Charged With A Crime. Now What To Do?

Your Guide To Successfully Beating Criminal Charges Throughout Maryland

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TESTIMONIALS

"Mr. Phillips was helpful from the very first phone call. He explained everything thoroughly, always answered any questions I had, and was always available. He is very knowledgeable, reliable, fair, and goes out of his way to help. He was honest with all the facts and did all he could to make the court process as painless as possible for my son. He ended up not having to go to court. I don't know what I would have done without him and I highly recommend his services!"

– A Satisfied Client

"Mr. Phillips always answers any questions I have even today and it has been 10 years since my case was in court. He is very reliable, helpful, and goes out of his way to help. He has helped everyone in my family in different types of cases. I don't know what I would have done without him over the past couple of years."

– Wanda

"I don't know what we would have done without Mr. Phillips' help. He was there to answer all our questions whenever we called, and met with us in person. He led us through a criminal case smoothly, with a good outcome. Not only that, but he was a pleasure to be with, and made a painful process somehow pleasant."

– A Former Client

"I've had the pleasure of working with Mr. Phillips on two occasions. I couldn't get him to commit to the case I wanted him to, but I'm sure he has legitimate reasoning for that decision. I'm extensively glad to have contact with Mr. Phillips. Thanks for reading."

– Kenny

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AUTHOR INTRODUCTION

Arnold F. Phillips is an experienced attorney who uses his knowledge and experience of the law to help his clients negotiate the legal system in an efficient manner.

His goals are to accomplish the goals of his clients, while not wasting his clients' time, effort, and money on activities that do not promote the goals of his clients. He often works with opposing attorneys to work out an agreement that promotes the interest of his clients rather than forcing expensive litigation. When it becomes apparent that it will not be possible to come to a resolution conducive to the interest of his clients, Phillips becomes a fierce litigator! He has won many civil and jury trials over his 15 year career.

Phillips is currently licensed to practice law in the States of Maryland and West Virginia. He has tried civil, criminal and jury cases in both States. He is also admitted to practice before the Supreme Court of the United States of America, and in both Maryland and West Virginia Federal Courts. He has practiced law since 1994, concentrating his practice in Western Maryland and Northeastern portions of West Virginia.

Phillips has experience in civil trials before District, Circuit and Magistrate Judges, and has also won many jury trials in District and Circuit Courts. He has won six figure verdicts in Circuit Court and settled cases that have involved multimillion dollar payouts. He has served as the President of the Garrett County Bar Association in the years of 2006 and 2007 and President Elect for the year of 2005. He is a member of the American Bar Association, the Maryland State Bar Association and the West Virginia Bar Association.

Born September 23, 1963 in Prince Georges County, Maryland, Phillips spent his childhood in Wheaton, Maryland. He moved to Harper's Ferry, West Virginia during his adolescence. Upon graduation from Jefferson County High School, he attended West Virginia University, in Morgantown, West Virginia where he completed his Bachelor's Degree in Business management in four years.

After graduating from West Virginia University, Phillips worked for and managed several whitewater rafting outfitters giving him a unique perspective by interacting with clients from all over the world. He spent two winters working for a rafting company in Queenstown, New Zealand, which further diversified his experiences. He later managed a company named Whitewater Classic located at

Deep Creek Lake in Garrett County, Maryland and found a beautiful unspoiled area that he would later call his permanent residence.

Phillips attended West Virginia University, without any financial help from his family. He financed his education by working during the year and summer and with educational loans. In 1994, he graduated from the West Virginia University College of Law and the same year he passed the Maryland Bar Exam in his first attempt. The following year, he passed the West Virginia Bar exam on his first attempt.

Phillips lives near Deep Creek Lake, Maryland with his wife and children. He enjoys spending considerable time with his family and coaches his youngest daughter in soccer. He is extremely active in sports. In the winter you can often find him on the local ski slopes and in his kayak or wave runners, or on the golf course, rain or shine, in the summer. He believes that a balanced lifestyle helps give him the energy and open mind needed to tackle his clients' largest legal problems.

Types Of Criminal Cases That We Handle

We represent people for crimes including driving under the influence, CDS, meaning "Controlled Dangerous Substances," including drug cases, assaults, theft, and driving on a suspended license.

We also handle a fair amount of fire arm violations and represent people who are unaware that their crimes are actually crimes. This would usually involve fire arm violations, because people are obviously aware about the regulations and laws requiring fire arms, although given the complex nature of them especially in Maryland, a lot of people unwittingly run afoul of them, like hunters, sport shooters and a fair amount of people passing through Maryland with a carry permit not realizing they would be coming through this area of Maryland and not realizing they did not have reciprocity so they would flash their carry permit but then end up going to jail.

As far as white-collar crimes are concerned, we have handled some of these cases, and they generally involve some kind of

theft or embezzlement scheme. We also represent people who are involved in embezzlement, although we do not see a lot of these cases.

Maryland does not have something called "Petty Larceny" per se. They have theft statutes with different amounts involved and certainly more often than not, most theft schemes involve the smaller numbers.

What Are Some Things People Have A Hard Time Understanding About Criminal Cases?

Probably the most difficult thing is that people, laymen on the outside looking in or a new attorney who came in, would tend to expect that the law worked more like mathematics, whereby if X event happened then Y would happen and Z would happen after that. The system is much greater and much more volatile than that. A person cannot expect to get the same kind of results even if the cases were similar because they would be dealing with different prosecutors and different judges, which overall tends to be one of the harder things for people to understand.

