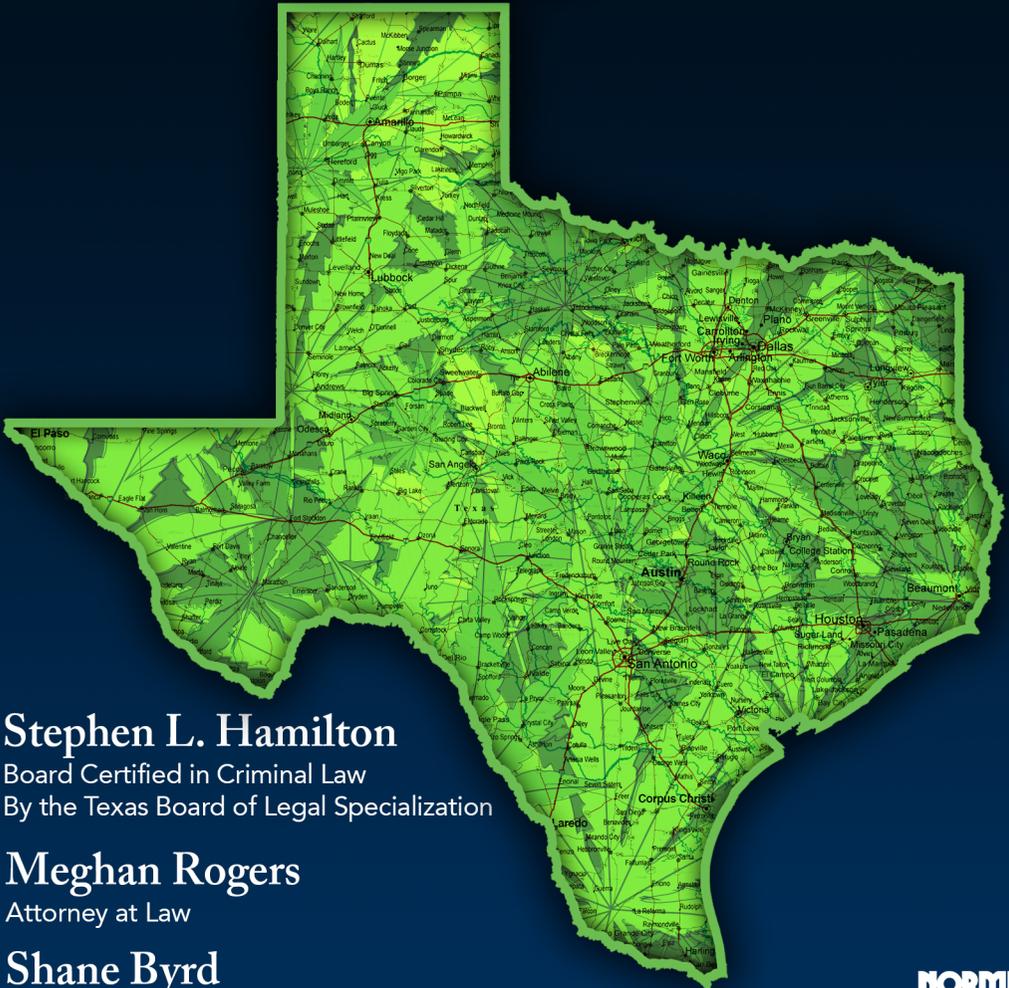


**PROTECT YOUR FUTURE
KNOW YOUR RIGHTS**

A Citizen's Guide to a Marijuana Arrest in Texas

Second Edition



Stephen L. Hamilton
Board Certified in Criminal Law
By the Texas Board of Legal Specialization

Meghan Rogers
Attorney at Law

Shane Byrd
Attorney at Law

NORML
LEGAL COMMITTEE
LIFETIME MEMBER

PROTECT YOUR FUTURE ★ KNOW YOUR RIGHTS™

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KNOW YOUR RIGHTS**

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Offices Conveniently Located in

LUBBOCK

802 Main Street
Lubbock, TX 79401
(806) 472-4525

MIDLAND/ODESSA

112 S. Loraine, Ste. 505
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1333 E. Jasmine Ave., Ste. A
McAllen, TX 78501
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Principal office located in Lubbock, Texas

***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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By the Texas Board of Legal Specialization



Meghan Rogers
Attorney at Law

Shane Byrd
Attorney at Law

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But...It's Only Pot

"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

If you believe that—that it's *only* pot—and you've got marijuana on you, then you'd better not find yourself in Texas. While many states in our country have reformed marijuana laws to some degree or another, Texas is definitely not one of them.

A number of states have changed their marijuana laws, lowering penalties and eliminating jail time. In some, you might get no more than a citation—like a parking ticket—for having small enough amounts of marijuana that are assumed for personal use (vs. intent to distribute). Indeed, many states have made enforcing marijuana laws their lowest priority.

Twenty-three states to date have legalized medical marijuana. Washington, Colorado, Oregon, Alaska, and even our nation's capital have legalized it for adult recreational use. That's quite a shift.

So, getting caught with marijuana here in Texas isn't that big a deal, right?

WRONG!

Texas's laws have not changed. So, if you're in possession of marijuana in Texas, no matter how small the amount,

you're in serious legal trouble. There's a lot more you need to know.

Please understand that this book is not a do-it-yourself manual. However, it will give you the basics: understanding marijuana charges, outlining the arrest, investigation, and trial processes, and citing possible defense options.

Stephen L. Hamilton

One of our clients was the unwitting victim of a tip to law enforcement that implicated the client in distribution of narcotics. Sure enough, as a result of the tip, the agent followed our client and witnessed him purchasing something that appeared to be marijuana. The agent immediately arrested our client and charged him with possession.

We negotiated with the State of Texas and received a dismissal: No conviction and no record.

Zero Tolerance

“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

Marijuana is reported to be the most widely used controlled substance, and you may already be aware that research indicates the consumption of marijuana does not present the same risks or, used long term, cause harm the way legalized alcohol does.

**Possession
of marijuana
in Texas is
a serious
offense!**

In fact, marijuana boasts many medical benefits, including treating glaucoma, potentially reducing lung tumors and halting the spread of aggressive cancers, even killing cancer cells in those suffering from leukemia, as well as easing side effects such as chemo-induced nausea and loss of appetite in cancer patients.

