

NJ Marijuana Defense

1. Could you please advise me as to the different types of marijuana possession charges that I could receive in New Jersey?

New Jersey throws the book at people who are charged with possession of marijuana. There are several different levels of marijuana charges that a person can receive:

a. Possession of Less than 50 Grams

If a person is found to possess 50 grams or less of the marijuana, and if he has no intent to sell the marijuana, then this offense is only considered to be a disorderly persons charge (DP). See, N.J.S.A. 2C:35-10. A DP conviction for the possession of marijuana also exposes a person to a six-month loss of driver's license, heavy fines, and a possible jail term. However, in my almost two decades of practice I have never seen a defendant sentenced to jail for a marijuana possession charge. Moreover, you will also receive a criminal record. Therefore, if you apply for a job, if your employer does a criminal background search then it will show that you have a drug conviction. Additionally, if you want to be licensed in such fields as a medicine, the law, or if you want to become a CPA or nurse, then a marijuana related conviction could certainly haunt you. In today's day and age, a criminal record is a major road block to having a successful career.

b. Possession of More than 50 Grams

Meanwhile, if a person is charged with possessing more than 50 grams of marijuana, then the penalties are much more severe. The person could be charged with a fourth degree crime. See, N.J.S.A. 2C:35-10. A fourth degree crime is considered to be a felony and the possible jail sentences are much longer. A person faces up to 18 months in prison on a fourth degree charge. The max fine exposure is \$25,000. However, in reality most defendants have to pay around \$1,000 to \$1,500 in fines for a fourth degree marijuana possession conviction. Finally, if you are convicted for possession in excess of 50 grams then you will also be required to be on probation.

c. Possession in a School Zone

In some cases, the police may also try to charge a person with possession in a school zone. The penalties for a school zone charge are much more severe. A person convicted of this charge must perform at a minimum 100 hours of community service. See, N.J.S.A. 2C:35-10

2. What is the potential penalties for a marijuana possession charge(s)?

There is a vast range of penalties that could be imposed for a marijuana possession or distribution case. However, the worst part of having a conviction for a marijuana related offense is that you will have a criminal record. Good luck finding a job in this "dog eat dog" economy if you have a criminal record. Do you really believe that many top notch companies will want to hire an applicant who could be a "stoner?" If the marijuana possession case only involves a minor amount, then the penalties are lower. The penalties increase with the weight of the seized marijuana.

For possession of marijuana that is less than (50) grams then it is a DP offense, and the jail exposure is six months. Meanwhile, if a person possesses more than fifty (50) grams of marijuana then it is considered a fourth degree. The jail exposure is up to up to eighteen (18) months in jail.

The sentencing scheme for the selling/distribution of marijuana are much more progressive. The following info shows the degree of offense, weight of marijuana involved, the jail exposure, and the fines for each category of marijuana distribution.

First Degree Marijuana Distribution = 25 lbs. or More

10-20 years prison and fines up to \$300,000

Second Degree Marijuana Distribution = 5 to 25 lbs.

5-10 years prison and fines up to \$150,000

Third Degree Marijuana Distribution = 1 Ounce to 5 lbs.

0-5 years in prison and fines up to \$25,000

Fourth Degree = Less than 1 Ounce

0-18 months jail and fines up to \$10,000

In addition to the fines and jail a person could also lose his driver's licenses for a marijuana charge. A person is exposed to a six-month mandatory driver license suspension if convicted of possession of marijuana or distributing marijuana. However, a defendant can ask the judge for a waiver of the imposition any driver's licenses suspension. The defendant must prove that he will have a hardship if his license is suspended.

3. I was busted by the police for a marijuana related charge. The police officer did not find any marijuana in my pants or in pockets. Can I be found guilty if the marijuana even if the marijuana was not found on me or in my pant pockets?

Yes, a person is not required to have physical possession of marijuana to be found guilty. There is a legal doctrine called constructive possession under N.J.S.A. 2C:35-10. Under this doctrine a person does not have to have actual physical control of the marijuana to have possession of it. In the context of marijuana possession charges, the defendant must have knowledge of the presences of marijuana. Moreover, the defendant must also have an intention to exercise physical control over the marijuana. The doctrine of constructive possession is extremely often difficult to prove. Therefore, if you have a case that has legitimate issues of constructive possession then you should raise this defense.

4. I was recently busted by a local cop for marijuana charges. I only use the stuff, but I am being charged for distribution. Can I be charged for this trumped up drug charge?

A marijuana charge becomes much more complicated when it involves an allegation of selling/distribution. The penalties are much more severe for this type of distribution charge. The penalties for selling marijuana depend on the weight of the marijuana that was seized from the police.

