

# **KNOW YOUR RIGHTS:**

## **A Guide to the Louisiana Criminal Justice System**

**This Know Your Rights Guide is intended to make you aware of your most basic rights and liberties and provide practical information for situations that often arise when people have contact with the police and the courts. This guide is not a substitute for legal counsel. Every case is different and you should always consult with an attorney about specific legal questions. Every person accused of a crime is guaranteed the right to a lawyer. If you are too poor to afford an attorney, you have the right to have a lawyer assigned to your case at no cost to you.**

**Please contact the organizations listed at the end of this guide if you feel that your rights have been violated.**

# **YOUR RIGHTS ON THE STREET**

## **Stopped by the Police**

The police can stop you if they have reasonable suspicion that criminal activity is occurring. If you are stopped because the police have reasonable suspicion of criminal activity, they can detain you only for a short period of time while they try to figure out whether or not there is criminal activity. In Louisiana, if you are stopped by the police you must identify yourself. If you refuse to identify yourself, you can be arrested. The only information that you have to provide to police is your name and address. It will be up to a court, at a later time, to decide whether or not the stop was lawful.

**If you are stopped by police: Ask whether you are under arrest. If you are not under arrest, you should be able to leave. You can only be placed under arrest if the police have a warrant or probable cause to think that you committed a crime. You have a right to know why you are being arrested.**

## **Searched by the Police:**

You have the right to refuse a search of your body, your car or your house unless you are already under arrest or the police have a warrant. If the police say they have a warrant, you should ask to see it. The warrant should specifically describe what the police can do. Remember that the police never need a warrant if they see something in "plain view."

### **Your body:**

If you are temporarily detained by the police but not under arrest, they may pat you down to check for weapons. During a temporary stop, the police may do a pat down only if they have reason to believe that you are "dangerous". The police are not allowed to put their hands in your pockets unless they think you have a weapon. They do not need a warrant to search your pockets if you are lawfully stopped and something feels like a weapon during the pat-down, or if they saw you put a weapon in your pocket. However, if the police are looking for a weapon and find something else incriminating in your pocket, they can still use it against you.

If you are under arrest, the police may search your entire body.

## **Your car:**

Police do not need a warrant to search your car. To protect yourself later, you should make it clear that you do not consent to a search by repeating, "I do not consent to a search". You should always try to remember a police officer's name, and if possible, their badge number.

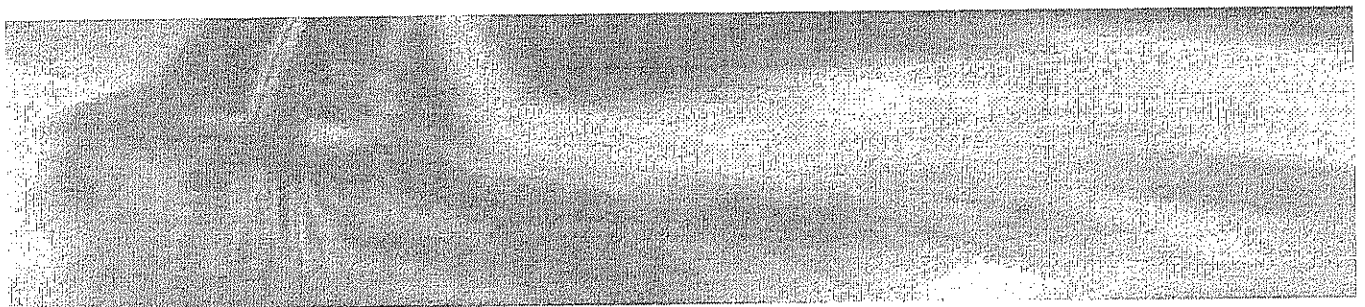
If you are arrested, the police can do an "inventory search" of your car after you are arrested. This means that they can search the entire car. If you are stopped on reasonable suspicion of criminal activity, the police can search within your arm's reach. This means they can search anywhere in the passenger compartment for weapons. If the police have probable cause to believe that something involved in a crime is in a specific place in your car, then they can search that specific place even if you are not under arrest. However, they are not allowed to search other parts of your car without probable cause.

Police can arrest you if they see or smell anything in "plain view" in your car. It is not lawful for police to arrest you simply for refusing to consent to a search.

