

| ABOUT |

THE ZINE | This is not your everyday 'Know Your Rights' booklet!

RESISTING is for those fighting for collective liberation, and against systemic injustice and oppression while being subjected to Canadian colonial law. It is a thorough, plain-language resource that will walk you through your legal rights (or, realistically lack thereof) and then on to more information than any dissident could ask for.

Learn about the entire step by step processes of detention, arrest, and court, the pros & cons of lawyers and duty counsel, common charges and sentences, how to prepare for arrest or being a surety, and a lot more.

THE AUTHOR | This zine was written by and from the perspective of a white settler living in the occupied territories that have been home to many Indigenous peoples including the Huron-Wendat, Chonnonton, Petun, Erie, Anishinaabeg, Missisaugas, and most recently the Haudensaunee in so-called southern ontario. They have had plenty of personal experience with police repression including arrest, court and jail as well as supporting others (expectedly and unexpectedly) through those processes.

The legal information found within is taken and updated from mixed sources, including individuals, lawyers, resources from the Movement Defense Committee in Tkaronto, legislation as written, as well as personal experiences and perspectives.

To submit comments, feedback, corrections, updates etc. contact:
RadHamilton@riseup.net



| RESISTING |

| FEAR, ARREST & REPRESSION |

a zine to demystify the decisions, processes and risks around
arrest in the context of political work so
that we can be informed, courageous & dangerous; together.

| GLOSSARY OF TERMS |

ADJOURN | To bring back a matter another day or time

CROWN SCREENING | A paper indicating the crown's initial position on your charges

CROWN RESOLUTION | A meeting with the crown to try and resolve charges

CROWN PRETRIAL | A meeting to discuss issues for trial, witnesses and trial date

CUSTODY/CUSTODIAL | To be in police custody; to have a jail sentence

DETAINED | To be kept by police; not under arrest or charged, but not free to go

DISCHARGE | A court sentence with no permanent criminal record

DISCLOSURE | Evidence the crown has; officer notes, photos, video, statements etc.

DIVERSION | A process to settle your charge outside of court

GLADUE | Sentencing principles for Indigenous people

JUDICIAL PRETRIAL | A meeting to discuss issues for trial in front of a judge

INJUNCTION | A court order against individuals or groups meant to stop an action

OIC UNDERTAKING | Signing conditions with an officer in charge (OIC) to be released

PAROLE | A release from jail or prison before your sentence is complete, on conditions

PROBATION | Post-sentencing conditions

PROMISE TO APPEAR | A signed document agreeing to appear for fingerprinting or court

RECOGNIZANCE | Bail, usually under conditions.

REMAND | To be sent to custody to await a bail hearing or trial, or after sentencing

SET DATE | Initial court dates before resolution while awaiting screening & disclosure

SLAPP SUIT | "Strategic Lawsuit Against Public Participation"; intended to censor

SUMMONS | A notice to an accused that they must attend court

SURETY | An individual who supervises an accused in the community

SUSPENDED SENTENCE | A sentence that can be recalled if you breach, so that you can be re-sentenced to custody

| SHIFT YOUR PERSPECTIVE: CANADIAN LAW AS A TOOL OF COLONIZATION |

Since the settlement and forced seizure of lands to make up so-called Canada, colonial law has been weaponized against Indigenous people; from having treaties signed with duress or trickery, to the formation of the RCMP to clear the plains, to residential school systems and assimilation legislation, to the criminalization of ceremonies & life.

The theft and exploitation of Indigenous people under the guise of colonial law continues today. We see it reflected in racist child apprehensions, targeted police violence, incarceration and remand¹ statistics, state interference with sun dance ceremonies and pow wows as seen during the COVID pandemic, as well as ongoing struggles for sovereignty and the land & water - including related court proceedings.

White and white-passing settlers are the individuals "best served" by Canadian law – meaning that they often escape serious repercussions when involved with the legal system, compared to Black, Brown and Indigenous people. Law is also used systemically to maintain power over Indigenous peoples by the settler-state in a number of ways.

Canadian law is a practise of white supremacy.

Settlers need to think critically about - and challenge - all aspects of the colonial state including the legal, court, and policing systems.

