

## DRUGS

The government's approach to drugs is often as "dazed and confused" as the addicted. Drugs make up a huge portion of the criminal justice system. Whether legal, illegal, and often in-between, drugs also make up a large portion of our economy. A citizen can be charged for a wide range of drug violations from mere possession, to sophisticated sales, to altering one number on their prescription bottle.

### VUCSA & THE FACTORS THAT DETERMINE YOUR PUNISHMENT

Nothing also has a wider legal definition and broader range of punishment than drugs. Most of this depends upon the type of drug, the amount, and the circumstances. In Washington State, our government has organized most of its criminal drug laws in **The Uniform Controlled Substances Act located in RCW 69.50**. Violations of this law are commonly known as "VUCSA."

This law declares that "it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance." (Notice the words "rich pharmaceutical corporation" are nowhere in that sentence).

The law also declares that "it is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription." Washington law then sets out elaborates lists and grids that determine the type of crime and its punishment. These factors include, in order of their importance:

- The type of drug – marijuana, cocaine, heroin, oxycodone, crack, meth, etc.
- Sales vs Possession – this makes the large difference in the punishment
- The sure volume of the drug – usually measured by weight not mass
- Evidence of other activity (usually organized sale) scales, money, communication
- Prior Convictions – because Washington gives you an "Offender Score" - S.R.A.
- Guns, Knives or other Weapons – give you a "Sentencing Enhancement"
- Other violence – this, no surprise, is a factor in many crimes

### THE INFORMANT

"Drugs" are also one of the few areas of criminal law where the government will actually trade freedom for "information." Young suspects are often (secretly) told that if they give the police leads or help them set up "stings," they can put in a good word, change the charges, or make it all go away. The "informant" then becomes a common element to many drug investigations and prosecutions. The police and prosecutors try to erect elaborate systems that protect these people from having their identity revealed while still proving their case. This creates a wide area of legal battles for "discovery" as defense attorneys seek to discredit their accusers.

### THE UNDERCOVER OFFICER

It is well known that police officers suffer from alcoholism and other addictions. Some of this is due to the intense job stress. Ironically however, the government unintentionally promotes alcohol and other drug addiction in their own law enforcement through sophisticated networks of undercover officers who must act and behave like drug users and low level dealers to infiltrate networks, fish out information, and set up stings. In doing so however these officer must not "blow" their cover and must usually meet their contacts in bars and drink regularly during day

hours to complete the task. Films like “The Bad Lieutenant” dramatize this phenomenon to ugly proportions. Unlike the informant, they are often key witnesses in the prosecutor’s case. Ironically, they have also become key plaintiffs suing their own employer for promoting harsh addictions by the very nature of their work or asking for assistance on their “disability.”.

<http://www.katu.com/news/local/Fired-Oregon-officer-Alcoholism-was-a-disability-204884681.html>

## **DRUG FORFEITURE: THE CIVIL SHORTCUT**

If an individual is arrested on any suspicion of drug sales activity, their first concern may not be jail but **losing their home or car instead.**

Even before budgets were tight, the government began to rely on the “other drug industry” for part of its income. The federal government and most states have enacted laws that can civilly seize and sell property “related” to criminal drug activity. In doing so however, they created a process that operates under relaxed rules of evidence, much lower burdens of proof and junior “judges” who may not have any legal training but do have a direct interest in seizing the property. For instance, the Eastside Task Force around the year 2000 had nearly \$1.7 million dollars in their forfeiture account. Police also use the vehicles seized and other property in their very own undercover investigations.

Washington State is no different. Washington’s forfeiture laws are contained in **RCW 69.50.505**. This law declares that “the following is subject to seizure and forfeiture and no property right exists in them:” This includes the:

- Drugs themselves
- Equipment and raw material related to making or selling
- Property used in the process of making, keeping or selling
- Vehicles, aircraft, vessels and conveyances used
- Research materials and records
- Drug Paraphernalia (this is usually illegal on its own)
- Money, securities, property obtained selling the drugs or traced to the “business”
- All real property (land, homes) involved

### **The Defense**

The property owner(s) have a defense but it is their burden to show the sales went on “without their consent.” The most common scenario is a landlord or parent who may not know but this also includes the “community property” interest of a spouse who did not take part or know.

### **The Process: Notice and Timeline**

The police (usually) must first file legal notice with property owner. When vehicles, cash and other smaller items of property are involved, they are usually seized as evidence in the criminal case but this does not forfeit the property and the police must begin the other process.

The police must file notice within fifteen days of the seizure. This must be on the property owner who may not be the criminal suspect. If no one responds to the notice, all personal property is legally forfeited after **45 days**, all real property after **90 days**.

