

Colorado Drug Possession Legal Guide

Colorado is one of the most lenient states in America when it comes to prosecuting simple drug possession.

Recent legislation makes it more difficult for local district attorneys to aggressively prosecute drug users with felonies and requires prosecutors to charge defendants with a misdemeanor when they are found in possession of “personal amounts” of controlled substances.

If you have been arrested for drug possession in the State of Colorado, you can use this guide to understand the severity of your charges, navigate the criminal justice system, and secure proper representation.

Understanding the Basics: Federal Drug Schedules

Drug possession laws in Colorado, along with the other 49 states in the US, are all derived from the Federal Controlled Substances Act and the corresponding Drug Enforcement Division’s (DEA) formal [drug schedule](#).

This list is updated by the federal agency semi-regularly and is used to determine the drug's 1) acceptable medical use and 2) drug abuse potential. Schedule 1 drugs are substances with no acceptable medical use and a high potential for abuse. Schedule 5 drugs are the opposite: they are considered to have accepted medical use and the least potential for abuse.

Let’s look at each of the federal scheduling categories to see which common drugs are included in each schedule.

Schedule I

No acceptable medical use and a high potential for abuse:

- Cannabis (THC)
- Ecstasy (MDMA)
- Heroin
- Lysergic Acid Diethyl-amide (LSD)
- Mescaline (Peyote)
- Quaalude

Schedule II

Acceptable medical use and a high potential for abuse:

- Cocaine
- Methamphetamine
- Morphine

- Oxycodone
- Adderall
- PCP

Schedule III

Acceptable medical use and moderate potential for abuse:

- Ketamine
- Anabolic Steroids
- Amphetamines
- Lorcet

Schedule IV

Acceptable medical use and a low potential for abuse:

- Ambien
- Valium
- Xanax
- Soma
- Ativan

Schedule V

Acceptable medical use and nearly no potential for abuse:

- Lyrica
- Motofen
- Lomotil
- Robitussin AC

The Federal Analogue Act

It is also important to note that a drug does not need to be on this formal list to be classified as a controlled substance. The 1986 Federal Analogue Act places all chemical analogs with similar psychoactive effects in the same federal schedule as the drug it is derived from.

The law defines an analog as a substance where:

1. the chemical structure of which is substantially similar to the chemical structure of a controlled substance
2. which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to a controlled substance

3. or that the person found in possession of the item represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to a controlled substance.

This law is important because analogs to popular Schedule 1 and Schedule 2 drugs are widely available online and sold openly in countries outside of the US and select circles within the country.

The Analogue Act allows the federal government to preemptively make these similar drugs illegal, without having to individually name each drug variant. This is an important tool for law enforcement in an era when new drug analogs are being created and sold monthly.

HB 19-1263 & Simple Drug Possession

[HB 19-1263](#) is the single most important legal change governing drug possession in Colorado in the last century. The revolutionary law was signed by Governor Jared Polis in 2019 and went into effect on March 1, 2020.

This new law made possession of fewer than 4 grams of a Schedule 1 or Schedule 2 drug a misdemeanor. This was a huge change from the previous legal structure, where simple possession of these classes of illicit drugs resulted in an automatic felony charge.

The sole exception to this new classification is GHB and other “date rape” drugs. Possession of this class of illicit drugs remains a level 4 drug felony despite the changes.

While this type of “de-felonize” change may seem insignificant at first glance, it has huge implications for defendants caught with personal amounts of drugs. The previous system, which mandated a felony drug possession charge, took the approach of trying to arrest and jail away the state’s drug problem.

This type of approach is brutal and lacks compassion. It transforms working people and contributing members of society into felons almost overnight. A felony on your record can impact your ability to find and keep a job, secure housing, live in certain areas, and can result in lengthy jail time.

By moving away from the prison-first approach, Governor Polis and the bipartisan group of state legislators who drafted the bill helped change the conversation around drug use in Colorado and introduce a more compassionate approach to dealing with drug addiction.

Introduction to Drug Possession Levels

Misdemeanor Simple Possession

In Colorado, defendants charged with simple drug possession are charged with either a Level 1 or Level 2 misdemeanor, depending on the type of drug in their possession.

A Level 1 misdemeanor is the most serious charge at this level and is levied when defendants are found in possession of a Schedule I or Schedule II drug. If convicted of a Level 1 misdemeanor, you can expect to serve up to two years of probation and pay a fine of \$1,000. Violation of probation can result in 180 days of jail time and subsequent possession charges can result in up to 364 days in jail for the third offense.

On the other hand, a Level 2 misdemeanor is used when a person is found in possession of a controlled substance in Schedule III, IV, or V. Those convicted of a Level 2 misdemeanor can expect to serve up to a year of probation and pay a \$500 fine. Violation of probation can result in 120 days of jail time and subsequent Level 2 possession charges can result in up to 180 days of jail time.

