

Potential Charges, Continued

Resisting Arrest

There is a City of Chicago Ordinance (2-84-300) that prohibits both passive and active resistance of a police officer. It prohibits one who knowingly "resist[s] or obstruct[s] the performance" of an officer. **Potential consequence:** Fine between \$25-\$500. There is also a State Statute (720 ILCS 5/31-1) which prohibits active resistance of a police officer. **Potential consequence:** up to one year in jail, a \$2,500 fine, or both. The minimum sentence is a conviction—you are not eligible for a period of supervision.

Reckless Conduct

Under state law (720 ILCS 5/12-5), a person commits reckless conduct when he acts in a way that "cause[s] bodily harm" or "endanger[s] the safety of another person." **Potential consequence:** up to one year in jail, a \$2,500 fine, or both.

Mob action

Under this state statute (720 ILCS 5/25-1), "mob action" occurs when one engages in the "knowing or reckless use of force of violence disturbing the public peace by 2 or more people" the knowing assembly of 2 or more people with either (1) "intent to commit or facilitate commission of a crime" or (2) "for purpose of exercising correctional powers over any person by violence." **Potential consequence:** minimum 30 hours community service, and up to 364 days in jail, with potential for felony consequences.

Other Potential Consequences

Residents of public housing or those who use subsidized housing vouchers may have problems with their eligibility or renewal for those programs after being arrested for or convicted of a charge that includes allegations of violence.

Students currently enrolled in CPS could face school disciplinary proceedings for protesting on or off school property. Also, protections for First Amendment activity are less robust for students in school. Restrictions on police searches are also weaker in schools, meaning that students (and their bags and lockers) can be searched without the same suspicion required on the street.

Trans* and queer folks may be jailed with people of their birth gender regardless of their gender identity or wishes, or isolated, though the Cook County Sheriff's policy is to consider gender identity.

What to Expect if Arrested

The Chicago Police Department **can hold you in custody for up to 48 hours without charging you.** Typically, you will be released after 3-18 hours, though this period could be longer if you have an outstanding warrant, are charged with a serious crime, or if processing is delayed due to mass arrests.

You will not have access to your personal effects—everything but the clothes you wear will be confiscated, and not returned until you are released.

You will not have your phone, so **write a contact number on your arm** so you have a number to call (phone calls are usually allowed only after many hours in custody).

You probably will not have access to medications or medical care—it's up to the police, and they are not generous with attention to medical needs. **Tell the officers at the station if you are taking any medication.**

It's best if a friend (who will not be arrested) knows your name and whereabouts.

You may be given something to eat, but usually only after many hours in custody.

The **National Lawyers Guild (NLG)** is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests.



Vol. 1 April 2015

Photos by Sarah Jane Rhee - www.loveandstrugglephotos.com

NLG Chicago

MASS DEFENSE COMMITTEE

KNOW YOUR RIGHTS: A GUIDE FOR ACTIVISTS IN CHICAGO



It is important to know your rights so you can be well-informed; however, the police can and do arrest folks even if the law doesn't support them. The time to make arguments and legal defenses is in the courtroom, after the arrest or citation.

The information in this brochure is intended to inform social justice activists and is not a substitute for legal advice from a licensed attorney. Please contact an NLG attorney in the event of an arrest.



www.nlgchicago.org

Know Your Rights on the Streets

First Amendment Activity

Under the First Amendment, you have the right to participate in peaceable assemblies and to petition the government for a redress of grievances.

However, the US Supreme Court has held that in certain circumstances the government can restrict the way people exercise their First Amendment rights. Below is a list of Chicago and Illinois laws that have recently been used to restrict the way individuals exercise their First Amendment rights. Please be advised that this is not an exhaustive list.

Know Your Rights During a Police Encounter

Police Encounters

Police have the discretion to arrest you or issue a citation. When dealing with the police, you may want to keep your hands in view and avoid sudden movements. You may also want to avoid passing behind them. If you touch the police or their equipment (vehicles, flashlights, animals, etc.), you may get beat up and/or charged with assault or battery. You cannot know for certain what you will be charged with until after you have been arrested. In felony cases, the prosecutor is the only person who can actually charge you. Remember this the next time the cops start rattling off all the charges they're supposedly "going to give you."