Is There Anything You Would Like People To Know?

We have seen a shift in the lawyer market in western Maryland, where a lot of the old established guard has retired and we find ourselves at the peak of our carriers as being that law firm, three middle-aged attorneys who have all litigated a lot of cases both criminal and civil, so that if it is not a case we handle, we can help people find someone who could handle it, and if we do take a case, then we would find some way to get the client out of the charges or get them a good civil result.

This would vary a lot between specific crimes. A felony charge would be reserved for more serious crimes because felonies generally carry much more serious punishments such as more jail time and higher fines, but a felony conviction would also result in a loss of a right to vote, loss of a right to hold public office, loss of a right to possess a firearm, and it could affect the person's ability to get jobs more seriously than a misdemeanor. It could also be a bar to military service.

What Does It Mean To Be Indicted?

There are generally three basic ways to be charged in Maryland. The state could file the charges in district court, or they could file a criminal information in circuit court, which would by far be the most common ways the state would proceed in Maryland.

Maryland still has the indictment system which is based on the result of a grand jury process. In the present day, the grand jury system in many states including Maryland is more of a political dodge by the state's

attorneys when they feel like they need to or should file charges but they do not want to be the bad guy dropping the hammer for some political reasons. In this situation, they take the case to the grand jury and then the grand jury indicts the person, so that the grand jury ends up being the bad guys.

THE THINGS TO KEEP IN MIND WHEN ARRESTED FOR A CRIME

The biggest misconception people have when they encounter law enforcement is that they think it would help to talk to the police. They think that at best it would not hurt, whereas far more often than not it does actually hurt them.

People really should exercise their right to remain silent, and they should exercise their right to an attorney, and they should just clearly and unambiguously ask for an attorney because both of these would trigger their Miranda Rights and it would shut down the interrogation. Most people would be clueless for the most part when they got charged, regarding what might happen and how it would happen, unless they had been through the system a fair number of times.

People Unintentionally Incriminate Themselves Or Hurt Their Pending Case

When talking about the case whether with law enforcement or any third parties, the attorney would have privilege so the client would be able to talk to their

attorney and not have to worry about it. The other big problem would be the delay. There are often very short deadlines in cases and people tend to just put their head in the sand so they tend to delay when things need to be done. The other problem people face is with evidence, because there is certain evidence that would need to be preserved right away the moment the attorney got the call, or else it might be lost.

The most common one nowadays is video surveillance, which a lot of places have and they tend to have it on the 24 or 72 hour loop where it would get erased if no one's expressed the need for it. This kind of evidence would be gone if a call was not put in to preserve it.

This also applies to crime scene evidence. Any time there was a physical crime scene; there might be some circumstantial evidence that we would only get if we went to the crime scene. A vast majority if the time, when we take a look at the crime scenes, it is surprising some of the things we find or the observations we can make that would actually help the case.

How Public Would The Situation Be? Can Employers, Friends, Or Family Find Out?

The client's conversations with their attorney are privileged; the only exception to that would be if there was a serious ongoing crime where someone was in harm's way. There would be no issue in talking with the attorney regarding the charges, because the public record would show when someone had been charged.

A lot of states, including Maryland, have a judiciary case search website where anyone can search for and see the charges, with the exception of certain juvenile matters. In the long run, a lot of the criminal cases can be expunged at the end of it. The problem is that there are now a lot of private entities who basically data mine search and have built their own information data sources so a court order of expungement would be unable to get at those.

If it came down to a conflict where the charges were affecting someone's present job or their job application, then the person could come to their attorney and ask about the charges that were showing and the attorney could then go into the system and show then that there was nothing there, which is one way we would be able to get past those private information sources.

Someone Who Is Guilty Should Not Throw Themselves On The Mercy Of The Court

It would always be a bad idea to just throw oneself on the mercy of the court. We have a social policy longstanding in the west where we set a burden of proof beyond a reasonable doubt. In theory, the worst thing that could happen is when an innocent people who was not guilty, gets convicted of crimes in spite of those checks in the system. The law journals and popular press have many examples of people who were convicted but were later exonerated because they did not do the crime.

Someone who was feeling guilty about something they did could seek some forgiveness or absolution, whether through a counselor, a church, or through their religion, but it's a bad idea to try and get that from the criminal justice system. The criminal justice system in the U.S is oppressive and unfair. We have the highest percentage of people incarcerated among the first world nations in the world. The person has the right to force the state to prove its case beyond a reasonable doubt, so that is what they should do.

Would It Matter If Someone Was A Good Person, Had A Family, Or Had Never Been In Trouble Before?

It would not matter as far as whether or not someone was technically guilty, but it would make a difference regarding how aggressive the prosecutors would be. This is why the person's attorney would often play those kinds of facts ahead of the game to reduce what the state would be seeking in the case, because it would certainly make a big difference in terms of disposition of a case. A "Recidivist" would be someone who had been in trouble multiple times, because the more times someone had been in trouble, the harsher the punishments would generally become.

If a first time offender could be shown as otherwise being a good upstanding, productive and stable citizen, then it would make a tremendous difference and it would be one of the reasons why it would be important to have an attorney to help flush out those facts and to document them so that it could be presented before the court in such a way that they would be admissible because they would be considered, and they would carry weight.

