



**WHEN SOMEONE
WITH MENTAL
ILLNESS IS
ARRESTED IN
GEORGIA.®**

A Georgia handbook for family, friends, advocates and community mental health workers.

This handbook was prepared by Debra J. Blum, the Director of the Mental Health Advocacy Division of the Georgia Public Defender Standards Council (formerly the Georgia Indigent Defense Council).

The Division is a state office dedicated to working with individuals who are involved in the criminal justice system and who have mental health issues. Division staff train, consult with and represent individuals with mental illness, defense attorneys, mental health professionals, and court personnel on issues related to these cases.

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WHEN A PERSON WITH MENTAL ILLNESS IS ARRESTED: *How to Help*

A Georgia handbook for family, friends, advocates and community mental health workers



TABLE OF CONTENTS

INTRODUCTION	1
WHAT HAPPENS WHEN YOU ARE ARRESTED IN GEORGIA?	2
BOOKING	2
BAIL OR BOND	2
CASH BOND (3)	
PROPERTY BOND (3)	
BAIL BONDSMAN (3)	
SIGN OWN BOND (3)	
PRELIMINARY HEARING	4
TYPES OF COURTS (4)	
ARRAIGNMENT (4)	
GETTING TREATMENT IN JAIL	5
WORKING WITH THE DEFENSE ATTORNEY	6
LAWS RELATING TO PEOPLE WITH MENTAL ILLNESS	13
Insanity, Incompetency to Stand Trial and Guilty But Mentally Ill	13
Incompetency to Stand Trial (13)	
Insanity (14)	
Guilty but Mentally Ill (14)	
Advocating for Alternative Sentencing	15
GLOSSARY	16
REFERRAL SOURCES	19

INTRODUCTION

This handbook is designed for anyone who wants information about helping a person with mental illness who is arrested in Georgia. Although there are general procedures within the criminal justice system that apply everywhere in the state, there are many facets of the justice system that vary from county to county. Furthermore, in some areas (ie, Atlanta, Decatur, Savannah) there may be city systems as well. It can be very confusing, especially to someone who has never been involved with the criminal justice system before.

Whether you are a family member, mental health professional, friend or advocate, you know more about the person arrested than anyone involved in the criminal justice system. The purpose of this handbook is to allow you to ask the right questions to get the information you need, should allow you to help bring the information you have to the attention of the court system to bring about a better resolution to the criminal case. Much of the information contained in this handbook applies to any person arrested in Georgia whether mental health is an issue or not.

WHAT HAPPENS WHEN YOU ARE ARRESTED IN GEORGIA?

An arrest can be based on a police officer's observations, or because another citizen made a complaint. The pre-arrest process may be somewhat different depending on the circumstances of the alleged crime. Either way, the individual may be taken into custody by the police or sheriff's department and brought to jail.

Each county has its own jail, run by the Sheriff's Department. Many cities, and some towns, have their own jails as well. If the person was arrested in a metropolitan area it will be important to determine which law enforcement agency made the arrest. Find out, if you can, the jail in which the person is being held. Although that may not solve the issue, it may help you. For example, if the person is in the Roswell City jail, the charge will be based in Roswell, not Fulton County, although Roswell lies in Fulton County. It is possible that the case may get transferred to the county courts, but knowing where the charges originated (which agency made the arrest) may help when you are trying to get police records and other information.

BOOKING

When brought to a jail, the person will be booked in, fingerprinted and photographed. Any property or medications will be taken to be returned later. Many jails will have a brief medical screening conducted before the person is brought to a cell or pod (a housing unit). In many places the individual will be asked whether they can afford an attorney and will be asked to fill out a form if they want an attorney appointed.

BAIL OR BOND

Specific procedures for jail booking, making bond, court appearances and having an attorney appointment differ from county to county in Georgia. This handbook will try to give general information which will allow you to contact the appropriate agency in your county if someone is arrested.

In general, it is the Sheriff of each county who runs the jail. An arrest may be made by city police, the Georgia State Patrol or other agency, but it will generally be the Sheriff who controls the person once they are booked into jail.

