

LANCE KENNEDY LAW

The Drug Case Book

Texas drug charges in plain English, and how they get fought

Rev. 2026.1 | Current through the 89th Texas Legislature (2025)
lancekennedy.com | (737) 324-7540

Contents

1. Read This First
2. How Texas Charges Drug Cases: Possession, Delivery, Manufacture
3. The Penalty Groups and the Weight Tiers
4. Drug-Free Zones and Other Enhancements
5. The THC Problem: Hemp, the 0.3 Percent Line, and the Lab
6. Analogues and Paraphernalia: The Edges of the Drug Laws
7. Search, Seizure, and How Drug Cases Get Suppressed
8. Civil Asset Forfeiture: When the State Sues Your Property
9. Diversion, Treatment, and the Off-Ramps
10. If You Are Not a Citizen: Read This Chapter Twice
11. The First 72 Hours, and Choosing Your Lawyer

Read This First

If you are reading this book, someone was probably just arrested with drugs in Texas: you, or someone you love. Before you read anything else, you need three sentences of orientation.

First, a Texas drug charge is built from three questions: what the substance was, how much of it there was, and what the State thinks you were doing with it. Those three answers, run through a grid the Legislature wrote, decide whether you are facing a ticket, a misdemeanor, or a felony that can carry decades. Nothing about your case will make sense until you can see that grid, and this book shows it to you in plain English.

Second, drug cases are search cases. In most of them, the single most important question is not whether drugs existed but whether the police found them legally. That fight happens in a courtroom months from now, but it is won or lost with facts from the first days: what was said, what was signed, what was seized, and what you do next.

Third, what you do this week matters. Do not explain, do not consent to anything else, do not discuss the case on a jail phone or on social media, and do not plead guilty to anything just to make it stop, because some quick pleas cause permanent damage that a few weeks of scrutiny could have avoided. If you or the person arrested is not a United States citizen, stop and read the immigration chapter of this book before anyone talks to a prosecutor. A drug plea that looks small can end a green card.

The honest ground rules. This book is general information about Texas law, not legal advice about your case, and reading it does not make us your lawyers. Every case turns on its own facts, evidence, court, and county, and no outcome can be promised by anyone. What a book can do is make you a harder person to push around: someone who knows what the charge actually is, what the State has to prove, and which questions to ask. That is the goal of the next ten chapters.

An arrest is not a conviction. People are arrested with drugs in Texas every day, and many of those cases end far better than the ride to jail suggested: reduced, diverted, dismissed, or won. None of that happens by itself. It happens because someone checked the stop, the search, the lab, and the law. Let us start with the charge itself.

How Texas Charges Drug Cases: Possession, Delivery, Manufacture

Almost every Texas drug prosecution comes out of one law: Chapter 481 of the Health and Safety Code, the Texas Controlled Substances Act. The chapter runs on three verbs, and which verb the State picks changes everything about your case.

Possession: care, custody, control, or management

The statute defines possession as *actual care, custody, control, or management* of the substance. Read that definition again, because two important ideas hide inside it.

The first is that possession does not require ownership, and it does not require the drugs to be in your pocket. Drugs in a car console, a shared apartment, a backpack in the trunk: all of these can be charged as possession against anyone the State believes was exercising control over them.

The second idea cuts your way: mere presence is not possession. Texas courts require the State to prove a knowing link between you and the substance, what lawyers call affirmative links: things like whether the drugs were in plain view, whether they were within your reach, whether the car or home was yours, whether you made statements or furtive movements, whether your fingerprints or belongings were with the drugs. Four people in a car, a baggie under a seat, and everyone arrested: that is a common fact pattern, and it is exactly the kind of case where the links, or the lack of them, decide who can actually be convicted. If you were a passenger near someone else's drugs, do not assume the charge will stick, and do not talk yourself into it by explaining.

Delivery: a transfer, or just an offer

Delivery means transferring a controlled substance to someone else, actually or constructively, and the definition expressly includes *offering to sell*. That last part surprises people. No drugs have to change hands, and in an offer-to-sell case no drugs even have to exist: words alone, often words spoken to an undercover officer or captured in text messages, can support the charge. Delivery offenses are punished one notch harder than possession of the same amount, and delivering to a person younger than 18, or to a student enrolled in a primary or secondary school, is its own second-degree felony regardless of amount.

Possession with intent to deliver: the circumstantial upgrade

Between the two sits the charge that turns a user into an accused dealer: possession with intent to deliver, which is charged under the delivery statutes and punished at delivery levels. Intent is

almost never proven with direct evidence. It is built from circumstances: the quantity, individual packaging, scales, baggies, large amounts of cash, multiple phones, text messages, and the absence of anything suggesting personal use. Every one of those inferences can be challenged, and the difference matters enormously: the same four grams can be a second-degree felony as possession and a first-degree felony as possession with intent to deliver. Where the line gets drawn is one of the most consequential fights in the whole case.

Manufacture: making, processing, packaging

Manufacture covers producing, preparing, converting, or processing a controlled substance, and it reaches further than a lab: packaging and repackaging count too. The definition excludes marijuana, which is why a grow operation is typically prosecuted as possession of the plants by weight, or as delivery if the State has evidence of distribution. Manufacture is punished on the same ladder as delivery, and manufacture cases tend to arrive with search warrants, surveillance, and co-defendants, which makes the search-and-seizure chapter of this book especially important if this is your charge.

Two proof points people miss

- **The weight is the whole mixture.** Texas measures drugs by aggregate weight, including adulterants and dilutants. The State does not weigh the pure drug; it weighs everything the drug is mixed into. A single tablet weighs as the whole tablet. A baggie of cut product weighs as the whole baggie. This is how a small amount of actual drug becomes a large weight tier, and it is also why the accuracy of the weighing, and what got included in it, deserves scrutiny.
- **The State must prove what the substance is.** A field test on the roadside is a presumptive screen, not proof; those kits are notorious for false positives. Conviction-grade proof requires laboratory analysis, and the lab's work product, the analyst, and the chain of custody from the roadside to the lab are all discoverable and all challengeable. In the THC chapter you will see an entire category of cases where the lab question is the whole case.