### **The Hearing**

If someone does respond, a hearing is set. These hearings are not like any other court hearing but can simply be before “the chief law enforcement officer” or their “designee.”

Individuals who likely have little education in court procedure or the rules of evidence. The person challenging the forfeiture can remove the hearing to “a court of competent jurisdiction” where they can at least have someone with legal experience. The “burden of proof” is on the government to show the property connection by a “preponderance of the evidence” which is a much lower burden of proof than the criminal courts.

Beyond ignorance of the activity, if the property owner is also the individual arrested, they also have “legal standing” to challenge any illegal activity by the officers including “probable cause to arrest, enter the home or car, search their clothing or other places, confessions, and a host of other legal issues. This of course should be done with an experienced legal counsel.

**These forfeitures by law must act quickly and often proceed well before the individual is criminally charged with the underlying offense as the prosecutors have three years to make that decision.**

The property owner must act quickly to save their interest. **The Law Office of David C. Mason** has experience with these hearings, over twenty three years as a prosecutor and legal defense, has trained law enforcement, prosecutors, has taught medical professionals criminal procedure and evidence at the University of Washington and has served as an American legal expert in a Canadian Murder trial. **PLEASE CALL OUR OFFICE FOR A FREE CONSULTATION**

## **THE FOURTH AMENDMENT AND SEARCH AND SEIZURE LAW**

No other area of criminal law invokes the Fourth Amendment more often than drugs. Most drug evidence is obtained by police using various methods to get into someone’s home, their shirt pocket, or the trunk of their car. When they do this, they invoke legal principles contained in The Fourth Amendment.

The Fourth Amendment is a huge bedrock of criminal “justice” and part of The Bill of Rights. The Fourth Amendment came about from tensions in America’s pre-revolutionary history with colonists fed up with the British Government abusing its power and busting into homes, farms and other property with little basis.

Despite the shocking news regarding the N.S.A. and internet spying, the Fourth Amendment still has profound power in our daily courts and can suppress or “throw out” key evidence in the government’s case when police fail to follow the rules. **The Law Office of David C. Mason** has successfully convinced many judges to either limit or completely reduce the government’s case to nothing based on violations of the Fourth Amendment.

### **The Words of our Constitution**

The Fourth Amendment declares “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

### **The Search Warrant & The Expectation of Privacy**

The heart of the Fourth Amendment requires the police to get a “search warrant” before they enter any area where a citizen has “a reasonable expectation of privacy.” A warrant is like “a note from your teacher.” It is written permission from a judge after the officer has submitted his own request usually in writing. Police are now allowed to obtain “**telephonic warrants**” by speaking directly to the judge but everything must still be recorded for later legal use.

## The Exceptions to the Warrant

Two-hundred and twenty years later, our courts have given the police numerous “exceptions” to this rule and will often allow them into our homes, cars, and shirt pockets without violating the Constitution. Nevertheless, this rule is still one of the most complex and powerful tools in criminal defense, is actually the least understood by police officers and probably accounts for the most evidence that is “thrown out” on a daily basis. In fact Washington State’s own Constitution carries even more protection and this law office has convinced more than one judge that evidence should be “thrown out” simply because our state rights are that much stronger.

### Washington’s Greater Protection Consent to Search The Ferrier Warnings

The largest “exception” to the search warrant is when police can “voluntarily” get you to agree or “consent” to the search. The State, not the defendant, must prove this by all the evidence or the “totality of the circumstances.” In Washington, consent is determined by many factors which include whether

- . *Miranda* warnings were read
- . They told you that you could refuse
- . They recorded your “waiver of rights” and consent
- . You have little or a lot of “experience” with “the criminal justice system.”
- . They threatened you with a warrant or arrest if you did not consent

## Your Home has the Most Protection

In Washington, when police search your home, they must take additional steps and actually read you “**Ferrier Warnings**” derived from State v. Ferrier, 136 Wn.2d 103 (1998). Like your **Miranda Warnings**, before you give them consent to search, the officers must inform you that:

1. You have the right to refuse to consent.
2. If you consent to the search, you have the right to withdraw the consent at any time.
3. You have the right to limit the scope of the consent to certain areas of the premises or vehicle.
4. Evidence found during the search may be used in court against you or any other person.

The rule has been expanded to protection in your **hotel room**. State v. Kennedy, 107 Wn. App. 972 (2001). The law is even leaning toward applying it to **vehicles**. State v. Parker, 139 Wn.2d 486 (1999). Like the Fourth Amendment itself, our courts have carved out some exceptions but prosecutors and police captains insist that field officers read the Ferrier Warnings.