If the person is arrested for all but the most serious offenses, bail may be automatically set by the Sheriff's department. There are several ways of making bail or bond.

CASH BOND

The entire amount of the bond is paid to, and held by the Sheriff's department until the defendant's criminal case is resolved. The entire amount will be returned at the end of the case.

PROPERTY BOND

The value of equity in the property must exceed the amount of the bond, sometimes by as much as three times; the deed will be held by the Sheriff until the case is resolved. The property must be located in Georgia. The Sheriff must certify that property is approved for use as bond.

BAIL BONDSMAN

Generally a bail bondsman will require somewhere around 15% of the total amount of the bond to be paid; this is not refundable to you. The bondsman, in effect, is pledging to the court and Sheriff that they will pay the full amount of the bond should the defendant fail to appear in court. Bail bondsmen are authorized county by county, so, for example, one that operates in Fulton County may not necessarily help your situation in DeKalb County.

SIGN OWN BOND

Sometimes called RELEASED ON RECOGNIZANCE. Depending on the charge and the person's record, the Sheriff (or judge) may allow the person to be released on their signature, pledging to return to court at the appropriate time.

The danger with using cash, or certainly property, as bond is that if the defendant fails to appear, you stand to lose the cash or the property. You will generally have the opportunity to find the defendant and bring him to court, but if that fails, you may lose what you have put up as bond.

The individual may be released with paperwork indicating the date they should return to court. If not, they will be mailed this information. It is important for them, and for you if you put up the bond, to make sure the court receives any information on changes of address. If the individual fails to appear in court at the appropriate time, the court will issue a bench warrant. This will authorize the sheriff's department to arrest the individual for failing to appear. It is not easy to make bond after failing to appear in court; it is more

likely that the individual would then be held in jail until their case is resolved.

PRELIMINARY HEARING

If the defendant is unable to make bond or if bond is not set, the first appearance before a judge will generally

be a preliminary hearing, sometimes called a first appearance hearing. This hearing is not designed to decide guilt or innocence, but whether the case should go forward. It is more likely than not that the case will go forward from this hearing. In most jurisdictions there will be no prosecutor, but the arresting officer will appear as a witness. The hearing will usually be held by a magistrate judge. It may be held in the jail. It may be continued if the defendant requests an attorney. There is an opportunity for the defendant to speak and have witnesses. Anything said at the preliminary hearing may be used later in the case, so it is wise to be cautious. Often bond may be set at this hearing as well.

TYPES OF COURTS

Georgia has a multi-level court system that varies somewhat from county to county. In many areas of the state, courts are grouped by circuit.

Probate Court: traffic offenses may be heard here in some counties Recorder's Court: traffic offenses and county ordinance violations may be heard here in some counties Magistrate Court: issues warrants and holds preliminary hearings. State Court: hears misdemeanors; not every county has one. Superior Court: hears felonies; every county has one.

ARRAIGNMENT

Arraignment will generally be the first court appearance before the assigned judge. It will be in State or Superior Court depending on the severity of the charge and on the county. The defendant is entitled to have an attorney present. The prosecutor will be either a Solicitor (in counties that have one in a State court) or a District Attorney. This is the first opportunity to hear the formal charges against the defendant. These may be somewhat different than the charges when the defendant was first arrested. They will be given a copy of the formal charges, either in the form of an indictment or an accusation.

If the defendant pleads guilty at the arraignment, they may be sentenced that day. If the defendant has met with the attorney previously, this may all be arranged ahead of time. Generally

there is time during the court session to meet with attorneys and make arrangements for a plea, and negotiate with the prosecutor. Certainly for a defendant with special considerations it is almost always best to not rush the process. There will be other opportunities to present the defense attorney and the prosecutor with information about the defendant's situation and treatment needs.