The questions everyone asks in the first week

Will I go to jail? For a first-time, small-amount possession case, the honest answer is that prison is usually not the realistic endpoint: as the diversion chapter explains, Texas law generally requires probation rather than state jail for the lowest-tier first offenses, and diversion programs exist in many counties. For delivery cases, larger weights, fentanyl, and enhanced cases, the

exposure is real and the early work matters more, not less. No one can promise an outcome, but the range on the charging document is a ceiling, not a prediction.

Should I just plead guilty and get it over with? Not before anyone has examined the stop, the search, and the lab work. A fast plea can lock in a felony, a license consequence, or an immigration disaster that a few weeks of scrutiny might have avoided entirely, and some pleas permanently close the door on clearing your record. Speed is a strategy only after the evidence has been read.

Do I need a lawyer for a small amount? The smallest Texas drug cases still carry jail exposure, driver's license consequences, and a record that follows you through every background check, and the smallest cases are also where the best outcomes, dismissal, diversion, expunction, are most achievable. It is the cheapest case to defend properly and an expensive one to handle badly.

Will my employer find out? An arrest becomes a public record almost immediately. Whether and when to tell an employer depends on your job and any licensing rules, and it is worth discussing with your lawyer before anyone else. What you can control is the ending: how the case resolves decides what can later be sealed or destroyed.

The three-question frame. What substance, how much, and which verb. Every Texas drug charge is those three answers plugged into a grid. The next chapter is the grid.

The Penalty Groups and the Weight Tiers

Texas does not have one drug law. It sorts substances into penalty groups, then punishes by weight within each group, with delivery and manufacture punished a step harder than possession. Learn where your substance sits and the rest of your case snaps into focus.

The punishment ladder itself

First, what the offense levels mean. A Class C misdemeanor is a fine-only ticket, up to \$500. A Class B misdemeanor carries up to 180 days in county jail and a fine up to \$2,000. A Class A misdemeanor carries up to a year in county jail and a fine up to \$4,000. A state jail felony carries 180 days to two years in a state jail facility and a fine up to \$10,000. A third-degree felony carries two to 10 years in prison, a second-degree felony two to 20, and a first-degree felony five to 99 years or life, each with a fine up to \$10,000. At the top of the drug statutes sit enhanced first-degree ranges with higher minimums and fines that can reach \$250,000, and for large-scale fentanyl delivery, \$500,000.

Who is in which group

- **Penalty Group 1:** cocaine, heroin, methamphetamine, oxycodone, hydromorphone, GHB, ketamine, PCP. The hard-drug group.
- **Penalty Group 1-A:** LSD, measured in abuse units rather than grams.
- **Penalty Group 1-B:** fentanyl and its derivatives, moved into their own group in 2023.
- **Penalty Group 2:** MDMA, psilocybin mushrooms, mescaline, amphetamine, and every non-plant form of THC: concentrates, wax, vape oil, edibles.
- **Penalty Group 2-A:** synthetic cannabinoids such as K2 and Spice.
- **Penalty Group 3:** most prescription sedatives and stimulants: Xanax, Valium, clonazepam, lorazepam, Ambien, Ritalin, anabolic steroids, and certain hydrocodone and codeine combination products.
- **Penalty Group 4:** mostly low-dose codeine cough syrups and similar compounds, plus buprenorphine.
- **Marihuana** in plant form has its own separate statutes and its own gentler ladder.

Group	Measured in	Felony territory begins
Penalty Group 1	Grams, aggregate	Any amount (state jail felony under 1 gram)
Penalty Group 1-A (LSD)	Abuse units	Any amount (state jail felony under 20 units)
Penalty Group 1-B (fentanyl)	Grams, aggregate	Any amount; delivery is at least a third-degree felony
Penalty Group 2 (includes all THC concentrates)	Grams, aggregate	Any amount (state jail felony under 1 gram)
Penalty Group 2-A (synthetics)	Ounces and pounds for possession	Possession over 4 ounces; delivery of any amount
Penalty Group 3	Grams, aggregate	Possession of 28 grams or more; delivery of any amount
Penalty Group 4	Grams, aggregate	Possession of 28 grams or more; delivery of any amount
Marihuana (plant form)	Ounces and pounds	Possession over 4 ounces; delivery over one-quarter ounce

Two structural points before the tables. Possession of a Penalty Group 1, 1-A, 1-B, or 2 substance is a felony at any weight: there is no misdemeanor amount of cocaine, methamphetamine, or MDMA in Texas. And the possession statutes do not apply to medication you obtained directly from a practitioner or under a valid prescription, which is why Penalty Group 3 and 4 cases so often turn on whose prescription it was and where the pills came from.

Penalty Group 1: the main grid

Amount (aggregate)	Possession	Manufacture or delivery
Under 1 gram	State jail felony	State jail felony
1 to under 4 grams	Third-degree felony	Second-degree felony
4 to under 200 grams	Second-degree felony	First-degree felony
200 to under 400 grams	First-degree felony	Enhanced first degree: life or 10 to 99 years, fine to \$100,000
400 grams or more	Enhanced first degree: life or 10 to 99 years, fine to \$100,000	Enhanced first degree: life or 15 to 99 years, fine to \$250,000

Notice the shape: delivery runs one step ahead of possession, and the ranges climb fast. Under one gram, roughly a sugar packet, is already a felony. Four grams, less than a nickel weighs, puts possession in the two-to-twenty range. This grid is why the aggregate-weight rule and the possession-versus-intent fight from the last chapter carry so much freight.

