

WHAT IF I GET ARRESTED WHILE I'M PROTESTING?

A GUIDE BY NY STATE LAWYERS · JUNE 2020

BEFORE YOU PROTEST

- Don't bring anything with you that you don't want police to see - anything illegal or private.
- **Bring an ID.** You will spend longer in custody if you don't have an ID.
- Put a PIN lock/passphrase on your phone and disable fingerprint/facial recognition unlock.
- Have a legal hotline number memorized or written in Sharpie on your body (**see below**).
- Tell a trusted friend who isn't at the protest where you're going, full name as it appears on your ID, date of birth, and any medical needs. Give them a copy of your keys & make plans to have your pets, plants, and children looked after.
- Wear a mask. There's still a pandemic.
- If you are not a US citizen, consult an immigration attorney before going out to protest. **Do not disclose your immigration status to anyone but your lawyer.**

LEGAL HOTLINE NUMBERS

National Lawyers Guild - NYC
212-679-6018

GOOD CALL
833-346-6322

Immigrant Defense Project
212-725-6422
(Voicemail-only)

IF YOU ARE ARRESTED

- If you do anything that the cops consider to be resisting, you could get additional charges.
- If possible, note the **names** and **badge numbers** of the cops who arrested you.
- The cops are not required to tell you why you are under arrest. **They are allowed to lie to you.**
- The cops are not required to read you your rights unless they are interrogating you while you are in custody.
- Information you should provide to the cops: **government name, ID, date of birth, address, any pressing medical needs.** If the cops ask you anything else, say "I am invoking my right to remain silent. I am invoking my right to talk to a lawyer." Then remain silent. Any information you volunteer afterwards can be used against you.
- **Don't lie to cops or federal agents.** This can result in additional charges.
- If you are trans/gender non-conforming, you have the right to be locked in the gendered cell of your choice.
- **Do not unlock your phone for the cops.**
- Do not accept drinks, gum, cigarettes, etc. while in custody - the police use these for DNA samples.
- You might not be able to make a phone call in custody. If you are given a phone call, call NLG-NYC and **give the names of your cellmates in addition to your own information.**
- Feel free to bond with your cellies, but don't talk about anything that led to arrests - you could talk yourselves into a conviction!

AFTER YOU ARE ARRESTED (NYC-SPECIFIC)

NYS law requires that anyone arrested be arraigned or released within 24 hours. That said, when many people are going through the system, these times can increase to multiple days (currently 3 days on average).

Tell the police if you need medical attention/prescription medications. They are required to take you to the hospital to get these. They may threaten you and tell you that you will be held twice as long. You will not be allowed to take prescription medicine that you have on you while in custody.

Summons

The quickest processing option, currently taking 1-6 hours from time of arrest. You'll be released with a pink ticket directing you to show up to summons court at a future date. Contact the NLG-NYC about getting a lawyer in advance of your court date.

Desk Appearance Ticket (DAT)

This processing currently takes 2-10 hours from time of arrest. You may be fingerprinted if you're charged with a misdemeanor, but it's **not legal to fingerprint people arrested for low-level "noncriminal" offenses**. You will be released with a white ticket requiring you to appear in criminal court at a future date. Contact the NLG-NYC about getting a lawyer in advance of your court date.

Arraignment

You are held until you see a judge. This happens for charges ineligible for DAT release, when police have discretion to give you a DAT but choose not to, if you don't have an ID on you, or if you have an open warrant. You will be processed and may be fingerprinted and brought to a courthouse. This process is currently taking up to 3 days after arrest. You will be represented by a Legal Aid attorney or other public defender who will talk to you before you see the judge. **Be honest with your lawyer:** anything you say is protected by attorney-client confidentiality.

ONCE YOU ARE RELEASED

- **Don't talk to anyone except your lawyer about the details of your arrest.** Don't post about it on social media, email, text, or DM about it, don't write it down in your journal. **Anything you document could be turned over to the government and used against you.**
- If you were injured by the police, photograph your injuries ASAP and send the photos to your lawyer. If you see a doctor, share your medical records with your lawyer and keep them somewhere safe.
- **Do not miss your court date** - if you do, a warrant will be issued for your arrest. If you can't make your court date, call the NLG-NYC beforehand to learn your options.

