



THE LAW OFFICES OF
GREG WEBB

Private Counsel *or* Public Defender?

THE HANDBOOK



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PREFACE

Private Counsel *or* Public Defender?

Most individuals charged with a crime in Louisiana will be represented through an indigent defender program of some type. Private counsel is usually too expensive, particularly since many potential clients are already stretched thin by the expenses of daily life and are often burdened with bonding obligations that may arise after an arrest.

However, before you make a final decision to request a public defender, you should at least call and perhaps meet with a private attorney. Depending upon their fee model (which can vary among attorneys), you may find a range of affordable costs. Some attorneys may offer a payment plan to make private counsel affordable, even on a budget.

If you cannot afford a private attorney, the ***Sixth Amendment of the U.S. Constitution*** guarantees legal representation to any individual charged with a crime whether he can afford an attorney or not. Established by the Gideon v. Wainwright decision, the public defender system provides attorneys who are paid by the state and/or parish so that individuals need not face the looming threat of loss of liberty and property without suitable representation.

The main purpose of this handbook is to dispel some of the myths held by those who ultimately choose to be represented by a public defender.

My personal experience has convinced me that the effectiveness of the representation may have as much to do with the efforts of the accused as the efforts of each appointed lawyer. Too often, individuals underestimate their role or fail to understand the impact of their participation. This manual will hopefully shed a little light on how you can help your attorney do his or her best job for you.

Although I have a private criminal practice, I am also proud to serve a Louisiana parish as an assistant public defender. In this dual role, I have had the privilege of representing individuals from nearly every background and nearly every possible charge. I consider my responsibility to be sacred since the lives and property of my clients are at stake in every case. I am not saying this to “blow my own horn,” but rather because I sincerely believe that my convictions are not unique. Most public defenders take their job seriously and entered this area of the law to serve and protect the disenfranchised. You do not have to worry if we are on your side. We are. However, we cannot effectively represent you without your full participation and cooperation.



Gregory Webb, Attorney at Law

Listen to Your Lawyer

As a criminal defense lawyer, I have learned firsthand the value of a client who will listen to the advice of their lawyer and stay in regular communication.

If you do not understand or agree with your lawyer's advice, ask questions until you are both on the same page. Perhaps your attorney is missing a key fact that only you know or perhaps you simply do not understand his advice. Sometimes, your lawyer's advice is difficult to follow for reasons beyond your control (financial or otherwise). Speak up and mention your concerns. If your attorney recommends a certain type of treatment or third-party evaluation and you cannot afford it, be honest and let him know. Try to resist the temptation to be silent or frustrated. In most cases, there are alternatives to simply being passive and hoping for the best. Keep in mind that your choices and decisions after arrest can make a huge difference in the outcome of your case.

Your attorney can never guarantee a certain result, and this handbook cannot change any previous convictions on your record or the facts that led to your arrest.

The ideas and suggestions presented here are only intended to help you assist your lawyer. Listen to your lawyer and take his advice as he is the one who knows you, is aware of the facts of your case, and is familiar with the prosecutor and the judge assigned to your case.

Arrested—now what?

I am intentionally not discussing your 5th Amendment Miranda Rights because I want to focus on improving the attorney/client relationship. If you have been arrested, there is a good chance you have or will be questioned. If possible, DO NOT speak to a police officer until first speaking to an attorney. Rarely is it in your best interest to provide a statement on your own. Your attorney can help you craft a statement, or if appropriate, prepare you to testify at a motion hearing or trial.

Bond Reduction

Probably the most common issue a criminal defense lawyer must address concerns bond reductions or getting released from incarceration while a case is pending. From a practical perspective, the volume of requests is enormous and nearly impossible to satisfy in a timely fashion. Filing and presenting a motion for bond reduction for every client who is appointed to a public defender is not realistic, especially considering the time that must be invested in the actual defense of each of those individuals (discovery, client meetings, jail visits, drafting of motions, legal research, investigation of witnesses, calls to prosecutors and probation officers, etc.). Building an argument takes time, but it can be done.

Most jurisdictions have some kind of pre-determined bond schedule based upon the charges,

so the bond is typically presumed reasonable and a judge needs a compelling reason to grant a reduction. Once you are arrested, there is a delay between the date of arrest and the filing of a bill of information or the conducting of a grand jury for an indictment. Your lawyer will probably not get formal discovery from the state until after billing or indictment. If you are in federal custody, then the issue of release is not tied to a “bond” and you must reach out to your attorney and give him the opportunity to learn as much about you as possible. Otherwise, he or she is left with the limited snapshot offered by the state—a reflection that is rarely positive and says little about your background, life story, personal challenges or future goals.