Penalty Group 1-A runs a parallel grid in abuse units of LSD: state jail felony under 20 units, climbing to enhanced first-degree ranges in the thousands of units. A 2025 law, Senate Bill 1936, redefined the abuse unit: 40 micrograms in liquid or solid form, and unmarked blotter paper is counted by the paper's own weight, one unit per 10 milligrams. How the lab counted the units is now, more than ever, a checkable fact.

Penalty Group 1-B: the fentanyl grid

In 2023, House Bill 6 pulled fentanyl out of Penalty Group 1 and built it a harsher home. Possession tracks the Penalty Group 1 tiers, but delivery and manufacture start as a felony of the third degree at any amount, hit a 10-year minimum at just four grams, and top out with a minimum of 20 years and a fine up to \$500,000 at 400 grams.

Amount (aggregate)	Possession	Manufacture or delivery
Under 1 gram	State jail felony	Third-degree felony
1 to under 4 grams	Third-degree felony	Second-degree felony
4 to under 200 grams	Second-degree felony	Enhanced first degree: life or 10 to 99 years, fine to \$20,000
200 to under 400 grams	First-degree felony	Enhanced first degree: life or 15 to 99 years, fine to \$200,000
400 grams or more	Enhanced first degree: life or 10 to 99 years, fine to \$100,000	Enhanced first degree: life or 20 to 99 years, fine to \$500,000

The same 2023 law went further: if someone dies from fentanyl that a person knowingly manufactured or delivered, the Penal Code now defines that as murder, a first-degree felony, without any requirement that anyone intended a death. Counterfeit pills pressed to look like oxycodone or Xanax are the modern fentanyl case, and the person who shared or sold a single pill can face the same statutes as a trafficker. If your case involves fentanyl and an overdose, the stakes are as high as Texas law gets, and nothing in the case should be handled casually.

Penalty Group 2: where the vape pen lives

Penalty Group 2 runs nearly the same grid as Group 1: state jail felony under one gram, third degree from 1 to 4 grams, second degree from 4 to 400, and an enhanced first-degree range at 400 grams or more. What makes this group a trap is not the exotic drugs; it is THC. Every non-plant form of THC, the oil in a vape cartridge, the wax, the gummy, sits in Penalty Group 2, and the aggregate-weight rule weighs the whole cartridge or the whole batch of edibles. A single store-bought vape pen can put a college student into felony weight before lunch. Marihuana flower is a misdemeanor at small amounts; the concentrate made from it never is.

Penalty Group 2-A, the synthetic cannabinoids, is punished for possession on an ounces-and-pounds ladder like marihuana, starting at a Class B misdemeanor for two ounces or less, while manufacture and delivery are punished by gram weight on the Group 2 delivery grid.

Penalty Groups 3 and 4: the prescription groups

These two groups start at misdemeanors: possession of less than 28 grams is a Class A misdemeanor in Group 3 and a Class B misdemeanor in Group 4, climbing through third and second-degree felonies at 28 and 200 grams and reaching enhanced ranges at 400. Delivery starts

at a state jail felony. Remember that 28 grams is measured the same way as everything else, by total weight of the tablets, and that a valid prescription is a complete answer to a possession charge. Loose pills in a bag instead of the bottle, a spouse's medication in your console, pills bought from a friend: these are the fact patterns, and they range from defensible to dangerous depending on the details.

Marihuana: the plant's own ladder

Amount	Possession	Delivery
One-quarter ounce or less	Class B misdemeanor	Class A if sold; Class B if given for free
Over one-quarter ounce to 2 ounces	Class B misdemeanor	State jail felony
Over 2 to 4 ounces	Class A misdemeanor	State jail felony
Over 4 ounces to 5 pounds	State jail felony	State jail felony
Over 5 to 50 pounds	Third-degree felony	Second-degree felony
Over 50 to 2,000 pounds	Second-degree felony	First-degree felony
Over 2,000 pounds	Enhanced first degree: life or 5 to 99 years, fine to \$50,000	Enhanced first degree: life or 10 to 99 years, fine to \$100,000

Despite everything you may have heard, marijuana remains illegal in Texas. What has changed is the proof problem created by legal hemp, which is the next chapter but one. And state law does allow officers to issue a citation instead of making an arrest for certain misdemeanor possession cases; whether that actually happens depends on the county.

Keep the chart handy. A printable one-page version of every table in this chapter, all seven penalty groups plus marihuana, is in the free resource library at lancekennedy.com/resources/, current through the 89th Legislature. When a prosecutor quotes you a charge level, check it against the chart. Charging errors happen, and they are worth catching early.

Drug-Free Zones and Other Enhancements

Everything in the last chapter assumed the offense happened nowhere in particular. Texas law cares a great deal about where it happened, and the drug-free zone statute is the sharpest example: the same conduct, moved a few hundred feet, can carry years more prison time.

Where the zones are

Under Section 481.134 of the Health and Safety Code, enhanced punishment can apply to drug offenses committed in, on, or within 1,000 feet of schools, and the statute's definition of a school includes licensed day-care centers, not just campuses. The 1,000-foot rule also reaches public or private youth centers, playgrounds, the premises of institutions of higher education, and, for adults with no authorization to be there, licensed residential treatment centers for children, and offenses on a school bus are covered outright. A shorter 300-foot ring surrounds public swimming pools and video arcade facilities.

Now think about what 1,000 feet means in a city. That is roughly three football fields in every direction from every school, day care, playground, and college building in the county. Large portions of any urban area, including apartment complexes, gas stations, and ordinary neighborhoods, sit inside some zone, and the people arrested there often had no idea. The statute does not require that children were present, that school was in session, or that you knew a zone was there.

What the enhancement does

Depending on the offense and the zone, the statute works one of two ways. For many manufacture and delivery offenses, the offense level itself is bumped up: a state jail felony becomes a third-degree felony, and higher levels climb accordingly. For a long list of other offenses, including most possession tiers, the offense level stays the same but the minimum term is increased by five years and the maximum fine is doubled. A five-year increase in the minimum is not a detail: it can transform a probation-range case into a mandatory-prison case.

