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The FAQs about Drug Charges in Virginia

Navigating the Virginia criminal justice system can be overwhelming when it's your first time and drug charges are involved. Below are some common FAQs asked in relation to drug charges in Virginia.

- 1. My daughter was accused of doing drugs in school. She was taken directly from the school to the hospital for testing and even though the drug test came back clean, she was suspended for five days. What should she do?** Often, the fact that your daughter was suspended for alleged drug use can **remain on her school record**. If you have not already done so, you should contact an experienced criminal defense attorney who also has experience with these types of educational issues and [guidelines](#).
- 2. I was charged with possession of marijuana (18.2-250.01), but I didn't have marijuana at all; I had synthetic marijuana that I bought from the store. How is this possible?** Synthetic marijuana is also known as [K2 or Spice](#) and is **definitely illegal in Virginia**. The Drug Enforcement Agency (DEA) has designated the five active chemicals most frequently found in Spice as Schedule I controlled substances. The most common chemical is Ab-Fubinaca which since January 2014, has been designated as a Schedule I controlled substance. As of 2015, while there are 22 synthetic cannabinoids federally controlled through legislation or regulatory action, the DEA has identified over 75 other synthetic cannabinoids that are not controlled, yet. If the laboratory finds one of the 75 uncontrolled chemicals, you have a defense.
- 3. Do I need to keep my Xanax and other prescription drugs in prescription bottle while I'm driving?** Xanax is a prescription drug that falls under the category of [depressants](#), which are used to put you to sleep, relieve anxiety and muscle spasms, and prevent seizures. All prescription drugs need to be kept in their **labelled bottles obtained from the pharmacy**; otherwise you risk being charged with possession of a controlled drug obtained without a prescription.
- 4. I got arrested for DUI after eating a lot of kratom. I didn't tell the cop I ate kratom, but he still arrested me because I was acting impaired. Can I fight the DUI?** The use of [kratom](#), generally by chewing is illegal in its native country of Thailand, but it is not scheduled under the federal [Controlled Substances Act](#). To get a conviction, the **drug must be illegal in the U.S.**
- 5. If I'm moving from California to Virginia, and I have a valid prescription, can I smoke my weed to treat my ailment while I'm in Virginia?** Make sure that you have a **valid prescription from a licensed practitioner**. It's the paperwork that will save you.
- 6. I was charged with two counts of conspiracy for transporting schedule I or II controlled substance and possession with intent to sell, manufacture, distribute. Does this need to go to a grand jury first?** The typical procedure followed in a majority of felony cases in Virginia is to be charged on a warrant and be scheduled for a **preliminary hearing**. From the preliminary hearing, if the court determines there is probable cause for trial, it would then typically go to the grand jury as these are serious charges. For a schedule I or II drug, just the possession with intent to distribute alone carries a sentence of 5 to 40 years for a first time offender if convicted.

- 7.** I got a ticket for expired inspection and also one for possession of marijuana. What is the best and worst case scenario? Assuming that this is your first marijuana charge, there is a great likelihood that you will get into the **first offender program** so that it will ultimately be dismissed. However, you cannot expunge the original arrest. Worst case scenario with the same assumption: a misdemeanor criminal record but with no jail. Fix the expired inspection and take proof of such to the Commonwealth's office for dismissal.
- 8.** On a possession of marijuana conviction, will I be drug tested right after court or will I have a period of time to get clean? Some jurisdictions may use the first test to **establish a baseline** of THC in the system to assess over time if you have stopped doing drugs. For example, if THC levels have gone down, it would indicate you've stayed clean or if the THC levels have gone up, it would indicate you're still doing drugs. Either way, you cannot change what is already in your system so since you have now seen the downside of smoking marijuana, stay clean and deal with whether metabolites are still in your system whenever they test. For more information on offender alcohol and drug testing, visit the [Department of Corrections](#).
- 9.** How much would a bond be for my husband charged with three counts of distribution of a controlled substance? You really need to **speak to a local experienced criminal defense attorney** because a lot is taken into consideration: was he on parole or bond when charged with this offense? Does he have prior criminal convictions? Does he have prior drug related convictions? Does he have any past convictions for failing to appear in court when required?
- 10.** Can the Commonwealth keep your car if you have a possession charge? The Commonwealth must **serve civil papers** on you regarding the seizure and then you have 30 days in which to file the reply document. You will require a lawyer to help you with this civil matter, so contact one sooner rather than later.
- 11.** I have a probation violation for failure of a drug screen, which is my third violation. How will this affect my 5 years suspended time? There is a good chance you will **not be released without a bond hearing** and that you will get all your backup time, despite there being guidelines in your case. Guidelines are discretionary in Virginia state court and not mandatory, so a judge can go above them (and frequently does when there are prior violations).
- 12.** I received six months on probation for possession of marijuana in Arlington. I finished my 24 hours of community service, but I missed my drug class. What should I do? You should be **signing up as soon as possible** but if this is Arlington, the file may be closed on you and it will mean getting your attorney to run interference for you.
- 13.** I was put in the first offender program for possession of marijuana. I cannot afford ASAP, a \$500 fine, community service, and court fees. What could happen if I was non-compliant? A misdemeanor conviction for possession of marijuana would likely be entered, giving you a criminal record. While the **maximum jail sentence is 30 days**, it is not likely if you were eligible for the first offender program. Court costs and fines can be converted to community service hours if you speak to the clerk. Also, you should speak to the court clerk or ASAP advising them that you cannot afford to pay the cost of ASAP and ask them if you fall within the indigent criteria and thus won't have to make the payment. You may have to go back to court to deal with this issue, but check with ASAP and/or the court clerk first.
- 14.** I was charged with possession of marijuana and was ordered to complete ASAP under the first offenders program. If I failed to take the class within the 6 months, my license was suspended and the case was finalized, do I still have to take ASAP? It sounds like you failed to complete the terms for dismissal, so a conviction was entered. If that is the case, you are **no longer required to complete ASAP**. However you should speak to your lawyer to make sure that this is the case. You can obtain a copy of the

