

# UNDERSTANDING YOUR FEDERAL CHARGE FOR POSSESSION OF A CONTROLLED SUBSTANCE IN A NATIONAL PARK



**FREEBURG** LAW, LLC

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Disclaimer: Thank you for reading my guide. If you downloaded this for free from my website, you should know that I am not your attorney, and that this is not legal advice. This is just general information. Legal advice is specific to you and your situation. It's also something you pay for. Additionally, laws change, so this general information may be out of date or not applicable to you.

# INTRODUCTION



If you've been charged in federal court with possession of a controlled substance in Yellowstone or Grand Teton National Park, this guide is for you.

The maximum penalty for a misdemeanor possession of a controlled substance charge is six months in jail and a \$5,000 fine. A federal charge can affect your current job, your ability to get a job in the future, your professional license, whether you can apply for federal financial aid, how easy it is to get an apartment, and, if you're not a United States citizen, your immigration status.



Because you're charged with a federal crime, it's worth taking a little time to understand the charge, legal process and consequences. Let's start with the citation or arrest.

# HOW THE CHARGE HAPPENS



It's the Fourth of July weekend and you're visiting Yellowstone National Park for the first time. Road tripping with friends across the American West is just like the movies, except better. You stop in Colorado on your way to Wyoming and acquire some new, legal marijuana. Unfortunately, when you get to Yellowstone, you can't reserve a campground. Now you're driving through the park after midnight, wondering where you're going to sleep. You find a pullout and shut your eyes. You awake to a ranger tapping on your window. You lower your window. "Sir, you can't sleep here for the night." One thing leads to another, and the ranger asks you, "Do you have any marijuana?" It's better to be truthful, right? You answer, "Yes..."

Or:



You're driving through the National Park in a flat, open area with good visibility. It must be a 55 mph zone, right? Wrong, it's 45 mph everywhere in the National Park. The ranger pulls you over and begins to lecture you about the danger of hitting wildlife. Somehow he detects the odor of your medical marijuana packed away in your backpack. One thing leads to another...

Or:



You work for a concessionaire in the National Park. You're hanging out with your friends doing your thing in the employee housing. Someone tells the security person that you're listening to Phish and Widespread Panic. The security guard tells the rangers that you're a suspicious character. One thing leads to another...

# WHAT HAPPENS AFTER THE CHARGE?

In all of these scenarios, you're left with a pink citation.

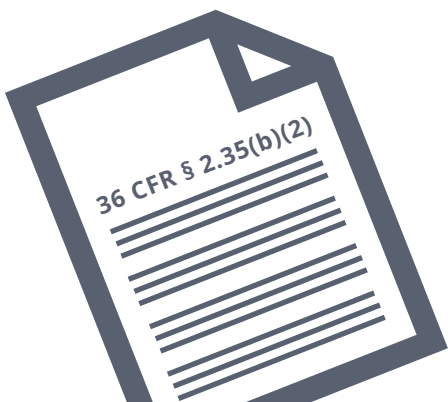
The citation lists the offense as **36 CFR § 2.35(b)(2)**. If you type that into Google, you learn that statute is part of the Code of Federal Regulations. Title 36 governs federal parks, forests and public lands. Chapter 2 relates to the Department of the Interior and the National Park Services. This particular section of the statute prohibits:

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

36 CFR 2.35(b)(2).

Busted. **You can't possess marijuana or any other controlled substances in a national park.** (Note: this is true, whether or not you obtained the substance legally in Colorado or Washington, or if you have a medical marijuana prescription from your home state).

Typically at the bottom of the citation, there is a box checked that says, "must appear" and gives you a court date three to six weeks in the future. The ranger may even have told you to call the prosecutor beforehand and handed you a sheet of paper with more information about your citation and the phone number to call.



**On occasion the ranger will write "minor" or "major" to indicate the severity of the charge. This notation will almost always be in relation to how much marijuana you were caught with. Don't let this fool you. The notation means next to nothing to the prosecutor and will not help or hurt your case.**

## QUESTION:

DO I ACTUALLY NEED TO APPEAR IN YELLOWSTONE OR GRAND TETON NATIONAL PARK?