Two more consequences hide in the fine print. A sentence enhanced under the drug-free zone statute may not run concurrently with punishment for any other offense, so charges that would ordinarily be served together stack end to end. And parole eligibility changes: a person serving a zone-enhanced sentence is not eligible for parole until five years of actual calendar time, or the full sentence if shorter, has been served, without good-time credit counting.

How zone allegations get fought

- **Measure it.** The State must prove the distance, from the premises as legally defined, to where the offense occurred. Real measurements, property lines, and maps beat an officer's estimate, and cases have collapsed on the tape measure.
- **Check the definitions.** A playground, for example, must be an outdoor public facility with three or more play stations intended for children. A patch of grass with one swing set is not a playground under the statute. Whether a building actually qualifies as a youth center or day-care facility on the offense date is a fact, not a label.
- **Check the private-residence carve-out.** For certain lower-level offenses, the statute makes an exception for conduct inside a private residence when no minor was present. Whether it applies to your charge is worth asking.
- **Make them prove it.** A zone enhancement is not automatic; it is an allegation the State must plead and prove like any other element of punishment, with real evidence of the location, the distance, and the qualifying facility. Treat it as contested until the proof is on the table.
- **Negotiate it.** Zone allegations are frequently used as plea leverage, and getting the allegation dropped, even when the underlying charge stands, changes the minimum, the stacking, and the parole math all at once.

The other multipliers

The zone statute is not the only enhancement in play. Prior felony convictions can raise the punishment range under the Penal Code's repeat-offender rules, sometimes dramatically. A firearm found near the drugs can add separate state charges and, in delivery cases, real federal exposure, where mandatory minimums live. Using a child in the commission of a drug offense carries its own enhancement. Two newer ones deserve their own warnings. Since September 2025, under a law the 89th Legislature added as Section 481.142, using a social media platform in furtherance of a delivery offense raises the charge by one degree, and at the first-degree level it adds five years to the minimum and doubles the maximum fine: the deal arranged over an app is now punished harder than the same deal arranged face to face. And if someone died or suffered serious bodily injury from a substance the accused manufactured or delivered, a separate statute can raise that offense a degree as well, on top of the fentanyl murder law you saw in the penalty-group chapter. When you hear your total exposure for the first time, make your lawyer walk you through exactly which enhancements produced the number and how solid each one actually is. Enhancements are allegations. Allegations have to be proven, and some of them cannot be.

The THC Problem: Hemp, the 0.3 Percent Line, and the Lab

In 2019, Texas legalized hemp, and in doing so it quietly broke a large part of its own marijuana enforcement. If your case involves THC in any form, this chapter is the ground you are standing on.

One plant, two legal identities

Hemp and marijuana are the same plant, cannabis. The only legal difference is a number: cannabis with a delta-9 THC concentration of 0.3 percent or less on a dry-weight basis is hemp, legal to grow, sell, and possess under federal law and Texas House Bill 1325. Cannabis above that line is marijuana, still fully illegal under the ladder you saw two chapters ago. The Legislature rewrote the definition of marijuana to exclude hemp, which means the difference between a legal product and a Class B misdemeanor, or a felony, is a laboratory measurement of tenths of a percent.

Why that broke prosecutions

You cannot tell hemp from marijuana by looking at it or smelling it. Neither can a police officer, a drug dog, or a field test kit: they all detect cannabis, not concentration. After 2019, the State suddenly had to prove, in every marijuana case, that the plant material was over 0.3 percent delta-9 THC, and most public crime labs at the time could only say that THC was present, not how much. Prosecutors across Texas dismissed or declined thousands of misdemeanor possession cases in the years that followed, and while quantitative testing capacity has been built since, it remains uneven, backlogged, and expensive, and it is generally reserved for felony-weight cases. If you are charged with possession of marijuana, one of the first questions in your case is brutally simple: can the State actually produce a lab result proving the concentration, and will it spend the resources to do it on your case?

The gray zone: delta-8, THCA, and the smoke shop shelf

The hemp law also unleashed a market of hemp-derived intoxicants: delta-8 gummies, THCA flower, vapes, and beverages, sold openly in thousands of Texas shops. For years their status was contested in Texas courts and agencies, and the gray zone is now closing fast. In May 2026 the Texas Supreme Court sided with the state health department in the long-running delta-8 case, the injunction that had protected those products since 2021 was dissolved, and effective July 31, 2026

the department's schedules once again treat delta-8, delta-10, and the other non-delta-9 THC isomers as controlled substances. A separate 2026 rule counts THCA toward the THC limit, which pulls most THCA flower out of compliance; that rule is being challenged in court but has been left in effect while the appeal proceeds. On top of all that, products are frequently mislabeled, and something sold as legal hemp can test above the delta-9 line anyway. People are arrested with store-bought products, and a product that was lawful to buy when you bought it may sit differently under the rules in force on the offense date, which is a question for a lawyer, not a guess. The receipt, the packaging, and the label are evidence. Keep them.

Legal to buy is not the same as safe from arrest. An officer who smells or sees cannabis generally cannot tell hemp from marijuana at the roadside, and arrests happen on suspicion, not lab results. If you use hemp products, keep purchases in their original packaging with receipts, and if you are arrested anyway, say nothing about what you thought the product was and let your lawyer handle the lab question. What you believed you bought and what a lab says it was are two different battles, and both are yours to win, not to concede on a curb.