Your attorney's job is to convince the judge that you are different than the average person charged with the same offense, therefore the typical bond is too high in your case. How do you help your lawyer convince the judge of this?

01 – Write a letter to your public defender or send an electronic message to your public defender's office. Don't just say you need a bond reduction, or that you're innocent, or that you shouldn't be in jail. If you are innocent or there is no probable cause for your arrest, your attorney should file a *Motion for a Preliminary Exam* in addition to a *Motion for a Bond Reduction*. Most public defenders will automatically file a *Preliminary Exam* once you are arrested.

02 – Let your lawyer know the nature of the charges—the bond that is pending and the key facts that may be favorable to you. For example, are there co-defendants? Do you have any previous arrests/convictions? It could be helpful to give your lawyer some personal background—where you will reside upon release and anything that could help your lawyer know more about you and what happened at the time of the arrest. Once you mail your letter, keep in mind you may be catching your attorney at a particularly busy time, so start with a friendly greeting and keep your comments brief and focused on facts. If you do not hear back from him in a timely fashion, do not get frustrated. Just send him or her a reminder that you would like a response as soon as possible. Provide as much information as possible about the arrest. Not only could it help prepare for the bond reduction hearing, but it could also give your attorney facts that might support alternative motions and defenses.

03 – Be liberal with personal facts about you and your background—your education, work history, criminal history, family background, etc. All of this is relevant. Obviously, the charge you are arrested on is critical, but of nearly equal importance are the facts that are unique to you. Are you a flight risk in the eyes of the court? Are you likely to commit a crime while you are out on bond? Will you make your court appearances? These are considerations that carry a lot of weight with judges.

04 – If you are on probation and parole when you are arrested, do not concern yourself with the bond. As long as there is a probation/parole hold, you are not able to bond out. Instead, let your attorney know what you are on probation for, your sentence, where you were convicted, and the name and number of your probation officer. If a lifting of the hold is possible, it would have to be approved by your probation officer. Moreover, you may be facing a revocation of your probation that your attorney will have to defend.

**IF POSSIBLE, LIFTING OF A BOND HOLD
WILL HAVE TO BE APPROVED BY YOUR
PROBATION OFFICER.**

The Treatment Option

If you are arrested on drug charges, you may have other options for release in addition to a traditional bond.

Discuss with your family and/or lawyer about getting transferred to a treatment center. Your support system should work with your attorney toward this goal. If you are transferred to a treatment facility, you are still considered under state custody, so if you leave the facility without permission, a warrant will be issued for your arrest. Failing to cooperate will put you in a bad light with the District Attorney and judge in terms of establishing trust.



Your commitment to treatment can keep you from returning to jail. Stay in compliance as this will almost always benefit your case and help you

achieve the best possible result, such as a reduced charge, probation or in some instances, dismissal. If you rehabilitate, authentic change is evident to your judge and the DA. Your improvement, particularly if the offense is drug-related, has a direct bearing on how the state approaches your prosecution.

If you are not released to a treatment facility, but are released on bond, you have only reached one of your goals. The charges are still pending and you are now responsible for providing your attorney with the invaluable assistance only you can provide. Your defense is just beginning.

Start by making an appointment to meet with your attorney immediately. Once you are out of a detention or treatment facility, this meeting is based upon your effort. Very few public defenders have the time and resources to track down and reach out to every one of his/her appointed clients. Make this meeting a priority. Your job and financial responsibilities are pressing and important, but consider the impact of a future conviction and possible incarceration on your family, job and income.

If you cannot make your scheduled appointment, call in advance to let your attorney know you will not be able to make it and reschedule as quickly as possible. No matter the skill, knowledge or dedication of your attorney, if he is not able to speak with you, then for all practical purposes, he is representing you with “one arm tied behind his back.” This will only hurt you in the long run.

Preparing for Your Appointment

They say that showing up is half the battle. So take your appointment seriously.

If you have relevant documents, bring them. This could include documents from a treatment facility, prescriptions for any drugs found in your possession, contact information for possible witnesses, and treatment history or medical records, if appropriate. Even if you don't have documents, keep the appointment anyway. Your attorney will help you determine what evidence needs to be obtained.

It may be helpful to make some personal notes in advance, by writing down your recollection of the circumstances that led to your arrest. Ask the Public Defender's Office staff how to forward your notes to your attorney. Next, make a list of questions to ask your attorney. If they are written down, you will be able to think more clearly and make the most of your time together. Try to forward the list to your attorney before you meet so he or she will have a chance to review them in advance. Bring a paper and pen to take your own notes and write down the advice and/or questions your attorney may have. I often give my clients "homework" to do after our meeting. Your ability to remember any instructions provided by your attorney will help you complete specific and important tasks.