How Should You Behave When Arrested?

Probably, the most surprising thing in criminal practice is how people attempt to lie, but when they get called on it, they just confess. The other half of the time, they tell the truth and confess anyway. Both of those strategies are bad. It would be a crime to lie to the police and that would just compound the charges in a case where the state had leverage, and obviously confessing to the crime would be a big step in the wrong direction.

Are Police Officers Allowed To Lie To The Defendant?

Police officers are not only allowed to lie to people, they are trained to lie, and because that is part of the interrogation training they receive. Some police officers are better than others, whereas some of them are very good at it.

Is The Defendant Allowed To Lie To The Police?

As far as whether or not the person of interest or the defendant is allowed to lie, then the answer to that is no. It would actually be considered a separate crime in Maryland if someone lied to law enforcement. The person would have a right to remain silent and they would have a right to an attorney so the best thing for them to do would be to exercise those rights.

Should You Request A Lawyer Before Meeting With Police Or Detectives?

The person has absolutely no obligation to meet with the police or the detectives and talk to them, although the police do tend to exert tremendous pressure on people to do just that.

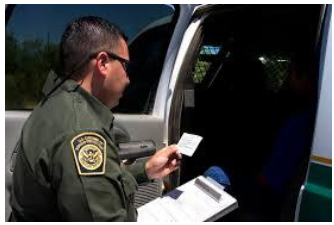
This is when the person should call their attorney, because an attorney would certainly be able to have a conversation with them and there would be certain cases where the attorney would need to sit down with the law enforcement or the detective and with the client, especially if there was a case where someone did not do the crime and they were attempting to exonerate them before things ramped up into actual charges. Being nice would be the best case and it would not do any damage, although more often than not it would do damage so the person should certainly request a lawyer and get a lawyer at that point.

How And When Do Miranda Rights Come Into Play When Confronted By The Police?

The first step in the Miranda analysis would be custody, meaning we determine whether the person of interest was in custody or not. This often becomes a point of contention, because there are cases where they would talk about whether or not there was custody, whereas it would

really be anything that the judge could be convinced of on any given day regarding what custody is.

Miranda rights are triggered once custody has been established, and the police would then be under obligation to read the person their Miranda Rights. If they read the Miranda Rights, then anything the defendant said, could and would be used against them in the court of law. If the person was interrogated without the Miranda being read, then any statements made by the defendant in custody would not be admissible in court as well as any other evidence that was directly linked or found as a result of those statements.



The legal term is "fruit of the poisonous tree," because that evidence would also get suppressed unless the state could show there was an independent way they found that information or an independent way they would have found that evidence for them to get it in.

How Does One Know They Are Under Criminal Investigation or Have Been Charged With A Crime?

Sometimes people do not know they are being investigated, although they generally find out when they are approached by law enforcement. This would be the

time to start exercising the right to remain silent and get an attorney even at the investigative stage, because things could go horribly wrong by talking to the police, even if it was just a simple failure of communication.

People should also realize that the police lie and they have been trained to lie, although some of them are very honest when it comes down to presenting the case and coming to court, although some do lie which is why the person would need to be very careful even at the early stages of an investigation. Ultimately, someone who got charged would either get served with the summons or they would get picked up by law enforcement and processed. At that point they would either have to make bail or they would have to sit in jail until the case went to trial.

The way you communicate your silence to a police officer is very important. When you tell an officer that you wish to invoke your 5th Amendment rights and will remain silent, that statement can be used in court to help infer your guilt. On the other hand, if you tell an officer that you refuse to answer any questions without your attorney present, that statement cannot be used to infer that you are guilty.

How Does Bail Work And How Is It Set?

In Maryland, most people are initially brought before a commissioner so that the commissioner can set bail. Once an attorney was retained, then even after the bail was set, the attorney would be able to request a bail hearing to get it adjusted.

Bail can be set up in different ways, it can be a 100 percent bail where the bail would be set at $1,000 and the person would have to put up the full $1,000, or the court can set it at a percentage bail where the bail would be set at $1,000 but the person would only have to put up 10 percent, which would be $100 and they would be able to get that money back if they paid the bail themselves, however the person would owe the balance of the bail if they did not show up on a percentage bond.

Many people who do not have money for bail, go to a bail bondsman. The bail bondsman would basically charge a percentage, maybe 10 percent, and then they would put up the lump sum of the money. The problem for the defendant in that situation would be that the percentage

the defendant paid to the bail bondsman would not be returned and it would be kept as their fee.

They would be able to get back the money they paid to the court if they showed up. However, they would never get back the money they paid to a bail bondsman.

How Long Do Criminal Cases Take To Resolve?

There are a lot of variations regarding how long a case can take to resolve. Western Maryland has a rocket-docket kind of system where cases move very quickly, so we usually expect to see a trial date within 3 months for first trial date. More often than not, most cases would not go off on the first court case for one procedural reason or another, but because of the speedy trial rule in Maryland, a person could usually expect to be at trial within 4 to 5 months.

How Often Would Someone Have To Go To Court After They Got Out Of Jail?

This would really depend on what happened at the disposition or sentencing. In certain cases, the person would be done after they got out of jail, although more often than not, there would be a period of probation. Some of this probation would be unsupervised, meaning there would be no checking in with the person but there would be someone who was monitoring the court systems to make sure they had not gotten in trouble again.