The law in NJ imposes a different range of potential sentences for the distribution/selling of marijuana. The key fact is the weight of the marijuana that was seized or sold. New Jersey makes it a fourth degree to sell or distribute one (1) ounce or less of marijuana. N.J.S.A. 2C:35. It is a third degree crime to distribute between one (1) ounce and five (5) pounds of marijuana. It is a second degree offense if the weight of marijuana involved is between five (5) pounds and twenty-five (25) pounds. Finally, it is a first degree offense to possess with the intent to distribute twenty-five (25) pounds or more of marijuana.

There are several elements which a prosecutor must establish to prove a marijuana distribution case. The prosecutor must prove the weight of the weight of the marijuana for the degree of offense charged. In determining the level of marijuana distribution, the state may aggregate or add up the weight of each individual sale involved.

A marijuana distribution case is a very serious charge! A marijuana distribution conviction exposes a person to a potential jail term, a long driver's license suspension, probation, heavy fines, a never ending expanding list of assessments, and a mandatory incarceration if this is a second or subsequent distribution offense or involves a School Zone.

5. I was charged with possession of marijuana in a Municipal Court. Can I apply for a conditional discharge?

New Jersey law also provides a person a chance to avoid a formal prosecution for a simple marijuana possession charge. Typically most simple possession cases are tried in the local Municipal Court. This program is the baby brother of the PTI program and it is called a conditional discharge. Once again, there are various conditions that must be satisfied for a person to be accepted into the conditional discharge program. First, the defendant must be on probation for usually six months to one year. Second, the offender must remain offense free. Third, the defendant will be subject to random drug testing. If you successfully complete these requirements, then you will not have any criminal record.

These guidelines for a conditional discharge for a simple possession charge is contained at N.J.S.A. 2C:36A-1. This law covers not only disorderly persons drug charges relating to marijuana but also depressants, stimulants and hallucinogenic drugs. If the defendant completes the suspension period without any violations, then the original marijuana offense is dismissed. This process is referred as a conditional discharge.

The requirements for the acceptance into the conditional discharge are as follows; (a) the defendant must have no prior drug convictions; (b) the defendant has never been accepted into a PTI program or obtained a conditional discharge before; (c) the prosecutor and the judge must approve the application.

6. I was recently busted for a marijuana related charge. Can I apply for the PTI program?

New Jersey also allows a person charged or indicted for a marijuana offense to avoid a formal prosecutor. The person can apply for a program called the called the Pretrial Intervention ("PTI"). The goal of the PTI program is to enable people to try to rehabilitate themselves. Moreover, PTI also reduces the backlog of the cases in the criminal courts. There are several eligibility requirements for PTI and they are: a) The applicant can't have a prior criminal record; b) The charge must be a third or fourth degree case; c) There is a presumption that a person charged with a second degree offense is not eligible for PTI; d) There is a likelihood that the person will complete the program; and e) The person was never accepted into PTI before; f) The prosecutor must also consent to the person's admission into the PTI program.

If a person completes the PTI program, then the criminal case is finally dismissed. Thus, the person will not have a criminal conviction. However, if the person violates the condition of PTI, then the original charge will be reactivated, and the case will be re-listed for a court date.

7. What are the penalties for the possession of drug paraphernalia?

A drug paraphernalia possession charge also carries heavy penalties. The possession of drug paraphernalia is also commonly charged in many simple possession cases. Many common household items that are perfectly legal to possess could be charged as paraphernalia. The prosecutor often uses a paraphernalia charge as leverage in a marijuana case. A defendant could receive up to up to six months in jail and be fined from \$500 to \$1000. Moreover, a defendant could also lose his driver's license for up to two years.

8. I was busted for having a bong in my car. The bong was not mine. Can I still be charged for any type of crime in New Jersey for possessing this marijuana paraphernalia?

There are all kinds of drug paraphernalia that is illegal to possess. These items include pipes, bonds, rolling paper. If you possess these types of drug paraphernalia in New Jersey then you certainly could be charged with a crime. New Jersey law makes it unlawful for a person to "use, or possess with the intent to use" any items to grow, process, store or ingest marijuana. See, N.J.S.A. 2C:36-2. A violation of this law is considered DP offense.

In many cases, a key issue is whether the items that the police find is actually considered to be paraphernalia. New Jersey law sets forth several criteria to assess whether an item is considered to be paraphernalia and they are:

(a) statements of those in actual possession or constructive control of the alleged paraphernalia; (b) existence of any residue in the item; (c) direct or circumstantial evidence concerning use of the object; (d) instructions for use of the item; and (e) the legitimate uses for the item.

The key issue is for what purpose did the defendant intend to use the paraphernalia for. A defendant must possess the intent to use the object as marijuana paraphernalia.