The 2025 and 2026 whirlwind, and where the law stands

The 89th Legislature tried to shut the hemp-THC market down. Senate Bill 3, a near-total ban on consumable hemp products containing THC, passed both chambers in 2025 and was vetoed by the Governor that June. What followed instead was regulation, in waves. A 2025 law, effective that September, banned the retail sale and marketing of vape and e-cigarette products containing cannabinoids. A September 2025 executive order directed state agencies to bar sales of consumable hemp THC products to anyone under 21, require ID checks, and tighten testing and labeling rules, and the agency rules carrying that out took effect in early 2026. Then came the court rulings and schedule changes described above, which are removing delta-8 and most THCA flower from the legal shelf. A change in federal law scheduled to take effect in November 2026 is expected to narrow the federal definition of hemp so that it excludes intoxicating consumable products, though how that will be implemented and enforced is still taking shape. Separately, House Bill 46 substantially expanded the Compassionate Use Program, Texas's tightly controlled medical cannabis system: more qualifying conditions, including chronic pain and terminal-illness care, more licensed dispensers, and new product forms, all still prescription-based and low-THC.

Here is the bottom line as this book goes to press, and rules in this area are changing quarter by quarter, so treat any specific product question as one to verify: recreational marijuana is illegal in Texas, THC concentrates are Penalty Group 2 felonies at any amount, plain delta-9 hemp within the 0.3 percent line remains legal for adults 21 and older while the intoxicant market built on top of it is being dismantled piece by piece, and the line between a legal product and a criminal charge

is a number only a laboratory can produce. In a THC case, the lab file is the case. Demand it, read it, and make the State prove its number.

Analogues and Paraphernalia: The Edges of the Drug Laws

Two smaller sets of laws catch people at the edges of the main grid: the analogue rules, which chase chemistry, and the paraphernalia statute, which reaches objects instead of drugs. Both are easy to underestimate.

Controlled substance analogues: the designer drug net

Chemists tweak illegal molecules faster than legislatures can list them, so Texas wrote a net instead of a list. Under Section 481.106, Penalty Groups 1, 1-A, 1-B, 2, and 2-A include any controlled substance analogue: a substance with a chemical structure substantially similar to a listed drug, or one specifically designed to produce a substantially similar or greater effect. Sell a novel synthetic that mimics methamphetamine and you can be prosecuted as if it were in the group it imitates.

For the defense, the net has seams. Substantially similar is not a scientific term; it is a legal conclusion that chemists dispute in good faith, and analogue cases regularly become expert-versus-expert fights over ring structures and side chains. What the substance actually was, what group it allegedly mimics, and whether the State's chemistry holds up are all litigable, and in analogue cases more than most, the lab file and an independent expert are not luxuries.

Paraphernalia: the small charge with a long shadow

Possession of drug paraphernalia, a pipe, a bong, a syringe, a scale, rolling papers, even a baggie, with intent to use it with drugs, is a Class C misdemeanor: a ticket, fine only, no jail. Delivering paraphernalia, or possessing it with intent to deliver, is a Class A misdemeanor, and a repeat delivery conviction carries a minimum of 90 days in jail. An adult who delivers paraphernalia to a minor at least three years younger commits a state jail felony.

Three warnings about the small charge. First, people pay paraphernalia tickets like parking tickets, and a conviction goes on your record as a drug offense, visible to employers and, as the immigration chapter explains, genuinely dangerous for non-citizens. Handle a Class C like it matters, because it does, and a dismissed Class C can often be expunged entirely. Second, the item is rarely the point: a pipe in the console becomes the officer's justification for a longer stop, more questions, and a fuller search, so the paraphernalia charge is often the smoke that marks a search worth challenging. Third, residue cases cut the other way: a baggie or pipe holding measurable residue of a Penalty Group 1 substance can be charged not as paraphernalia but as felony

possession of that substance, under one gram. The gap between a \$500 ticket and a state jail felony can literally be a film of powder, which is one more reason the lab work deserves scrutiny.

Search, Seizure, and How Drug Cases Get Suppressed

Here is the strategic heart of this book. In most drug cases the State's evidence is a thing: the substance in the console, the bag in the bedroom. If the search that produced the thing was illegal, a court can suppress it, and a possession case without the possession usually collapses. That is why the most important question in your case is often not what was found, but how.

The stop: where almost every case starts

Most drug cases begin as traffic stops. An officer needs reasonable suspicion, specific articulable facts suggesting a violation, to pull you over, and the video of the minutes before the lights came on is often the most important footage in the case. But the modern battleground is what happens after the stop. The United States Supreme Court held in *Rodriguez v. United States* that a traffic stop may last no longer than its mission: check the license, run the warrants, write the ticket. Police may not extend the stop, even by a few minutes, to wait for a drug dog or go fishing with questions, unless something during the stop created new reasonable suspicion of a crime. Stops stretched past their mission while a canine unit drove across town are a recurring, winnable suppression issue, and the timestamps on the video decide it.

Dogs, odor, and the hemp wrinkle

A dog sniff during a lawful, unextended stop is not a search, and an alert from a reliable dog can supply probable cause. But dogs and noses alike now face the hemp problem: a dog trained on cannabis, and an officer who smells it, cannot distinguish legal hemp from illegal marijuana, because the odor is identical. Whether the smell of cannabis alone still justifies a search is being fought courtroom by courtroom across Texas, and if your search rests on odor, that fight belongs in your case.

Consent: the search you hand them

The most common search in America is the one people agree to. Officers ask casually, you mind if I take a look, and refusing feels like an accusation of yourself. Understand your actual position: you have the right to refuse a consent search, refusal is not evidence of anything, and consent, once given, is nearly impossible to unwind. If a search already happened because you said yes, all is not lost: consent must be voluntary, not the product of coercion or an unlawfully prolonged detention, and the video sometimes shows a consent that was not really one. But the cleanest version of this chapter is one sentence long: be polite, and do not consent to searches.