Felony Simple Possession

The passage of HB 19-1263 dramatically altered the legal consequences for residents caught in possession of federally controlled substances. Before the law's implementation, those caught with Schedule I and II substances were charged with felony possession, even when they possessed small amounts for personal use.

Since Governor Polis signed this law, residents caught in possession of substances with serious abuse potential are treated with compassion and charged with a simple misdemeanor—allowing them to avoid jail time and a felony criminal record that could impact them for life.

However, individuals caught in possession of more than four grams of a Schedule I or II controlled substance will still be charged with felony drug possession. That's because this amount is considered to be more than a "personal use" quantity and is treated much more seriously.

Individuals charged with felony simple possession in Colorado must secure legal counsel to avoid significant jail time and the lifelong stigma associated with a felony drug record.

Aggravated Felony Possession

In Colorado, prosecutors can seek out extended sentences for felony drug possession when certain extenuating circumstances are present.

You will be subject to mandatory aggravated felony possession sentencing if, at the time of your offense, you were on probation, parole, or bond for another felony. The court will also levy mandatory extended sentencing if you were awaiting sentencing for a probation violation or were out on appeal bond for a previous felony.

The court also has the discretion to apply extended sentencing in other cases, especially when defendants were out on bond or on deferred judgment for a plea deal that was originally charged as a felony.

Understanding the Criminal Process

Arraignment Hearing

The first step in your criminal justice process is your arraignment hearing. After being charged with drug possession in Colorado, you will soon attend a preliminary arrangement. This date will be listed on your paperwork before you are released from jail on bond.

This pre-trial hearing is a chance to learn more about the misdemeanor or felony charges you are facing. You must attend this hearing since failure to attend will result in a bench warrant for your arrest and revocation of bail—sending you back to jail.

At the arraignment, the judge will read the charges the state is accusing you of and will ask if you have secured a private attorney or if you wish to work with a free public defender. Many defendants opt to work with a private attorney because of their personalized attention and lower caseloads.

Next, you will have the opportunity to enter a plea of guilty or non-guilty. A guilty plea means that you accept the charges against you in full. This will result in a speedy sentencing hearing and the end of your legal process. Post-sentencing will include probation, jail time, and/or parole, depending on the seriousness of the offense.

On the other hand, a plea of not guilty means the defendant does not admit responsibility. If you enter a plea of not guilty the judge will set a date for a jury trial to begin.

If you are being represented by an attorney, it is important to enter an initial plea of not guilty—regardless of the facts of the case. That's because it gives your legal representative more time to prepare your case and negotiate a favorable plea deal.

Negotiate a Plea Deal

Perhaps the best possible outcome in a criminal drug possession trial in Colorado, outside of a complete dismissal of charges, is a negotiated plea deal. This process requires your attorney to present your side of the case to the District Attorney in private negotiations—and argue that you have such a strong case, or can generate enough doubt, that it is not worth taking the case to trial.

If the prosecutor agrees to a negotiated plea deal, you will agree to plead guilty to a lesser offense in exchange for a lesser punishment compared to the maximum sentence that you face.

Oftentimes a negotiated plea deal can result in no jail time and a chance to remove the charge from your record once probation is completed.

A more desirable outcome is when the prosecutor allows the defendant to plead to a lesser charge than what they were originally arrested for. This can happen when a defendant is on the border of the felony drug possession level and the prosecutor allows the defendant to plead down to a

misdemeanor simple possession—with less jail time, fines, and without a felony on your criminal record.

It is important to note that some District Attorney offices have mandatory plea bargain guidelines which hamper your ability to negotiate a favorable plea bargain. In counties without plea bargain guidelines your defense attorney will have more leeway to negotiate a favorable settlement that minimizes jail time and expenses.

Take it to Trial

Simple drug possession cases rarely make it to trial in Colorado, since most charges result in either a guilty plea or negotiated plea bargain. However, it is sometimes useful to work with an experienced trial attorney who can take your case to trial.

In the vast majority of cases, this isn't necessary. However, if there's significant doubt associated with the circumstances of your arrest your defense attorney may want to take the case to trial. The most frequent reasons for taking simple drug possession to trial are doubt about the actual substance found and doubt about who in a vehicle or home owned the substance.

Speak to your defense attorney today if you believe that your drug possession case has sufficient doubt to take it to trial.

Consult an Attorney Today

If you have been charged with a drug possession charge in the State of Colorado, you must secure competent legal representation to fight these criminal charges. That's because a successful drug conviction can result in thousands of dollars in court fees, a permanent criminal record, and difficulty securing gainful employment—which may lead to a loss of employment and income.

Contact Yoast Law

Adam Yoast has dedicated his career to representing marginalized people caught in the criminal justice system. As a former Colorado Public Defender and Federal Civil Rights Attorney, Mr. Yoast understands how confusing the legal process can be for defendants and he remains committed to helping his clients understand their rights and fight for their freedom.

You can contact Mr. Yoast for a free consultation at adam@yoastlaw.com or by filling out a [contact form](#).