

## **WHAT TO EXPECT AT YOUR FIRST COURT APPEARANCE**

### **You Have a DAT (Desk Appearance Ticket)**

A Desk Appearance Ticket is given in lieu of placing a criminal defendant through the entirety of the formal arrest process. If granted a DAT, an arrestee is only minimally processed, given a date to appear in court, and released. You must show up in court to be arraigned on the day and time shown on the ticket. You have not been formally charged with anything until your arraignment. Keep in mind that although this is a “ticket,” a DAT may be given for violations, misdemeanors, and some E felonies.

### **Your Criminal Charges**

Most of you have been charged with a subsection of the disorderly conduct statute.\* This is a violation and not a crime. You should be aware that because you have not been formally charged these charges are subject to change by the District Attorney (or D.A., the city's prosecutor). While your DAT indicates one charge you still may be charged with additional crimes. Maximum penalties for violations are up to \$250 in fines and 15 days in jail.

### **Arraignment: Your First Appearance**

Arraignment is your first appearance before a judge. At this time you are formally presented with the charges against you (a formal paper filing). *You must personally appear at your arraignment.*\* If you fail to appear the judge will issue a bench warrant for your arrest.

There are some rights you should be aware of before showing up in court. You have the right to have an attorney present. You may bring an attorney with you or you may ask the court to appoint one for you if you can't afford one. You have the right to go to trial should you choose to. At trial you may present evidence and confront any of the witnesses who will testify against you, including your arresting officers. While the 5<sup>th</sup> Amendment means you are not required to testify at trial, as an individual arrested in a protest, a trial may provide you a forum for voicing your side of the story.

If you plan to plead not guilty, you should decide whether you will hire a private attorney or acquire a National Lawyers Guild-NYC (212-679-6018, [www.nlgny.org](http://www.nlgny.org)), Legal Aid (a public defender) or court-appointed attorney as soon as possible; some important strategic decisions must be made at your arraignment and you want to be prepared.

If you plan to plead guilty, you will usually be offered a lesser sentence in order to take a guilty plea through the process known as “plea bargaining.” You may be offered an ACD if you have no or limited criminal history. If you are offered an ACD then there is no reason to plead guilty.

### **Understanding an ACD (Adjournment Contemplating Dismissal)**

An ACD is not an admission of guilt, nor is it an affirmation of innocence. It means essentially that if you don't get arrested for six months, the District Attorney will dismiss the charges against you, and the case record will then be sealed. Bear in mind, however, that while sealed records are supposed to stay sealed, in certain instances courts have re-opened them anyway.

Also important: if you get arrested again within six months, the case may be re-opened and the charges will come back. You should take into consideration your ability to stay out of any further trouble for the duration of the adjournment period.

---

\* **Disorderly conduct** –New York Penal Law section 240.20 – you can find the language by going to [public.leginfo.state.ny.us](http://public.leginfo.state.ny.us) and by clicking on the “Laws of New York” link.

\* **If you can't make it to your arraignment** then for good cause shown the court has the discretion to permit the defendant to appear by counsel instead of in person. In other words, if you've got a really good reason, your lawyer can show up and enter your plea for you, or accept an ACD on your behalf. You will need to have a notarized letter authorizing your lawyer to appear for you, and there is no guarantee that the arraignment judge will agree. You should consult an attorney if you can't make your arraignment.

Be aware that the D.A.'s office has complete discretion in offering you an ACD. If you decide to plead not guilty at your arraignment then there is a chance the ACD may not be an option should you decide at a later point that you no longer want to go to trial and want to take a plea. While it is possible that the ACD will remain on the table until trial, it is wise to talk these possibilities through with your attorney before making a decision on what is best for you.

Here are some things to consider:

Benefits of taking an ACD:

1. If you take an ACD at arraignment you will not need to make any further court appearances. If you live out of state or have a particularly demanding schedule making it difficult to return for the possible hearing and trial, it may be in your best interest to accept the ACD.
2. You are not pleading guilty. After you complete your six-month adjournment period, the case is dismissed, your arrest and prosecution will be deemed a nullity and you will be in the same exact position you were in before your arrest and prosecution.

Potential problems with accepting an ACD:

1. For many people, rejecting the ACD and pleading not guilty so they may fight the charges against them is an important part of standing up to the police. Should you choose to take an ACD your case is finished and you will give up your right to contest the charges against you.
2. Taking an ACD also limits your options in terms of affirmative litigation against the city. For example, if you want to sue the city for malicious prosecution, you cannot do so if you take an ACD.
3. Importantly, an ACD can have serious consequences for your immigration status. If you have or anticipate having citizenship issues, you should consult with an immigration attorney.
4. If you are arrested again in the future, accepting an ACD now may affect your ability to secure a favorable plea bargain in a future case.
5. If you are currently on parole or probation, taking an ACD may trigger adverse collateral consequences.

### **A Warning: Exercising Your Right to Remain Silent**

It sounds clichéd, but you should take full advantage of your right to remain silent until your criminal case is resolved.

In particular, any comments you make to the press can potentially be used against you in your criminal case should they be discovered by the District Attorney. This is also true of any videos posted on YouTube, or comments made on Twitter and Facebook. Police are notoriously good at using these social media sites against criminal defendants. You may be well intentioned, but you may not realize that you are implicating yourself in the crime charged.

You also should exercise caution in dealing with the Civilian Complaint Review Board (CCRB) - New York City's civilian police oversight. While it is common for those unjustly arrested to want discipline for the officers involved, it is best to wait until the conclusion of your criminal proceedings before you file a complaint. A complaint filed with the CCRB may be used against you in your criminal case and may encourage the officers involved in the complaint to be extra diligent in their attempt to secure your conviction. It may also hurt your chances of winning a civil case.

### **Conclusion**

Your first court appearance is a critical phase of the criminal process. You should be prepared to make some difficult decisions on what is best for you and your future. Carefully weigh all of your options, work with your attorney and make a choice that you will be happy with individually.

While some people want to resolve their criminal case with as minimal impact on their life as possible, others want to use the medium to voice the same concerns they were protesting in the first place. Others simply want to be declared innocent of any wrongdoing.

No matter your choice, make sure it is the appropriate one for you.