9. What are the penalties for driving while with the possession of marijuana?

If marijuana is found in your vehicle then you will receive a charge for possession of CDS in motor vehicle under. N.J.S.A. 39:4-49.1 This law prohibits any person from operating a motor vehicle while he knowingly possesses marijuana. This law is only applicable to the driver of the vehicle, and it does not apply to the passengers.

In order to prove a violation of N.J.S.A. 39:4-49.1, the state must establish: (a) operation of a motor vehicle by the accused; (b) the presence of marijuana on the person of the operator or in

the vehicle; and (c) that the operator knowingly possessed the marijuana. Any driver could also always argue that under the CDS was not within his wingspan

The most severe penalty for driving with the possession of marijuana is a mandatory two-year license suspension. The two-year suspension is very harsh. Keep mind that New Jersey does not permit a driver to have temporary license to drive back and forth from work. Moreover, the court will also impose heavy fines, and MVS will zap you with surcharges of course.

The best defense to this charge is that the driver can argue that the marijuana was not within his reach, and that he could not have physical control over it. The farther away that the marijuana is from the driver within the vehicle, then the more difficult it becomes to satisfy the "knowing" element of the offense.

10. What are the requirements to find a person guilty of operating a motor vehicle while in the possession of a CDS?

There are five elements that are associated with operating a motor vehicle while in possess of a CDS. They include:

- a. Operation of a motor vehicle;
- b. On a highway;
- c. While in knowing possession;
- d. Of CDS or prescription drugs;
- e. Located on the person of the driver or within the vehicle.

11. I was busted for possessing marijuana. I am terrified that this case will ruin my life. I am a first time offender what are the possible outcome(s)?

A first time marijuana possession offender(s) should try to either obtain a conditional discharge authorized by N.J.S.A. 2C:36A-1, or get into the or the Pre-Trial Intervention Program (PTI). Conditional discharges are given in the Municipal Court. The basics premise of a conditional discharge is that your marijuana charge will be frozen for one year. You will have to be on probation as well. If you stay out of trouble and receive no new charges for one year, then the marijuana possession charge will be dropped entirely.

Almost all defendants who are a first time offender will be given the chance to receive a conditional discharge. A defendant is only entitled to one conditional discharge in his life. Finally, if you blow off the probation and don't pay your fines, then you will be kicked out of the conditional discharge program, and your case will be reactivated in the Municipal Court.

In summary if you are accepted for the conditional discharge

program, then your case will be suspended for a year. Thereafter, if you stay out of trouble, then the entire marijuana case will be dismissed without any type of trial. Moreover, your driver's licenses will not be suspended at all. However, conditional discharges still may show up on your criminal record. Therefore, you will still have to expunge your conditional discharge from your record. Meanwhile, if you are charged with possessing/distribution of larger amounts of marijuana then you will have to apply for PTI.

12. What is the best game plan to try to beat a marijuana possession/distribution charge?

The best way to beat a marijuana possession/distribution charge is to file a well prepared motion to suppress. The motion should allege that the stop of the vehicle and the defendant was without probable cause, and it violated the Fourth Amendment. Litigating Fourth Amendment searches and seizure issues is the best defense to try to beat any marijuana charge. Moreover, if you were a dope and gave confession, then you will also have to file a motion for a *Miranda* hearing, and try to suppress your statements as well.

Remember that the prosecutor must always be able to prove beyond a reasonable doubt that the alleged substance is actually an illegal controlled substance, and that the substance belonged to you or was in your possession. Finally, you might just try to wait out the case. In many cases, the cops and the witnesses don't show up for trial in Municipal Court. The Municipal Courts are swamped, and sometimes you can get a case ultimately dismissed if it is on the trial list and after a few listings the witnesses don't show. Please keep in mind that there is not as significant of a stigma to dismiss a pot case as there is a DWI case. In the world of Municipal Court a DWI defendant is treated like he is Satan. The Municipal Courts "chill out" some when a defendant is only charged with a marijuana charge. Therefore, if the prosecutor botches up a marijuana case and if it gets dismissed then it will not trigger any bells and whistles by the Administrative Office of the Courts (AOC).

13. What are the immigration consequences if a noncitizen is busted for a marijuana related criminal charge?

A defendant who obtains a marijuana conviction could also be exposed to some dire immigration consequences. If you are noncitizen then you could even be deported if you are busted for a marijuana related charge. If a person is noncitizen and if he is convicted of an aggravated felony, then he could be deported. In summary, a simple conviction for a marijuana possession could certainly ruin a person's chances to become a US citizen.

14. There was marijuana in the vehicle (or in the room) that

wasn't in my possession, and it didn't belong to me. Nonetheless, I was arrested and charged with possession. Can the police charge me with this offense?

Yes. If there is marijuana that was seized in the car or in the room is in a common area, and if it is accessible to all parties, and if no one takes responsibility for it, then the police certainly can charge everyone with a marijuana possession charge. This legal concept is called "constructive possession."