INDIGENOUS PEOPLE
CURRENTLY COMPRISE 13%
OF PERSONS IN REMAND
DETENTION, DESPITE
REPRESENTING ONLY 2% OF
ONTARIO'S POPULATION.

—
THEY COMPRISE MORE THAN
30% OF JAIL POPULATIONS,
DESPITE REPRESENTING ONLY
5% OF THE POPULATION.

—
INDIGENOUS WOMEN
REPRESENT 40% OF
INDIVIDUALS IN FEDERAL
CUSTODY.

¹ Remand is when someone is kept in custody while they await their trial

| PRIVILEGE & ARREST |

This zine was assembled for folks who are interested in - or already doing - political organizing/mobilizing work that involves some risk of arrest.

Having the choice to engage in struggle outside of our life context is a privilege. *Choosing* land defense is a very different experience than having to defend your territory while being subjected to current and past colonial forces. So is being arrested for either. Likewise, *preparing* for an arrest is an advantage that many marginalized by the state don't have.

Consider how media portrays Indigenous struggles and people through headlines and news clips versus – for example – a mostly white environmental group trying to save a park in their neighbourhood. Public support and commentary, surveillance, safety during police enforcement, police tactics, court proceedings, and treatment by court personnel will all

vary. Black, Brown and Indigenous peoples are inherently at more risk when dealing with police and courts. And while *Gladue principles*² are an attempt to minimize Indigenous peoples' involvement in the courts, they fall short and fail to address the root of the over-incarceration of Indigenous people such as racism, and the ongoing colonization & white supremacy of Canada as a state.

We encourage folks engaging in risk to think of these things and balance their individual position and privilege in actions and consequences. Remain cognizant and de-centre yourself where applicable, balance the resources your arrest will require or take from others, and consider privilege and power you may be able to leverage for others in times of both risk and repression.

A 2002 STUDY OF TORONTO BAIL COURTS FOUND THAT PEOPLE OF COLOUR ARE MORE OFTEN DENIED BAIL, AND WHEN RELEASED, GIVEN MORE RELEASE CONDITIONS THAN PEOPLE WHO ARE WHITE OR WHITE-APPEARING.

²Legal considerations intended to prevent the incarceration of Indigenous people

| OUTCOMES: EXAMPLES & DEFINITIONS |

CITY	CHARGE	CROWN POSITION	RESULT
TORONTO	ASSAULT WITH WEAPON	DIVERSION	DIVERSION: 25 HRS COMMUNITY SERVICE, LETTER OF REGRET
TORONTO	MISCHIEF	CONDITIONAL DISCHARGE	DIVERSION
HAMILTON	OBSTRUCT POLICE	60 DAYS CUSTODY	WITHDRAWN
SARNIA	MISCHIEF ENDANGERING LIFE	SUSPENDED SENTENCE	CHARGES CHANGED TO MISCHIEF OVER & UNDER. PEACE BOND.
HAMILTON	ASSAULT	30 DAYS CUSTODY, 2 YRS PROBATION	10 DAYS CUSTODY
WOODSTOCK	MISCHIEF UNDER x2 FAIL TO COMPLY (FTC)	SUSPENDED SENTENCE	WITHDRAWAL FTC, SUSPENDED SENTENCE ON ONE COUNT MISCHIEF

PEACE BOND | The withdraw of the charge(s) in exchange for signing an agreement to follow certain conditions. No criminal record.

DIVERSION | The withdraw of the charge(s) after community service hours or programming has been completed. No criminal record.

ABSOLUTE DISCHARGE | A finding of guilt – not a conviction. No requirements to fulfill. Criminal record can be destroyed after 1 year.

CONDITIONAL DISCHARGE | A finding of guilt – not a conviction. Usually a set period of probation terms to follow. Criminal record can be destroyed after 3 years if there are no further charges.

FINE | Up to \$5000 for summary offenses or any amount of Indictable. Court must consider defendants ability to pay. Can be combined with other sentences.

SUSPENDED SENTENCE | A probation with terms up to 3 years. If the terms are breached, the sentence can be recalled and the individual can be sentenced to jail.

