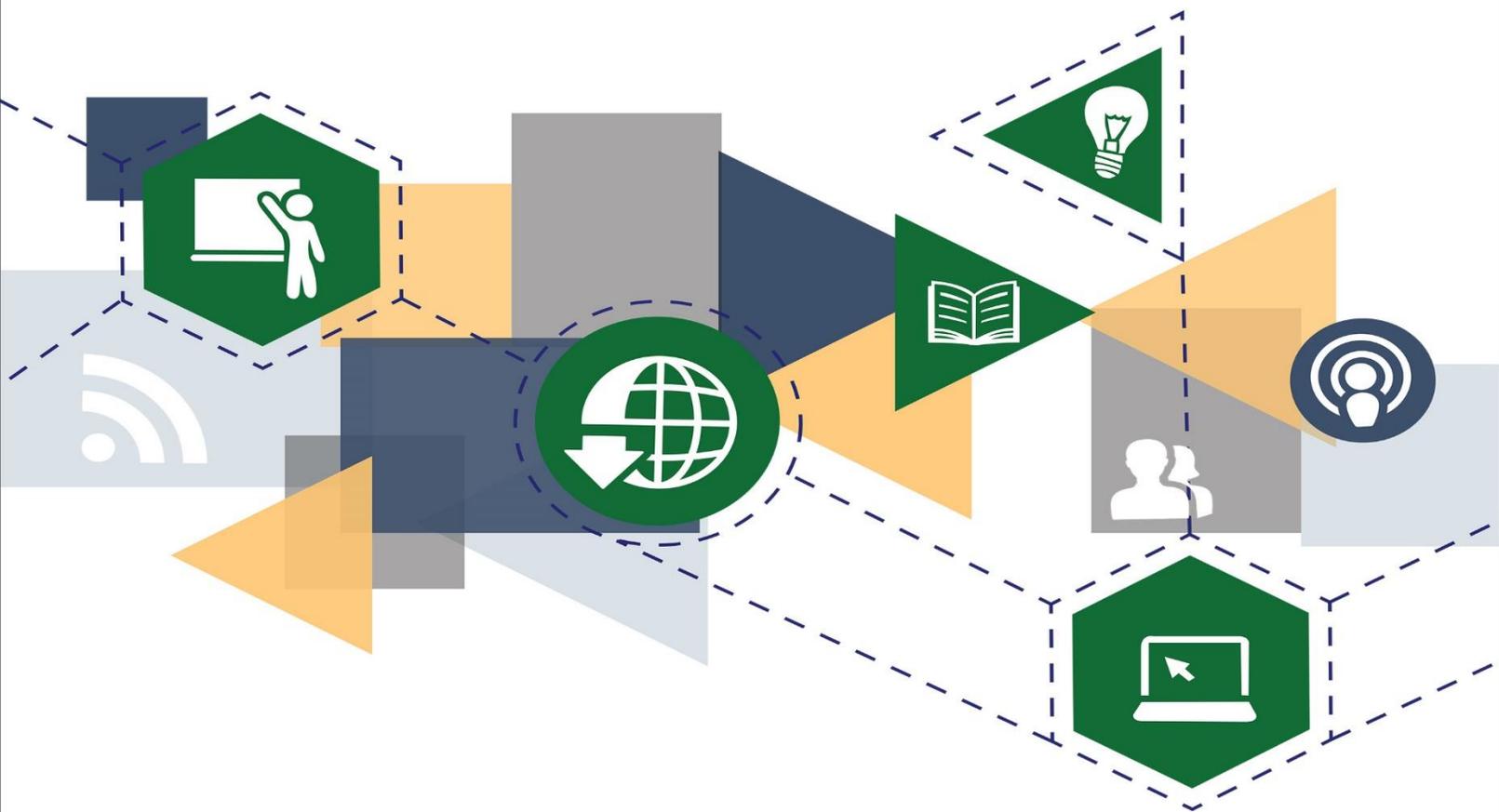


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Things Everyone Facing a Drug Charge in Fairfax Should Know



FARAJI ROSENTHALL



Since 2004, I've been a daily presence in the Fairfax County Courthouse and have handled hundreds of drug cases as both a Prosecutor and a Defense Attorney. I have spent the last decade analyzing the legal process and observing the results.

Here are several tips to help you navigate Fairfax County's legal system.