One meeting may be sufficient, but you may need a follow-up meeting to review additional steps or gather more information. Be sure you are proac-

tive and schedule a second appointment as soon as you have new information to bring to the table. Remember: the attorney for the state is actively preparing to prosecute you, so with the advice and assistance of your attorney, you must also be actively preparing your defense.

Based upon the information your attorney receives from the State and from you, your lawyer will have a lot of questions. Everything you tell your attorney is subject to the attorney/client privilege and will remain confidential, so be completely honest. Your attorney will know what defenses or strategies are most appropriate if he knows every fact, both positive and negative. Hiding or avoiding negative facts does not help you. Your attorney will not disclose anything that will hurt your case, but knowing the "bad" facts will allow him to develop the most effective strategy.

**EVERYTHING YOU TELL YOUR
ATTORNEY IS SUBJECT TO THE
ATTORNEY/CLIENT PRIVILEGE AND
WILL REMAIN CONFIDENTIAL, SO
BE COMPLETELY HONEST.**

In addition to the facts of your case, your attorney will need to know as much about you as possible. You are the one being prosecuted or tried, and your attorney needs to know, with as much detail as possible, who you are.

Be forthcoming about your background, family history, education, job history, past arrests or convictions, health history, mental and physical issues, including any treatment. Ideally, your lawyer will ask you these questions, but if not, share this information with him anyway.

I will pause here and address the elephant in the room. **Even with an attorney you might personally select and hire, developing trust can be an issue.** This hurdle is magnified when the attorney is chosen for you. The reality is that although you may not have the advantage of knowing your attorney, you must try to build a relationship with this individual who has been appointed to represent you. I encourage you to do so with honesty and commitment.

Remember, most public defenders truly care about their clients and want a just and fair outcome for them. Your attorney will be making a lot of decisions and needs your input. If you have built a good relationship together, his or her advice will likely be thoughtful and valuable. The foundation of mutual knowledge and trust will not only make the advice more personal, but also provide you the opportunity to respectfully question that advice in a constructive manner. However, if you are only seeing and talking to your attorney at court dates, then his advice will be limited in scope—not because of any lack of competency or compassion, but simply because your attorney does not know you or the facts that only you can provide.



Court Appearances

You may feel intimidated or anxious about your court appearances, but your attorney will help you understand what to expect.



Your court appearances are your only chance to make an impression on the court and prosecutor, so take them seriously. **Here are some basic rules on how to approach your court date, regardless of the charges.**

01 – Keep your entire day open and be on time. Your attitude makes an impression, positively or negatively, on judges and prosecutors. If you are running late or unable to make your appearance, notify your attorney beforehand. He or she can address the court when your

name is called and ask to move your case until you arrive, or even ask that any attachment be “stayed” until your next appearance. This averts the possibility of an active warrant being pressed against you. Even if your absence does lead to a warrant, it may be lifted at your next court date.

02 – There is no need to dress beyond your financial means, but dress appropriately. Business casual is appropriate and shows that you respect the dignity of the court. Avoid unnecessary or excessive jewelry or any type of dress that is loud or garish. **You are not going to a party or a concert. This is court.**

03 – When your case is called, rely upon your attorney to speak on your behalf. If you have questions, discuss them in private. Every word being spoken is recorded by the court reporter, so let your attorney speak for you—that is literally his or her job.

04 – Whenever it may be appropriate to address the court, remember you are not talking to your friend... you are addressing a court of law. Speak clearly and respectfully. Every action and word reflects upon you.

**YOUR ATTITUDE MAKES AN IMPRESSION,
POSITIVELY OR NEGATIVELY, ON JUDGES
AND PROSECUTORS.**

Deciding to Plea or Go to Trial

Your lawyer will know the state's evidence and your defense options. If you have built a good relationship, he or she will help you make the most informed decisions about your case. **Here are some general points to consider when discussing a plea:**

01 – Remember, your lawyer is not afraid to go to trial. Not every lawyer enjoys appearing in court or conducting a trial, but generally speaking, criminal defense lawyers do enjoy the trial experience. Your lawyer is concerned about your welfare and has your best interest at heart. He or she is not only willing to represent you, but looks forward to it.