## **Your house:**

If the police come to your house, step outside and close the door while talking with them. If the police do not have a warrant to search your house, you can refuse to let them in. If you refuse to allow a search of your home, the police cannot come in unless there is some emergency inside of the house or they are chasing someone into your home. Police can search your house if they are let in by someone who they believe lives there with you. However, if you are at home and tell the police that they cannot come inside without a warrant, they cannot use anything incriminating that they find against you, even if they are let in by your roommate. If the police try to go into your house without a warrant, you should say repeatedly "I do not consent to the search" and ask for a lawyer.

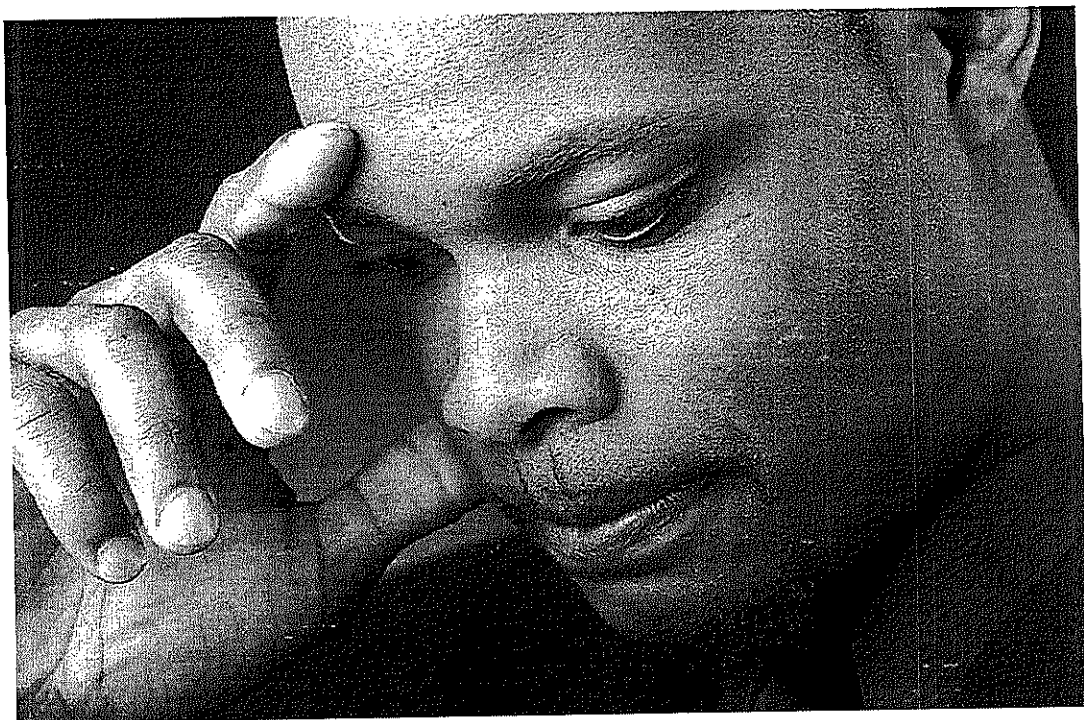
In all cases, a court may review whether a search of your body, car or house was lawful.



**IMPORTANT NOTE:** If you refuse to allow the police to search you, your car, or your home and the police begin to conduct the search anyway you should not physically resist the police or you could get hurt or end up with charges filed against you. If you think a search or arrest is unlawful try to remember everything that happens to tell your lawyer later. Evidence that is found during an illegal search should not be used against you in court. If possible, you should write down notes to tell your lawyer, especially details like the officer's name, badge number, car number, and any witnesses. If you are injured by police, you should seek medical attention and take or request pictures of your injuries. If you are in jail, file for a sick call and tell the medical staff what happened. Make sure that they take notes on your injuries and what you tell them.

## Arrest

If you are arrested, you have the *right to remain silent* and you have the *right to have an attorney present* while you are questioned. You should not answer any questions for the police except questions about your name and address. By law, if the police ask you questions you *do not* have to answer them. Tell the police "*I want to remain silent. I want a lawyer.*" Once you say this, the police should not ask you any more questions. If you are arrested, you should not talk to anyone about your case except your lawyer. Anything you say to friends, family, district attorneys, or other people in jail may be used against you in court.



# YOUR RIGHTS IN THE COURT

## Initial Appearance

By law, everyone who is arrested is entitled to a *Probable Cause Determination* within 48 hours of arrest. You may or may not be present at that hearing, and you may or may not have an attorney at this time. By law, a judge and District Attorney can hold this hearing without you or your lawyer and can determine that there was probable cause to justify your arrest.

