

OPEN CONTAINER

There are many laws that regulate alcohol possession and consumption, and being under the influence of alcohol in New York City. Here are the laws governing such behavior:

CONSUMPTION OF ALCOHOL ON STREETS PROHIBITED

(open container, generally) - NYC Administrative Code §10-125 (this is a violation):

a) an "alcoholic beverage" contains more than .005 alcohol by volume

b) a "public place" is a place like a street, shopping area, or park that the public has access to.

c) you may not consume, or possess with intent to drink or consume, an open container of alcohol in a public place

d) possessing an open container creates a presumption that you intended to drink it (although you can disprove this presumption)

ALCOHOL IN TRANSIT FACILITIES

(part of "Disorderly Conduct" in transit facilities) - Transit Authority Rule 1050.7 (*this is a violation*):

Behavior that is not allowed:

g) drinking alcohol or possessing an unsealed alcoholic beverage

h) entering or being in a station or train where your ability to function safely there is impaired by alcohol or drugs

ALCOHOLIC BEVERAGES IN PARKS

Parks

Department Regulations (misdemeanor or violation):

§1-04: Prohibited Uses

d) glass bottles prohibited in parks

§1-05: Behavior that is not allowed:

f) 1) drinking alcohol in park or possession (even closed) with intention to drink it

f) 2) appearing in park under influence of alcohol to degree that you endanger or unreasonably annoy others

WHAT IS A QUALITY OF LIFE VIOLATION?

"Quality of life" violations are minor offenses like open container and disorderly conduct. They are not crimes, meaning that they should be sealed on your New York State rap sheet and people like potential employers and private landlords should not be able to see them (although NYCHA might).

Quality of life violations are especially problematic because:

1) They target people who are homeless and are selectively enforced, meaning that police ticket and arrest people who appear homeless and less often ticket and arrest non-homeless people for these same actions

2) The punishments associated with them are often excessive.

The city of New York accumulated over \$5 million in fines from summonses in 2005. The two most frequently charged summons offenses in 2005 were Open Container and Disorderly Conduct. Also in the top ten were Public Urination (under 2 different codes) and two separate Parks violations. In addition to fines, people are often given community service, a form of slave labor where homeless New Yorkers are forced to work for the city for free for very minor violations of the law.

*Organizing For Justice and Respect:
Don't Talk About Us: Talk With Us!*

PICTURE THE HOMELESS

www.picturethehomeless.org

Picture the Homeless was founded by two homeless men in 1999 and is led by homeless people today. Picture the Homeless was founded on the principle that in order to end homelessness, people who are homeless must become an organized, effective voice for systemic change.

**CIVIL RIGHTS MTGS, TUESDAYS 2PM,
212-427-2499**

KNOW YOUR RIGHTS: QUALITY OF LIFE VIOLATIONS

This publication is produced by Picture the Homeless to inform you of your rights and responsibilities under the law. It is not legal advice and cannot substitute for a lawyer.



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KNOWING YOUR LEGAL RIGHTS IS IMPORTANT BECAUSE:

1) Knowing the law is an important tool in fighting police abuse. If you know the law, you can know what to look for in police interactions when you think that the police were violating your rights.

2) Just because you are ticketed or arrested for something does not mean that you were doing something illegal. The police can make mistakes in filling out paperwork or be wrong about the law, and you have the right to defend yourself against these errors.

3) Common mistakes that the police make are writing the wrong charge or number of the law associated with that charge on your ticket or paperwork. Sometimes the police will write something down that does not match your behavior or will charge you with something (like panhandling) that is not illegal. You can use your knowledge of the law to challenge these types of mistakes in court and as a way to hold the police accountable.

Once you know the law, you can make informed decisions about what your options are and what actions you want to take. You are not a victim of the law, but can be an active participant – from challenging tickets and arrests on an individual level to educating others on their rights and working for social change.

DISORDERLY CONDUCT

Police sometimes give “disorderly conduct” tickets when they don’t have anything else to charge people with. Here are the legal definitions of disorderly conduct:

DISORDERLY CONDUCT (GENERALLY) - NY Penal Law §240.20 (this is a violation):

Intending or recklessly creating a risk that there will be public inconvenience, annoyance or harm WHILE:

- 1) fighting or participating in violent, tumultuous, or threatening behavior
- 2) making unreasonable noise
- 3) using abusive or obscene language or obscene gestures in public
- 4) disturbing others meeting up (without legal authority)
- 5) blocking pedestrian or vehicular traffic
- 6) gathering with others in public and not dispersing when police lawfully ask you to do so
- 7) creating a dangerous/physically offensive condition by any act that does not have a legitimate purpose.