Answer: For charges arising in Yellowstone, the Courthouse is located in **Mammoth, Wyoming**, about five miles from Gardiner, Montana. For charges arising in Grand Teton, the Courthouse is located in **Jackson, Wyoming**. If you don't live in Wyoming, the judge, court staff and prosecutor are well aware that appearing in person is probably going to be a hardship for you. Therefore, if you can sign court documents ahead of time, **you can usually appear by telephone**, or have your attorney appear for you. However, you need to make sure that the right documents are signed in advance of the Court hearing and that you have permission to appear by phone. If you fail to appear when you are supposed to appear, then the Court can issue a federal warrant for your arrest.

Additionally, there are certain kinds of court hearings where you cannot appear by phone. For a trial or a motion hearing, the judge will generally require you to appear.

## QUESTION:

SHOULD I CALL THE PROSECUTOR TO DISCUSS MY CHARGES?



Answer: **The short answer, in my opinion, is no.** For the long answer, [see this link](#). Generally, I don't think you should call the prosecutor. It's a little bit like going to Vegas and playing blackjack against the house. Imagine talking to the dealer and putting all your money down on the first hand. Yes, you could win big, but the dealer does this every day. The House usually (always) wins.

Think back to that first encounter with the ranger. **Do you regret anything you said?** Did the ranger get you to say things you wish you hadn't? Anything you say to the prosecutor can be used against you. If there is a hole in their case, you won't hear about it from the prosecutor. **If the rangers did something wrong, the prosecutor doesn't have to tell you.** If there are special consequences to you, your professional license, financial aid, probation, immigration, etc., it's not his job to make sure you understand those consequences.

# DATES DOCUMENTS AND COURT HEARINGS

Let's go big picture and talk about the timeline and legal documents in the case. Let's assume that you have hired an attorney to represent you. I am going to go through the dates, documents, and court hearings, in the order they usually occur. Your case may be different.

DATE:  
DAY1



**ARREST OR CITATION:** Generally, you receive a pink citation for the charge. At the bottom of the citation, is another date that says "must appear."

COURT  
HEARING



**BOND HEARING AND INITIAL APPEARANCE:** If you have been arrested, you'll be taken to the jail. If you're arrested Sunday through Thursday, you will be transported to the courthouse the next day to be seen by the Court. Prior to this hearing, you will be given copies of any citations with their corresponding reports written by a ranger. It is possible the prosecutor may have charged you with more crimes after you were arrested, and after he had the opportunity to review the case before your hearing. During your Initial Appearance you'll be informed of your constitutional rights, including the right to remain silent and the right to retain an attorney. Fortunately, you've already exercised that right. You will not be asked to enter a plea. This hearing is strictly informative and for your benefit.

Immediately following the Initial Appearance will be your bond hearing. This is where the prosecutor will recommend to the judge whether or not you should be released from custody. Assuming you do not have a history of failing to appear for court dates, the judge will set terms for your release.

## CONTINUED: DATES DOCUMENTS AND COURT HEARINGS

### DOCUMENT



**SIGNATURE BOND AND TERMS OF RELEASE:** Once the judge has ordered you to be released from custody, you will be required to sign a Signature Bond. This document details the terms of your release which you must live by while your case is open. On the Signature Bond you will notice a dollar amount. Don't worry. You don't have to pay that amount in order to be released. However, if you fail to follow your terms of release you may be required to pay that amount to the Court. In addition, failure to follow terms of release may be cause for the judge to issue a warrant for your arrest and hold you in custody until the conclusion of your case.

If you were arrested on a Friday or Saturday, typically you will be released without a hearing in front of the judge. You will still be required to sign a Signature Bond. It may be possible for your attorney to file paperwork with the Court so that you do not need to have an initial appearance hearing.

### DOCUMENT



**DOCUMENT: NOTICE OF APPEARANCE:** If you hire an attorney, he or she will file a Notice of Appearance with the Court and prosecutor. A Notice of Appearance lets the Court and prosecutor know that you have an attorney. Once your attorney files this document, all communication between you, the Court and the prosecutor is handled by your attorney.