Stopped on the street

If you are stopped on the street, **you can and should ask if you are "free to go."** If the answer is yes, consider just walking away. If the police say you are not under arrest, but are not free to go, then you are being detained (police are temporarily restricting your movement). The police can pat down the outside of your clothing if they have reason to suspect you might be armed and dangerous. If they search any more than this, **say clearly, "I do not consent to a search."** They may keep searching anyway. If you resist, you might be charged with assault, battery or resisting arrest. You do not have to answer any questions. You do not have to open bags or any closed containers. Tell the officers you do not consent to a search of your bags or other property.

Mandatory information

When an officer stops you with reasonable suspicion, he can ask you for information about your identity. You should only give him **your name, date of birth, and address if they ask.** Also, **lying to**

officers is a crime. If you are going to hand an officer your ID, tell him that, and do not reach into your pocket until you tell the officer what you're doing.

Police Interrogations & "Miranda" Warnings

If you are questioned by the police on the street or after you have been arrested, you may assert your Fifth Amendment right to remain silent by saying, **"I am going to remain silent. I want to see a lawyer."** (Note: You must affirmatively state that you will remain silent in order to properly assert your Fifth Amendment rights.) The police do not have to read you your rights (a "Miranda" warning). The police regularly intentionally violate Miranda, and though your rights have been violated, what you say can be used against you. For this reason, it is better not to wait for the cops to tell you your rights. You can invoke them by using the language above.



Immigration Status Questions

Regardless of if you are undocumented, out of status, a legal permanent resident (green card holder), or a citizen, **you do not have to answer any questions about your immigration history.**

Police Mistreatment

You have the right to ask for an officer's name and badge number. If you are mistreated, try to obtain this information as well as contact information for witnesses. If you resist or fight back, you can be charged with assault or battery to an officer.

Recording Police Activity

Making audio recordings of on-duty police officers is a felony under state law (720 ILCS 5/14-1), but a federal court judge declared the law unconstitutional in April 2013 and has permanently enjoined Cook County from prosecuting anyone openly recording on-duty police officers in public. This ruling does not yet apply to actions outside of Cook County. Despite the fact that you cannot be charged, filming or recording police may anger them and make you a target for other discretionary charges such as disorderly conduct.

Potential Charges

There are several possible charges that you may face from protest activity. Disorderly conduct is the most common charge protesters face. Some other potential charges are listed below, but this list is not exhaustive. Not that some charges are possible violations of both City of Chicago ordinances and Illinois state laws.

Disorderly Conduct

Under the City of Chicago ordinance (8-4-010), a person commits disorderly conduct when she: (1) knowingly acts in an "unreasonable manner" such that she "provokes, makes, or aids in making a breach of the peace" or "Fails to obey a lawful order of dispersal by a person known by him to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or alarm." Potential consequence: up to \$500 fine for each violation. "The "failure to disperse" section of this ordinance was declared void as unconstitutionally vague in September 2012, but it is unclear what the current enforcement of the law is."

Under the state statute (720 ILCS 5/26-1), a person commits disorderly conduct when she knowingly "does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." Potential consequence: between 30 and 120 hours community service; up to 30 days in Cook County jail.

Criminal Trespass

Under the City of Chicago Ordinance (8-4-050), a person commits criminal trespass when she enters or remains on property after being notified that her presence is forbidden or after notice to leave, or "[w]illfully defaces...or destroys any building or part of any building." Potential Consequence: Fine between \$100-500.

The same actions are punishable as trespass under state statute (720 ILCS 5/21-3). Potential Consequence: up to 6 months in jail, a \$1,500 fine, or both.

If a person trespasses on land or in a building funded in part by state money, the criminal penalties increase. (720 ILCS 5/21-5) Potential Consequence: up to one year in jail, a \$2,500 fine, or both.