02 – Your lawyer cannot guarantee an outcome at trial. A trial is always a risk, whereas a plea is a negotiated agreement with a guaranteed outcome. If your lawyer suggests a trial, it is because he or she believes the state's case is relatively weak and you have a good chance for a positive outcome OR the state's offer, compared to a nega-

tive outcome at trial, is not a significant benefit to waive your right to trial. Still, in every case, this decision is based upon probabilities and weighing risks, never upon a guaranteed result.

03 – In most cases, a court will give you time to consider a plea. If a plea is on the table and you are not certain that it is in your best interest, your attorney can ask for a continuance so the two of you can discuss it before your next court date. You should not be in a position of having to decide on the spot. But if circumstances, for whatever reason, create such a situation, do not be afraid to ask for time to meet and discuss the offer with your lawyer.

04 – In exceptional situations, a prosecutor may make what he calls a “favorable offer” that is “only good today.” Your attorney will help you understand this situation. Normally, an offer remains open until at least one subsequent pretrial hearing.



Motions

Most U.S. citizens understand their constitutional rights and expect them to be protected. In most instances, constitutional issues are raised in pre-trial motions. Regrettably, some prosecutors will offer their pleas before your motions are heard and even threaten to only make that offer available before a ruling is made. It is normal for your attorney to file your motions and then enter into negotiations with the prosecutor before they are heard and decided.

In an ideal world, all of your motions would be heard and decided, and the state would still offer their “best” plea agreement. Instead, many prosecutors consider the merits of your motions when making an offer, and if and when your motions are decided negatively, the state will change their offers. This is a touchy situation that

requires careful consideration. Should you force the issue and argue your motions? Should you take the plea? For these decisions, you must consider the jurisdiction you are in (how your judge tends to rule); the tendencies of the prosecutor; and the strength of your defenses and motions. There is no way to predetermine how each case should be handled. The unique advice of your lawyer is critical at this point.

If they have merit, your pending motions can give your attorney leverage. When considering an offer on the table, you should keep in mind the dynamics of leverage and how those dynamics can change as your case proceeds. Of course, these decisions can be reviewed by an appellate court, but your attorney cannot guarantee the outcome.

Time Calculations

If a plea offer or potential sentence includes incarceration, your attorney can only estimate how much time you will serve. It depends on issues such as prior or multiple convictions, revoked parole or probated sentences, or multiple sentences with varying overlaps of credit for time served. On top of the good time calculations, parole eligibility can impact your release date. (Some charges do not provide for parole eligibility and for offenses that allow parole eligibility, the necessary time that must be served can also vary.)

The final say belongs to the Department of Corrections.

Trial Strategies

If your case ultimately goes to trial, the nature of your conversations with your lawyer will change. Your attorney will shift into a new gear and begin preparing your case at a different level. He will interview witnesses, review the discovery more thoroughly, discuss trial strategies, talk about jury selection, and decide what physical evidence to introduce. One of your biggest decisions is whether or not you should testify. Your attorney will guide you on the merits and pitfalls of this strategy, but the decision is yours. Your attorney cannot deprive you of your right to testify on your own behalf.

Hopefully by the time of trial, your attorney has earned your trust and the two of you are working closely together. But another possibility is that you have spent little time with your attorney

or have not been able to build a good relationship. This is a serious problem. If you have not had at least one significant meeting related to trial preparation, or feel you need more discussion and preparation after your initial meeting, schedule one immediately and document your request in writing. It's possible that your attorney is simply focused on other areas of preparation that don't require your direct input and is in no way neglecting your case or deliberately excluding you. Simply communicate your concern.

Perhaps you just need to hear an explanation of your lawyer's current strategy in order to help you sleep at night. Ask for a review session to hear his or her thoughts on the case—and let him know that you appreciate his time and effort.



You Can Make a Difference

There is no single answer or set of actions that can satisfy every legal situation. The criminal defense system is imperfect and imperfect people work within it. But even so, the indigent defense system is comprised of legal professionals who sincerely care for their clients and have a passion to pursue the ideal of justice promised by Gideon v. Wainwright.

You can make a difference in your own case. Even if your attorney seems jaded or overworked,

or perhaps has trouble building a relationship with every client, he or she will respond to the positive and diligent efforts you bring to your representation.

One final note: Even if you feel vulnerable and threatened, do not take your frustration out on your attorney. He or she is your advocate and is fighting for you.

There are many situations your attorney cannot control, so try to remember you are on the same team and work to overcome those obstacles.





THE LAW OFFICES OF
GREG WEBB

37325 MARKET PLACE DR., STE B.
PRAIRIEVILLE, LA. 70769
(225) 744-0089