If you are arrested and placed in jail, you are entitled to an *Initial Appearance* before a magistrate or district court. This appearance may be made in person or by video conference. Your Initial Appearance must happen within **72 hours** of your arrest. At the Initial Appearance, you have the right to be represented by a lawyer. In most courts, this is the time when you are appointed a public defender. Most courts hold the probable cause determination, initial appearance and bond hearing at the same time and within 48 hours of arrest. However, courts are allowed to hold these hearing separately.



## **You Have The Right To An Attorney**

If you have been arrested you have *the right to an attorney for any crime for which you could be sent to jail*. If you go to court for a misdemeanor that could sentence you to jail, you have a right to an attorney. This right extends to parole revocation hearings, or any other hearing where you are at risk of going to jail.

At court, ask the judge what the charges are against you. Then ask:

- If I am found guilty of any of these charges, can I be sentenced to jail or be given a jail sentence?
- At a later date, if I am required to pay a fine, can the court sentence me to jail for not paying?

If the judge or the prosecutor answers "YES" to any of these questions, you are entitled to an attorney. The judge is required to inform you of this before you plead guilty to any indictment if you state under oath that you are unable to afford a lawyer. Under both the United States Constitution and the Louisiana State Constitution, the court is required to appoint you a lawyer at *no cost to you*. However, you may be asked to pay a \$40 application fee to determine whether or not you qualify for a public defender. If you cannot pay this fee, tell the person taking your application and he/she will decide whether or not it can be waived. If you pay

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the fee, and are found to be indigent is non-refundable. Even if you are found indigent or partially indigent, you may be requested to partially reimburse the Public Defender's Office for the cost of your defense. If you disagree with the requested reimbursement, you may request an adjustment from the court.

### **What you should expect from your public defender:**

- 1) You will be asked if you accept the appointment of a Public Defender because you want and need the assistance of an attorney for the charges for which you were arrested.
- 2) You will be advised to invoke your right to counsel under the 6th Amendment and your right not to incriminate yourself under the 5th Amendment.
- 3) You will be advised to agree not to discuss any charges with any law enforcement agents or jail personnel or inmates without the appointed attorney being present.
- 4) The lawyer will tell you if you have given up any of your rights, by spoken or written word, that the lawyer will revoke and withdraw that waiver of rights and advise you to deal with the police or prosecutors, or their agents, only through your assigned lawyer.
- 5) You will be informed that if you will be released from custody on bail, before the next court date you must either hire a lawyer or go to the Public Defender's Office to apply for the continuing services of a public defender and establish that you are financially unable to hire a lawyer.

6) You will be told that the lawyer assigned as counsel to you will be relieved of his/her duties if you privately retain counsel, or by the assignment of substitute counsel by the District Public Defender, or if after you are released from jail, you do not make an application for the continued services of the public defender.

## **BAIL**

The sheriff will collect a \$30 processing fee for all bonds posted. Read the front and back of the bond forms carefully.

1] You may use the services of a commercial surety (bail bondsman) for any charge. (C.Cr.P. 322) Commercial sureties may charge 12% of the bail amount, but not less than \$120.00. (R.S. 22:1443)

2] Unless restricted to "No 10%" by the judge (based on residency, type of charges, and/or repeat offender status), you may be permitted to put up a 10% cash deposit with the sheriff. (C.Cr.P. 326A(2)) That will be returned to you when the case is completed except that any fines, costs, and fees ordered by the judge will be deducted from the amount deposited.

3] You may use a secured personal surety or a "property bond" secured by a mortgage on any immovable property in Louisiana, such as a house or land. (C.Cr.P. 323) That will require you to get documentation regarding the property ownership and value, and regarding any recorded mortgage, judgments or liens. A judge's approval is needed to post a property bond.

4] You may put up 100% cash deposit with the sheriff for any charge. (C.Cr.P. 326 A (1)) That will be returned to you when the case is completed except that any fines, costs, and fees ordered by the judge may be deducted from the amount deposited.

5] A judge may allow release without surety (C.Cr.P. 325), including a Release on Recognizance (ROR).