While Texas recently took one baby step forward in legalizing the use of CBD cannabis oil (low in THC, which causes the high that marijuana is known for), the governor was emphatic that this is only for the treatment of severe epileptic seizures that haven't responded to traditional medication and that Texas still rejects legalizing marijuana in any form, including for medical purposes.

Despite vigorous arguments that legalizing marijuana for recreational use would result in anarchy, those states that

have done so have experienced nothing of the sort. Colorado is reported to be pulling in record amounts of tax dollars and has benefited from the creation of numerous jobs in the now legalized marijuana industry.

Marijuana prohibition is often likened to Prohibition in the 1920s and, much like what happened back then with alcohol, many feel that it is no longer a question of WHETHER marijuana be legalized throughout the United States, but WHEN.

Texas Doesn't Care

Don't be fooled by the fact that many states and cities are making an effort to reduce harsh penalties for marijuana possession.

Being caught in Texas in possession of cannabis—no matter how small the amount—is a serious offense.

Texas takes a ZERO TOLERANCE approach to marijuana possession. Despite changing public opinion in the state, little progress has been made to reform these laws.

Texas does not recognize the medicinal benefits of cannabis. Extracted THC (tetrahydrocannabinol—one of the active chemicals in marijuana and the one responsible for inducing feelings associated with “being high”) is considered a Schedule 1 controlled substance. Substances of this classification are not recognized to have any medical use and are deemed to have a high risk of abuse. LSD and PCP are considered comparable Schedule 1 substances as far as Texas is concerned.

Studies that demonstrate the far-reaching medical benefits of marijuana hold no sway in Texas. That means that even if you obtained your marijuana legally in another

state for medical reasons, if you're caught with it in Texas, you could find yourself behind bars.

Texas law doesn't care what other state governments do. Texas doesn't care if your doctor prescribes using marijuana to treat your cancer. Marijuana arrests carry heavy consequences, including up to a life sentence if you're caught with a large enough quantity!



Point to Remember:

- Texas maintains a zero tolerance policy where marijuana possession is concerned, no matter how small the quantity or what your reason is for possessing it.

Stephen L. Hamilton

A student just a semester from graduating college who had never had a violent offense in his life found himself detained by police without justification. The student knew enough to speak up for himself and remind the officer that he had no reason to detain him.irate, the officer tried to muscle the student to the ground but failed. He called to another officer who came over and the two subdued him, breaking his nose and busting his lip in the process. To literally add insult to injury, they then charged the student with Felony Assault of a Peace Officer!

I took the case up with the prosecutor who finally agreed to just a few hours of community service and a couple of classes in exchange for dismissing the charges. The student went on to receive his degree without any criminal record and immediately secured an excellent job after graduation.

Lock 'Em Up!

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

– Edward Conlon,
former NYPD officer and author

Virtually all controlled substances vary their penalties according to specified amounts and based on the charge, whether it's straight possession, intent to deliver, or manufacture. Other controlled substances distinguish between the charge of *Possession* and the charges of *Possession with Intent to Deliver* and *Manufacture*.

In Texas, most of these distinctions don't apply to marijuana (although possessing large enough amounts of marijuana are assumed not to be intended for personal use, and that the defendant was either producing marijuana or intending to distribute it).

Why Is Marijuana Different?

While THC in its extracted form sits firmly in Penalty Group 2, the cannabis plant containing THC sits in a classification of its own.

This makes the legal terrain you face murky. However, it also provides certain opportunities for your defense. Let's take a closer look at what this means for you.

Penalties for crimes that involve marijuana hinge upon how much you had in your possession and whether the

crime involved nothing more than **possession** of a controlled substance vs. **delivery** of a controlled substance.

Delivery of marijuana is defined as transferring possession of the substance, regardless of whether you're taking payment for it. So, if you were to grow marijuana for a friend or relative, say, for example, an elderly parent who's ill, you're guilty of intent to deliver. It's not negotiable.

That's serious.

A Little Pot Equals Big Trouble

No marijuana charge distinguishes between mere *Possession* and the more serious *Possession with Intent to Deliver*. So, if you possess large amounts of marijuana, such as growing it for medicinal purposes, law enforcement assumes intent to deliver. That's not good. In fact, that's bad. Bad for you.

Intent to deliver does NOT need to be proven—it is assumed as a given. So much for innocent until proven guilty!

If you are caught with a large amount of marijuana, which you intend solely for personal use, you face the same penalties that apply to more serious crimes. And they won't have to prove that a more serious crime was committed.

But what's particularly tricky about this situation in Texas is that no specifics exist to define how much or how little implies "Intent to Deliver." Nowhere in the statutes in Texas is this spelled out. Yet the penalties can be hefty, reflecting the assumption that you intended to deliver marijuana to another party.

Possession of 50 pounds or more of marijuana could easily hand you **A LIFE SENTENCE**.

It's a Catch-22

Oddly, no Texas law specifically prohibits your *growing* marijuana. While other controlled substances carry severe charges for their manufacture, technically speaking, growing (which is “manufacturing”) marijuana is legal.

Before you start celebrating, just know that if you grow it, it's considered to be in your possession. And it's the possession that's illegal. And it carries strict penalties.

So, while the act of growing cannabis is not strictly against Texas law, if you manage, control, and care for the plants, that's possession.

Not from Texas? You're Still in Trouble

The fact that laws in other states and cities across the country are changing with regard to marijuana can pose some particularly harsh consequences for people who travel through Texas or live here part of the time.

For example, let's say you're a Texas resident who goes to school in Colorado. While you're at college, you legally purchase marijuana products. If you have any of these on you when you return home, you can be thrown in jail.

Texas doesn't care that you bought it legally.

The same goes for anyone visiting Texas from a state where use of marijuana is legal. They're going to jail. Period.

If you drive a car with plates from a state where marijuana has been legalized, either for medical or recreational use, you WILL be targeted by Texas law enforcement.

Police here and in many other states where pot has not been legalized are specifically trained to single out vehicles coming in from other states and find a reason to stop and

search them. Keeping marijuana in your car or smoking while driving is a great way to get caught.

Here at Hamilton, Hull & Rogers, we've seen police in Texas stop cars coming in from Colorado for going 76 in a 75 mph zone, or sometimes for no reason at all. Profiling in this manner is absolutely unfair, but that's not a defense. You must be aware of what makes you a target for law enforcement.

How Much Is a Problem

The penalty for possession is determined by the weight of the product in your possession (with the exception of mature plant stems and sterilized seeds.) So, if your pot is in the form of a chocolate bar or brownie, your degree of possession is based not on how much pot is in the brownie, but on how much the brownie itself weighs!