GETTING TREATMENT IN JAIL

One of the most frustrating things for family and friends of individuals who are arrested is that there is almost always a gap in medication. Each jail has a medical and mental health contact person; the defendant's access to that care varies tremendously from county to county, even where medical or mental health care is fairly accessible, it is likely that the defendant will not be given the same medication they had been prescribed in the community. Jail pharmacies have their own list of approved medications based on cost and "street value." If the defendant's medication is not on the jail's list, they will not get it. That is true even if someone brings a prescription bottle to the jail. If the defendant has prescription medication (or any other property) on them when they were arrested, it will be held for the defendant until his or her release. It will not be dispensed.

Some jails have special mental health units and social work staff to assist defendants. The defendant, or someone assisting him or her, should contact the mental health unit to alert them to the defendant's treatment needs. Although each defendant is screened upon booking, the referral may not get to the mental health unit in a timely manner. Everyone agrees that jail is not the appropriate place for treatment, but sometimes circumstances are such that a defendant spends many months in jail awaiting disposition of the case. Family, friends and advocates can call the jail and find out what services the jail has. Some are quite helpful, within the parameters of their department. In jails where there is no special mental health unit, there may still be a contact person for mental health issues. The Georgia Indigent Defense Council can assist with a contact person for each jail.

If the defendant can not be managed in the jail because of their mental illness, they can be referred to a hospital. In Georgia this is called a "1013." Because the defendant is in the custody of the Sheriff's Department, there are only certain individuals who can "1013" a defendant. The treating psychiatrist from the community generally can not send the individual from jail to the hospital. A "1013" will get a defendant to a hospital for stabilization and observation. The "1013" will keep them at the hospital for 48 hours; a "1014" at the hospital will keep them for longer. When and if they are deemed stable, they

will be returned to the jail. Although the hospital may be a better setting for the defendant than the jail, this procedure will not generally keep them in the hospital for more than a few days. Medications may be changed while in the hospital, and then again upon return to the jail. Try and get as much information as you can before trying to get the "1013" process started.

WORKING WITH THE DEFENSE ATTORNEY

Once You've Done Whatever You Can to keep the person out of jail and/or ensure that they receive appropriate treatment in jail, the next step is to talk with the defense attorney about what is going to happen with the case. There is a cliché that says there are two things you don't want to watch being made; one is sausage and the other is law. In some courts where criminal cases are heard, court can seem very much like an assembly line: the rights and needs of the individual aren't necessarily a priority. No one really seems to get their "day in court." As an advocate for someone in this position, your job is to slow the proceedings, to say to the court, "Hold everything, this is not an object on an assembly line. This is a human being with special needs and you need to pay attention."

In Order to Do This, You must Work with the Defense Attorney.

- *The defense attorney has information you may want.* The defense attorney is the only person in the criminal justice system who has direct contact with a defendant. The defense attorney will know what the defendant's version of the 'crime' is and the defense attorney will have a sense, as soon as s/he meets the defendant for the first time, of what is likely to happen with the case. The defense attorney gets information from the prosecutor about what the police and/or the complainant in the case say happened, as well as any statement the defendant may have made to the police. The defense attorney will also know what the defendant wants to do, for example whether s/he plans to plead guilty or go to trial, and whether s/he is interested in trying to get a disposition that includes mental health and/or drug treatment. If you need information about what is going on with someone's case, the defense attorney is often your best source of information.

- *You may have information the attorney needs,* and you may be able to work with the attorney to help the defendant. The defense attorney probably does not know very much about the defendant's psychiatric problems and history. Most defense attorneys have no specialized training in mental health: they may neglect to ask the client about mental health issues and may miss even obvious clues that the defendant has a mental

illness. Even if the defendant tells the defense attorney that s/he has a mental illness and takes medications and is in a program, it may not occur to the defense attorney to talk to the program or the family about these issues. By contacting the defense attorney, you can educate him/her about the defendant's mental health problems and what supports are available to the defendant in the community to help her/him stay out of trouble in the future.

- *You generally cannot talk to the judge on your own initiative* — s/he can not return your phone calls, and while you may have the opportunity to address the judge in person on a court date, you should do so only with the defense attorney's approval and assurance that what you plan to say will be helpful to the defendant.