6] A judge may allow other secured or unsecured personal surety bonds. (C.Cr.P. 324)

# **A Guilty Plea is a Conviction and has Consequences**

Although you may want to consider pleading guilty, a guilty plea is a conviction that has consequences. Some of the consequences of a criminal conviction in Louisiana are:

- You will have a permanent criminal record
- Prior convictions can lead to harsher punishments if you are charged with another crime in the future
- If you are convicted of a felony, you will never be allowed to own a firearm again. There are severe punishments for violating this law.
- You lose the right to appeal your conviction
- A criminal conviction may affect your eligibility for state and federal public benefits, including public housing benefits
- If you are convicted of a felony, you lose your right to vote until you have completed probation or parole
- A conviction could affect your immigration status or result in deportation

## **Charges Against You Must Be Filed On Time**

The State of Louisiana must bring an indictment or bill of information against you within a certain period of time depending on the type of charge and whether you are being held in jail.

## **In State Custody**

If you have been in jail after your arrest, an indictment or bill of information must be filed against you within **45 days** of the arrest if you are being held for a **misdemeanor** or within **60 days** of the arrest if you are being held for a **felony** that does not carry life imprisonment.

If the state does not initiate a prosecution during this period, a defendant must be released from jail unless the government can demonstrate just cause for the delay. If the government can demonstrate just cause, the court must still reconsider the defendant's bail.

## **Not in State Custody**

If you have not been in jail following your arrest, an indictment or bill of information must be filed against you within **90 days** of the arrest if you were arrested for a **misdemeanor** or within **150 days** of the arrest if you are being charged with a **felony**.

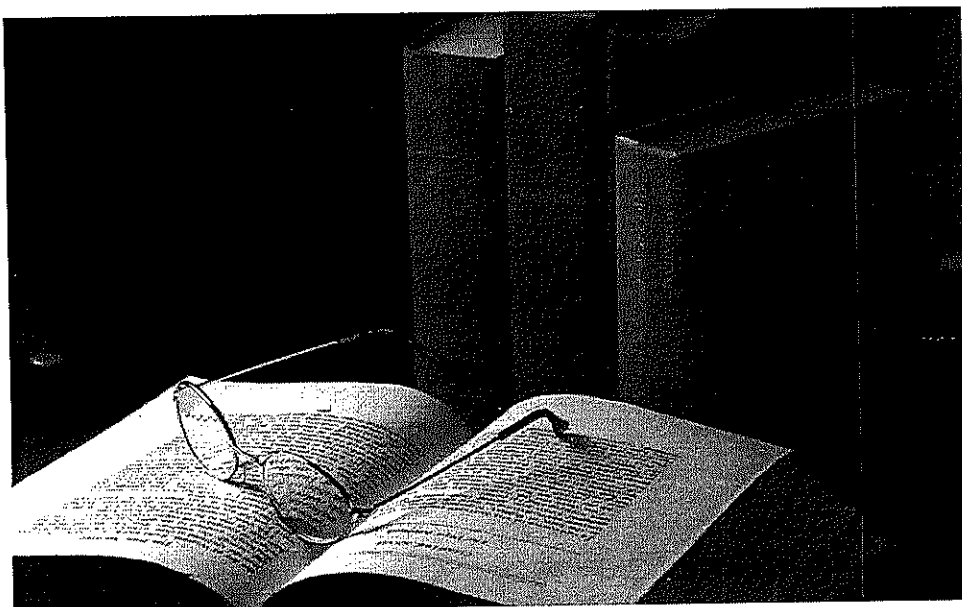
If the state does not initiate a prosecution during this time frame, the defendant's bail obligation must be lifted unless the government can demonstrate just cause for the delay.

# A Speedy Trial

Formal prosecution begins when the indictment or bill of information is filed. Once this has happened, the State must give you a speedy trial. The State must give you a trial within:

- **Three years** for capital offenses
- **Two years** for felony offenses
- **One year** for misdemeanor offenses

However, the State does not count the time when documents or motions are being considered by the court as part of the time limits for a "speedy trial". Therefore, in some instances, it may take longer for a case to go to trial without a violation of your right to a speedy trial taking place.



## **Fines: Pay Them, But Having No Money Is Not A Crime**

You should not go to jail for the same crime that a rich person would only pay a fine for. Therefore, a poor person *may not* be incarcerated just because he is unable to afford to pay a fine which is part of his sentence. If you have to go to court for not paying a fine, tell the judge:

- I am willing to pay the fine, but I do not have the money to pay it.
- If the judge suggests a reasonable option, like a fair payment plan or community service, accept it.

If the judge says you are going to go to jail unless you pay a fine ask:

- For what crime am I being sentenced to jail?
- I would like an attorney for this proceeding.