That's right. Texas law bases the weight on the entire product, not just the amount of marijuana it contains.

Consider the difference between carrying a six-ounce chocolate bar vs. six ounces of pot. As far as Texas is concerned, it's one and the same. And it's a felony.

You read that right: **Possession of just one chocolate bar can—and often does—carry a felony charge.**

Arrests are made for marijuana possession across the State of Texas every single day. Despite being a non-violent crime, it carries serious long-term consequences—even for very small amounts.

If the amount can in any way be deemed a “usable quantity,” charges can be filed.

Sounds ambiguous, doesn't it? Yes, it does. And it is. “Usable quantity” can be as little as what you pack the bowl

**A 4-oz.
brownie
equals a
felony record!**

of a pipe to smoke. Being found with two ounces or less is a Class B misdemeanor punishable by up to 180 days in jail and suspension of your driver's license.

Selling someone a mere quarter ounce or less is a Class A misdemeanor **punishable by up to a year in jail.**

If you are arrested for possession of four ounces or more, **YOU ARE IN FELONY TERRITORY.**

**A mere pinch
can get you
6 months AND
you'll lose
your license!**



Points to Remember:

- Intent to deliver does not have to be proven; it is assumed.
- Possession of large quantities can mean not only jail time but a life sentence.
- Even if you purchased it legally elsewhere, it's illegal to have it in Texas.
- If your car is registered in a state where any form of marijuana is legal, Texas police can target you as a potential criminal and stop you for no other reason.
- Penalties are determined by the weight of the product, not the marijuana content. Carrying a six-ounce chocolate bar laced with marijuana is considered a felony, the same as possessing six ounces of marijuana.
- A mere pinch of marijuana can be punishable by up to 180 days in jail and suspension of your driver's license.

One of our clients was pulled over for a traffic violation and ultimately arrested for felony possession of marijuana. Despite the fact that the actual amount of marijuana found by the cops was less than one ounce, making it a misdemeanor, the cops chose to weigh it in its glass container, making the combined weight over a pound and, thus, a felony! When the client hired us, we approached the DA about the cop's poor judgment in weighing the marijuana prior to the charges being filed.

We negotiated to have the client make a donation to charity and do some community service in exchange for the charges never being filed, not even as a misdemeanor. On top of that, the officer who weighed the marijuana received an official reprimand.

What Happens in Texas Doesn't Stay in Texas

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

— Robert Reed

Marijuana possession convictions carry a host of consequences that can haunt you for the rest of your life—even if you don't get jail time.

Many police officers, prosecuting attorneys, judges, and even some defense attorneys are completely unaware of the fallout such a conviction can have for a victim.

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 state governor agrees to grant you a pardon.

Think that's likely? Think again.

Receiving a pardon from the state governor is extremely rare. You will likely have a drug charge on your permanent record for the rest of your life. And that's even for possessing the smallest amount.

What Happens If You're Convicted?

If you're convicted, the State of Texas can (and likely will) 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. There's no going back.

Even if you simply depend on being able to drive to get to work, you risk losing your job if you can't get there.

Who can afford to be unemployed when, on top of all the other expenses, you have to start paying off the fines associated with your charges?

Now, imagine having to undertake a job search with no license and with a criminal record. How will potential employers view you with a drug charge hanging over your head?

And don't think they won't find out. Background checks have become routine these days. No employer is going to trust you when there's a drug arrest on your record.

The same goes for landlords. Even if you own your home, if you've got a mortgage and 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 rental property with a criminal charge on your record.

What Else Could Go Wrong?

- Obtaining a passport will prove difficult or even impossible. (You can say *sayonara* to 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—be they property, school, car, personal, or business loans, for example—or be unable to receive any form of government assistance, like welfare or even unemployment. Federal and state governments are always passing laws restricting critical financial aid to folks convicted of drug offenses.
- 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 being able to renew it when your current card expires. If that happens, you would have to leave the United States or, if you attempted to remain here illegally, be subject to further criminal prosecution.

These and other unseen consequences can, and will, haunt you for the rest of your life. Is it worth all that? And, if it's already happened to you, is it worth taking the chance to handle things yourself when your life hangs in the balance?

We at Hamilton, Hull & Rogers don't think so. Don't take chances with your future. Get a solid, experienced attorney

who has an established history of successful drug defense behind you now. Your rights are too precious to hand over to just anyone.



Points to Remember:

- You will likely lose your driver's license for up to at least six months, and any commercial driver's license permanently.
- A criminal conviction stays with you for life, even if you don't serve jail time.
- It's virtually impossible to expunge a criminal drug charge from your record.
- You can lose your job and be unable to get another; lose your home and be unable to rent a place to live; you can ruin your chances of obtaining any kind of financing: car, personal, business, even school loans. You can also be denied a passport.
- If a student, you can be expelled from college and denied financial aid.

A client and several of his friends were parked in their vehicle in the parking lot of a local Texas nightclub waiting on the rest of their friends to arrive before going inside.

A police officer came up to the car and spotted brass knuckles and a pocketknife on the dashboard. The officer promptly demanded that all the occupants step outside the vehicle and proceeded to search it.

During the search, the officer found marijuana and all the car's occupants were charged with possession of a prohibited weapon and possession of marijuana. Our client called us. We got the charges against him dismissed with the agreement that he perform some nominal community service in exchange.

I Can Represent Myself

“In law, it is good policy to never plead what you need not, lest you oblige yourself to prove what you cannot.”

— Abraham Lincoln

Possession of marijuana charges—even for very small quantities—should never be taken lightly.

All too often, our firm gets frantic calls from people arrested for possession who thought they could skip the expense of an attorney by representing themselves.

Ouch.

Too many people assume marijuana charges are 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 borrowed and accidentally dented.

Do You Know What You’re Up Against?

These individuals are in over their heads. They have no idea of the life-changing consequences they now face.

We do.

You think you can negotiate successfully with the prosecutor? It’s their job to prosecute people—it’s what they do for a living. Their success is measured by how many criminals they put away, not by how many they let walk. If it were that easy, practically every defense lawyer’s client might walk.

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 pot. 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 definitely not there to help you. Only your defense lawyer can advocate for you.

**The prosecutor
and the judge
aren’t there to
help you**

Criminal Charges Are VERY Serious

Don’t kid yourself. This is why we say 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 specialized knowledge of the intricacies of Texas drug laws.
- You need an attorney who can and will fight skillfully in your defense.
- You need an attorney who has an experienced private investigator at their fingertips to fight behind the scenes on your behalf.