Supervised probation would be where the person actually had a probation agent and they were required to stay in contact

with them and meet with them. The schedule would vary from one probation officer to another, but in that case the person would be done once their probationary period ended.

Sometimes the court would require the person to complete additional things such as community service or some kind of treatment regiment, whether alcohol classes, counseling, drug classes, or anger management.

What Do People Do Once Their Case Is Over To Return To Normal Life As Quickly As Possible?

Most people have one experience with the criminal justice system and that is enough for them, because they would have been burned and seen how bad it is. The reality of the criminal justice system is much worse than what is portrayed on TV so they tend to never get in trouble again. They go on to work and have a family life and put the whole process in the rearview. The people who have the really lasting problems are the recidivists, because they tend to get in trouble time and time again.

What Should You Do While Waiting For Trial To Finish?

The biggest thing would be to not get into anymore trouble. It sounds like common sense, but it is human nature that people tend to do self-destructive things,

because of the stress of having a pending criminal case. They might go to a bar and then get caught for a DUI, or they might get in the fight with their spouse and end up in a domestic violence situation. It would be important for the person to not get in anymore trouble.

In certain cases people can do productive things because we can sometimes have clients help us gather evidence. People are often more receptive to talking with and cooperating with a layperson than they would be during a scary phone call from an attorney they did not know. There are also cases where we suggest for people to do some community service before we go to court, because some of the prosecutors and judges like seeing that.

In certain drunk driving cases, we know that if we get people to have the evaluation, so that if we need it and it is in place, then the judges would like to see that because it would mean that the person had at least gotten an evaluation and in certain extreme cases, a lot of people would have started some treatment. We would work to get the person into an inpatient facility if there was a serious alcohol or drug problem.

How Long Does The Expungement Process Take?

This would really vary, depending on how many expungements the clerks have received at the time someone filed their expungement. An order would be issued to anyone or any entity involved and listed on the petition, which is why it would be key to make sure someone had an attorney who handled expungements so they could list the appropriate law enforcement entities on there.

After the court issued an order, everyone, including us, would have 60 days to report back stating they had sealed the records off. If I expunged a client's case, then my records to the case would need to be destroyed. Once everyone concerned had reported back to the court, they would usually be looking at another 60 days before everything disappeared from the system. Most expungements are completed within 90-120 days of the initial filing.

What Are Some Alternative Punishments To Jail?

There are a lot of options as alternatives to jail. The person could end up with home confinement, which is becoming more and more popular in most jurisdictions, including western Maryland. They might get community service and in certain cases we suggest for the person to do community service ahead of time.

There would obviously be fines levied in many cases, and there would also be certain treatment requirements with regards to the person being charged with drunk driving, in which case they would need to go for alcohol classes. Drug cases would require drug treatment counseling or classes and anger management classes would be ordered in domestic violence cases.

Can Someone Get Their Record Sealed Or Expunged If They Have A Prior Arrest Or Conviction?

This would be possible with certain dispositions. The person would be able to get an expungement if their case was dismissed as "Nolle prosequi," or if they went to trial and were found not guilty. They would have to sign a whole waiver agreeing not to sue the state, but we would be able to get those kinds of cases expunged and get that sealed up.

We would also be able to get it done for other dispositions, certain PBJs or STETs, although the person would usually have to wait 3 years. It could be expunged a little earlier in certain circumstances, although certain cases like drunk driving, even with the probation before judgment, could never be removed from the record so those charges would stay there forever.

The person would not be able to get it expunged if they had been convicted of a crime, and the only way to get rid of that would be to make friends with influential people and the governor's office so they could get a pardon from the governor's office.

Is There A Look Back Period Where A Second Offense Would Be Considered A First Offense Again?

There is no formal look back period of that nature, although there is somewhat of an informal look back period. If it had been more than 10 years since someone had been convicted of drunk driving, then a lot of prosecutors and judges would look at that as a first offense, with the mindset that someone who was a habitual drunk driver would not get to 15 or 20 years without getting tagged for a drunk driving. It would be more common for a first offense to be viewed as a second offense.

With regards to drunk driving, if someone was on probation before their judgment on the first offense and then got picked up at the second offense within a fairly short period of time, then the second case, even though there had been no conviction on the first offense, the first case would be viewed as a conviction and it would basically turn the first offense into somewhat of a second offense thereby making it worse.

What Are Some Common Drug Offenses?

Most of the common drug offenses committed in Maryland used to be marijuana cases. Those are generally less and less now that Maryland has changed the law on Marijuana. They basically have decriminalized less than 10 grams, so most of the cases seen now involve the harder drugs, and most of it is possession. Prescription drugs and pain killers are a very big issue these days, and also there's a lot of heroin going on.

Even in rural communities you have drug problems. It's not limited to the cities. People from the cities come out to this area. Garret County doesn't have any major jails here, but just over the border in West Virginia there's a Hazleton Jail, which is a federal penitentiary.

In Cumberland, you have federal and state penitentiaries, and both of those tends to bring families and other activities, so it has migrated its way out this area. It's taken longer to get here, but it is definitely here, so you see those crimes going on all the time.