### DOCUMENT



**DOCUMENT: DEMAND FOR DISCOVERY:** Under the Federal Rules of Criminal Procedure, the prosecutor is required to give you and your attorney "discovery," which includes law enforcement's reports. Filing this document triggers the prosecutor's obligation to provide your attorney with reports.



**What exactly is included in discovery?** Discovery is a broad category and includes more than just the ranger's reports. If there are lab test results, eyewitness statements, and/or video recordings, those are included too. Sometimes your attorney will need to make two or three requests to get everything. Under certain circumstances, if the prosecutor fails to provide discovery, the case will be dismissed. In special circumstances, you may request that the prosecutor get you documents in his possession or control, or make the rangers available for interviews.



**Will there be video recordings?** In general, rangers in Grand Teton and Yellowstone National Parks are recording traffic stops. They are less likely to be recording foot inspections of campgrounds. Additionally, sometimes cameras don't function, or they aren't turned on. It's likely that there is video, although there may be a good reason why there isn't. Have your attorney make sure you have everything.



## CONTINUED: DATES DOCUMENTS AND COURT HEARINGS

### DOCUMENT



**DOCUMENT: STATEMENT OF RIGHTS:** In general, if you have an attorney, you will sign a Statement of Rights. This document advises you of your rights under the Rules of Criminal Procedure and Federal Law. **Importantly, this document will allow you to appear by telephone at Court hearings.**

### DOCUMENT



**DOCUMENT: WRITTEN ENTRY OF NOT GUILTY:** If you have an attorney, you may be asked to sign a Written Entry of Not Guilty. This document eliminates the need for a formal arraignment. You may be worried about entering a plea of not guilty. You may have heard that Court or the prosecutor or “the system” will punish you for not “taking responsibility.” That’s not true. You need to plead not guilty as the first step in your case so that you can get discovery. After all, no one expects you to make a decision without knowing what the evidence is against you. **This is part of the process and it won’t be held against you.**

### COURT HEARING (around day 30)



**INITIAL APPEARANCE AND/OR ARRAIGNMENT:** If you have not hired an attorney, and you have not had any hearings before the Court, an Initial Appearance will be conducted. See the above discussion for more information about this hearing. At this time, **the judge will ask you if want to hire an attorney or represent yourself.** He will give you more time if you ask for it. If you do not want more time, or want to represent yourself, the judge will conduct an Arraignment. At the Arraignment, **the judge will advise you of your rights and the possible penalties in your case.**

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**Is this hearing necessary?** No. If you have an attorney, and your attorney has provided you with a Written Entry of Not Guilty that you signed, then the Court will not schedule an Arraignment. Your written documents took care of the need for this hearing.

# CONTINUED: DATES DOCUMENTS AND COURT HEARINGS

## COURT HEARING

(around day 45-60)



**STATUS CONFERENCE:** The purpose of a Status Conference is for the parties (you and the prosecutor) to **advise the Court of the state of the case.** If you have an attorney, your attorney will appear at the Status Conference. In general, you are not required to appear at a Status Conference. Typically one of three things happens at the first Status Conference.

One, your attorney talked to the prosecutor ahead of time, and **worked out an agreement** to resolve the case that you can live with. If that happens, your attorney asks the Court to set a final court hearing.

Two, you, your attorney, or the prosecutor **need more time** for one reason or another. For example, the prosecutor is waiting on lab results or a report to provide you. If that happens, the Court continues the case and sets another Status Conference. Note: either party can exhaust the Court's patience. The Court does not want the cases to drag on. **Two or three Status Conferences are the max,** unless something unusual is happening.

Three, **there may be a defect in the government's case.** The rangers may not have done their jobs properly. They may not have the right evidence. They may have violated your rights. If that is the case, your attorney may ask the Court to set a motion's hearing or trial.