One poor decision should not destroy the rest of your life. If you are arrested for possession or delivery of marijuana, you have options.

Start by exercising your rights, beginning with the right to remain silent and the right to an attorney. By knowing your rights and seeking representation, you and your attorney can work together to get your charges reduced or dropped, and minimize or even eliminate any jail time.

The less you say to the police, the less they have to use against you, and the more options your attorney has for your defense. Remain silent, right from the start, and speak with an attorney as soon as you possibly can. This is the only way to maximize your options. By taking our advice and doing this, you can begin making smart decisions about your case right away.

We help our clients navigate the legal system and make the appropriate strategic decisions so that the criminal charges they face will hurt them the least.

Again, this is absolutely not a do-it-yourself manual. In fact, this is probably just enough information to get you into deep trouble, should you decide to go it alone.

You don't have to go it alone. In fact, you shouldn't even consider going it alone.



Points to Remember:

- You can't talk your way out of a possession charge.
- The prosecutor is not sympathetic to you; their job is to convict you.
- The judge is not there to ensure you obtain justice. The judge merely referees the prosecutor and defense attorney.
- Never give up your rights. Immediately exercise your right to remain silent and be represented by an attorney.
- You need an experienced attorney with sufficient resources who is willing and able to fight for you.

Another of our clients, a college student, was smoking in his dorm room when cops knocked on the door. Feeling confident that he had done no wrong (aside from violating the dorm's "No Smoking" policy), he thought nothing of giving the police permission to search his room, figuring that by cooperating, he could quickly assure the officer that there were no drugs involved and be done with it.

The sole item the police found was the pipe the student had been smoking. Ignoring the fact that no drugs had been found and only tobacco was present, the police seized the pipe and arrested our client for possession of "drug paraphernalia." We immediately spoke with the prosecutor who rightly decided not to even bother filing charges.

Protect Your Future, 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*

It is imperative that the minute you’re arrested—or even just questioned—you remember to invoke your rights.

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

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

You’re likely familiar with the second and third ones listed above—anyone who watches popular crime dramas on television usually is—but did you know you could refuse to allow anyone to search you or your premises? This includes your vehicle.

Not unless they’ve got a search warrant. Ah, now you remember! But you probably didn’t realize that this would extend to your vehicle in the event of a traffic stop. Well, it does.

Search Warrants

Even though the laws governing searches of vehicles are less strict than those on our homes, an officer must either have a warrant or there must be “exigent circumstances.” This means that certain details or situations exist, such as whether the officer can see drugs “in plain view” or searches the vehicle after arresting you and before towing the vehicle.

If an officer says they have probable cause to search, you can’t physically stop them, but you must be explicit in insisting that you do not consent.

Why? Because if the court finds later that the officer did not have the legal right to conduct a search you objected to, anything the officer found during that illegal search would be judged inadmissible and the prosecutor would not be able to use any of it against you in court.

However, if you *do* consent (and not telling the officer that you refuse to consent is the same as consenting, as far as the court is concerned), you will not be able to contest the illegal search.

They can’t search your person, they can’t search your home (or any buildings on your property or on any part of its exterior), and they can’t search your vehicle. Not unless they hand you a search warrant or have probable cause.

Oftentimes, the officer who is permitted to do a pat-down of your clothing for safety purposes (to ensure you do not have a concealed weapon) might find illegal drugs on your person and immediately arrest you. You cannot refuse the pat-down but if the officer finds anything illegal or dangerous, do not make any admission or attempt to give any explanation, such as, “That’s not mine.” Instead, immediately say you’re invoking your right to remain silent and speak to an attorney and say no more.

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. Be polite and behave calmly. But that’s as far as you should go. If the officer asks any questions, tell him or her that you are invoking your right to speak to your attorney.

Your rights are absolute:

Refuse a search

Remain silent

Request a lawyer

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

Your rights are absolute. You are entitled to them and they cannot be legally taken away from you.

Let’s look at each of these individual rights a bit more closely.

Legal Right # 1: You cannot be forced to consent to a search.

The Fourth Amendment to our U.S. Constitution grants each individual within its borders—whether they are citizens or not—the right to be free from unlawful search and seizure.

You have the right to **not consent to a search** of your home or vehicle unless the police officer is in possession of a warrant—and that’s not the same as saying they’re planning to get one, or that one is supposedly on the way.

Should You Ever Consent?

Any time an officer senses something illegal, like smelling marijuana smoke or seeing it through a window, they will likely attempt a warrantless search. You cannot stop an officer from conducting such a search, but you can express your refusal to consent. If the Court later determines the search to have been illegal, any and all evidence obtained as a result of the search will not be allowed into evidence at trial.

The officer must be **in physical possession** of a warrant at the time the search is to take place, and give the warrant to you because you have the right to examine it. (And you should examine it carefully, because it might not extend quite so broadly as the officer might try to make you believe.)

Quietly and calmly but firmly assert this right. At best, it can prevent your car or home from being searched and, at worst, it can help suppress any potential evidence obtained during what may now have become an illegal search and prevent it from being used against you.

If the police tell you they have a search warrant, you should always ask to see it. Read it!

You might be surprised at just how many people feel intimidated in this kind of situation and spontaneously give the police permission to search their car or home.

Perhaps they feel they have nothing to hide and that this will strengthen their position as a potential suspect of a crime.

Perhaps they feel frightened that they'll be punished or treated more harshly if they refuse.

Perhaps they just don't feel they have the right to resist giving consent when addressing law enforcement officials.

Most people admit that they consented to a search because they thought it would help to be as cooperative as possible.

The Police Don't Need Your Help

You're not trying to make friends here. Helping them to do their job by making it easier to gather evidence against you of a crime isn't going to win you any points. (It might score them bragging rights later on, but that certainly isn't going to do you any good.)

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, or fail to speak up and object, you give prosecutors the justification they need to use against you any evidence found during a search.

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

Which scenario would you rather have?

Legal Right # 2: You have the right to remain silent.

Why? Because, as the next part of the Miranda warning goes, **anything you say can AND WILL be used against you.**

This has to be one of the toughest rights to force yourself to adhere to. Everyone's first instinct is to protest their innocence, to talk themselves out of a risky situation before it gets any worse.

The problem with that? It's the talking that usually makes the situation worse.