Determining Whether A Drug Charge Is Going To Fall Under A Misdemeanor Or A Felony In Maryland

Possessions are generally misdemeanors. Anything with possession with intent to distribute or distribution can come into the felony end. All distributions, no matter what, is a felony. Generally, all possessions are misdemeanors.

Unlawful controlled substances are generally defined by the state law in deference to federal law. You have class one, class two, and class three narcotics and depending on the class, those have different classifications.

Maryland generally goes with the Marijuana and not Marijuana as far as most of the statutes are concerned, so they generally lump everything into one big category. Anything that is marijuana related is taken out of that category as far as possession is concerned. With marijuana, you have lower penalties than you do with the harder drugs.

Schedules Or Categories Of Controlled Substances

In Maryland, judges look at what the federal category is, but Maryland is generally putting everything into one catch all statute. So if you're looking at different levels of controlled dangerous substances, it's something that a judge has more to do with than the law itself.

What Is Considered Possession, Distribution, Sale, And Intent to Distribute Unlawful Drugs In Maryland?

In Maryland, possession comes into a couple of different categories. If you're looking under marijuana at least, possession, you have three levels of possession. The first possession is under 10 grams, and under 10 grams you're looking at a citation and a maximum $100 fine. If you have multiple offenses, they can bring you in and force you into drug counseling.

When you get past the possession of 10 grams or more, then you're looking at a misdemeanor with a maximum sentence of a year in jail and a $1,000 fine. Depending on how much you have and how is it packaged, you can go to a possession with intent to distribute.

Possession with intent to distribute carries a much harsher sentence and with that it is no set amount as to what possession with intent to distribute is. Typically, police are looking for multiple packaging, or large amounts.

There have been cases where larger amounts have been found as personal use and generally anything where you package it in 10 or more bags, you're going to find a strong presumption in Maryland law that that would be possession

with intent to distribute. For instance, somebody could have 28 grams of marijuana which is an ounce.

Generally, if you have an ounce of marijuana and you're holding it in one spot, it is going to be considered a possession. If you are holding it in 28 separate baggies of one gram a piece, that is something that will take this charge for the same amount of drugs and give enough information to say this is possession with intent.

They'll also look at other factors. For example, if somebody's carrying scales or if somebody has large amounts of money with them to indicate that they are a potential drug dealer. That gets you into a stronger sentencing, stronger types of cases that the state will have against you.

Then the top is where there's a distribution, and distribution has been found as easily as one person passing a lit pipe to another person. That becomes a felony and carries much more serious penalties. Typically, with possession with intent or distributions, you're going to be looking at circuit court cases as opposed to district court cases. It raises the stakes all around.

And when you get into the other drugs, again it's not a specific weight that takes you over into possession with intent to distribute, it is the actual way it is packaged. Again, there's case law that basically says that if you have more than 10, a court will generally consider that as possession with intent to distribute.

Again, they always look at the other factors there, but a 10 or more basically gives you very little chance to fight it as far as the legal level. There's a lot of factual levels you can dispute on these, but as far as whether it's enough to say it's possession with intent, if someone has more than 10 bags, their court of appeal case is that 10 bags or more is going to be considered with possession to intent, and that can bring it to a jury trial.

Juries listen to the same arguments and everything that's going on, and even if you have that amount of possession with intent, a lot of people have facts that show that it's not really for intent, because it's the same situation as when you buy a beer. When you buy a beer, do you buy a six pack of beer, or do you buy a case of beer?

Sometimes if people are dealing in drugs or purchasing drugs, they're going to buy a case of beer, or the same analogy to that. They're buying something that they can use for two weeks, and when you do that if you purchase it

in a six pack, then the police will look at it as, you have six different bags, this is something we can look at a possession with intent.

A lot of these end up in jury trials or trials in front of the court where you're putting these facts in front of the people to see whether or not somebody's a casual user or if somebody's actually a distributor.

What Are The Laws And Penalties For Drug Offenses?

The maximum penalties in Maryland are setup to be very harsh. Judges have absolute discretion. Anybody that looks at a marijuana charge, which is one year and a $1,000 penalty, that is going to be something that a judge will have somebody in front of them. If they're guilty, they will take into account the person's criminal record, their background, whether or not they're working, whether or not they're productive in society, and that will end up giving a judge enough information to make a decision as to anywhere between probation to the full amount of the penalty.

You see a lot of variations in there. Generally, the statutes depending on the severity of them, you have up to 20 years in jail for certain distribution offenses. Generally, four years in jail for possession to distribute, and that will vary a little bit between a marijuana charge and other ones. So while somebody will get a criminal citation saying you might get 20 years in jail, for the most part they're not going to be looking at 20 years in jail unless they have a history of doing the same type of thing.

Laws In Maryland Regarding Medical Marijuana

Maryland does have a medical marijuana statute. It has a whole statutory framework set in where people who have a need for medical marijuana can get a prescription from a doctor. If they get a prescription from the doctor, they can purchase it at state licensed facilities.

It's been about two years since Maryland passed the statute in a law that not only permits the medical marijuana, but it permits the manufacturing and sale process.

For a few years, Maryland had allowed medical marijuana but really did not have any way to make that available. Typically, if you have a medical marijuana and you have the right to use it you can use it, but you still can be fined if you use it in public or if you are using it while driving.