6 Things Everyone Facing Drug Charges in Fairfax Should Know

In recent years, many states have adopted relaxed laws towards drugs and drug use. Some states have even gone so far as to make the recreational use of Marijuana legal. Unfortunately, Virginia has not embraced that viewpoint. The Commonwealth still has some of the strictest drug laws in the nation. Every year Fairfax County Police charge thousands of people with various drug crimes. Anyone charged with a drug crime in Fairfax would be wise to learn these six facts before they go into court by themselves or even before they begin consulting with attorneys about their cases.

1) If you are charged with Possession of Marijuana and have no prior record, hiring a Lawyer will likely be a waste of money. You should probably do it anyway.

Anyone who has a clean record for drugs is eligible for diversion under the state's 251 program. The program requires 24 hours of community service, a series of drug awareness classes and staying out of trouble. At the conclusion of the program the participant returns to court and the matter is dismissed. There is also a mandatory 6 month loss of driver's license. (Most of the time the judge will allow for a restricted driver's license which allows for driving to work, school, medical appointments, etc. However, any social driving is prohibited.) The way the program is structured the judge never finds the participant guilty.

This is a huge benefit. Almost all other criminal convictions remain on a person's criminal record for life. By completing the 251 program the participant avoids having a permanent criminal record. Additionally, the way the dismissal is structured you can say no on job and school applications that ask if you have ever been convicted of a crime.

While this result is not completely free of unpleasant consequences, a diversion is one of the better results a person can hope to accomplish if they are in fact guilty of a crime.

Because the program is such a significant benefit to those who are in fact guilty, it is often difficult to accomplish a better result. Even the benefit of brilliant legal work, may not be able to produce a better result.

In Fairfax, entering the program is very easy. At the beginning of the morning's docket the judge will call the names of all eligible participants. Those who are interested in learning more about the program are taken into a back room as a group with an administrator from the program. During that session the administrator informs the participant about how the program works. After learning about the program the judge will later recall the case and if the participant is interested the judge will enroll them in the program.

This is where having hired a lawyer will seem like a waste of money. If you end up entering the program, you will have your case resolved the exact same way as people who chose to represent themselves and saved the expense of hiring a lawyer. Many people will say "Why did I even hire a lawyer? He did nothing for me, I got the exact same result as the guy next to me who didn't hire a lawyer?"

That is a completely valid feeling. The difference is that you will know that the program was the best result for your case. You will know that the police did everything correctly and that you actually would have been found guilty had you decided to fight the case.

There are times where there is something wrong with the case. Either the police violated your rights with an illegal search, or they failed to follow proper protocol with how the suspected marijuana was tested, or any of a number of problems that occur frequently with marijuana cases. Before you simply accept not being able to drive to a restaurant or the grocery store for six months, it is worth it to make sure that you have done everything possible to avoid that punishment.

At a bare minimum you owe it to yourself to discuss the facts of your case with a lawyer to get a preliminary idea of whether you have a case that may be worth fighting.

Even if the end result is the same, the money spent on a lawyer is worth the peace of mind.

2) Loss of license is mandatory; expungment is not an option.

By law anyone convicted of possession of marijuana is required to lose their license for 6 months. It doesn't matter if the case has anything to do with driving or not. Even if you were caught with the drugs in your home or while walking, the judge has to suspend your license. Getting caught driving during that period of time will likely result in a new charge for Driving on Suspended. Not only will that charge present new issues, but a conviction may also result in losing your agreed dismissal.

Marijuana isn't the only offense that carries a mandatory 6 month loss of license. Any drug offense requires the judge to take your license.

Expungement is the process where criminal charges are removed from your record. Under Virginia law, an expungement can only be granted if a person was found not guilty of the charge. Participation in the 251 program does not count as being found not guilty. **So if you do the program you will not be able to get the charge removed from your record. Ever.**

That's not to say the program is a bad result. It is obviously much better than being found guilty. After you do the program your record will indicate that the charge was dismissed. However, the fact that you were arrested/charged with the possession will always be there.

3) Just because it's in your car doesn't make you guilty of Possession.

Many marijuana and other drug cases involve drugs being found in a car. In those cases, the result in court will depend greatly on where in the car the drugs were and what, if anything, was said about them. It is important to remember that you are innocent until proven guilty and that the Government has the burden of proving that you are guilty beyond a reasonable doubt.