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—they talk to gain sympathy or foolishly 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. In fact, the more you protest your innocence, the likelier they are to presume you're guilty—of what, they may not know. But they'll be determined to find out.

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 job to determine whether you're actually guilty or not. The fact that they're arresting you means they already believe you're 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 let you go. You won't talk your way out of an arrest, so don't waste time trying. Stay silent! When you are detained, arrested, or simply called in for questioning, it's in your best interest to say nothing more than to correctly identify yourself and add that you're invoking your rights.

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.

Many people worry that refusing to talk, instead of answering questions, and asking for an attorney makes them look guilty.

As hard as it may be for you to believe at this stage, looking guilty is not your biggest problem right now. You are

already guilty in their eyes. For whatever reason, they already suspect you. Talking to them will not change their minds. But it might just make proving you guilty that much easier.

If you've been arrested in connection with drugs, then 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.

If you talk 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's one aspect of this that you may not even be aware of. Ever hear of 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, even if it was because they didn't strike you as relevant, 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 were deliberately concealing the truth.

Now you look even guiltier!

All because you volunteered to talk when you were entitled to remain silent.

**It's not just WHAT you say that can hurt you.
It's what you DON'T say!**

Not only that, but if you voluntarily speak to the police, unless your conversation is recorded and it can be proven that the recording has not been tampered with or edited in any way, you have zero control over how they report what you said.

You can't be certain how accurately they will recall your conversation, or misunderstand or distort your words, because they suspect you of being guilty.

By the time the police officers have time to file their reports, you may not even recognize the statement they claim you gave them. At that point, if your statement is used in court, it comes down to your word against a police officer's.

Who do you think the court is going to believe?

Remember: the police are not on your side. It is not their job to gauge whether you are guilty or innocent. 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 for it to decide whether your guilt is real or not. At that point, their job is essentially done.

To get there, 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. They are not beyond exaggerating your situation in order to get you to protest your innocence or, worse, admit to a lesser offense in the hope of dodging a bigger bullet.

Call it a self-inflicted wound.

It's much easier for a competent attorney to make sure you don't get harmed or shoot yourself in the foot if you're smart enough to refuse to say anything unless your attorney is present. If you don't, you might bleed to death (so to speak) before your lawyer can arrive to tend to your wounds.

Stay safe. Slap a bandage over your mouth. Remain silent!

Legal Right # 3: You Have the Right to an Attorney

This right is equally as important as the previous two, to protect your interests and ensure the best possible outcome.

When you assert your right to remain silent, you must add that you request to speak to an attorney.

State that you will not answer any questions until you have spoken with your attorney.

Politely refuse to answer any questions without your attorney being present.

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

You MUST Assert Your Rights!

Is asserting your rights a scary thing to do? Yes. Not because it gets you into more trouble, but because there is the possibility, should circumstantial evidence be relatively strong, that you could be arrested. And being arrested is a scary experience for anyone.

Asserting your rights doesn't necessarily mean you'll be arrested. But because police have the right to hold anyone without charging them for up to 72 hours, they can use this as a means to intimidate you into incriminating yourself.

Don't panic. Your lawyer will do everything in his or her power to ensure you're released if held without cause, or bailed out if you have been processed. Remember: they know the ins and outs of the legal system when you probably don't.

Nobody wants to be taken away in handcuffs. 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.

This is particularly true if this is your first arrest and you don't already know an attorney. You will feel lost, in desperate need of information and guidance.

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.



Points to Remember:

- Always refuse to consent to a search in the absence of a specific search warrant. If a warrant is produced, read it carefully to make sure places are not searched that are not included in the warrant.
- Remain calm and polite—most of all, remain silent. Don't answer questions and don't volunteer information without first consulting your attorney.
- If you make the grave mistake of agreeing to speak without first consulting an attorney, not only what you say will be held against you but what you didn't say as well.
- Don't hesitate: immediately request an attorney and then stop talking!

Supreme Court Upholds Drug Suspect's Fourth Amendment Right

In March 2014, a case came before the Supreme Court questioning whether the reaction of a drug-sniffing dog outside a suspect's home in 2006 was sufficient cause for a warrantless search of the home's interior. Police had approached the home after receiving an anonymous tip, accompanied by a drug-sniffing dog, and entered the home after the dog's reaction convinced them that drugs were inside the home, despite not having any evidence of this before entering.

The late Justice Antonin Scalia of the US Supreme Court, speaking for the majority ruling, said that, "The police cannot, without a warrant based on probable cause, hang around on the lawn or in the side garden, trawling for evidence and perhaps peering into the windows of the home.... The officers here had all four of their feet and all four of their companion's planted firmly on that curtilage [the area immediately outside the home]."

The evidence provided by this warrantless search and seizure that turned up 179 plants in a growing operation with a street value of \$700,000, was thrown out.

Would your attorney fight this hard for you? If not, I strongly recommend you find one who would. It's what we do.

Do's and Don'ts When Arrested

“There is not one single police officer in America that I am not afraid of and not one that I would trust to tell the truth or obey the laws they are sworn to uphold.”

– Henry Rollins, musician and actor

Here are some of the tips we at Hamilton, Hull & Rogers 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 to strengthen your defense and prevent the prosecution from gaining anything 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. But do not 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 practiced 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** *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.
- **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 this 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're 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.

In another college dorm, the smell of marijuana was reported. (There is not the same expectation of privacy in college dorm rooms so searches are generally permissible.) The cops arrived and searched the room and found marijuana. The student was arrested and called us.

We spoke to the DA before formal charges were filed and successfully negotiated not filing charges and expunging the student's record of any arrest or criminal incident in exchange for our client taking a drug class and making a donation to charity.

When Formal Charges Are Brought

“Law school taught me one thing: how to take two situations that are exactly the same and show how they are different.”

— Hart Pomerantz

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

What Are Misdemeanor Charges?

If you are charged with a Class C misdemeanor (the least serious crime you can ever be charged with), where jail time is not a consideration, the criminal complaint will be filed against you in a justice of the peace or municipal court.

For Class B and A misdemeanors, jail time ranges from up to 180 days (with fines up to \$2,000) to up to a year in jail (with fines up to \$4,000), and charges are filed in county court.

In addition to a criminal complaint, rather than an indictment, a document called an *information* will be filed. An information lays out exactly what crimes you are being charged with, along with the maximum penalties you would face upon being convicted.

Felony Charges

If you are charged with a felony, the complaint is 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.