That's something that you can end up with driving under the influence of illegal substances, and there have been a few cases in Maryland where people who have medical marijuana authority have been charged with that. The same way as people who have prescription drug authority are taking too much prescription drugs and getting DUIs or some type of driving offenses.

What Is Drug Trafficking? Is That Addressed Under The Maryland Law?

Drug trafficking carries a little bit stronger penalties. Generally, drug trafficking is distribution, and people who have larger records of distribution are going to end up getting more of a sentence with that. In drug trafficking, if you have very large amounts, you can be subjected to even harsher penalties.

Laws Against Drug Paraphernalia In Maryland

Maryland still has their drug paraphernalia law and it is still considered a misdemeanor. As a misdemeanor, it also carries a fine of $500 but it does not have any jail time associated with it. This is an anomaly within the Maryland law because now that the marijuana has been made into a civil citation, essentially people who have that civil citation and have paraphernalia with them are subject to a criminal citation.

For instance, if a police officer spots a small bag of marijuana sitting on your dash, he can confiscate that small bag of marijuana. If it's less than 10 grams he can give you a civil citation, and he has to let you go.

But if you have a pipe sitting next to that or a piece of paraphernalia sitting next to that bag, the police officer could potentially charge you with the paraphernalia

charge which could force you to show up to court and be sentenced to up to $500 and he could search your car based on the fact that you had illegal paraphernalia in the car. It's a very strange situation.

Maybe in the future the Maryland legislature will address this anomaly, because for somebody who is a legal marijuana user with a medical card, they are technically violating the law when they have any implement that they can use to smoke it.

Law Regarding Forging A Drug Prescription In Maryland And The Severity Of Penalties

This is another crime that you see happen very often. Prescription drugs have really caused a problem in the last 10 or 12 years as other drugs may be harder to find. Prescription drugs have been very prevalent, and the fact of forging prescriptions happens more and more these days, and when somebody does that they really put themselves in a difficult case.

Those are very hard cases to win, because most of the time that person is going to be caught on camera going into the drug store and purchasing something. The drug stores or

pharmacies have a list of people that they look at very closely, and everything is now put on computers and everything can be tracked very easily.

So when someone is picking up prescriptions at multiple pharmacies, those get red flagged, and when they get red flagged, these people are on video most of the time picking them up. They have a very hard time to prove that they did not do that.

It's one of the tougher crimes that you can defend and with the federal control of narcotics, that's something that can get somebody with federal charges a lot easier than most of the other drug crimes seen in Maryland.

Can The Passenger In The Vehicle Also Face A Drug Related Charge?

Any time drugs are found in a vehicle, it's very possible that the police arrest multiple occupants of that vehicle. The driver of the vehicle is generally presumed to know what is in the vehicle, but if an officer can reasonably articulate a reason that a passenger may be in possession of those drugs, those are things that can be used to charge somebody.

A lot of times when an officer pulls somebody over and they find drugs in some compartment inside the passenger compartment of the vehicle, they could basically go in. For

instance, in the center glove box, that's easily accessible by the passenger and also the driver, or the glove box. A passenger could easily be charged for that.

Police are more likely to charge multiple people if one person does not take responsibility and it's usually called falling on the grenade. If the driver takes responsibility for everything in the car, more likely than not, the police aren't going to arrest the other passengers in the car, or unless there is something that directly ties somebody to the drugs.

But it really depends on where it's found in the car. If it's found under your seat, you can generally expect to be charged. If it's found in a backpack or a purse, you can generally expect to be charged unless nobody has taken responsibility for the backpack and those piece, in which case police have the authority to go ahead and charge everybody and let the judges sort it out.

What Are The Penalties If Minors Are Involved In Drug Trafficking?

Penalties are generally heavier in case minors are involved in possession or sale of drugs. There are different charges people can get for that, contributing to the delinquency of a minor. Even child abuse has been charged in certain cases. So those add on to the penalties.

As mentioned earlier, the penalties in Maryland are generally pretty harsh for any type of distribution or intent to distribute, and judges have a wide scale in what they can sentence. Depending on the severity of the crime or severity of what it looks like. For example, a drug dealer giving something to another drug dealer in small amounts isn't going to look nearly as bad as a drug dealer giving something to a 13 year old, and that wouldn't look as bad as a drug dealer giving something to an 8 year old.

A judge is going to look at that and depending on how red you make a judge's face, there's going to be a difference in the sentence, and the worse a crime, generally the worse a judge will give a sentence on.

Alternative Sentencing In The State Of Maryland

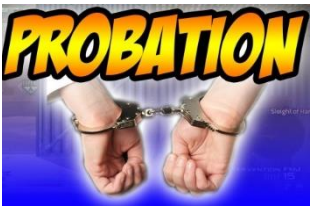
Maryland has a couple of ways of alternative sentencing. They have two different methods to do it.

One is called a stet. Stet is essentially an agreement by the state and the defendant that for certain conditions the state will not take a case forward. A stetted case means that a case is put on an inactive docket for one year and any time within that year a defendant has the right to re-open that case, and so does the state, and the state could re-open that case for good cause shown at a later date.

Stets are often given in drug crimes in return for community service. More likely than not for a first time offender, a stet can be negotiated. Somebody does not get fined, they do not get convicted. After three years, they can get their record expunged almost unconditionally, within three years after showing good cause and have the case expunged.

Generally, for people who are looking for jobs, people who have graduated college, people who did or completed extra community service, or numerous reasons. It could be good cause shown to get somebody's record expunged.