IMPRISONMENT | A custodial jail sentence. A conditional sentence is a non-custodial sentence (house arrest) for individuals serving less than 2 years and who otherwise qualify.

| AM I GOING TO JAIL? |

Probably not, no.

Any criminal offense allows for the possibility of jail – but that doesn't mean the crown will seek it, and if they do it doesn't mean they'll get it.

Sentencing generally follows a “ladder” of consequence, moving from extrajudicial processes³ like diversion or a peace bond to a conditional discharge, suspended sentence, non-custodial probation and then a custodial sentence.

Most first-time offenders with summary offenses are given diversion or peace bonds. Most second (and sometimes third) time offenders are given a conditional discharge, with some kind of probation.

When you look up the sentencing options for a criminal charge, what you read is the absolute maximum sentence a judge can give you. For example, an offense such as mischief under - pursued summarily, since it's a hybrid offense - states someone can receive a fine of up to \$5000 and/or a jail sentence up to 6 months. It is incredibly unlikely the crown will ask or receive anything close to that maximum unless there is a long criminal⁴ record that includes serving jail time, along with aggravating factors. The crown does tend to ask for harsher penalties for clear charges of assault or obstruct police, however.

| GOING TO JAIL: FURTHER READING |

1. BORED NOT BROKEN | <https://boredbutnotbroken.tao.ca/>
a blog written by a Tkaronto g20 prisoner.

2. THE HOT TRAY HOOPER | zine
a collection of short-stories that focus on the lightness and human connection people rely on to make time incarcerated bearable.

³ Settling the charge outside of court, resulting in no record and only one further court appearance to withdraw the charge(s).

The Crown is seeking the following sentence:
Le procureur de la Couronne demande l
60-90 days jail + 1 year probat

| STARTING POINTS |

1. RIGHTS AREN'T PREVENTATIVE.

Having “rights” doesn't protect you from being wrongly arrested, injured, or illegally searched in the moment. Police have most or all of the power in an arrest or detention situation, and it's not uncommon for them to overstep. Rights are best relied on as fixative – repair after the fact.

2. POLICE ARE NOT OUR FRIENDS

No matter your connection and experience with police outside of political action, within them the police are not our friends and you shouldn't be talking to them. Their function at protests is to surveil, gathering information and intelligence, and take notes. Their presence is not connected to our safety, wellbeing, or their interest in the cause.

POLICE PRESENCE ALSO REDUCES THE SAFETY AND COMFORT OF MANY INDIVIDUALS - in particular racialized & Indigenous folks, 2SLGBTQIA+ folks, those who are non-status, have mental health issues, or have exposure to police by occupation such as a bartenders, sex workers, or social service workers. These groups often have tenuous working relationships or long histories of harassment & abuse at the hands of police. Ignoring the experiences of marginalized people in your community to make police feel welcome is absurd.

Stand with your community and those pushing for change: Don't invite the police to demos, and don't talk to them if they show up.

3. WE WILL FACE REPRESSION – AND LIKELY SURVIVE IT

Historically integral changes have come as a result of people (especially people of colour) challenging the tenets of dominant systems of control. If we are challenging power structures we must accept that we will be subject to repression. For the majority of individuals that repression is survivable.

| TL; DR |

Under the Charter of Rights & Freedoms, **YOU HAVE THE RIGHT TO** know your charges, remain silent⁴, speak to a lawyer, and be brought before a court within 24 hours⁵.

If you are stopped by police while riding a bicycle and accused of an infraction, you must provide your name and address. Refusal can result in arrest.

If you are stopped by police on foot, you don't need to tell them anything unless you are under arrest.

If you receive charges after a demo, reach out to organizers.