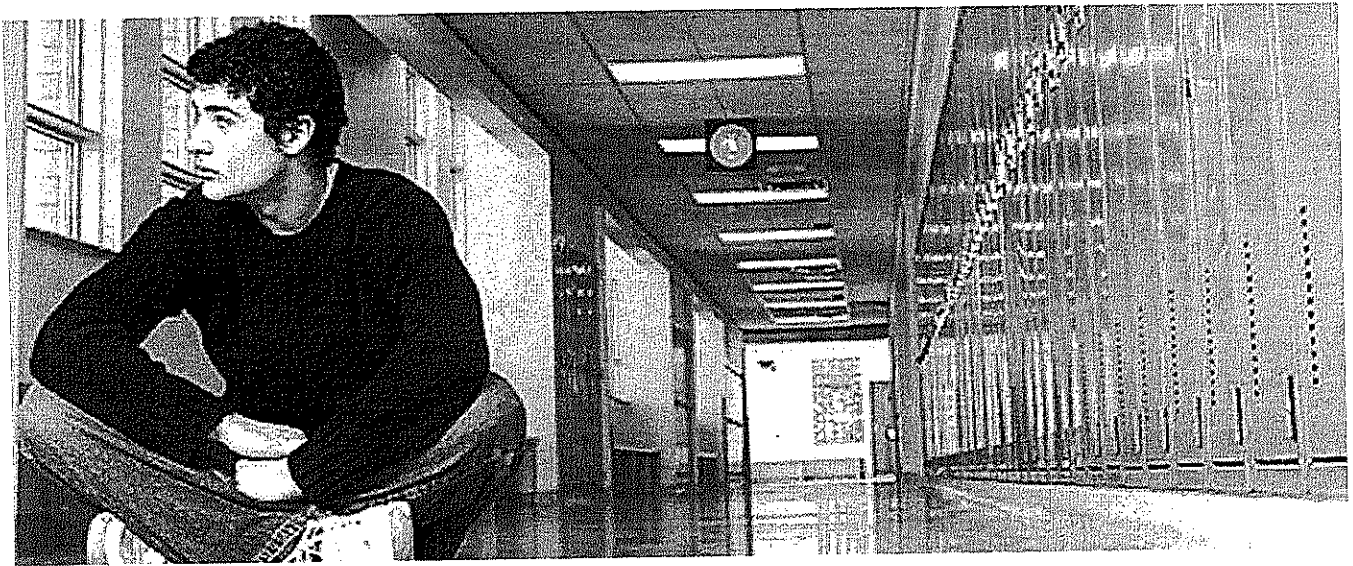
# **Juvenile Proceedings**

Children under the age of 17 who are charged with criminal acts are tried in juvenile court proceedings. There are some exceptions to this, however. Children who are 14 or older and charged with certain serious and violent crimes can be tried in adult criminal court and can face adult penalties. Juvenile proceedings are civil and not criminal, but children are entitled to all of the rights given adult defendants except for the right to a jury trial.

Juvenile court proceedings are different than adult criminal proceedings in many ways. For example different words are used in juvenile proceedings. In juvenile court proceedings:

- children are charged with "delinquent acts" instead of "criminal acts,"
- children have an "adjudications" instead of "trials," and
- children are given a "disposition" instead of a "sentence"