You may, in felony-related cases, have the facts of your case presented to a grand jury to assess whether you merit being indicted on the charges being filed. Grand juries were originally established to avoid unwarranted prosecution.

The grand jury's job is to decide whether or not, based on the evidence, there is probable cause to suspect you committed a felony.

Should You Demand a Grand Jury?

A grand jury can demand to review documents and evidence and also compel the testimony of sworn witnesses, including you, the defendant.

After they review all the evidence, they will decide whether or not probable cause exists and either return an indictment or a *no bill*, which means there isn't enough probable cause in their opinion to indict you.

While you may be asked to testify in front of the grand jury, it's not an opportunity for you to defend yourself against the charges and your attorney is not permitted to speak in your defense. You only get to answer the questions that the prosecutor poses to you, so the grand jury can hear your answers.

Unlike a criminal trial, this 12-person jury does not have to be unanimous: if only nine of the 12 grand jurors find enough evidence to charge you, that's good enough for Texas.

Grand juries in Texas are notorious for being overzealous and aggressive. It's also generally known that they will usually go along with whatever the prosecutor tells them they should do.

Here in Texas, nine of the 12 jurors must agree on the charge to indict someone, but don't be fooled—it is no challenge for the prosecutor to secure those nine votes. Nonetheless, it is your right to an indictment by a grand jury before being charged with a felony. Whether it will do you much good is debatable.

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 will discuss the pros and cons of this agreement with you.

When you are served your charges, you will also be told when you need to appear in court for your arraignment.



Points to Remember:

- The type of charge—misdemeanor or felony—being filed against you will determine what type of court will hear your case.
- If you are being charged with a Class A or B misdemeanor, an “information” is filed that lays out exactly what crimes you are being charged with, along with the maximum penalties you would face upon being convicted.
- If you are being charged with a felony, you have the right to demand a grand jury review the evidence and determine whether you should be prosecuted. (Grand juries typically do whatever the prosecutor wants, however.)

Stephen L. Hamilton

Pulled over for a burned out taillight, our client found himself ordered from his car when the officer said he detected a strong odor resembling marijuana.

After searching the driver, passenger, and vehicle, marijuana and prescription pills were found and the driver was arrested for possession of marijuana and another controlled substance.

He called us. We got the charges dismissed.

“How Do You Plead?”

Pleas & Pre-trial Motions

“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

Your Arraignment—What Does That Mean?

An arraignment is when you appear in court to formally acknowledge the charges against you and state whether you are pleading not guilty or guilty.

Ideally, by the time of your arraignment, you will have long since retained an attorney to conduct an investigation and strategically review your case 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’s unnecessary. In that instance, a plea of not guilty is automatically registered on your behalf.

If you enter a plea of not guilty, whether you’re guilty of the charge(s) against you or not, your attorney will have more time to work on your case, including determining whether your arrest was lawful or not.

You can always change your plea later, once your lawyer has had the chance to negotiate with the prosecutor on any ambiguities, should you and your lawyer decide that pleading guilty makes the most sense in your particular situation.

Once you plead guilty, however, there is no changing your mind, so always think carefully before pleading guilty. An experienced defense attorney will fight for your rights before entering a guilty plea.

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

Pre-trial Motions: Righting the Wrongs

Ideally, your defense attorney will have been working on your case from the time of your arrest. After the arraignment, your attorney will file any and all appropriate motions to challenge the evidence, procedures, and possibly even the charge itself. These motions call attention to how any of your rights 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, that is, to change where your case will be heard to another location. They will 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 point out that the statute you violated was unconstitutional to begin with.

A motion may also be filed to have your case dismissed if you can claim 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 highlight possible problems and weaknesses in your case and ensure that

illegally obtained evidence is suppressed and can't be used against you.

It is the filing of such motions in which superior skilled defense attorneys flex their trained muscles to protect you from any missteps. Their investigators research the circumstances surrounding your being detained and arrested to ensure that a complete picture of what did and didn't happen is obtained. Your defense attorney will ideally scrutinize all the facts surrounding your arrest to determine where the case against you is weak or even fabricated.

Other common motions that defense attorneys file regarding evidence include those seeking "discovery," that is, to discover precisely what evidence the State has in its possession to incriminate you so as to enable them to mount a comprehensive defense on your behalf.

Hurrah for the Michael Morton Act!

One recent law that went into effect on January 1, 2014, is the Michael Morton Act. It expands your rights as a defendant to see firsthand the evidence the State holds against you. It allows the defense to learn about, view, and make copies of most of the prosecutor's evidence against you.

Sadly, prosecutors often resist sharing everything, making it necessary to file a motion to force them to comply. It is your defense attorney's job to ensure that this motion is filed on your behalf.

Another frequently filed motion is to move 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 this and any other evidence that came to light as a result of having obtained this evidence illegally be suppressed, meaning it cannot be used against

you in any way, shape, or form to prove your guilt. Such suppression can force the prosecution to dismiss the charges if sufficient additional evidence against you does not exist.

Generally speaking, motions are a remedy to protect against the police violating your rights. (The very fact that we can file these motions also helps prevent habitual police misconduct.)

These violations of your rights include (but are not limited to):

- If you were stopped and the police officer who stopped you didn't have reason to suspect you were committing a crime.
- If your vehicle was stopped without evidence that you had committed a traffic offense.
- If you were frisked without reasonable concern that you might be armed and dangerous.
- If you were searched before you were arrested, or if your premises or vehicle were searched at the time of your arrest, without an appropriate search warrant in hand.
- Searching your vehicle without your consent.
- Entering or searching your home without a warrant or consent.
- Illegally searching your home when in possession of nothing more than 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 outside of your lawyer's presence once you have obtained a lawyer.

- Extorting a confession from you by subjecting you to violence or threats of violence.

When any of these things happen, your defense attorney has grounds to make a motion to suppress any and all resulting evidence and challenge the related charges filed.

Such motions that challenge evidence and your charges based on misconduct by authorities typically involve a hearing where your attorney can cross-examine those who are accused of having violated your rights.

If the motion is granted, it means that any and all evidence obtained as a result of the violation of your rights cannot be used against you in any way.

If the motion is denied, there is still the possibility that the cross-examination during the hearing produced testimony can help you during your trial.

What to Expect During Cross-Examination

Cross-examination is a skill. A shrewd and experienced lawyer can elicit testimonies that will either support motions to suppress evidence and/or challenge charges or prove helpful to you later on, when your case is being heard in court.