## COURT HEARING

(around day 90-120,  
but it all depends)



**MOTION HEARING/TRIAL:** At a motions hearing or trial, **your attorney likely** will file a motion and memorandum of law ahead of time. Your attorney will **question the rangers and may question you.** The prosecutor will do the same. It is beyond the scope of this guide to discuss everything that can happen at a motions hearing or trial. At the end of a motions hearing or trial, the Court can either rule from the bench, or issue a decision letter, which takes several weeks.

**The Court may dismiss your case after a motions hearing,** or find you not guilty after a trial. If either happens, then the process is over. **If you are found guilty,** the Court will set a **Sentencing Hearing** (and skip the Change of Plea Hearing explained on the next page).

## COURT HEARING

(around day 90-120, but it all depends)



**CHANGE OF PLEA HEARING:** At a Change of Plea Hearing, you change your plea to guilty. To start the hearing, you are placed under oath, which means you swear to tell the truth. Then the Court asks you several questions: “Are you under the influence of drugs or alcohol?” “Other than the plea agreement, has anyone made any promises or threats to get you to change your plea to guilty?” “Are you satisfied with your attorney?” Assuming the Court is satisfied with your answers, the Court will find that you are knowing, competent and entering into a voluntary plea. The Court will then ask you questions about the facts of the incident. The Court wants to know what happened and whether there is a factual basis for the plea.

If you have entered into a plea agreement with the prosecutor to complete a term of probation in exchange for him dismissing the charge, also called a deferred judgment or deferred adjudication, (which is possible, but beyond the scope of this guide), then you will not be sentenced or convicted. Instead, the Court will order a pre-sentence investigation and place you on probation. The Court will set another hearing. Talk to your attorney about how this works. You will need to sign and review several more legal documents.

Assuming you are not completing a term of probation in exchange for a dismissal, the Court will then sentence you at the Change of Plea Hearing. The procedure is the same as the Sentencing Hearing described on the next page.

## COURT HEARING

(around day 90-150, but it all depends)



**SENTENCING HEARING:** At the sentencing hearing, the prosecutor usually goes first. **He summarizes the facts and makes a recommendation** (I say he because for the time being the Assistant United States Attorney assigned to Yellowstone is a man).

**Your attorney then makes a statement,** and argues for the terms and conditions that you think are appropriate (less fine, less probation, less alcohol or drug classes, etc.).

**You can then make a statement.** I advise people to practice their statements ahead of time and keep them short.

Finally, the judge will impose a sentence. The maximum penalty is 6 months in jail and a \$5,000.00 fine. **The judge rarely imposes jail or the maximum fine.** The judge may impose probation for up to 5 years; require you to do a drug and alcohol evaluation and treatment; ban you from entering the National Park; and/or fine you. The judge may put you on supervised or unsupervised probation. Under supervised probation, you have a probation officer. Because you're in Federal Court, the judge can order probation in any of the 50 states. Unsupervised probation means you are not supervised.

**Wrapping it up:** Typically, if there is a sentencing hearing, then you will have a few more requirements to take care of. Your attorney can show you where to pay the fine, and advise you on drug classes, and any other terms. **You should keep a copy of all the Court documents in your case.** Make sure you get those from your attorney.

# FREQUENTLY ASKED QUESTIONS

## WHAT ARE COURT HEARINGS USUALLY LIKE?



If you were charged in Grand Teton National Park, then the Court hearings are in Jackson, Wyoming. **These are crowded calendars.** Because the Judge and prosecutor live in Mammoth, Wyoming, they group all of these cases on one or two days in a month. That means the Court is pretty full. You should wear “church clothes.” Slacks and a collared shirt are fine for guys. If you want to wear a suit, that’s appreciated but not required. The judge has been known to decrease fines when a person is wearing a suit. The court security will take your phone and make you go through a metal detector.

If you were charged in Yellowstone, then the Court hearings are in Mammoth, Wyoming. **These dockets are less crowded.** However, occasionally, the judge will need to hear cases from people in custody first, in which case you may wait.