Being charged criminally doesn't equal a criminal record | P. 6

Process of Arrest | P.7

You don't get a phone call: Police will notify one lawyer for you | P.11

Court Process | P.20

Good security culture is good legal prep | P. 29

Surety Prep | P. 30

Charge Outcomes | P. 32

Arrested... without status | P.24

while trans | P. 24

while a parent | P.23

needing accommodation | P.22

as a youth | P.23

⁴ If under arrest, you must provide your name, date of birth, and current address

⁵ Right is not fixed. Police are supposed to try. Being brought before a court does not guarantee you a bail hearing within 24 hours – it may just be a brief appearance to schedule a bail hearing.

| PREP FOR SURETIES |

Forget your politics [temporarily]! Court is not a place to debate the need for authoritative control over others' lives or proclaim sympathy for the political action. The goal here is getting your friend/lover/comrade out of jail.

As a surety, you may or may not need to take the stand. When the crown or judge cross examines a potential surety they can sometimes ask trick questions. Keep cool. They mostly want to know that **[1]** You are not "of the same ilk" and didn't also participate in whatever got your person arrested **[2]** You have "influence" over the accused (by relationship or situation) **[3]** If they breach, you'll report them immediately **[4]** You're not being forced or paid to be a surety.

IN THE 2018 ANTIFASCIST RESISTANCE TO BANNON'S APPEARANCE IN TORONTO, ONE OF THE ARRESTEES WAS FROM OUT-OF-TOWN WITHOUT A SURETY. A RAD LOCAL PERSON SUCCESSFULLY ARRANGED TO BE THEIR SURETY, DESPITE NOT KNOWING THE INDIVIDUAL ARRESTED. WE DON'T IMAGINE THIS WOULD WORK EVERYWHERE, OR UNDER EVERY CIRCUMSTANCE, BUT THOUGHT IT WAS INTERESTING TO NOTE.

| SHIT THE HAMILTON CROWN HAS ASKED SURETIES ON POLITICISED CASES |

How long have you known soandso? How do you know eachother? What is their birthday? Their address? What do you do for a living? How much do you make? How many hours a day do you work? If you're busy that many hours a day how will you supervise soandso? How do you feel about soandso's actions/charges? What are you willing to do to ensure soandso doesn't breach their [specific] conditions? What will you do if you suspect they are about to breach? Were you at the same event that resulted in charges for soandso? Where were you during the event? Did you know they were attending? How can you think you're close if you don't know what they do with their life? Are you being willfully ignorant?

NO RELEVANT RECORDS available

| SECURITY CULTURE AS ARREST PREP |

The state is always working against dissenters; good security culture practises are a good defense against the state. Security culture – which is different from but might include digital security practises – are norms that can keep individuals and groups safer.

The zine “Confidence, Courage, Connection, Trust: a proposal for security culture” is a good place to start reading and considering practises.

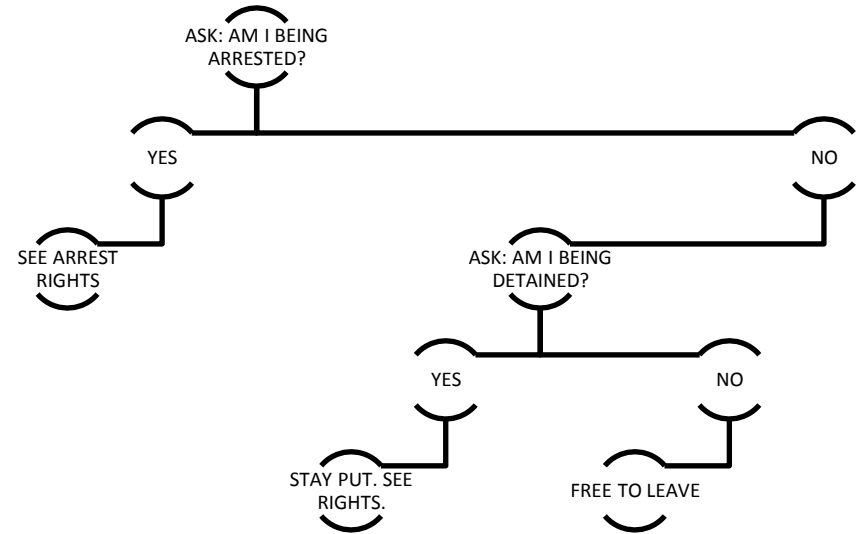
| WHO KNOWS BEST: LAWYERS OR EXPERIENCED ORGANIZERS |

Maybe this is more of a “who knows what” question.