This is where a law firm's investigators really make a difference. Competent, thorough investigations are the foundations of successful motions. A skilled private investigator will pick apart each step of the police investigation, find and question witnesses, and investigate each witness and party involved.

At Hamilton, Hull & Rogers, from the moment our clients request our representation, we work with our investigators to examine your case from every angle, picking it apart for any possible weaknesses.

We take no evidence at face value, and this includes lab results. While lab results are often perceived to be impartial and infallible, we know they're not. Errors in lab procedures and findings occur all the time. A sharp attorney will ensure that all lab findings being used against you are analyzed for accuracy.

A good defense attorney will scrutinize every aspect of your arrest, the evidence against you, probable cause, and all the circumstances surrounding the crime(s) the police allege you have committed.

At the same time, your attorney's private investigator will obtain the police records of your case, start from there, and conduct his/her own independent investigation.

Before you decide to go to trial, you need to understand the strength of your own case, as well as the strength of the prosecutor's case.



Points to Remember:

- Your arraignment is when you formally enter a plea of either not guilty or guilty. Not-guilty pleas can always be changed later to guilty, but guilty pleas can never be changed to not guilty.
- If you are unsure what to plead, **ALWAYS** plead not guilty. Never enter a plea without first consulting with an attorney.
- Pre-trial motions are submitted to suppress any illegally obtained evidence and ensure that all procedures surrounding your investigation, arrest, and questioning were legal, including the constitutionality of the law(s) you're accused of breaking.
- Even if a motion is denied, any testimony resulting from the hearing on it may benefit your defense during trial.
- Don't hesitate! Get yourself a skilled and experienced lawyer as soon as possible. The sooner you do, the sooner an investigation can be launched on your behalf.

Officers were on bicycle patrol in an area experiencing a recent rise in vehicle and residential burglaries. Officers spotted the “silhouette of a person acting suspiciously” inside a vehicle. When officers approached, they spotted a laptop computer on the front seat beside him. The young man explained that he had just left his brother’s house after the brother had installed a computer program on his laptop for him.

While ensuring the computer was not stolen, officers conducted a pat-down and detected what they claimed was an unusual bulge in his front pocket, something the officers asserted that, as a result of their extensive “training and experience,” was reasonable to conclude was drugs. The officers seized the bag in his pocket and searched the vehicle. The young man was arrested and charged with possession of marijuana and drug paraphernalia. He called us and we negotiated a deal where all charges were dismissed after he completed a mere 35 hours of community service.

How Can I Be Sure Mine's a Good Attorney?

"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*

There are some fundamental ways to establish whether your attorney is indeed a superb attorney.

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

There are many things that only experience can yield, and with the risks you face fighting marijuana charges, 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, when you first meet. There is a tremendous amount of trust required 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 frankly with your attorney, how can they possibly do a superb job defending you?

No attorney can predict the future and a skilled attorney knows that a good outcome can inexplicably come from a weak case and 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 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 says that it is certain should not be trusted.

If you are going to emerge from this in the best way possible, your lawyer should understand not only the laws regarding marijuana 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 marijuana possession and delivery charges, and one who is knowledgeable in the science behind it.

We've touched on the importance of the science involved in drug cases, and the percentage of error that exists when obtaining lab results. Those results can make or break your case. If you are facing marijuana 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 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.

Why does this really matter? Because drug charges are based on the prosecution's belief that the drugs you had on you were in fact the illegal controlled substances the law claims them to be. If there is a shred of reasonable doubt—that these substances weren't actually the illegal controlled substances the law claims them to be—a skilled attorney will know how to uncover that fact and can discredit the lab findings. Why would you want to overlook the possibility of that happening?

The science of controlled substance charges is by no means simple or 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 the hows and whys of the scientific procedures performed.

Attorneys who take the time to complete forensic science training and invest the money and effort in it are diligent, tenacious, and committed to excellence in their field. In other words, by definition, they're superb.

What Kind of Reputation Do They Have?

You need an attorney who is well respected and has a good reputation. If other attorneys have good things to say about yours, then you have found the right representation. Attorneys

can tell bad lawyers from good, and they aren't going to try to convince you otherwise—endorsing bad lawyers reflects badly on those doing the endorsing. Endorsing another attorney means that 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 counsel 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, have a personal conversation with them.

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.

How to Identify a Superb Lawyer

Let's look at some specifics as to how you can establish how superb your attorney really is.

A superb attorney is one who has invested time, money, and energy into expanding his or her 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 is trained in the science of drug testing, commonly referred to as "solid state" or "solid dose" testing. Your lawyer should understand and be familiar with the precise lab instruments

used to test for marijuana. 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 with 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 those attorneys who have achieved an “A” rating.

Your ideal attorney should also have a high AVVO rating. What’s an AVVO rating? We’re glad you asked because it’s an important consideration.

AVVO is a mathematical method, developed by attorneys, law professors, and other legal workers, that is designed specifically to rate attorneys based on information collected from their websites, profiles, and other background material.

Ratings range from 1, which equates to “use extreme caution when dealing with this attorney,” to 10, which means they’re the cream of the crop.

When looking for representation, you want 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, so the site does permit you to assess potential attorneys based on both their AVVO rating and past client testimonies.

Another important consideration 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 marijuana defense lawyer, he or she is a member of NORML.

What Is Expected of YOU?

You also 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. It might sound attractive but it's just not possible.

If you're not being asked to contribute, then everything possible just isn't getting done. Your attorney should stress to you the importance of your getting rehabilitated and producing clean urine samples, if you're a user, but also contributing to assembling the most comprehensive mitigation packet possible, information that puts your character in the best possible light.

It's you who knows your entire history better than anyone: who will make the best character references for you, what your relationships were like 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. This is a team effort. And you're a member of this team, not a spectator.

How Well Does Your Attorney Communicate with You?

A skilled attorney will keep you in the loop on *everything* concerning your case. You should be made fully aware of all the details concerning 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 decisions about 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 answers 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 affect the rest of your life.

When an attorney assesses the potential outcome of any case, it should always be accompanied by: "I can't be sure." 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 with them. 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** 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 AVO rating of 8 (preferably 9 or 10)
- They give you homework
- They keep you informed
- They do not promise outcomes

Red Flags—When to Run from an Attorney

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

— Stephen Wright, comedian

We have talked about the attributes that signal a superb attorney. By now you know what to look for, but, like many things in life, often it’s not just what to look for but what to look out for.