- *Similarly, do not talk to the prosecutor* without the defense attorney's blessing or presence. Information that you think will help the defendant may actually be harmful in the hands of a prosecutor. Even the simple disclosure that an individual has a mental illness may lead the prosecutor to fight harder to keep the person in jail. If you disclose harmful information about the defendant to a defense attorney, that attorney is bound by professional ethics to never disclose that information; a prosecutor, on the other hand, is charged with protecting public safety and if you give a prosecutor any information that can be used to harm a defendant, it may be used to do so. Even if you find the defense attorney challenging to deal with, you must remember that the defense attorney is the only person in the criminal justice system whose job it is to look out for the needs and rights of the defendant.

- **Dealing with the Defense Attorney May Not Always Be Easy**

Although you must start with the person's defense attorney when trying to advocate for someone who is charged with a crime, this isn't always successful. Many family members and mental health workers complain about defense attorneys; unreturned phone calls, abrupt conversations, or just plain refusals by attorneys to speak with their clients' caseworkers and family members. Why is this? The answer is that while some attorneys may just be rude, the problem is usually one of resources, funding, and caseloads — and, sometimes, different views of the client's "best interest."

- **You Have a Right to an Attorney.** If you cannot afford an attorney, one will be appointed for you. The U.S. Constitution provides that every person charged with a crime has a right to an attorney whether or not the defendant has money to hire one.

Unfortunately, the right to an attorney does not seem to include the right to an attorney who actually has the time to do a thorough job on every case or the breathing room to return phone calls. Public defenders and court appointed attorneys often have large caseloads. These caseloads are not their choice, but rather are a function of how much Georgia is willing (or not willing) to pay to provide lawyers for people accused of committing a crime. With that many cases, a defense attorney likely has a hard time remembering many clients' faces and names — your job is to convince the defense attorney that this is a special case.

Many public defenders chose their jobs for noble reasons — a desire to help people in trouble, a concern about the rights of disenfranchised people. Other lawyers representing poor criminal defendants may have a struggling tax law practice and have decided to supplement it by picking up a few criminal cases. One thing virtually all defense attorneys representing poor criminal defendants share, however, is that they have far too many cases and too few resources to devote a great deal of time to an individual case.

•Different County, Different System

Currently each county in Georgia has a different system of appointing lawyers to represent defendants who can not afford their own attorneys. Recent legislation will be changing this to a more uniform system that will be phased in over the next several years.

•Can You Demand a Different Lawyer? What if you or the person you are advocating for strongly believe that the lawyer assigned to the case is not doing a good job? The answer is sort of. First, the only person who can request a different lawyer is the defendant. No matter how unhappy family members may be with an appointed lawyer, they cannot fire the lawyer because the lawyer does not represent them — the lawyer represents only the defendant. Even if the lawyer is hired and paid for by the family, the lawyer's only responsibility is to represent and obey the wishes of the defendant.

If the defendant is unhappy with an appointed lawyer, s/he can request that the lawyer be 'relieved' from the case and a new lawyer be appointed. In order to do this, however, the defendant must tell her/his lawyer that s/he wants a different lawyer, and must have the current lawyer convey this request to the judge. This means that on the next court date, the lawyer will tell the judge that the defendant has requested a new lawyer.

Sometimes the judge will grant this request and a new lawyer will be assigned. Other times, however, the judge will deny the request. A judge may feel that the lawyer is doing a good job on the case, or that the

case has been going on for so long that it will take a new lawyer too long to get up to speed, or, particularly in a case where a defendant has already made the same request before and received a new lawyer, that the defendant's request is unreasonable,

It is worth noting that a lawyer can also choose to make a request to the judge to be relieved from representing a particular client.

•A free lawyer may be better than a cheap one.

Knowing all of this, you might assume that anyone who can possibly come up with the money to hire a lawyer should do so. Many people assume that a paid lawyer will always be better than a free one. This is not necessarily the case, however. People who are wealthy enough to spend a large amount of money on a defense attorney should do so — and will probably be required by the court to hire their own lawyer. But people who have limited funds and can meet the criteria to get a court-appointed lawyer should be extremely cautious about selling the car or mortgaging the house to hire a lawyer instead.

