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DRUG AND MARIJUANA CHARGES

We all know that a drug conviction is serious. What you may not know is that your ability to get to work or school will be affected because there is a one-year suspension of your driver's license for any conviction. Remember this has nothing to do with operating a motor vehicle. This punishment is imposed by your law makers to deter you from using drugs.

You will probably never be advised of this penalty by your defense attorney prior to pleading guilty. If this has happened to you, call us and we will fix the problem.

Unless you are addicted or have a significant record, a possession charge can be disposed of with an alternative sentencing option if you don't have a legal defense. In another words, you may not have to plead guilty and subject yourself to a conviction and loss of license.

A major change in Massachusetts is that possession of one ounce or less of marijuana is no longer a criminal offense. Procedurally the marijuana will be confiscated and you will receive a written citation which provides for a fine of \$100 which will be made payable to the town or city clerk where the incident occurred. Note that the possession of one ounce or less must be by a person 18 years of age or older. A person under the age of 18 will be, if the citation so indicates, notified and summoned to court. He or she will be placed on probation for one year and must complete both a drug awareness program and community service in addition to the \$100 civil penalty. This will not result in a criminal record. In the event that the person fails to complete the drug awareness program and community service, the civil penalty will be increased to \$1,000 and his or her parents shall be jointly and severally liable to pay that amount as well. Therefore it seems that you have a choice, you may either complete the program and community service or pay the \$1,000 fine. Interesting as well, that unlike criminal penalties there is no progressive civil penalty for any subsequent offense or offenses. The penalties for possession of one ounce or less will not result in a loss of license.

The more serious drug offenses involve possession with intent to distribute (which offense lives or dies on the amount of drugs seized) or distribution or sale, which is the more difficult to defend.

Either charge of possession with intent to distribute or sale within 1000 feet of a school zone or 100 feet of a playground will result in a two-year minimum mandatory sentence with no possibility of parole. School zones include churches, child care homes, and businesses and any other facility where children may be schooled or cared for.

Whenever someone is charged with a drug offense, it is usually the result of a police search and seizure with a search warrant. A search warrant is a document issued by the clerk magistrate or judge which gives the police the legal right to search. The request for search must have sufficient facts set forth in supporting documents to allow the magistrate or clerk to make a finding of probable cause to believe that a crime has or is being committed.

Your first step should be to determine whether the search and seizure was constitutionally valid. In order to do so, all facts must be investigated to determine whether “probable cause” existed. If it is determined that the police did not have “probable cause” then all evidence seized must be suppressed, which means that this illegally seized evidence cannot be used against you in court.

PENALTIES

Possession of Class A (Heroin, Morphine and Others)

1st Offense: Up to 2 years in jail
2nd Offense: Up to 2½ years in jail or up to 5 years in prison

Possession of Class A with Intent to Distribute or Sell

1st Offense: Up to 2½ years in jail
2nd Offense: Mandatory minimum 5 years in prison

Possession of Class B (Cocaine)

1st Offense: Up to 1 year in jail
2nd Offense: Up to 2 years in jail

Possession of Class B with Intent to Distribute or Sell

1st Offense: Up to 2½ years in jail
2nd Offense: Mandatory minimum of 5 years in jail

Possession of Class D (Marijuana)

One ounce or less:

18 years of age or older: \$100 civil penalty
Under 18 years of age: \$100 civil penalty, drug awareness program and community service or \$1,000 civil penalty.

More than one ounce:

1st Offense: Up to 6 months in jail
2nd Offense: Up to 2 years in jail

Possession of Class D with Intent to Distribute or Sell

1st Offense: Up to 2½ years in jail

2nd Offense: Mandatory minimum 2 years in jail

Sale or Distribution in a School Zone or Park

Minimum mandatory two years in jail or state prison

IMPORTANT: THE REGISTRY OF MOTOR VEHICLES WILL SUSPEND YOUR DRIVER'S LICENSE FOR ANY DRUG CONVICTION EXCEPT POSSESSION OF MARIJUANA IN THE AMOUNT OF ONE OUNCE OR LESS.

AT IANELLO & BRITTAIN P.C., CONSULTATIONS BY PHONE OR IN PERSON ARE ALWAYS FREE. REASONABLE FEES AND PAYMENT PLANS ARE AVAILABLE.