## HOW DO THESE CASES USUALLY GET RESOLVED?



**It all depends on you and your individual circumstances.** If the rangers made a mistake when they stopped you, then the case may get thrown out. If the rangers made a mistake when they processed the evidence, then the case may be thrown out. If you have a co-defendant, there may be room to negotiate. If you have multiple charges (like careless driving, possession of a controlled substance and interference with a law enforcement officer), then it is definitely possible to negotiate a better outcome. If you have criminal history, you will be treated differently. If you have a clean record and are a mature adult (instead of a college student, for example), the judge may impose certain terms and conditions. If you're a younger person, the judge may impose other terms.

In general, it's rare for these cases to result in jail time. **Many cases result in a conviction, probation with certain terms, suspended jail time, and a fine plus court costs.**

## IS A DEFERRED SENTENCE, OR SOME SORT OF PROBATION AND A DISMISSAL POSSIBLE?



For certain first-time offenders, a deferred sentence (called a deferred judgment, or deferred adjudication) is possible. However, a discussion of the requirements for a deferred adjudication are beyond the scope of this guide. Not everyone qualifies for one. Additionally, a deferred judgment requires going on supervised probation and there are many factors specific to you as to whether supervised probation is a good idea for you.

## WHAT ARE MY RIGHTS WITH MY ATTORNEY?



With any attorney, you have the right to have your case file at any time. You can have your case file even if you did not pay your attorney in full or you have a dispute with your attorney. You have the right to fire your attorney at any time. And, if you do fire your attorney, you may have the right to a refund, even if your attorney says the fee is non-refundable and "earned income for availability."

## HOW MUCH DO ATTORNEYS COST? HOW DO LEGAL FEES WORK?



**LEGAL FEES:** Most people dread the idea of hiring a lawyer and are worried about what it will cost. Have you heard this joke—Why are divorce attorneys so expensive? Because they’re worth it. This is the same idea, but with some information, hopefully you can make an informed decision and spend your money wisely. For this kind of case, most lawyers do either a flat fee or an hourly fee with a retainer.

### FEE

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**THE FLAT FEE:** The lawyer quotes you one number up front. But be careful, some lawyers add a surcharge for making copies. Others add a substantial flat fee due when they file motions on your behalf or appear in court. Most add a fee for taking the case to trial (I think this makes sense). Some lawyers will bill you for travel time. Attorneys generally want to call this fee “earned income for availability.” This means that once you hire them, this fee is supposed to be completely non-refundable, no matter what happens, even if you fire them.



**THE HOURLY FEE:** There are a handful of attorneys that work on the hourly fee for criminal cases. In general, I think you should be cautious if your attorney wants to work on an hourly basis. The longer and slower they work, the more money they earn. On the other hand, most attorneys are very ethical and only do the necessary work. Additionally, with an hourly fee, the attorney will require a retainer. A retainer is cash up front that they bill against. My sense is the required retainer is usually more than a flat fee.

**HOW I DO IT.** I operate on the flat fee split into two parts. There is one fee to handle the case up to a trial (this includes any motions to dismiss and all court hearings). If your case gets resolved without a trial, this is the only fee you will pay. There is a second fee for a trial.

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I do not treat the entire fee as “earned income for availability.” That means I don’t claim to earn all the money the second you run your credit card. Instead, the flat fee goes into a trust account. When I file my first court documents, I take half the fee from the trust account. When the case is done, I take the other half of the fee. If you decide to hire another attorney in the middle of the case, you get half (or a reasonable portion) of your money back.

Occasionally, cases will require overnight travel, private investigators, or expert witnesses. You are responsible for those costs, but I never will incur costs without getting your approval first.

# FINAL THOUGHTS



**You've been charged with a crime.** Take a second and think about this experience. For most people, being charged with a crime is incredibly stressful. My clients typically tell me about the effect it has on their lives and their relationships. It's normal to be concerned about what this means for you and your future. This keeps people up at night.

**But this process will end. It will be done.**

Imagine yourself six months or a year from now. Chances are, if you hired an attorney, you are not thinking about this case. You know that you did everything you could, and that a professional took care of it for you.

**My name is Alex Freeburg and this is what I do.**

**Give me a call (307) 200-9720.**