In general, a free lawyer is better than a cheap one. A lawyer who takes a case for a low fee has to take a lot of cases to earn a living — and thus can't devote much time to any one case. A cheap lawyer may also be cheap because s/he is not a very good or experienced lawyer. Or s/he may practice tax law or real estate law most of the time and just pick up a criminal case once in awhile; someone who is a great real estate lawyer is, almost by definition, not likely to be a great criminal defense attorney. Inexpensive lawyers often have no support staff — not even a secretary or paralegal, let alone a social worker. Often Public Defenders and court appointed attorneys have much more experience in criminal law, know the Prosecutors and the local system and can better achieve the defendant's goals.

What Is The Defendant's Best Interests?

Sometimes social workers/family members/advocates and lawyers seem to speak languages so different that they cannot communicate at all. This often happens when a lawyer and someone from the mental health community discuss the best interests of a client who has mental health and/or substance abuse treatment needs, but is also facing criminal charges.

Imagine that you have been working as an outreach worker and have been trying for several months to engage a particularly hard-to-reach client. The client is a man with paranoid schizophrenia who is living on the streets, refusing psychiatric treatment and shelter, and using crack cocaine and alcohol every day. Your

efforts to engage the client seem to be going nowhere and you are concerned that his lifestyle places him at great risk. One day you receive a phone call from the court because the client has been arrested and has shown your card as a contact person. You rush down to the courthouse and find the defense attorney who has been assigned to represent your client.

The defense attorney tells you that the client has been arrested for possession of marijuana. Because the client had only a small amount, the offense is a misdemeanor, punishable by up to a year in jail. You feel suddenly inspired; while of course you don't view it as a good thing that your client has been arrested, you wonder whether this might not provide the opportunity you've been looking for to break through the client's resistance and help him to get off the street and into treatment. You start outlining for the attorney the treatment plan you would propose for the client — an 18-month residential program, assistance obtaining benefits, day treatment, medical care — in hopes that, with your assistance, the defense attorney can suggest to the prosecutor and judge that rather than being sentenced to a year in jail, the client should be mandated to comply with this treatment plan.

The lawyer interrupts you. "Slow down," he says. "The guy's only got a couple misdemeanors and no felony priors. I know this prosecutor- we can get time served on this case. I'm gonna have the guy take it." With that, the lawyer walks away to deal with some other cases. A few minutes later, your client's case is called, and he pleads guilty to criminal possession of a controlled substance, and is sentenced to two weeks in jail. Two weeks later, you see him back on his usual corner.

What just happened? You and the defense attorney had different views of what was in the client's best interest — and the defense attorney's view trumped yours. Defense attorneys have an obligation to look out for the legal rights of their clients, while social workers are concerned about a more holistic view of what is in a client's best long-term interest. Often these two perspectives are irreconcilable, particularly when a defense attorney has an opportunity to get a client out of the system quickly and a mental health advocate would rather use the opportunity to get the person into treatment.

While a few defense attorneys do not see getting a client into treatment as being part of their job under any circumstances, most are happy to consider their clients' treatment needs, but only when the treatment intervention is proportionate to the sentence that would otherwise be imposed. For example, if a month later

the same client is arrested for selling crack cocaine, and is facing a minimum of two years in prison, the same defense attorney may be begging you to come to court and advocate for the client to go to an 18-month program instead — because this time the client is in a lot more trouble, so 18 months of treatment seems proportionate.

A Defense Attorney’s Job Is to Get the Defendant out of the Criminal Justice System. Period.

The system described above can be maddening to someone concerned about the defendant’s mental health because of course there is often no relationship between how much trouble the client is in and how badly s/he needs treatment. Mental health advocates may be frustrated by a sense that the defendant will have to commit a serious offense before the criminal justice system will ever do anything to help the individual. Sometimes family members and mental health workers feel that it is only through criminal justice intervention that a particularly resistant consumer will ever become engaged in treatment — and wish the system was more intrusive about mandating treatment.