You need to be fully aware of the major red flags that indicate that an attorney’s way of doing business is not necessarily in your best interest. We at Hamilton, Hull & Rogers believe that it’s important to weigh the bad as well as the good in order to make fully informed decisions.

So, let’s take a quick look now at some of the more significant red flags that you need to be on the alert for, so that you can avoid getting saddled with poor or mediocre representation.

Red Flags

- Bargain basement prices—you get what you pay for
- Answering machines instead of a real person when you call
- No private investigator available
- Promises on outcomes
- General practitioners—no specialization means no expertise

Right now you may be in the unenviable position where you're being forced to find someone at the drop of a hat that you can trust to fight for you. It's without question a very vulnerable time in your life and this is a huge decision. You need someone in whose hands you can trust your future. Your life depends on it.

What should you know to avoid?

- **Cheap Lawyers**

In this business, you absolutely get what you pay for. When searching for the best attorney to represent you, money should not be one of your top concerns. When you are 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—it's really hard to put a price on that. Right now, you need to focus on protecting YOU.

- **Answering Machines**

If you get an answering machine every time you phone your attorney, either you're dealing with a firm that does not have a solid, reassuring coverage system in place or you're dealing with a one-man show. Both are bad news. One person cannot possibly do everything needed to conduct an effective investigation and build a strong case while navigating you through the bureaucratic aspects of the legal system. Likewise, a law firm that can't figure out how to answer your calls is not a firm with your best interests at heart.

- **No Dedicated Private Investigator**

Some attorneys will ask 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. It is, to put it bluntly, downright unethical to make such promises to clients. No one can ever guarantee a home run before seeing the pitch. Uncertainties can and do arise. 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 will ever promise what he/she is unable to guarantee. If an attorney promises that he or she will get your charges dropped, drop the attorney instead.

Conversely, an attorney who tells you from the start that you're going to strike out, that there's no hope for you before conducting a full evaluation of your case, is also making you a promise—a promise that they will fail to represent you. The same way winners win, losers lose.

The core reason to hire an attorney is to have them build the strongest, most strategic case possible. An attorney who dismisses any chance of a good outcome 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 in-depth 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.

When you need to find an attorney to defend you, it's not the time to cut corners or pinch pennies. 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.

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.



Points to Remember:

- Things to avoid:
 - Bargain basement prices
 - Answering machines
 - No private investigator
 - Promises on outcomes
 - General practitioners

A client of ours was innocently parked in his vehicle at a local park one afternoon when he was surprised by an officer who activated his warning lights and approached unexpectedly. The officer ordered our client to step out of his vehicle so he could conduct a search. When prescription pill bottles were found, the man was charged with possession of a dangerous drug and jailed.

He promptly called us. The following day, he was released from jail and, four months later, we got his case dismissed.

“And the Verdict Is...”

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

– Robert Frost

In Texas, a marijuana conviction can land you in prison for a frighteningly long time, including up to a life sentence if the quantity is sufficient. That should make anyone think twice about carrying marijuana on them, whether they live here or are just passing through. But more often than not, people only find out just how serious it is *after* they’ve been caught.

If this happens to you, you need to retain an attorney who is up to date on Texas laws surrounding marijuana charges and the norms that are constantly changing, constantly being revised.

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 marijuana charges, conducting thorough investigations in conjunction with skilled private investigators, and doing our utmost every day to serve our clients’ best interests.

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, our firm, and our services, please visit our website www.attorneyhamilton.com.

Meet the Team at Hamilton, Hull & Rogers



Stephen L. Hamilton

Attorney **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 ranks among the less 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 is a lifetime legal member of the National Organization for the Reform of Marijuana Laws (NORML), the National

Association of Criminal Defense Attorneys, the Texas Criminal Defense Lawyer's Association, and several other regional legal associations.

Scientific certifications include completing Blood Testing Gas Chromatograph training (used to test blood for alcohol and/or drug levels) and solid-state forensic drug testing (the legal requirement for Texas lab technicians to establish and identify substances by their precise drug composition).

Stephen 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.



A successful local businessman and owner of three bond companies, National Bonding of Lubbock, Lone Star Bail Bond, and Garcia Bail Bond, **Shane Byrd** 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 study at Texas Tech University in criminal justice and subsequent degree from American InterContinental University, 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.



A former Texas prosecutor, **Tommy Hull** is a native Texan, raised in the Texas hill country. He attended the University of Texas at San Antonio with his high school sweetheart and eventual wife, Brittany. After graduation from Texas Tech Law School, he accepted employment with 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.



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.



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. She was the Executive Managing Editor of one of Tech's prestigious law journals and competed in mock trial and moot court competitions, developing skill with both oral argument and legal writing.

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.



The former sole juvenile prosecutor for the Midland County District Attorney's Office, **Brooke Hendricks-Green** was promoted within a year to felony prosecutor in the 238th Judicial District Court. After two years, she advanced to Chief of the Misdemeanor division. In 2010, she returned to her hometown to become a felony prosecutor at the Ector County District Attorney's Office and was subsequently promoted to Chief Deputy District Attorney. Before joining Hamilton, Hull & Rogers, Brooke tried over 60 cases to a jury, ranging from misdemeanor DWIs to murder and attempted capital murder.



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.



In-house investigator for Hamilton, Hull & Rogers, **John Lopez** is a licensed Master Police Officer, retired Texas Department of Public Safety Trooper, and Special Ranger. With over thirty years of law enforcement experience, John acts as the “eyes and ears” on every Hamilton, Hull & Rogers case, photographing/vid- eo recording crime scenes; interviewing witnesses; reviewing discovery, including physical evidence, prior arrest records, and police and lab reports (he is certified as an HGN expert, and practitioner and instructor of Standardized Field Sobriety Tests); and investigating traffic accident evidence, including mapping scenes for accident reconstruction. John has accumulated nearly 2200 hours of training, as listed on his TCLEOSE (Texas Commission on Law Enforcement Officer Standards and Education) and holds the following Certifications/Special Training:

Special Ranger, Specialized DOT Certification, and Peace Officer License, including Basic, Intermediate, Advanced, and Master Peace Officer Certifications.

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

Attorneys Stephen L. 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 marijuana 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 marijuana arrests in Texas and *how to assemble the best defense possible*.

ABOUT STEPHEN L HAMILTON



Attorney Stephen L. 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 Organization for the Reform of Marijuana Laws (NORML), 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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