Once you get past the stet, then the next level of a second chance statute is Maryland's probation before judgement statute. What happens in a probation before judgement is generally agreed to by the state's attorney ahead of time in return for a plea. Sometimes a judge can grant probation before judgement if he sees somebody is fit and worthy for it even after a trial.



Generally, probation before judgements are given to people who don't have convictions. In a probation before judgement, a person would plead guilty or get convicted and they would have good reasons or be able to impress the judge in one way or another that they deserved a second chance.

The judge would convict them with one stroke of the pen, they would give them a fine, and also potentially give them a suspended jail sentence, and with the next stroke of the pen they would put them on probation and they would essentially strike the conviction.

This means that somebody's not convicted and that's something they can't really use for enhanced sentencing in the future, or to disable somebody from some type of right that they would have. They would be on probation for a period, and once their probation would expire, they would have the same right to get this expunged as somebody

with a stet. Three years after the date or with good cause shown at any time after that.

Can People Return To Normal Life After A Conviction?

There's always hope after something like this happens. The first step is whether or not a person can rehabilitate themselves. The worst part of the whole situation is if somebody has a drug charge and they're able to rehabilitate themselves afterwards, then they're going to be able to move on with their life.

If somebody does not, then they can end up with multiple charges, and the more you get, the harsher the penalties. The worse it will look on somebody's criminal record.

For somebody that has a first time drug offense and they're not distributing or doing something very serious or intent to distribute, such as with possessions, an attorney can get those expunged, and get those off somebody's record.

The expungement statute in Maryland is very broad as far as the misdemeanors and the possession are concerned, and it allows the judges to take this off your record and for the most part, they're fairly easy to obtain. As long as somebody stays clean and doesn't have

multiple offenses, for example college students who are doing things and experimenting.

More than 95% of these people end up coming back to their attorney having their records expunged, graduating college, and going through and having a normal life.

So a drug charge is not something that's going to cripple you or cause you problems, unless you do something serious with it. Good representation is very important because knowing the right way to go about a case, knowing what your options are, whether PBJ (Probation Before Judgement) or a stet is available are extremely important tools that you can use, and also knowing the expungement and when and how to get these things off your record.

How Long Does A Drug Related Crime Take To Resolve?

Most of the time in Garret County and the district court, you're going to see trials come in within 90 to 120 days of the arrest. Those trials could be continued for good cause shown and generally, continuances are never opposed. In continuances, the feelings are generally in a client's best interest because as time passes, there's always a chance for evidence to become destroyed.

Police officers get transferred, move on, are retired, and the people become less familiar with what happened on those crimes. If you are cross-examining somebody and you're trying to find reasonable doubt, it's usually better to cross-examine somebody 12 months after the crime than 6 hours after the crime.

So you have 60 to 90 days. If you're looking at a possession with intent to distribute or if you're looking at a distribution charge, you will generally be given the opportunity for a preliminary hearing. Your attorney will generally take advantage of the right for a preliminary

hearing. Those are held within district court, generally fairly quickly after you're arrested.

It is very important for somebody to request a preliminary hearing within 10 days of the time that they are arrested. They secure that right to that preliminary trial, at which point the state has to basically prove probable cause, and it's not hard for the state to prove something's probable cause.

In most cases, usually somebody possessed enough drugs to distribute or somebody actually distributed drugs and they had facts for that. Those things give the attorney an opportunity to conduct early discovery, get a police officer on the stand, hear what they have to say, and get a transcript that you can use later on in the jury trial if it comes to that for all statements the police officer made.

Generally, testimony changes over time. Once a preliminary hearing goes through, the judge has the right to forward this to the circuit court for a jury trial or a judge trial. When you look at the jury and judge's trial, after your preliminary hearing, the court has 30 days to take that to the circuit court.

Circuit court generally acts fairly quickly in getting people into their first appearance, usually 60 days after that

preliminary hearing or after that time period, and scheduling a trial within 180 days of the day the case is presented to them.

So for big felonies you should have a trial within about 7 to 8 months and with misdemeanors you should be having a trial in between 60 and 120 days.

The state has a duty to provide people with a speedy trial, especially in the circuit court. There's a 180 day rule. The 180 day rule can be broken generally if there's good cause. If the defendant asks for a continuance or the court has to continue it for a good cause, they can do that, but more than 180 days without any continuances by the defendants generally gives you a good route to get a case dismissed.

What Defense Strategies Are Used In Drug Related Cases?

With drug related cases, the first thing to look at is what has the state done? How much has the state gone to prove this, and your defenses can vary from constitutional defenses, and then there are fact defenses. Constitutional defenses commonly seen is a search and seizure that is done wrong.

Maryland has a very interesting situation coming up with drug dogs and dog searches. Maryland has drug dogs which are universally trained to sniff out marijuana, and that is something that they have done for years. That is something that they have been very good and very effective at. There have been so many cases where somebody's been pulled over, a drug dog has come in and noticed marijuana.

With the changes in the marijuana laws over the last couple of years, the possession of less than 10 grams of marijuana is a civil citation, and as a civil citation that is something that does not really give an officer authority to search a vehicle to investigate a civil citation.