While these perspectives are certainly understandable, it’s worth stepping back for a moment and remembering what a toxic place the criminal justice system is and how destructive being in that system is to people’s physical and emotional well-being. This is why it is important that defense attorneys fight so hard to minimize the contact their clients have with the system. While it is clearly a mark of progress that courts have become more amenable to sending offenders to treatment as a disposition in a criminal case, the cost of obtaining treatment through the courts can be very high.

For example, the defendant described above may have a choice of taking a sentence of two weeks in jail, or being mandated to an 18-month program. But if, three weeks into the program, s/he leaves the program and goes back to the streets, s/he may be sentenced to more than two weeks in jail — perhaps the full year — as punishment for having been ‘given a chance’ and failed. Faced with those options, any competent defense attorney would advise the defendant to take the two-week sentence. Even if the defendant desperately wanted treatment, the defense attorney would have to advise him to do the two weeks in jail and then seek treatment voluntarily after release — when the consequence of failure in treatment will not be so high.

Finding the Defense Attorney

First you have to find out who the lawyer is. Hopefully you can find out from the person you are advocating for. If not, call the Georgia Public Defender Standards Council (formerly the Georgia Indigent Defense

Council) at 404-232-8900 or 800-676-4432. The Council won't know the specific attorney, but can tell you who to call in the county where the defendant was arrested.

Getting in Touch with the Defense Attorney

Once you know who the lawyer is, call. Leave detailed messages. Don't leave your name and number and say "Call me." Say, "You are representing my client/family member, John Doe, I have some important information regarding the circumstances of the offense he is charged with and his psychiatric history that I need to discuss with you." If you have the indictment, or case number, leave that too.

•*Keep calling.* If you leave a couple of messages and don't hear back, call the attorney's supervisor, if there is one. Don't trash the lawyer; just say, "I know Mr. Smith is very busy in court but I have some very important information that perhaps you can get to him."

Talking to the Defense Attorney

Once you get in touch with the defense attorney, be concise. It is difficult to emphasize enough how important this is, not just the first time you speak to the lawyer, but every time. The defense attorney is incredibly busy, and is far more likely to return your phone calls and keep you apprised of developments in the case if s/he knows that you will be brief. Don't tell the defendant's whole story, starting with the first psychiatric break 17 years ago. The most relevant facts are whether the person is seriously ill, what was going on in his/her life at the time of the offense, and what supports are available to the defendant in the community. Don't insist on telling the story your way: let the lawyer ask you questions, and answer them.

Speak plain English. Use words that a layperson would understand and when jargon is unavoidable, explain what it means. By the same token, don't hesitate to nicely ask the lawyer to stop using legal jargon that you don't understand.

No matter how concerned you are about the defendant, *the defense attorney does not work for you.* The defense attorney represents the defendant, and that means that if the defendant tells the attorney not to talk to you, the attorney may not talk to you. Similarly, if the defendant is making choices that seem clearly to not be in his/her best interest (for example, refusing a generous plea bargain offer involving treatment), the defense attorney must obey the client's wishes.

Follow the defense attorney's advice unless it seems completely wrong. Information that you think is relevant may actually not be. For example, if the defendant says s/he did not do the thing s/he is accused of, then the psychiatric history and need for treatment don't have much to do with the case; it will come down to whether the prosecutor can prove that s/he did it.

If you think the defense attorney is completely wrong, speak to his/her supervisor about your concerns. If there is no supervisor, your only options are to encourage the person you are advocating for to request a different lawyer or to alert the Georgia Public Defender Standards Council.

Follow through on any promises you make to the defense attorney. If you tell the defense attorney that you will make a phone call to a treatment provider, get a letter from a program or come to court, do it. The defense attorney will be counting on it, and may have conveyed your promise to the judge. Judges are impressed when someone other than the defense attorney cares enough to advocate for the defendant, but they get angry when people promise to find programs or make plans for a defendant then fail to follow through. The defendant will bear the consequences.