Cars, pockets, and phones

Vehicles get less privacy than homes: under the automobile exception, an officer with probable cause can search a car without a warrant, and after an arrest a vehicle search is allowed only within the limits the Supreme Court set in *Arizona v. Gant*. A pat-down for weapons during a stop is allowed on reasonable suspicion that you are armed, but a pat-down is not a license to explore your pockets for drugs. And your phone is different from everything else you carry: under *Riley v. California*, police generally need a warrant to search a cell phone, even after arrest. In delivery cases built on text messages, how the State got into the phone is a suppression issue all its own.

Homes and warrants

Your home has the strongest protection the law gives. Entry generally requires a warrant supported by probable cause, and even bringing a drug dog onto the porch to sniff the front door is a search requiring justification. When there is a warrant, the fight moves to the paper: whether the affidavit's four corners actually establish probable cause, whether the information was stale, whether an informant's reliability was established, and whether the search stayed within the warrant's limits. Warrant affidavits in drug cases are drafted fast and lean on informants, and they do not always survive a careful read.

Informants and controlled buys

Bigger cases are often built on confidential informants: people working off their own charges by setting up buys. If your case involves an informant, your lawyer will press on who this person is, what they were promised, how the controlled buy was actually monitored, and whether the informant's history was disclosed as the law requires. Informants have powerful incentives to produce cases, juries know it, and warrant affidavits leaning on an unnamed source's say-so deserve the hardest read in the file. Entrapment, where government conduct actually induced a crime you were not otherwise disposed to commit, is a narrow defense but a real one, and it lives in exactly these cases.

Texas gives you an extra weapon

Federal law excludes evidence from unconstitutional searches. Texas goes further: Article 38.23 of the Code of Criminal Procedure excludes evidence obtained in violation of the constitution *or the laws* of Texas or the United States, and where the facts are disputed, you are entitled to have the jury itself instructed to disregard evidence it believes was illegally obtained. The tool that enforces all of this is the motion to suppress, argued to the judge before trial, and for a warrantless search,

once the defense shows there was no warrant, the burden shifts to the State to justify what happened.

Why this chapter decides cases. Suppression is not a technicality; it is the constitutional price of policing, and in drug cases it has real teeth. Take out the stop and everything found afterward can fall. Take out the search and the substance itself can be gone. Prosecutors know which of their cases have search problems, and defense lawyers who consistently find those problems negotiate from a different position entirely. When you interview lawyers, ask how they evaluate a search. The answer will tell you most of what you need to know.

Civil Asset Forfeiture: When the State Sues Your Property

While your criminal case moves in one courtroom, Texas may open a second front in another: a civil lawsuit against your property. It is called Chapter 59 forfeiture, it runs by civil rules, and if you do not respond on the civil clock, you can lose your car, your cash, and your phone without the State ever proving you committed a crime.

How it works

Under Chapter 59 of the Code of Criminal Procedure, the State can seize and seek to forfeit contraband: property used or intended to be used in committing certain crimes, including felony drug offenses, and proceeds of those crimes. The lawsuit is styled against the property itself, which is why forfeiture cases have surreal names like *State of Texas v. \$8,340 in United States Currency*. You are not the defendant; your car is. That framing has consequences:

- **The burden is lower.** The State proves its case by a preponderance of the evidence, the civil more-likely-than-not standard, not beyond a reasonable doubt.
- **No conviction is required.** The statute says a final conviction of the underlying offense is not required for forfeiture. You can win the criminal case and still be fighting for your truck, though an acquittal does raise a presumption in your favor that the State must then rebut.
- **Civil deadlines apply.** You will be served like a civil defendant, and you must file an answer by the civil deadline or the State can take the property by default. A staggering share of forfeitures are lost this way: not on the merits, but by silence.

The defenses that exist

An innocent owner has a real defense: an owner who proves they were not a party to the offense, and that the property was stolen or used without their effective consent, can defeat the forfeiture. That matters for parents whose car a child was driving, and for anyone whose property was used by someone else. Beyond that, the forfeiture fight tracks the criminal one: if the seizure came from an illegal stop or search, that illegality can be attacked in the civil case too, and the State still must connect the property to the offense. Cash cases are especially contestable, because carrying currency is not a crime and the State must prove the money's connection to one. The United States Supreme Court has also held that the constitutional ban on excessive fines applies to state

forfeitures, so a seizure grossly disproportionate to the offense can be challenged on that ground as well.

The honest context

You should know why these cases get filed energetically: Texas law allows the seizing agencies and prosecutors to share in forfeiture proceeds under local agreements. That is a documented incentive, and it means you should treat a forfeiture notice as an adversarial lawsuit, not paperwork. Practical rules: never sign a roadside waiver giving up property; calendar the answer deadline the day you are served; gather proof of legitimate ownership and income, titles, pay stubs, withdrawal records; and make sure your criminal defense lawyer knows about the forfeiture case, because the two cases share facts, and something said carelessly in one can surface in the other. Whether a forfeiture is worth fighting is an economics question, weighing the property's value against the fight's cost, but it should be answered deliberately, not forfeited by default.

Diversion, Treatment, and the Off-Ramps

Not every drug case should be fought to a verdict, and not every one should be pled. Texas has a set of off-ramps that can end a case without a conviction, and knowing how they actually work, including their traps, is as important as knowing the trial options. Here is the honest tour.

Pretrial diversion: the cleanest exit

Many district and county attorneys run pretrial diversion or intervention programs: you complete conditions, classes, testing, community service, sometimes treatment, over a set period, and the State dismisses the charge. The terms, eligibility, and even the existence of a program vary county by county, and admission is the prosecutor's choice, not a right. Done right, this is the cleanest exit available, because a dismissal after completing an authorized pretrial intervention program can later support a full expunction of the arrest. Before you sign, get every requirement in writing, understand what happens if you slip, and have a lawyer confirm what the dismissal will let you do about the record afterward, because that endgame is most of the value.

