

METHAMPHETAMINE CRIMES AND ITS DEFENSE

SIZE MATTERS

The gravity of crimes involving sale or possession of methamphetamine in Minnesota is linked to the size of the contraband. The amount of the drug is determined by the total gram weight of the substance, not by the actual amount of methamphetamine present in it. Because of the dangers that methamphetamine, cocaine, and heroin pose, the penalties for sale or possession of these drugs are much harsher than penalties for the same amount of other drugs.

Sale of ten grams or more of any mixture or substance containing methamphetamine, or possession of 25 grams or more of any such substance, is a **first-degree** controlled substance crime and carries a penalty of up to 30 years' imprisonment and a \$1 million fine, or both. If the person has a previous controlled substance conviction, the penalty is increased to at least four and up to 40 years' imprisonment. The Minnesota Sentencing Guidelines recommend an 86-month sentence for a person with no criminal history who is convicted of a first-degree controlled substance offense.

Sale of three to ten grams or possession of six to 25 grams of a methamphetamine substance is a **second-degree** controlled substance violation and is punishable by a 25-year prison sentence or a \$500,000 fine, or both. For offenders with a previous controlled substance conviction, the penalty increases to up to 40 years (with a three-year minimum sentence) and an optional fine of up to \$500,000. The Minnesota Sentencing Guidelines recommend a 48-month sentence for a person with no criminal history who is convicted of a second-degree controlled substance offense.

Sale of any substance containing methamphetamine, or possession of three to six grams of such substance, is a **third-degree** controlled substance crime and carries a prison term of up to 20 years or a fine of up to \$250,000, or both. With a previous controlled substance conviction, the term is at least two and up to 30 years, with an optional \$250,000 fine. The Minnesota Sentencing Guidelines recommend a stayed 21-month sentence for a person with no criminal history who is convicted of a third-degree controlled substance offense.

Possession of a substance containing any amount of methamphetamine is a **fourth-degree** controlled substance crime and carries a prison term of up to 15 years or a fine of up to \$100,000 or both. With a previous controlled substance conviction, the term is at least one and up to 30 years, with an optional \$100,000 fine. The Minnesota Sentencing Guidelines recommend a stayed 12-month sentence for a person with no criminal history who is convicted of a fourth-degree controlled substance offense.

METHAMPHETAMINE CRIMINAL DEFENSES

A. The Evidence.

Obviously, evidence of a drug charge is critical to a conviction. The existence of contraband including the necessary weight must be proven beyond a reasonable doubt. That evidence,

however, can be challenged where the search resulting in the evidence was flawed. The evidence is challenged before trial with Motions to Suppress Evidence. Such motions are a powerful tool when wielded in the hands of aggressive and experienced legal counsel. A Motion to Suppress Evidence is based upon arguments that evidence was illegally obtained as the product of a search or seizure that violates the Constitution. The court decides this issue after a hearing in which the defense attorney cross-examines the officers involved in the case, and presents legal arguments about why the evidence should be suppressed. If this motion is successful, the case may be dismissed entirely.

The Fourth Amendment of the United States Constitution protects you from unreasonable search and seizure. As individual rights are highly valued in this country, our lawyers have been very successful in challenging drug arrests based on improper searches and invalid search warrants. A constitutional violation may occur where searches are unsupported by sufficient probable cause to conduct the search. Such challenges require a careful inspection as to what the law enforcement officer knew and when it was known. Even where search warrants are acquired, numerous potential challenges exist. Challenges may include attacking the probable cause for the warrant or arguing that the scope of the warrant was exceeded either as to location or with respect to the items seized. The challenges that are used would depend greatly on the particular facts of the case.

In addition to challenging the seizure of evidence, the testing procedure for contraband evidence may also be challenged. If improper methods are used to identify the contraband substance, the test results may be suppressed in court. Moreover, since a critical issue in any drug case is the amount of contraband, challenging the drug's purity may also provide a viable challenge to see a reduction of charges.

B. Entrapment

Entrapment occurs when the government, usually law enforcement, entice a person to commit a crime that they were not predisposed to committing. In the context of a drug offense, it may be a viable claim of entrapment if law enforcement initiates contact and communication regarding a sale of narcotics where there was no predisposition on the part of the defendant to commit the offense. It is important to note that law enforcement officers have no obligation to tell the truth or to reveal their true identity if asked by a potential drug buyer or drug seller. Claims of entrapment are very difficult to present effectively without a trained lawyer. Some successful claims against law enforcement agencies have centered around the idea of a 'virtue test'. Police cannot select random citizens to participate in organized sting operations in hopes of generating an arrest. There must be some compelling evidence that a specific individual has a propensity for committing such a crime.

C. Possession

One of the critical elements of any drug case is whether the defendant was the person who had actual possession of the drugs on their person, or whether the defendant had constructive possession, by locating drugs within that individual's span of control, whether that is in a car, a house, or a dresser drawer.

CONCLUSION

Charges related to methamphetamine possession or possession with intent to sell are extremely serious. On a first offense, presumptive prison sentence in excess of twelve years may apply. Accordingly, you should always seek experienced and aggressive counsel for your defense.