

First 30 Days After Your Arrest

If you have been arrested, you are now in the first stage of a criminal proceeding.

Besides the steps you need to take when you are arrested, any prosecution requires:

01

That guilt be proven beyond a reasonable doubt

02

That all evidence be admissible under the United States and Louisiana Constitution

03

That all of your constitutional rights be protected from your arrest through trial

This is a scary event and unless your family has hired a lawyer for you on Day One, you are not getting advice from a lawyer right away. **This appendix provides a basic summary of the first phase of prosecution in the State of Louisiana and will explain what to expect and how to avoid unnecessary mistakes.**

ARREST ON A WARRANT

If the arrest has already happened, skip this section, but some individuals may be aware of an active arrest warrant and need to know what to do.

If you have advance notice of a warrant for your arrest, you have a unique opportunity to mini-

mize some of the worst aspects of getting arrested. If you are aware of the warrant, a detective likely reached out to you. **DO NOT answer any of his questions and DO NOT give a statement of any kind.** Nothing you can say will keep him from arresting you and now is not the time to prepare your defense.

Politely indicate that you are willing to cooperate with the arrest and you will turn yourself in on a pre-arranged date. Tell him you want to speak with an attorney who will schedule the date and time for your “turn-in.” Ask the detective for his name and number, and advise him that you or your attorney will call him shortly. **This is ALL you should say to the detective.**

You have not been arrested, so you will need to hire private counsel to assist with the turn-in. A Public Defender will not get appointed until your arraignment. Your attorney can contact the local judge on duty, work on getting a bond set and help you get booked and released as quickly as possible. Let your attorney know what bond you can afford. In many cases, your attorney can get an affordable bond in place before you turn yourself in. You can have the bail bondsman ready or the property submitted to the Sheriff for appraisal before the arrest, so your release from jail is expedited when you turn yourself in.

It is important to note that in some instances, the lowest bond agreed to by the judge may not be affordable. It is still in your best interest to turn yourself in. Your attorney can schedule it in advance so you have some time to get your affairs in order. Depending on the type of charge, your attorney may be able to work on alternative avenues of release. If the charge is drug-related, he could work on finding an inpatient treatment facility. If that is not an option, he can file a motion for house arrest. If the facts supporting probable cause for the arrest are weak, your attorney can file a preliminary exam immediately after you turn yourself in.

When you turn yourself in, the detective will typically give you an opportunity to give a statement. **DO NOT give one.** Hopefully, you have an attorney with you and he can speak on your behalf and give you specific advice about handling this procedure.

SURPRISE! AN OFFICER SHOWS UP

If you were arrested on the scene without a warrant or you were arrested on a warrant without prior knowledge of the warrant, you will not have the opportunity to schedule a turn-in. The

police will ask you questions and will normally advise you of your Miranda rights, but **DO NOT give a statement or answer any questions.** You have the right to speak with a lawyer first, so ask for one.

Sometimes, instead of questioning you, an officer will ask for consent to search you, your house or your car. Decline any request to search your person or property. **An officer may search anyway and you cannot stop him, but DO NOT give consent.** Politely, let the officers take whatever action they deem appropriate, maintaining your objections to their actions.

WHAT NOW?

In Louisiana, the state must set bond within 72 hours of your arrest. However, if you are arrested Sunday through Thursday, your bond is normally set the next day. If your bond is not set the next day, be aware of the 72-hour rule.

Once bond is set, the next event is the filing of formal charges by the District Attorney's Office. This is normally through a Bill of Information, but the state can seek an Indictment by a Grand Jury.

- **If you are in jail on a misdemeanor, the state has 45 days to file a bill or seek an indictment.**
- **If you are being held on a felony, the state has 60 days to file a bill or seek an indictment.**
- **If the felony is punishable by death or life imprisonment, the state has 120 days.**

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If the state fails to file formal charges within the above time periods while you are still in custody, you have the right to file a motion to be released from custody.

ARRAIGNMENT

Once the state has filed formal charges, your case will be set for arraignment. At arraignment, you will be asked if you intend to hire a lawyer or if you want the court to appoint the Public Defender's Office to represent you. Either way, you will want to enter a "not guilty" plea. The only possible exception is if you have been in jail the whole time and are being charged with a misdemeanor and are comfortable with pleading guilty and receiving a sentence of credit for time served.

Before you enter any plea other than "not guilty," even one to a misdemeanor, you have the right to speak with an attorney. Take advantage of this right so you don't enter a plea that could hurt you later. For instance:

- **Pleading to misdemeanor theft could lead to restitution.**
- **A guilty plea in a citation related to a car accident could lead to a presumption of fault in a civil case.**
- **A domestic abuse battery charge can lead to protective orders and loss of right to possess a firearm, etc.**
- **Certain misdemeanors are known as enhanceable offenses (examples include: Theft, DWI and Domestic Abuse Battery). A first offense is a misdemeanor, but every subsequent conviction leads to harsher penalties and enough convictions can even make what would otherwise be a misdemeanor into a felony offense.**

If you choose the Public Defender, please download my *Handbook for Clients of Public Defenders*, which is available free of charge through my office. It provides valuable information to help you work with your attorney to prepare your best possible defense.

If you plan to hire private counsel, do not just rely upon Google. The internet is a good starting point, but nothing beats face-to-face interaction. Schedule a consultation with an attorney and ask questions. (Many attorneys offer a free consultation.) The time you spend to choose the best attorney is time well spent. You are seeking not just competency, but also a relationship.

Some criminal defense attorneys may have experience or expertise with specific criminal matters, but even more important is trust and an ability to communicate. When the time comes, you may want to consider taking a plea. You will want to know that your attorney did everything possible and that all of your options have been clearly explained. Sometimes, a good outcome is based on your ability to communicate with your lawyer effectively and his ability to listen. You can only discover this through direct experience.

FINAL THOUGHTS

This appendix is designed to give you ideas and options to consider. Your defense is tied to the specific facts of your case and the unique preferences of whatever jurisdiction is prosecuting you. The information here is general in nature and is simply a starting point—it does not replace or substitute the advice of your retained counsel. It should be considered a resource to help you develop a plan of defense with your attorney and not as an alternative to the defense proposed by him/her.



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