Usually, in that situation a police officer comes in, the dog sniffs and alerts to something because not only do they alert to marijuana, they alert to cocaine, they alert to heroin and other drugs that they're trained to do, but if the dog's also trained to alert to marijuana, you have a very good constitutional case now for any drug dog search, because if they can't prove that that drug dog is trained not to smell less than 10 grams of marijuana, then they are taking an overly broad search when they're searching a car.

If a drug dog detects heroin for instance and you are in court, how can you prove that that drug dog may not have been detecting a civil citation substance of marijuana, which changes the whole aspect of the search. It doesn't give them a constitutional right to search. And whether or not somebody's pulled over, or how somebody is pulled over makes a difference as far as a constitutional search is concerned.

A lot of times, people are pulled over for bad reasons. Once, police were pulling people over because they had the back of their car filled with camping equipment, and they couldn't look out the rear view mirror. There is actually nothing illegal about that. It's something that may

be a little bit of a danger, but it doesn't given an officer probable cause to search the vehicle.

If they don't have probable cause to search a vehicle and an officer finds something, that is evidence that can be suppressed based off the fourth amendment of the U.S. Constitution and also the Maryland Declaration of Rights. The state cannot use that evidence against you if it was obtained illegally. If the state has no evidence that they can use against you, a person is generally going to be found not guilty and walk free of that.

Those are the constitutional defenses, numerous fact defenses. Police have to prove that somebody has knowledge of what they have, depending on where something's found and what the relation is to a person. A person may have a defense to say this doesn't belong to me, this belongs to somebody else.

A person can also be charged for possessing somebody else's contraband, and when that happens, you have a good defense and you can win at trial.

Ultimately, it comes down to what the police officers do and the state's attorneys do and how good a job they do as far as investigating a crime, gathering evidence, prosecuting the crime, and following through with the court rules.

As a defense attorney, that gives many options to fight a drug case because you can fight it on constitutional grounds, you can fight it on factual grounds, you can fight it on grounds that the police did not do a good enough job, or if the state's attorney makes a mistake somewhere in the trial you can take advantage of that.

Many cases have been won in all different methods. It starts out with their own facts, and depending on how somebody's pulled over, what they say to the police, what the police have found, where it is found, those are the facts that you generally start out with and you have to deal with, and you have to work within that framework to find the best defense for somebody to get them the best outcome possible.

What Credentials Should You Look For When Interviewing An Attorney?

A good place for someone to start would be by checking the attorney's experience. A client would be able to go into judicial case searches and in Maryland, they would be able to type any attorney's name and see the cases for which they had represented people.

The node of caution with that is that attorneys like us who manage to get over a third of our criminal cases expunged at the end need to add a third or more to the cases that the clients would see, in order for them to know what we had really done. The prospective client should also have a look at the attorney's reputation by talking to people in the area and talking to court personnel because they would see who was coming and going or who was winning or losing.

Is It Better To Hire An Attorney Versus A Public Defender Or Representing Oneself?

The best course of action would be to get a private attorney. Private attorneys earn their living based on a reputation and they get that reputation by winning and getting results

that are better than public defenders or a layman who went into the court on their own could manage.

Public defenders would be the second best option because the person would be getting a lawyer and they would show up and give the client a due process defense. They do not have a reputation to be that concerned about because they make a salary and they have a huge caseload, so they tend to do a minimalistic job.

Someone who decided to represent themselves should mind the expression that "A person who represents himself has a fool for a client," because they would essentially be going into a very complex administrative procedural environment with little or no clue of what to do. It would be just like the analogy of someone going to a gun fight without a gun.

What Are Some Red Flags Someone Should Look For When Interviewing Attorneys?

Some red flags to be aware of would be that when talking to an attorney, the prospective client should remember that the attorney would be taking the time to ask detailed questions and detailed follow-up questions about the facts of the case. The client should see whether the attorney seemed knowledgeable about what he was talking about, whether he

was giving specific and detailed analysis of what he saw in the case or whether he was making broad generalizations.

It would be a red flag if the attorney was making broad, sweeping, beautiful promises that sounded great but would not really be true and honest with regards to how the system actually worked. Attorneys who charge very small amounts of money might seem great but in a lot of ways, the client would get what they paid for, which would also be true for attorneys who charge huge exuberant amounts of money, because there would be a certain balance of diminishing returns to where someone might not be getting anything more for all that money.

How Often Can An Attorney Get Charges Dropped, Dismissed, Or Reduced?

This varies from case to case. Generally, for any kind of a plea deal that is dropped, we would be looking to get a deal that was better than what we felt we could get at trial. There would be no point in making a deal for the same thing we could have gotten at trial. We would basically need leverage to help us get the charges dropped, so we would either need very compelling evidence to convince the state that the defendant did not do it or so we could

convince them there was some tremendous flaw in their case to the point where they would lose.

The more leverage we had, the more we would be able to get done and we might even be able to get the case dismissed if we had a lot of leverage. We would usually find ourselves getting some kind of middle ground pretrial disposition if we had some leverage, even if it was not necessarily a homerun.

Maryland has something called a STET docket, meaning inactive, so it acts as a way for cases to be disposed off pretrial without any admissions or without any findings of guilt or conviction, although in certain cases it would also allow the state to be able to get people to do things, whether it meant getting some alcohol or drug treatment, taking an anger management class, doing some community service or maybe restricting them from having any contact with somebody, which would really be the two pretrial options in Maryland.