crime Penalties**

Drug offense penalties can be very serious. You could end up in county jail or state prison. Your car or anything else linked to the drug crime could be taken away (Forfeiture Proceedings). You could lose your driver's license, have to pay a fine, and/or be required to register as a narcotics offender.

How the crime is charged and punished depends on the type and quantity of the drugs involved, whether the drugs were for personal use or for sale, and if the defendant has a criminal record, especially prior drug convictions. (If you are facing a second offense for sales of narcotics you are looking at a minimum 3 year enhancement for the prior sales conviction which is added to the time/sentence on your current drug charge.)

- For example, a first-time offender selling 100 grams to 5 kilograms of heroin has a mandatory minimum sentence of five years.
- Manufacturing, producing, or preparing methamphetamine has a maximum sentence of seven years and fines up to \$50,000.

For most drug crimes charged as FELONIES, there are three components to sentencing:

1. A Base Term (for example, the base term for selling cannabis is 2-4 years)
2. Conduct Enhancements (selling cannabis to children under 21, selling drugs near a school, causing children under 18 to violate drug laws)
3. Status Enhancements (prior convictions, crime committed while out on bail)

All three are considered together to determine the length of the sentence and other penalties.

California's "Three Strikes Law" can result in a much longer sentence if the defendant has at least one prior conviction for a serious felony.

## **Drug Crime Defenses**

The most powerful defense for a drug bust or drug crime is the evidence and how it was obtained. Law enforcement gathers most evidence through "search and seizure." You have a constitutional right to be free from illegal searches and seizures. Therefore, any illegally obtained evidence can't be used to convict you. This is not automatic. An experienced criminal defense lawyer must challenge in court the way the evidence was obtained. This is a very technical part of criminal law and it is treacherous for the inexperienced criminal defense lawyer. If the challenge is successful then the evidence is "suppressed" and the case may be dismissed.

## **Sentencing Alternatives**

In California, drug treatment is considered more appropriate than jail time for non-violent individuals with drug abuse problems. Depending on your situation, you may be eligible for one of three alternatives:

**Proposition 36:** Under California's Substance Abuse and Crime Prevention Act, first and second time non-violent "simple drug possession" offenders can receive substance abuse treatment instead of jail time. This includes one year of outpatient, halfway house, narcotic replacement therapy, education classes and/or limited inpatient treatment, plus six months of "aftercare" treatment.

**Deferred Entry of Judgment (also known as DEJ or Diversion):** The defendant pleads guilty, but is not convicted. Instead, the case is put on hold for 18 months while the defendant must take a 6-months drug education classes and avoid an arrest or conviction of another crime. The case is dismissed after 18 months. The felony is completely wiped away.

**Drug Court:** This involves a "supervision-and-treatment" program typically separated into phases that offer the defendant more freedoms as he/she completes each one. In rare cases, jail time is required. Once the defendant completes the program, the case is dismissed.

## **An Experienced Criminal Defense Lawyer is Critical for your Drug Case**

Drug cases and penalties are tricky, so it's very important to hire a skilled drug crimes attorney. Only an experienced lawyer will understand the facts of your case, including the evidence being used against you, and can prepare the best defense.

The Law Offices of Jerry Nicholson, APC, has successfully defended many clients in drug matters, often helping them avoid a conviction entirely. We have assisted many clients with alternative sentencing such as Electronic Monitoring and House Arrest.

If you're facing a drug charge, call Jerry Nicholson for a **FREE CONSULTATION** right away.