## Police Make More Mistakes in This Are of Law

Because Miranda is more imbedded in American Culture, young police officers (and some old ones) often forget or misunderstand the Ferrier Rule and fail to read these warnings. More often, they usually threaten you with arrest or a warrant if you do not “consent” to search. The smarter ones do not record that in their reports, the dumber ones do.

## WASHINGTON’S SENTENCE ALTERNATIVES

Because drug cases overwhelm the court system and the jails, many states, including Washington, have erected a variety of sentencing “exceptions” to their harsh drug laws. These exceptions include:

**A First-Time Offender Waiver:** This is available for some other non-violent felonies as well but is used most often in drug cases. This can reduce or eliminate the mandatory jail period.

**Drug Diversion:** These include “**expedited**” cases and other “diversion” methods which allow the defendant to avoid a felony charge or jail by completing various conditions including drug evaluations, random drug testing, community service and other courses.

**Drug Court:** is a much more formalized diversion program heavily monitored by the judge and prosecutor requiring a tremendous amount of court time that behaves as much like a support group as a robed official. It also involves drug treatment, and other conditions. It can result in charging reductions, jail reductions and other advantages.

**Drug Offender Sentencing Alternative:** This tool actually halves the jail punishment and is a formal addition to Washington Law. It also contains strict monitoring and restrictions and requires the defendant to remain under formal probationary supervision and restricted living conditions.

## LOCAL “POLICY”

Locally, **King County Prosecutor**, Daniel Satterberg, has just issued a formal statement on the federal government’s “de-escalation” of their war on drugs. Despite the rhetoric, most of this has to do with drastically shrinking government budgets.

<http://www.kingcounty.gov/Prosecutor/news/2013/august/de-escalation.aspx>

**CCAP: Community Center for Alternative Programs:** this **King County** Program is another “cost saver” and is used for more than drugs but addictions takes up the lion’s share of business. This includes converting jail to regular reporting to the CCAP center located at 400 Yesler Way in Seattle. It also requires drug testing, drug treatment, random UAs and sitting in on support groups and other classes.

## A POLITICAL SIDENOTE

## **WHY CORPORATE DRUG CRIMINALS NEVER DO TIME**

From the federal “war on drugs,” to laws that actually protect federal employees with addictions, the government’s approach to drugs is often just as “dazed and confused” as the people with the addiction. Washington State is no different. From harsh mandatory jail terms for opium derived drugs, to jail alternative “drug court” programs that act more like support groups than jailers, to becoming the first state to “legalize” marijuana, tells us that Washington State is also under the influence.

Our federal lawmakers and politicians are definitely under the influence... of lobbyists mostly, including a complicated network of rich multinational drug companies, cartels that maintain opium production in Afghanistan, and lucrative drug forfeiture mechanisms that produces huge amounts of federal income on civil procedures with lower burdens of proof and deals for a lower criminal sentence. Once again, Washington State has modeled their example.

### **THE CORPORATE DRUG DEALER**

But still, nothing beats the deals offered to rich corporations caught doing “drug crime.” In some of the most striking and hypocritical examples, when huge pharmaceutical companies are caught criminally marketing their “drugs” and literally hiding their dangerous affects on young children, they simply pay a portion of their yearly profits and have “the abstract corporate person” admit to a misdemeanor with no jail and some probation.

<http://articles.mercola.com/sites/articles/archive/2012/07/16/glaxosmithkline-plead-guilty.aspx>

### **OXYCONTIN**

OxyContin is the most shining example of this hypocrisy. Any experienced judge or police officer with tell you this drug has become one of the most pervasive elements in the court system today as users have discovered a cheap alternative that can be as powerful and addictive as heroin. The American corporation that makes this drug, Purdue Pharma both knew and hid those vital, destructive facts from regulators, consumers and the medical community. More than any other “street dealer” Purdue Pharma is responsible for its huge affects (and costs) on young lives and on the criminal justice system today. When these dealers were caught however, no one went to jail, and, like some “South American” dealer, the corporation and executives merely paid some officials off with huge wads of cash:

[http://www.nytimes.com/2007/05/11/business/11drug.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2007/05/11/business/11drug.html?pagewanted=all&_r=0)

**PLEASE CONTACT OUR OFFICE FOR A FREE CONSULATION** if you or your child has been arrested or charged with a drug violation. We have unique experience in this area which includes:

- 23 years of experience as prosecutors and defense counsel
- Training police, prosecutors, and other justice members
- Teaching criminal procedure and evidence at the University of Washington from a medical perspective to medical professionals
- Serving as an expert legal witness on American and Washington Criminal law in a Canadian murder trial.

If you are a parent with an addicted child caught up in the system, we understand and can help. We have advised numerous parents, clients, medical professionals, lawyers and even police officers on proactive steps for addiction while taking legal protection from the often destructive criminal justice system.