POTENTIAL CHARGES (NYC-SPECIFIC)

From least → most serious:

Disorderly Conduct - PL § 240.20

Blocking traffic, failure to disperse, etc.
Violation.

VTL § 1156(a).

Walking on a road where a sidewalk is available.
Violation.

Unlawful Assembly - PL § 240.10

Assembling with the intent to engage with others in tumultuous and violent conduct likely to cause public alarm. Class B misdemeanor.

Curfew Violation: NYC Admin. Code § 3-108

Out after mayoral curfew. Class B misdemeanor.

Inciting to Riot (PL 240.08) or

Riot in the Second Degree (PL 240.05)

Urging 10+ to engage in tumultuous and violent conduct likely to create public alarm.
Both Class A misdemeanors.

Obstructing Governmental Administration (OGA) - PL 195.05

Intentionally trying to prevent an officer from performing an official function, including preventing an arrest. Class A misdemeanor.

Resisting Arrest - PL 205.30

When people struggle, and also when the police injure people. Class A misdemeanor.

Trespass - PL 140.05, 140.10, 140.15

Entering a building or dwelling without permission. Violation/class A/B misdemeanor.

Assault in the Third Degree - PL 120.00

Intentionally, recklessly, or negligently causing injury to another. Class A misdemeanor.

Assault in the Second Degree - PL 120.05

Either causing serious injury, causing injury using a weapon, or causing any injury to a cop, firefighter, nurse, or paramedic. Class D felony.

Burglary in the Third Degree - PL 140.20

Entering a building with intent to commit a crime. Can include people suspected of looting/ anyone entering or even outside a store with smashed windows. Class D felony.

A charge is different from a conviction - see “common outcomes” below. In NYS, a “violation” is not considered a crime. Even if you are convicted of or plead guilty to a violation, you will not have a criminal record - all violations come off of your record after 1 year.

Violations may have consequences for non-citizens and people with certain licenses. All misdemeanors and felonies are “crimes”.

COMMON OUTCOMES

The District Attorneys offices in multiple boroughs have announced they will not be prosecuting many low-level protest cases. This means many cases will be dropped.

For summonses/DATs, they will likely make a non-criminal offer at your first court date. You can take it or fight the case.

For arraigned cases, they are mostly not making offers at arraignment. You will see a judge and be given a court date. You will be appointed a lawyer and can discuss a possible resolution or trial.

Adjournment in Contemplation of Dismissal

The most likely outcome for protest-related cases. An ACD is not a plea and does not imply guilt or innocence. It means if you are not re-arrested within a period of time (usually 6 months) - and often even if you **are** re-arrested - the case is automatically dismissed and sealed. You may be required to complete community service. There are no automatic fines or fees.

Decline to Prosecute

Case is dismissed, the record is sealed. Can happen at the precinct, arraignment, or your first court date.

Disorderly Conduct

If you are charged with a misdemeanor that the prosecutor considers slightly more serious, you may be offered a plea to the reduced charge of disorderly conduct ("discon"). This is a violation and will not give you a criminal record. **If you are not a US citizen, consult with an immigration attorney because it could potentially impact your status.** After 1 year a discon will be sealed, and will not show up on your record. A discon plea may also come with a community service requirement. If you plead guilty, you will pay a "court fee" of \$120.

MAXIMUM POSSIBLE SENTENCES

You may have seen memes about how long you could go to jail for protesting. These are the maximum possible sentences, and not what is likely to happen. The maximum sentences in NYS court are:

- **Violation:** up to 15 days in jail, \$120 mandatory court fee.
- **Class B misdemeanor:** up to 3 months in jail, \$250 court fee.
- **Class A misdemeanor:** up to 364 days in jail, \$250 court fee.

If you are charged with a felony, talk to your attorney!

WANT TO SUE THE POLICE?

Contact the NLG to be referred to an attorney that you can talk to. **Gather photos, videos, and names and contact information of witnesses.**

Work with your lawyer to track down surveillance cameras that may have filmed your arrest - those are usually erased after as little as 7 days, so move quickly.