Drug courts: intensive, effective, and not for everyone

Texas law authorizes drug court programs built on a defined model: judicial supervision, a nonadversarial team approach, early placement, and access to a continuum of treatment, with frequent testing and staged sanctions and rewards. Graduation typically ends in dismissal or a substantially reduced outcome. The realistic picture: drug court is demanding, often 12 to 24 months of court appearances, testing, and treatment, and relapses are met with sanctions that can include jail days. For someone genuinely struggling with addiction, it can be the best thing the system offers. For someone who does not need treatment, it can be a heavier lift than the case itself. Fit matters; talk it through honestly.

Deferred adjudication: no conviction, real strings

Deferred adjudication is available in many drug cases: you plead guilty or no contest, the judge defers a finding of guilt, and if you complete supervision the case is dismissed without a conviction. Two strings deserve bold print. If you violate, the judge can adjudicate and sentence you anywhere in the full punishment range of the original charge. And for immigration purposes, a deferred with a guilty plea counts as a conviction anyway, which is why the next chapter exists. Deferred can still be the right call, especially because many drug deferreds can later be sealed with an order of nondisclosure, but it is a tool with edges, not a gift.

Rules written for small possession cases

- **Mandatory probation for first-time state jail possession.** For the lowest-tier state jail possession offenses, under a gram of Penalty Groups 1, 1-B, or 2, small amounts of Groups 1-A and 2-A, and up to a pound of marihuana, a judge is generally required to suspend the sentence and place a first-time felony defendant on community supervision rather than send them to state jail. Prior felony convictions and certain other findings can take the mandate away, but if you are a first-timer with a small-amount case, prison is usually not the realistic endpoint, and you should not let fear of it stampede you into a bad plea.
- **Section 12.44: shrinking the felony.** The Penal Code lets a court punish a state jail felony as a Class A misdemeanor, and, with the prosecutor's consent, lets the case be prosecuted as a Class A misdemeanor outright. The difference is profound: the first leaves a felony conviction with misdemeanor punishment, while the second leaves you with a misdemeanor conviction, not a felony. If a 12.44 offer appears, make sure you know which one is on the table.
- **Treatment inside supervision.** Felony probation in drug cases often includes treatment conditions, up to and including an intensive residential program in a Substance Abuse Felony Punishment Facility. It is confinement with treatment, and it is a very different experience from prison; if it enters your negotiations, understand exactly what is being proposed.

The overdose Good Samaritan defense: narrower than the name

Texas has a defense meant to let people call 911 during an overdose without convicting themselves: a person who was the first to request emergency medical assistance for someone's possible overdose, who stayed on scene and cooperated, has a defense to small-amount possession, and so does the overdose victim. Now the reality: the defense is unavailable if you had requested emergency assistance for an overdose within the previous 18 months, if you have certain prior drug history, or if officers were already executing a warrant or arresting you when the call was made, and the evidence from the call can still be used for offenses the defense does not cover. Call 911 anyway; a life outweighs a case. But do not assume the statute makes the scene legally safe, and say nothing beyond what the emergency requires.

The record endgame

How the case ends controls what the record can become, so read the off-ramps backward from the ending you want. A case that ends without a conviction or supervision, an acquittal, a dismissal

after diversion, a straight dismissal, can qualify for expunction: the arrest records destroyed, with the right in most situations to deny the arrest ever happened. A case that ends in deferred adjudication can often be sealed later with an order of nondisclosure, which hides it from private employers and landlords while government agencies retain access. A conviction is the hardest ending to fix and, for many drug offenses, cannot be sealed at all. Which waiting periods and conditions apply depends on the offense and the disposition, and a lawyer negotiating your case should be able to tell you, before you accept anything, exactly what the proposed ending will let you do about the record and when. If they cannot, that is information too.

The question that should drive every off-ramp decision: what does my record look like when this is over, and what will this disposition do to my immigration status, my license, and my job? A dismissal that leads to expunction is worth more than almost any plea. A deferred that seals in two years may beat a conviction that never seals. And for a non-citizen, none of these calculations work the normal way, which is exactly where this book goes next.

If You Are Not a Citizen: Read This Chapter Twice

For a United States citizen, a drug case threatens jail, money, and a record. For everyone else, a green card holder, a visa holder, a DACA recipient, an undocumented person, it threatens the ability to live in this country at all. Immigration law treats drug offenses with a severity that surprises even lawyers, and the ordinary instincts about what makes a good deal are actively dangerous here.

How bad is it? This bad.

- **Almost any drug conviction is a removal problem.** Federal law makes a non-citizen deportable for a conviction relating to a controlled substance, with one narrow exception: a single offense for possession of 30 grams or less of marijuana for personal use. Outside that sliver, there is no seriousness threshold: a misdemeanor can be enough.
- **Inadmissibility is even broader.** A controlled substance violation also makes a person inadmissible: unable to get a visa, a green card, or lawful reentry after travel. Inadmissibility can be triggered without a conviction at all, including by formally admitting drug use to a government officer. Waivers are scarce; the main one reaches only a single offense involving 30 grams or less of marijuana.
- **Trafficking is catastrophic.** A drug trafficking offense, which can include state convictions for delivery or possession with intent to deliver, is an aggravated felony under immigration law, stripping away nearly every form of relief and defense in immigration court.
- **Deferred adjudication counts.** The state judge never entered a conviction; immigration law does not care. A guilty or no contest plea plus any court-imposed condition meets the federal definition of a conviction, even after the Texas case is dismissed and even after it is sealed. The off-ramp that protects a citizen's record can end a non-citizen's residence.
- **Even the small stuff is radioactive.** Paraphernalia convictions have triggered removal proceedings and require the same careful analysis. There is no such thing as a throwaway drug plea for a non-citizen, including a Class C ticket paid by mail.