court document from the clerk's office and take it to the DMV and they will tell you whether you are eligible to get your license back.

- 15.** **What happens after I complete everything I was required to complete for first offender possession of marijuana? Does the conviction get expunged?** In all likelihood, your charge will be dismissed at the review hearing. Once dismissed, you can say you do not have a conviction for this misdemeanor charge. However, you will never be able to expunge the charge if the judge indicated **"facts sufficient"** on the court document.
- 16.** **I finished all probation requirements for a drug conviction and my probation officer said she is sending all of my paperwork over to the courts. What happens next? How long will court be? Am I done drug testing?** You should receive a notice from the court indicating your next court date. If you have to go to court, you wait for your name to be called and then the Judge will dismiss the charge. The **actual dismissal takes seconds**; how many people are in court that day will determine how long you have to wait before your name is called. Once the Judge dismisses the charge, you will then be done with all drug testing.
- 17.** **Can I buy a gun with drug arrests on my record?** This is not a simple answer. Any felony conviction prohibits your from legal gun possession, but outside of felonies, there are [several reasons](#) to keep someone from being able to purchase a gun – one reason is being a drug addict. If you have several drug arrests in the past few years, this would support concerns of drug addiction. However, you can write to the clerk of the county court where you were convicted to **obtain a copy of your drug convictions** and find a local experienced criminal defense attorney who will likely give you a free consultation.
- 18.** **I have worked for the same company for 16 years and have never failed a drug test the entire time. I've just taken my second drug test in less than a year. Is this legal?** Virginia is a "right to work" state so a company can ask an employee to prove that they are not using illegal substances, **at any time**. The most popular form is a urine test, but you could be asked to provide hair, saliva or blood to be tested.
- 19.** **I regularly drink a tea made from Khat but I heard it's illegal. Is that true?** [Khat](#), aka Abyssinian tea, Miraa, Qat, Gat Tohai, Kat, etc., has been widely available in the United States since 1995. The two active ingredients are cathinone and cathine, which are Schedule I and IV stimulants, respectively, of the federal [Controlled Substances Act](#).
- 20.** **I have a valid prescription for oxycodone. I went to a party and gave some oxy to friends and they didn't pay me. Did I do anything wrong?** You could possibly be charged with an **unclassified felony for distribution of a schedule II controlled drug**. It is unlawful for any person to sell, give, distribute...any controlled schedule I or II substance (§18.2-248). [Oxycodone](#) is a schedule II substance. However, if the defendant can prove that they gave the controlled schedule II without intent to profit or induce the other person to become dependent on that drug, they will be guilty of the "lesser" class 5 felony, which carries a maximum sentence of 10 years rather than the maximum of 40 years on the distribution. This is called an "accommodation".

This Guide does not constitute legal advice and is meant for information purposes only. Information provided is current as of April 2016 and is subject to legislative change at any time. The author of this Guide is not responsible for providing updates when legislative changes occur.