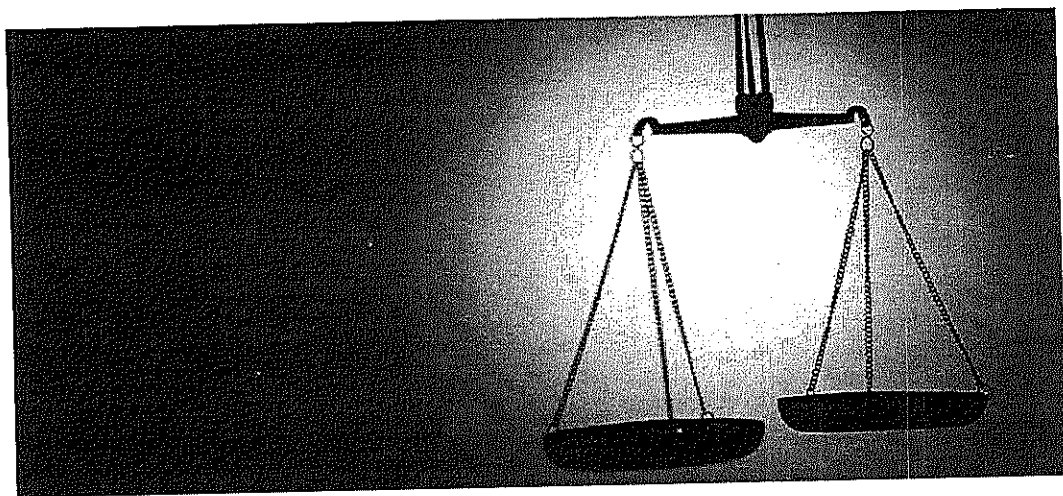


Children brought before juvenile court also have the right to private confidential court proceedings unless the charge is a violent offense. This means that only court personnel and attorneys, the child, his or her parents or guardian, and witnesses who must be in court to testify, should be present in the courtroom for juvenile court.

In some cases, juveniles have even more rights than adults in juvenile proceedings. Children have the right to an attorney at ALL stages of juvenile court even after they are given a disposition. Children also have the right to rehabilitation and treatment if they are found to be delinquent. In addition, in juvenile court a child cannot be placed in custody or on probation beyond their 21<sup>st</sup> birthday.

Juvenile courts also hear FINS (Families in Need of Services) and CINC (Children in Need of Care) cases. Children who miss school, run away, or are alleged to have committed minor delinquent acts may be referred for FINS services. FINS services are targeted toward the entire family and may require both the child and the parent or guardian to fulfill certain obligations while on probation. Most FINS cases are handled informally and without the involvement of a judge. However, when the informal process does not work or in more severe cases, a formal FINS case may be initiated and a juvenile court judge will become involved with overseeing the case and enforcing the terms of FINS probation.

CINC cases involve allegations of parental abuse and neglect. In these cases, the parents or guardians of the children are defendants in juvenile court proceedings.



## Disclaimer

This 'Know Your Rights' guide is not a complete statement of your liberties or their limits; the material provided here is for basic informational purposes only. It is not meant to be, and should not be taken as legal advice, nor should you rely on this information instead of seeking the advice of an attorney. The legal issues surrounding civil rights and civil liberties are among the most complex in the law, frequently changing with court and legislative decisions. A person's rights may vary from case to case because of small, subtle details. Only a lawyer, who has taken the time to become fully aware of the facts and the applicable law in a given case, can provide you with sound legal advice. **The law imposes time limits on most actions to vindicate your rights, so it is important to act quickly within the allowed time frame.** If you are trying to reach an attorney who is not a public defender, call the Lawyer Referral Service of your local bar association. They may direct you to a lawyer experienced in the type of law involved in your case.

## **Organizations That Can Help: Share Stories and Learn About Your Rights**

The following organizations can assist you with information regarding your rights and what to do if your rights are violated, but they do not generally provide direct representation in criminal cases. For assistance in a pending criminal case, contact your local public defender office or indigent defender board.

### **ACLU Foundation of Louisiana**

P.O. Box 56157

New Orleans, Louisiana 70156

Phone: (504) 522-0617

e-mail: [complaints@laaclu.org](mailto:complaints@laaclu.org) • [www.laaclu.org](http://www.laaclu.org)

### **Louisiana Justice Coalition**

P.O. Box 19403

New Orleans, LA 70179

Phone: (504) 301-7920 • Fax: (504) 558-0378

e-mail: [info@lajusticecoalition.org](mailto:info@lajusticecoalition.org) • [www.lajusticecoalition.org](http://www.lajusticecoalition.org)

### **Juvenile Justice Project of Louisiana**

1600 Oretha Castle Haley

New Orleans, LA 70130

Phone: 504-522-5437 • Fax: 504-522-5430

e-mail: [info@jjpl.org](mailto:info@jjpl.org) • [www.jjpl.org](http://www.jjpl.org)

## **National Legal Aid & Defender Association**

1140 Connecticut Ave. NW, Suite 900

Washington, DC 20036

Phone: (202) 452-0620 • Fax: (202) 872-1031

e-mail: [info@nlada.org](mailto:info@nlada.org) • [www.nlada.org](http://www.nlada.org)

## **National Association of Criminal Defense Lawyers**

1150 18th St. NW, Suite 950

Washington DC 20036

Phone: (202) 872-8600 • Fax: (202) 872-8690

e-mail: [assist@nacdl.org](mailto:assist@nacdl.org) • [www.nacdl.org](http://www.nacdl.org)