“DISORDERLY BEHAVIOR” IN PARKS – Parks Department Regulation § 1-04 (this can be a misdemeanor or violation):

Behavior that is not allowed:

- l) 1) entering / exiting the park at places not designated as an entrance/exit or trying to enter locked/restricted areas(misd)
- l) 2) climbing any tree/ bush/ structure not intended for climbing (misd)
- l) 3) Trying to enter a place in the park where payment is required to enter and payment is not made (misd)
- l) 4) gambling
- l) 5) interfering with, blocking or making any park road or any part of the park dangerous
- l) 6) fighting/assault
- l) 7) sexual activity
- l) 8) endangering the safety of others
- l) 9) operate bicycle, motorcycle or other vehicles in a dangerous manner

DISORDERLY CONDUCT

DISORDERLY CONDUCT IN TRANSIT FACILITIES – Transit Authority Rule 1050.7 (this is a violation):

- Behavior that is not allowed:**
- a) littering, or creating unsanitary conditions
 - b) smoking
 - c) sleeping in a disruptive manner
 - d) gambling
 - e) using music/sound players w/o headphones
 - f) throwing/dropping any item onto the tracks, buildings, or trains
 - g) drinking alcohol or possessing an unsealed alcoholic beverage
 - h) being in a station or train where you can’t function safely due to alcohol or drugs
 - i) acting in a way that would annoy, alarm or inconvenience others
 - j) taking up more than one seat at a station/on a train, lying on the floor or stairs, or blocking others’ access to the floor or stairs
 - k) riding bicycles, skateboards, in-line skates, etc.
- *It is NOT illegal to sleep sitting up on a train or bus**

ARRESTS WITHOUT A WARRANT

Generally, when the police ticket and arrest people on the street for quality of life offenses, the police do not have a warrant and there are rules about what they can and can’t do.

Arrests without a warrant; by police officer; when and where authorized – New York Criminal Procedure Law §140.10:

- An officer may arrest a person for:
- 1) a) any offense committed in his presence (like violations)
 - 1) b) any crime he believes the person committed, in the officer’s presence or not (misdemeanors and above)
 - 2) a) a violation, when committed in the geographical area of the officer’s employment
 - 2) b) a misdemeanor or above, whether committed in the geographical area of the officer’s employment or outside it.

STOP AND IDENTIFY LAWS

New York’s “Stop and identify law”, NY Criminal Procedure Law §140.50, dictates when the police can ask you to identify yourself. New York’s law also talks about when they can frisk you.

Temporary Questioning of Persons in Public Places – NY Criminal Procedure Law §140.50:

- 1) An officer may stop a person within his geographic area of employment and demand his *name, address, and explanation of his conduct* WHEN:
 - he reasonably suspects the person is committing, has committed, or is about to commit a *misdemeanor* OR a *felony* (**NOT a violation**)

Search for Weapons – NY Criminal Procedure Law §140.50:

- 3) An officer may search a person stopped under the circumstances described at left WHEN he reasonably suspects he is in danger of physical injury AND is searching for a deadly weapon or any instrument capable of causing serious physical injury and is not of a sort usually carried by law-abiding persons in public places.

Although the police may demand your name, address, and an explanation of your conduct in these circumstances: 1) this law does NOT mean that you have to produce an identification card, 2) they are allowed to fingerprint you and identify you if they ARREST you – even if they arrest you for a violation. However, they are not allowed to arrest you solely for not identifying yourself, because not identifying yourself is not a crime in New York.

ACDS (ADJOURNMENT IN CONTEMPLATION OF DISMISSAL)

When you are ticketed or arrested for a minor offense, you may be offered an ACD plea bargain. Often the judge or lawyer will say something like, "Your case is being dismissed. Just stay out of trouble for 6 months." An ACD can offer you immediate freedom BUT there are important things to know about ACDs:

1) A condition of an ACD is often no police contact for 6 months. If you violate a condition of your ACD you can receive a much harsher penalty than your original violation carried – like jail time.

* If this has happened to you, let Picture the Homeless know – it is illegal!

2) Under New York's Criminal Procedure Law §170.55, you can not be given an ACD lasting longer than 6 months, unless it is related to family violence.

3) You do not have to take an ACD! If you think you will not be able to avoid police contact or will violate another term of your ACD and do not want to receive a harsh penalty for the violation, ask your Legal Aid lawyer what will happen if you don't take the ACD

FINGERPRINTING

The police are only allowed to fingerprint you under certain circumstances. Under New York Criminal Procedure Law §160.10, "**Fingerprinting; duties of police with respect thereto,**"

The police **MUST** fingerprint you if:

- 1) You are arrested OR
- 2) You are charged with a felony, or a misdemeanor that is defined in the Penal Law (quality of life offenses are generally violations or else are misdemeanors only under the NYC code, not the state code) OR
- 3) You are charged with loitering for the purpose of engaging in deviate sex or prostitution.

The police **MAY** fingerprint you (but are not required) if they arrest you AND:

- 1) Cannot figure out your identity OR
- 2) Reasonably suspects that the identification you gave was not accurate OR
- 3) Reasonably suspects that you're wanted for another offense

LOITERING

New York has several anti-loitering laws, although their constitutionality has been challenged. Generally, loitering in itself is not illegal, though you cannot block residential or commercial entrances or exits.

