

# Arrests Related *to* Controlled Substances

If you have been arrested for a drug-related offense, you have some unique options. An arrest related to illegal drugs can involve simple possession, possession with intent to distribute, distribution, creation, and even certain property offenses (theft, burglary, etc.) which can be attributed to drug use.\*

In addition to the options below that can assist your defense, 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 appendix is not intended to address the multitude of legal complexities that involve taking a case through motions and possibly trial. It is only intended to offer suggestions on how to mitigate the charge in the mind of the District Attorney and reduce the DA's incentive to prosecute.

## **THOSE DRUGS AREN'T MINE!**

Sometimes we find ourselves in the wrong place at the wrong time. If you are in a place with drugs in your immediate surroundings, it is possible you could be arrested when the police arrive. It is

not in your best interest to give a statement to a police officer and you cannot rely upon someone else being honest and admitting the drugs belong to them.

So you haven't given a statement, but you were arrested because you were in the area... what now? You could always go to trial and make the state prove the drugs belonged to you. But what can you do while your attorney is preparing your defense?

## CAN YOU AFFORD A BOND?

If you can afford a reasonable bond, pay the posted bond or hire an attorney to get the bond reduced. Once you are released from jail, you



can present a case to the DA that the drugs did not belong to you. Your attorney can tell the DA that the drugs were not yours, but will the DA believe it? Short answer—no. So how can you make the DA at least doubt that the drugs belong to you? Someone who owns or possesses drugs tends to “use” them. So get a drug test—if it’s negative, then you have created evidence the DA will accept... that the drugs seized were actually not yours.

Once you have a clean drug screen, continue getting monthly tests until your case is resolved. The longer you can prove you are clean, the more credible you will be to the DA. You might also get a substance abuse assessment from a local rehabilitation center. Most rehabilitation centers or substance abuse counselors can offer a substance abuse evaluation. From an interview and list of questions, a licensed counselor will make a report noting whether you have a drug problem and if so, to what degree? If you have multiple clean drug screens and an assessment indicating you do not have a drug problem and other individuals were in the area when you were arrested, guess who will likely be prosecuted? Not you.

## I HAVE A DRUG PROBLEM!

### DO I HAVE TO GO TO JAIL?

If you do indeed have a drug problem and were caught with your drugs, you have the option of convincing the DA that prosecution isn’t necessary in your case. How? You must admit you have a problem and are willing to get help. You need a substance abuse assessment to determine what kind of treatment is appropriate for you and then enroll in the recommended program.

Once you are enrolled, your case might be continued while you are undergoing treatment. From there, the ball is in your court. You can fully comply with the treatment program and earn glowing reports from the facility. Compliance will go a long way toward convincing the DA that although you may have committed a crime, you’ve gotten the message and do not need a conviction or jail time to encourage you to turn your life around. Your successful treatment almost always makes a great impression. The bad news, however, is that there is no guarantee the state will dismiss or reduce the charge. Successful treatment will often help with the charge, but every DA is different and your case is also unique to you and your background. Every prosecutor will consider multiple factors which can influence his recommendation to a judge.

COMPLIANCE WILL GO A LONG  
WAY TOWARD CONVINCING  
THE DISTRICT ATTORNEY

The state will not only look at your criminal history, but will also consider:

01

Does the prosecutor believe you are selling drugs?

02

Are there victims?

03

What type of drug and how much was found?

All of these factors and more can have an impact on your case, but successful treatment will never hurt your case. You have much to gain and nothing to lose. While you undergo treatment, your attorney can still prepare your other defenses. And if you don't like the ultimate plea offer made by the state, treatment doesn't mean you can't go to trial.

### **I AM IN JAIL, BUT I CANNOT AFFORD A BOND OR GET OUT OF JAIL BECAUSE OF ANOTHER HOLD**

If you are incarcerated and can't get out on your own by posting bond, how do you get drug tested, get a treatment recommendation, or get into treatment? Is trial your only option? Short answer—no.

Obviously, the steps to pursue treatment are a little more complicated, but some judges will consider amending your bond to allow admission into an inpatient treatment as an alternative condition of your bond. Your attorney will need the help of your family or alternative support system to get you admitted into a facility. It must be inpatient, and if you are not fully compliant with their recommendations, you will risk being arrested again.

If you fall into this category, contact your attorney to discuss the options and preferences of your

specific judge. Some courts have court-monitored drug treatment and some use outside facilities. The options vary and are specific to the jurisdiction you are in.

### **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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*\*If you have been arrested for any crime, certain general guidelines apply in almost every case. See my outline on how to handle an arrest for those suggestions. This appendix is solely focused on the unique issues and defenses for individuals arrested and charged with drug-related offenses.*



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