What to actually do

Tell your criminal defense lawyer your exact immigration status on day one; the Constitution entitles you to accurate advice about the immigration consequences of a plea, and no competent strategy can be built without the facts. Insist that any proposed disposition be analyzed for immigration effect before you accept it, because safer alternatives sometimes exist: a plea to a

non-drug offense, a deferred prosecution without a plea, a fight worth having instead of a deal worth refusing. Do not discuss drug use with any government officer without counsel. Understand the division of labor, too: a criminal defense firm is not an immigration law firm, and this firm does not practice immigration law. Removal proceedings happen in a separate immigration court system with immigration counsel, and the criminal defense lawyer's job, coordinating with that counsel, is to keep the criminal case from creating or worsening the immigration problem in the first place. And treat this chapter as the map's edge, not the map: the firm's companion book, *The Non-Citizen's Guide*, covers arrests, ICE holds, bond, and the intersection of criminal and immigration law in the depth this subject demands. If one chapter of this book gets ignored in a hurry to end a case, let it not be this one, because these consequences do not forgive.

The First 72 Hours, and Choosing Your Lawyer

Everything in this book converges on what you do now. This chapter is the checklist, and then the decision that shapes the rest of the case.

The first 72 hours

- **Get through booking with your mouth closed.** You must identify yourself. Beyond that, you have the right to remain silent about the facts, and you should use it completely: no explanations, no I-didn't-know-it-was-there, no naming names. Within 48 hours a magistrate must inform you of the charges and set bail. Say nothing about the facts there either.
- **Assume every jail call is recorded,** because it is, and prosecutors listen. Do not discuss the case, the drugs, the search, or anyone else involved on any jail phone, and tell family the same. Talk logistics and bond, nothing else.
- **Get bond handled and read every condition.** Drug case bonds commonly include testing and no-drug conditions. A dirty test on bond is a new, self-inflicted crisis. If dependence is real, say so privately to your lawyer, because treatment can start now, on your terms, and starting it voluntarily helps both your health and, often, your negotiating position.
- **Write down everything while it is fresh.** The stop from beginning to end: what the officer said the reason was, what questions were asked, whether you were told you were free to go, whether consent was requested and what you said, where everyone was sitting, what was searched and in what order, how long you waited and for what. The suppression chapter runs on exactly these details, and memory decays fast.
- **Preserve the physical trail.** Receipts and packaging for any hemp or smoke shop product. Prescription bottles and pharmacy records for any medication involved. Names and numbers of every witness and passenger. Titles and proof of ownership for anything seized.
- **Calendar the forfeiture deadline.** If property was seized, the answer deadline in the civil case is separate from everything in the criminal case, and missing it loses the property by default.
- **Go silent in public.** Nothing about the case on social media, no venting in group chats, no talking to investigators who just want your side. Statements become exhibits. Politely decline and refer everyone to your lawyer.

- **If you are not a citizen**, re-read the last chapter today and make immigration analysis part of every decision from this moment on.

What happens next in the case

Misdemeanors are filed and move toward court settings within weeks. Felonies go to a grand jury for indictment, which can take months, and that gap is not dead time: it is when preservation letters go out, video gets pulled, the lab file gets demanded, and, in the right cases, your lawyer talks to the State before the indictment is shaped. Early counsel is not a luxury purchase; it is when some of the most valuable work happens.

Choosing your lawyer

You do not have to hire us. You do have to choose well, because in a drug case the difference between lawyers shows up in concrete places: whether the stop gets timed against the video, whether the lab file gets demanded or the report gets taken at face value, whether the zone gets measured, whether the plea gets immigration-checked. Questions worth asking anyone you interview, including this firm:

- Who will actually work my case and stand up in court on it?
- How do you evaluate the stop and the search, and how often do you litigate motions to suppress?
- Will you demand and personally review the laboratory file, and when do you bring in an independent chemist?
- If property was seized, will you handle the forfeiture case, and is it included in the fee?
- What diversion, drug court, and deferred options exist in this county for a case like mine, and what does each one do to my record long-term?
- How do you analyze immigration consequences before a plea?
- What is the fee, exactly what does it cover, and what happens to it if the case goes to trial?
- What is your honest read of my case after you have seen the video and the lab work, not before?

Notice what is not on the list: promises. No honest lawyer can tell you your outcome before seeing the evidence, and a lawyer who guarantees a result is telling you something important about their honesty. Believe them, and keep walking.

How Lance Kennedy Law handles drug cases

- **One flat fee, through trial.** The fee we quote covers the case through trial, with no separate trial surcharge, so our advice about pleading or fighting is never shaped by what the next phase would bill.
- **Built on the search from day one.** Every case starts with the stop, the detention, the consent, the warrant, and the timeline, because that is where drug cases are won, and we pursue suppression, reduction, or dismissal wherever the facts and the law support it.
- **The lab is never taken on faith.** We demand the underlying laboratory file, not the one-page report, and we treat the substance, the weight, and the testing as claims to be proven, not facts to be accepted.
- **The endgame is part of the case.** Dispositions get chosen with your record, your license, and, where it applies, your immigration status in view, and when your result qualifies for expunction or nondisclosure, we prepare that filing for eligible clients as part of the representation.

The honest disclaimer, in plain sight. No lawyer can promise you a suppression win, a dismissal, or any particular result, and you should walk away from anyone who does. What a lawyer can promise is process: the video watched, the lab file read, the deadlines met, the issues fought, and straight answers throughout. Those are the promises this book is willing to make.

If your arrest was recent, the most valuable evidence in your case is aging right now: video retention clocks, forfeiture deadlines, fading memories. Call (737) 324-7540 for a free case review, and bring this book's questions with you, whoever you end up hiring.

Lance Kennedy Law | (737) 324-7540 | lancekennedy.com

Attorney Advertising. This book is general information, not legal advice, and does not create an attorney-client relationship. Every case is different and no result is guaranteed. Principal office: Austin, Texas.

Rev. 2026.1 | Current through the 89th Legislature (2025).