However, loitering for the purpose of doing something else illegal *is* illegal:

LOITERING (GENERALLY) – NY Penal Code §240.35 (*this is a violation*):

Behavior that is not allowed:

- 2) loitering for the purpose of gambling
- 4) loitering while masked or disguised (except for police-authorized masquerade parties)
- 5) loitering on school grounds or at a children's camp
- 6) loitering in a transit facility to solicit or engage in business (including playing music)

NY Penal Code §240.36 when you loiter for the purpose of possessing or using a controlled substance

NY Penal Code §240.37 Loitering for the purpose of promoting, or patronizing a person for prostitution

"LOITERING FOR ILLEGAL PURPOSES" IN PARKS -

(part of "Prohibited Uses" of Parks) - Parks Department Regulation §1-04 (*this can be a violation or misdemeanor*):

Behavior that is not allowed:

- m) 1) prostitution (buying or selling)
- m) 2) loitering to sell drugs or alcohol

LOITERING IN TRANSIT FACILITIES

(part of "Loitering" generally. There is no MTA regulation about loitering) – NY Penal Code §240.35 (*this is a violation*):

- 6) loitering in a transit facility to solicit or engage in business (including playing music)

PUBLIC URINATION:

Public urination is primarily regulated by littering ordinances, with special regulations for parks and transit:

PUBLIC URINATION (GENERALLY) (called "Littering Prohibited") – NYC Sanitation Code §16-118 (*this is a violation*):

Behavior that is not allowed:

- 4) drop, spill... refuse, rubbish, manure, garbage, or other organic refuse, in or upon any street or public place
- 6) causing / allowing filthy liquid or matter to fall on the streets

PUBLIC URINATION IN PARKS (part of "Prohibited Uses" of parks) - Parks Department Regulations §1-04 (*this can be a violation or misdemeanor*):

Behavior that is not allowed:

- k) public urination or defecation in parks

PUBLIC URINATION IN TRANSIT FACILITIES (part of "Disorderly Conduct" in transit facilities) - Transit Authority Rule 1050.7 (*this is a violation*):

Behavior that is not allowed:

- a) creating "unsanitary conditions" in transit facilities (urinating in places other than toilets)



PANHANDLING:

Panhandling is not illegal. It is a form of free speech protected by the First Amendment. However, certain types of panhandling are regulated:

AGGRESSIVE PANHANDLING (called “Harassment in the Second Degree”) – New York Penal Code §240.26 (*this is a violation*):

Intending to harass, annoy, or alarm another person WHILE:

- 1) making/threatening to make violent physical contact with a person
- 2) following someone in or around a public place
- 3) engaging in a “course of conduct” or repeatedly acting in an alarming or seriously annoying way to another person, WHICH serves no legitimate purpose.

AGGRESSIVE PANHANDLING (called “Prohibition against certain forms of aggressive solicitation”) – NYC Administrative Code §10-136 (*this is a misdemeanor*):

Behavior that is not allowed:

- b) 1) aggressive begging in public (aggressive begging is approaching or following someone in a way that would cause a reasonable person to fear bodily harm, damage to or loss of property, intimidation, or causing them to suffer unreasonable inconvenience, annoyance, or alarm. Intentionally blocking or interfering with someone or using violent or threatening gestures towards the person solicited from).
- b) 2) begging within 10 feet of an ATM or check cashing business
- 3) approaching a car to beg or exchange services for money

This does not apply to ATMs in supermarkets, airports, or school buildings (though other restrictions may apply to those places)

PANHANDLING IN PARKS (part of “Prohibited Uses” of Parks) – Parks Department Regulation §1-04 (*this can be a violation or misdemeanor*):

- s) 2) no panhandling in parks

PANHANDLING IN TRANSIT FACILITIES (part of “Use of the Transit System”) – Transit Authority Rule 1050.6 (*this is a violation*):

- b) 2) No panhandling in any station or on any train

SITTING/SLEEPING

Although there are not specific laws prohibiting sleeping or sitting in public, police often charge people under other laws for these activities.

SLEEPING/SITTING (GENERALLY) (part of “Disorderly Conduct”) – NY Penal Law §240.20 (*this is a violation*):

Intending or recklessly creating the risk that there will be public inconvenience, annoyance or harm WHILE:

- 5) blocking the sidewalk or street for pedestrian or vehicular traffic.

SITTING / SLEEPING (GENERALLY) (part of “Vehicles and other movable property”) – NYC Administrative Code §16-122 (*this is a violation*):

Behavior that is not allowed:

- b) On the sidewalk or in the street: leaving any box, barrel or other movable property or erecting a building or obstruction

SLEEPING/SITTING IN PARKS (Part of “Prohibited Uses” of Parks) – Parks Department Regulation §1-04 (*this can be a misdemeanor or violation*):

Behavior that is not allowed:

- o) blocking other persons from using a bench with your person or your stuff
- p) camping or maintaining a tent or shelter in park without a permit

NOTES