

DRUG CRIMES

State and federal law enforcement agencies take drug offenses extremely seriously. There are many good people who have been swept up in the war on drugs merely because they suffer from an addiction. When you are charged with possession of a controlled substance, you can be subject to serious penalties that include incarceration in county jail or prison, significant fines, mandatory participation in drug treatment programs, probation and other adverse consequences.

A misdemeanor or felony conviction will remain on your criminal record, so that future employers, academic institutions, State of California licensing boards, professional licensing agencies and landlords discover your conviction. A criminal record can cost you a job, a rental property, a loan and immigration benefits.

Possession is much broader in this context than ordinary conversation because it includes not only actual possession but also constructive and joint possession.

- **Actual Possession:** A defendant actually possesses drugs if he or she has immediate and direct physical control over the narcotics. This generally refers to the drug being on your person, clothing or an item of luggage.
- **Constructive Possession:** Although the drugs may not be on your person, you can be charged with constructive possession if the drugs are recovered from a location over which you have the right and ability to exercise control. If the drugs were in your storage locker, for example, this would constitute constructive possession if you were the party with the key to access the storage locker.
- **Joint Possession:** The police can charge multiple parties that share actual or constructive possession. If drugs are found in a married couple's bathroom cabinet, for example, both spouses might be considered to jointly possess the drugs.

Defenses to Possession of a Controlled Substance under California Law

Many criminal cases involving charges of possession of a controlled substance are based on drugs, paraphernalia, cash and other evidence obtained in searches by law enforcement officers. Christy and Sanford Horowitz evaluate the facts used to obtain the warrant, the facial sufficiency of the warrant and the scope of the search to identify violations of clients' 4th Amendment search and seizure rights. Law enforcement agents also might rely on unreliable informants looking to make a deal to improve their own situation. If the prosecutor is seeking a conviction for possession of a controlled substance, the following elements must be proven beyond a reasonable doubt:

- The accused exercised control of the drugs or had the right to exercise such control;
- The accused had knowledge of the drug's presence;
- The accused was aware that the drug was a controlled substance; and
- The amount of the drug was sufficient to be ingested or used as a controlled substance.

Some of the specific defense strategies that Sanford & Christy Horowitz Criminal Defense might rely on in a simple possession case include:

- **No Possession:** Sometimes police will attempt to establish joint possession or constructive possession when the facts do not support such an inference.
- **4th Amendment Violation:** There are a litany of reasons that a search might violate a defendant's rights to be free of unreasonable search and seizure. The facts used to obtain the warrant might be false or distorted, so there is no probable cause to justify issuing the warrant. In other cases, the officers might exceed the scope of the warrant. For example, the officers might search in places that the warrant does not entitle the officers to look. In the case of warrantless searches, officers might improperly claim that exigent circumstances (emergency) or that consent for the search existed. Horowitz Law carefully analyzes all facets of a search in a drug possession case because exclusion of the drugs can mean a dismissal of all charges.
- **No Knowledge:** If you did not know you possessed the drug or that it was a controlled substance, you cannot be convicted of possession. If a person was arrested while wearing a friend's jacket with no knowledge there were drugs in a hidden pocket, the accused would not have had sufficient knowledge to support a drug possession conviction. Similarly, a person who is asked to store a can of paint could not be convicted for possession if the accused had no idea that the can contained drugs rather than paint.
- **Miranda Violations & Involuntary Confessions:** If the key evidence in your case is a statement obtained in violation of Miranda protections or subject to coercion, this may be a basis to exclude the confession.
- **Lawful Possession:** If you have a valid prescription for a controlled substance, you cannot be convicted for possession provided your possession is consistent with the prescription. However, a prescription will not provide a defense if you used a fraudulent prescription, engaged in doctor shopping or possessed more drugs than authorized by the prescription.

Federal, State, and Local Drug Laws

The legality of a drug often depends on how it is being used -- or what it is being used for. For example, amphetamines are used to treat attention deficit disorder, barbiturates help treat anxiety, and marijuana can help alleviate cancer-induced nausea. But un-prescribed and unsupervised use of these substances (and many others) is thought to present a danger to individuals and to society in general. So, for decades, lawmakers have stepped in to regulate the use, abuse, manufacturing, and sale of illegal drugs.

Though there is a longstanding federal strategy in place to combat the abuse and distribution of controlled substances, each state also has its own set of drug laws. One key difference between the two is that while the majority of federal drug convictions are obtained for trafficking, the majority of local and state arrests are made on charges of possession. Out of these state and local arrests, over half are for the possession of marijuana.

Another difference between federal and state drug laws is the severity of consequences after a conviction. Federal drug charges generally carry harsher punishments and longer sentences. State arrests for simple possession (i.e. possession without intent to distribute the drug) tend to be charged as misdemeanors and usually involve probation, a short sentence in a local jail, or a fine -- depending on the criminal history and age of the person being charged.

Sanford and Christy Horowitz Criminal Defense have a wealth of experience obtained in criminal trials spanning the full spectrum of criminal offenses, from minor misdemeanors to serious and violent felonies, combined with the benefits of access to the best experts, forensic testing, and a limited caseload. Whether seeking a dismissal, acquittal, diversion, or plea reduction, Christy and Sanford Horowitz will tenaciously attack the prosecutor's case and expose all weaknesses and deficiencies in the government's case.

Possession of a Controlled Substance (Health & Safety Code Section 11350)

Under California HS 11350, possession of specific "controlled substances" is unlawful without a valid prescription. The controlled substances that can expose a defendant to criminal liability for possession are those covered under the United States Controlled Substances Act. Narcotics are classified based on a schedule, which classifies the drugs according to their degree of danger and the related penalties. The drugs are divided into IV categories with the highest penalties being associated with Class I drugs down to the lowest penalties for Class IV drugs:

- Class I Drugs: These drugs are considered the most addictive and hazardous drugs, which offer no legitimate medical benefit. Examples of Class I drugs include heroin and LSD.
- Class II Drugs: While this category of drugs is also considered highly dangerous and addictive, these drugs might have some legitimate medical uses. Examples of Class II drugs include amphetamines, cocaine and opium.
- Class III Drugs: While these drugs pose some risk of addiction, the risk is lower than for a Class II drug. Examples of this category of drugs include ketamine, depressants and anabolic steroids.
- Class IV Drugs: Drugs in this category have substantial medical uses with only a limited risk of addiction. Examples of this type of drug include tranquilizers and sedatives.
- Schedule V Drugs: The drugs in this category are extremely low-risk. An example of this form of drug includes codeine.

Sanford and Christy Horowitz are extremely skilled at defending against drug crimes, including:

- Possession
- Possession for Sale
- Sales & Transportation
- Manufacturing
- Medical Marijuana

Sanford and Christy Horowitz make it a point to guide our clients through each step of the legal process, and to explore all available options – including alternative sentencing and diversion programs to protect your freedom and to keep your criminal record clean.