When there is an upcoming court date, check in with the defense attorney. By calling the defense attorney a day or two before the court date, you can make plans to meet in the appropriate court at a specific time. You can also find out whether the defense attorney will be there or will be sending another lawyer in his/her place, and what the defense attorney expects to happen that day.

LAWS RELATING TO PEOPLE WITH MENTAL ILLNESS

Insanity, Incompetency to Stand Trial and Guilty But Mentally Ill

In Georgia, there are only 3 “mental health pleas” available to most criminal defendants. But just because they are potentially available does not mean that they should be sought, for they are often not a good thing for the individual.

Incompetency to Stand Trial means that at the time the case is ready to go to trial the defendant is unable to appreciate the nature of the crime he or she is accused of, is unable to appreciate the nature of the proceedings and is unable to assist his or her defense attorney in defending the case. In almost every case, the defendant will be evaluated by a psychologist or psychiatrist who will give the judge their opinion about

the defendant's competency. In many cases there will be an agreement that the defendant is incompetent and there will be no trial on this issue. But in some cases there will be a trial, either before the judge or before a jury. In such a trial the only issue is the defendant's competency. The trial on the criminal charges will be held only if the individual is deemed competent to stand trial.

A successful plea of incompetency to stand trial means that the defendant will go to a state mental hospital until s/he becomes competent to stand trial. In many cases this will be a relatively brief stay; correct medication will help the individual become competent. But for some individuals, particularly those with brain damage or developmental disabilities, the stay in the hospital can be very lengthy. It is important to think about the potential consequences for an individual who might be incompetent to stand trial. Even in cases where the defendant is clearly incompetent to stand trial, there may be other ways to resolve the case.

Insanity in Georgia can be reached one of two ways. The first of these is the "right and wrong test;" at the time of the crime the defendant must not have been able to distinguish between right and wrong. The second way a defendant can be found insane is by "delusional compulsion," meaning that at the time of the crime the individual was suffering from a delusional compulsion such that their will was overmastered. Additionally, presuming the delusion was true, the act must have been justifiable. These are very narrow criteria; mental illness, by itself, does not mean that the person will be considered insane under Georgia law. If a plea of not guilty by reason of insanity is sought, there will be at least one evaluation by a psychologist or psychiatrist.

The insanity plea is a defense, like self-defense. Even if the defendant meets one of the two tests for insanity, the defendant does not have to plead insanity. They can plead not guilty, or enter a plea of guilty. It is almost always worth exploring other options because a plea of insanity will result in the defendant being sent to a state mental hospital for an indefinite period of time. People who are found insane usually spend longer amounts of time in the hospital than if they had gone to prison. A plea of insanity should be viewed with caution, especially if the charges are not serious.

Guilty but Mentally Ill applies only to felony cases, and for the defendant it is not usually a good thing. By definition it means that the defendant was mentally ill at the time of the crime, and for sentencing purposes it means that he or she will go to prison. In prison they will receive treatment only if they meet the Department of Corrections criteria; there is no guarantee of treatment or any particular type of treatment.

In cases where parole may be an issue, defendants found guilty but mentally ill generally do not receive parole and spend a longer period of time in prison than others.

There is no formal mechanism in Georgia for diminished capacity or otherwise pleading mental illness to the court. However, in sentencing, most judges will allow the attorney to present evidence regarding mental illness or capacity. This is something to discuss with the defense attorney, as are all the mental health pleas.

Advocating for Alternative Sentencing

Most public defenders and court appointed attorneys have large caseloads and few have the time to investigate alternatives to jail or probation for their clients. That doesn't mean they won't be interested, but either the defendant or another interested person may have to initiate the idea and do some of the legwork. Depending on the case, it may be possible to get a case dismissed on the condition that the defendant, for example, stay away from a person or place and get mental health treatment. Sometimes jail can be avoided with the implementation of a treatment plan. The defense attorney will have some idea about what might work in a particular case, in front of a particular judge.

In general, though, the court will want to see some change in order to impose an alternative. For example, suppose the defendant was living at home, seeing a psychiatrist once a month at the time the crime was committed. The judge may want to see more structure to release the defendant- perhaps the addition of a day treatment program or additional counseling appointments. Every case is different; work with the defense attorney to find out what would be most helpful.