Cases are thrown out of court everyday where the Police cannot prove that a person knew the drugs were in the car. They usually rely on confessions and/or the location of the drugs to prove that a person must have known they were there. So if the drugs were found in your pants pocket and you admitted to smoking you are in a very different situation than if the drugs were found in a glove compartment and you said nothing.

The exact line of what is sufficient to prove that you knew really depends on which judge is handling the case. It's important to remember that what happens in courtroom A, can be very different than what happens in courtroom B. Even if a friend of yours had the exact same facts, their result may be very different. It's always important to remember that Judges are human beings also and each one of them looks at the same set of facts differently.

4) Possession with intent to distribute can be one of the hardest types of cases for the Government to prove.

Possession with intent to distribute is exactly what it sounds like. The Police allege that you had drugs and that you were planning to either sell or give them away. You could be a dealer or just a guy that buys and shares with his friends, it doesn't matter. Either way the cases can be very tough for the Government to prove.

Think about it, they have to prove what you intended to do with the drugs. Often the police will simply charge people with intent to distribute if they have a large amount of drugs on them. However, quantity alone is not usually enough unless it is an overwhelming amount. A lot of the times, the police rely on either a confession or other outside evidence to prove that a person intended to sell the drugs. However, if those elements aren't there then a person will have a very strong defense to the intent to distribute portion of the charge. Even if they were caught red-handed with a large quantity of drugs.

5) Prescription fraud cases can be more serious than possession of illegal drugs.

Anyone who does not have a prior record for drugs and is charged with prescription fraud is eligible for a diversion program. The prescription drug diversion works similar to the 251 program discussed above. The judge continues the case for a period of time. The participant is required to complete community service, drug classes and stay out of trouble for a period of time. If they are able to do all those things successfully, they return to court some time later and the charge is reduced.

Notice that the charge is reduced, and not dismissed like under the 251 program for illegal drugs. So, if you get caught with heroin or cocaine or marijuana you can get your case dismissed if you participate and complete the program. However, if you get caught trying to use a forged prescription and complete a similar program, you will still have a record. Granted, it will be a misdemeanor record which is much better than a felony record. But it will be a blemish on your record forever.

6) Drug cases almost always deal with Constitutional rights and can be very complicated legally.

Everyone knows that the Constitution protects them against illegal searches and seizures. But very few people know exactly what the police can and can't do. Well that same level of uncertainty applies to many police officers, lawyers and judges. The law of search and seizure is some of the most complicated in all of criminal law. Cases are fought and dismissed every day based on the police going beyond what they are allowed to do in the search for illegal drugs.

There is very little about that area of law that is black and white. The only thing that is clear is that if a judge believes that your rights have been violated he is required to throw your case out. These decisions hang on the specific judge's definition of words like reasonable suspicion and probable cause. Was the person under arrest or just "detained"? You have very different rights depending on the circumstance and the situation. As surprising as it may be to believe, your rights change depending on where you are. For example if you are in a "high crime area" the police are allowed to do things differently than if you are not in a high crime area. That probably sounds insane, but it is 100% true. That's why it is very important to make sure that you explain every detail about your case to your attorney well before court. It is very surprising to most people what factors end up winning or losing criminal cases.

There are a lot of people who thought they had very strong cases who end up getting convicted, and there are other people who think the cops have them dead to rights who end up getting their charges dismissed. Any analysis of a drug case is meaningless unless it really looks at the facts of the case against an individual's Constitutional rights.

Here's What to Do Next ...

By reading this far and evaluating each section as it relates to your situation, you've demonstrated a commitment to learning about how drug cases are handled in Fairfax County.

But you're not done yet.

Now is the time to take action because, as you know, your decisions today have a critical impact on your future.

Many people who read this special report won't take any action for whatever reason. Too nervous to talk to an attorney ... don't want to deal with the paperwork ... too much effort ... confused where to start ...

Don't fall into this trap. I'm available at any time to answer your questions at (703) 934-0101 or Faraji@FairfaxCriminalLawyer.com. Furthermore, I'll give you a FREE Opportunity Analysis, my step-by-step system for finding opportunities where other attorneys see obstacles.

No pitching. No tricks. No trying to turn over your case to another lawyer. Just more education about how to move forward with your situation.

Fair enough?

Call me now at (703) 934-0101 or visit www.FairfaxCriminalLawyer.com (you'll find many free resources in the Articles section) to schedule your FREE Opportunity Analysis.

Sincerely,
Faraji Rosenthal