Some counties in Georgia have treatment courts or other diversion programs that might help defendants in those areas. Generally, these courts or programs are available for relatively minor, non-violent crimes.

Georgia's mental health system divides the state into regions, and further divides the regions into Community Service Boards. It is the Community Service Boards which will have the most information about the services available for a mentally ill person in a specific geographic area. There may be other services, but this is usually the best place to start to find out what is available in your area.

GLOSSARY

Accusation- the formal charges against a defendant, usually in misdemeanor cases.

Arraignment- the first court appearance where the defendant is notified of the formal charges, and is given an opportunity to enter a plea of guilty or not guilty.

Arrest Warrant- the document, signed by a judge, which allows a law enforcement officer to arrest a defendant.

Assistant District Attorney- a prosecutor who works for the District Attorney, an elected official.

Assistant Solicitor- a prosecutor in State Court, handling misdemeanors, who works for the Solicitor, an elected official.

Bench Warrant- the document signed by the judge if the defendant does not appear in court at the appointed time. The bench warrant will allow the sheriff's department to arrest the individual and hold them without bail until and unless the judge orders them released.

Booking Number- the identification number assigned to someone held in the jail.

Charge- the crimes a person is accused of

Conviction- the criminal record of a plea of guilty or finding of guilty by a judge or jury.

Court Appointed Attorney- a defense attorney who is paid by the court to represent an indigent defendant charged with a crime.

Defendant- the person accused of a crime

Department of Corrections- the state agency which manages the prison system.

District Attorney- the prosecutor in Superior Court, where felony cases are handled. In some counties the District Attorney's office also handles misdemeanor cases. District Attorneys are elected.

Felony- crimes punishable by more than one year in prison.

Indictment- the formal charges against a defendant, usually in felony cases. Issued by the grand jury.

Indigent- poor; income must fall below federal poverty guidelines.

Inmate- someone in jail or prison

Jail- detention in a county facility, usually before the criminal case is decided. Sometimes defendants whose cases are already decided will serve their sentence in the jail, or wait there until they are picked up by the Department of Corrections.

Misdemeanor- crimes punishable by 12 months or less in prison.

Plea Bargain- the agreement between the defense and the prosecution for the recommendation of a certain sentence following a plea of guilty.

Prison- detention in a state facility following a plea or finding of guilt in a criminal case.

Probation- some form of supervision following a plea or finding of guilt. There are varying degrees of supervision depending on the charges, the defendant's record and other factors. Mental health treatment may be a condition of probation.

Public Defender- an attorney who represents indigent clients accused of crimes.

Sentence- the judge's determination of probation, prison, fines or other consequences following a plea or finding of guilt.

Solicitor- the prosecutor in State Court handling misdemeanor cases. Not every county has a Solicitor; where they exist, Solicitors are elected.

REFERRAL SOURCES

The Georgia Public Defender Standards Council is the state agency charged with funding counties for their programs providing attorneys for indigent criminal defendants. Council staff will be able to assist you in contacting the local agency who appointed the specific attorney for the defendant in whom you are interested. The Council's Mental Health Advocacy Division may help you with specific information about mental illness in the particular case.

The Georgia Public Defender Standards Council and the Mental Health division can be reached at 404-232-8900, 800-676-4432. The website is www.gidc.com The Division's e-mail is mhad@gidc.state.ga.us

The National Alliance of the Mentally Ill is a national organization dedicated to improving the lives of individuals and families affected by mental illness. The Georgia office may be reached at 770-234-0855. The office has a great deal of support and resource information.

www.nami.org

Other resources include:

www.disabilityresources.org : lists national resources.

<http://www.mcg.edu/resources/mh/sourcebk>; lists resources for treatment and other services in Georgia

www.mentalhealth.org: Offers numerous programs and projects that aim to increase the range, quality and availability of treatment and other supportive services for people with mental illness.

www.thegao.org : The designated agency in Georgia to work with disabled or mentally ill individuals who are being abused or neglected.