Lawyers can be exceptionally useful and are sometimes necessary, however they may have little personal experience, or limited willingness for accommodating political or collective defenses which can collectivize and reduce harm. Lawyers also often pressure individuals to sign initial bail agreements for a quick release from jail, with promises to change them – even when those conditions may be worse for an arrestee’s mental health than temporarily staying in custody. Conditions can be difficult to change – even with a lawyer - and the bail review to do it will take at least 30 days to file and longer to hear. Staying in custody until a contested hearing to fight more onerous conditions will take between a few days and a couple weeks.

Ultimately the collective experience of radical left and anarchist circles is more than sufficient to get you through the first few steps of being arrested and making bail. Some even have experience doing crown resolution and running their own trials without a lawyer. Don’t feel pressured to retain immediately – seek information, experience, and balance the cost against what else those funds could be accomplishing in your movements.

| IF YOU ARE STOPPED BY POLICE |



KNOW YOUR (ARREST) RIGHTS

IF YOU ARE UNDER ARREST, THE ONLY INFORMATION YOU HAVE TO SHARE WITH THEM IS YOUR NAME, DATE OF BIRTH, AND ADDRESS.

They may ask other questions related to an event you may have been at: **DO NOT TALK TO THE POLICE.** Your answer may verify you were there or provide information the police need to charge or convict you, or others.

They may also ask questions about your phone number, next of kin or medical history: you don’t have to answer any of them if you don’t wish to.

YOU HAVE THE RIGHT TO KNOW YOUR CHARGES, REMAIN SILENT, SPEAK TO A LAWYER, AND BE BROUGHT BEFORE A COURT WITHIN 24 HOURS⁶.

⁶ Right is not fixed. Police are supposed to try. Being brought before a court does not guarantee you a bail hearing within 24 hours – it may just be a brief appearance to schedule a bail hearing.

| IF YOU ARE **DETAINED** |

Being *detained* isn't the same as being arrested. It might look like a cop stopping you on the street, usually with an excuse about an incident nearby. Similar to being pulled over for speeding, you are not under arrest but you are not free to leave. You are under investigation - act like it!

Police may try and ask you questions about your identity, where you're coming from or headed to, what you may have seen etc. **DO NOT TALK TO THE POLICE**, even if you think it's harmless.

| **YOUR "RIGHTS"** IF BEING DETAINED: |

You do NOT have to share any information with the police UNLESS you are driving a car, or riding a bicycle. *If you are driving a car*, you must be able to provide insurance, license and registration. *If you are riding a bicycle*, you need to provide your name and address. You don't need ID. Lying and being discovered could result in criminal charges.

In some cases, police can do a pat down search for the purposes of officer safety.

BEING DETAINED CAN END IN BEING RELEASED, OR CHARGED WITH AN OFFENSE (BYLAW, PROVINCIAL, OR CRIMINAL).

| **ARREST & BAIL PACKAGES** |

A compilation of info as simple or in depth as needed that can help guide friends (or organizers) in supporting you through arrest.

Trusted pals sometimes have write-ups they share with each other, keep encrypted, and up to date. Other times organizers of public actions have emergency arrest sheets for attendees to fill out either with their personal information, or an emergency contact who has access to that information if you wish to remain more private.

| **PACKAGES CAN INCLUDE** |

Basic info about yourself: full name, address, birthdate, work/income, health issues/medical needs (note that mental health issues, if shared with the crown, can be used as a reason to keep you in custody), legal status

Surety/Sureties: identify your surety, or potential sureties in order of preference. Provide their contact information.

Lawyers: Have you arranged one? Used one you've liked before that you'd use again? Under what circumstances do you want to hire a private lawyer (which can cost money) for a bail hearing over using duty counsel (free)?

Additional Contacts: partners, close friends, family. Also identify people you definitely DO NOT want contacted!

Care of others: What are your plans for your kids? Pets? Bills? Other deadlines? Be sure to include these individuals' contact info somewhere!

Support: How can people support you if you get out? How can they support you if you don't?

| PREPARING FOR ARREST |

THE PROCESS

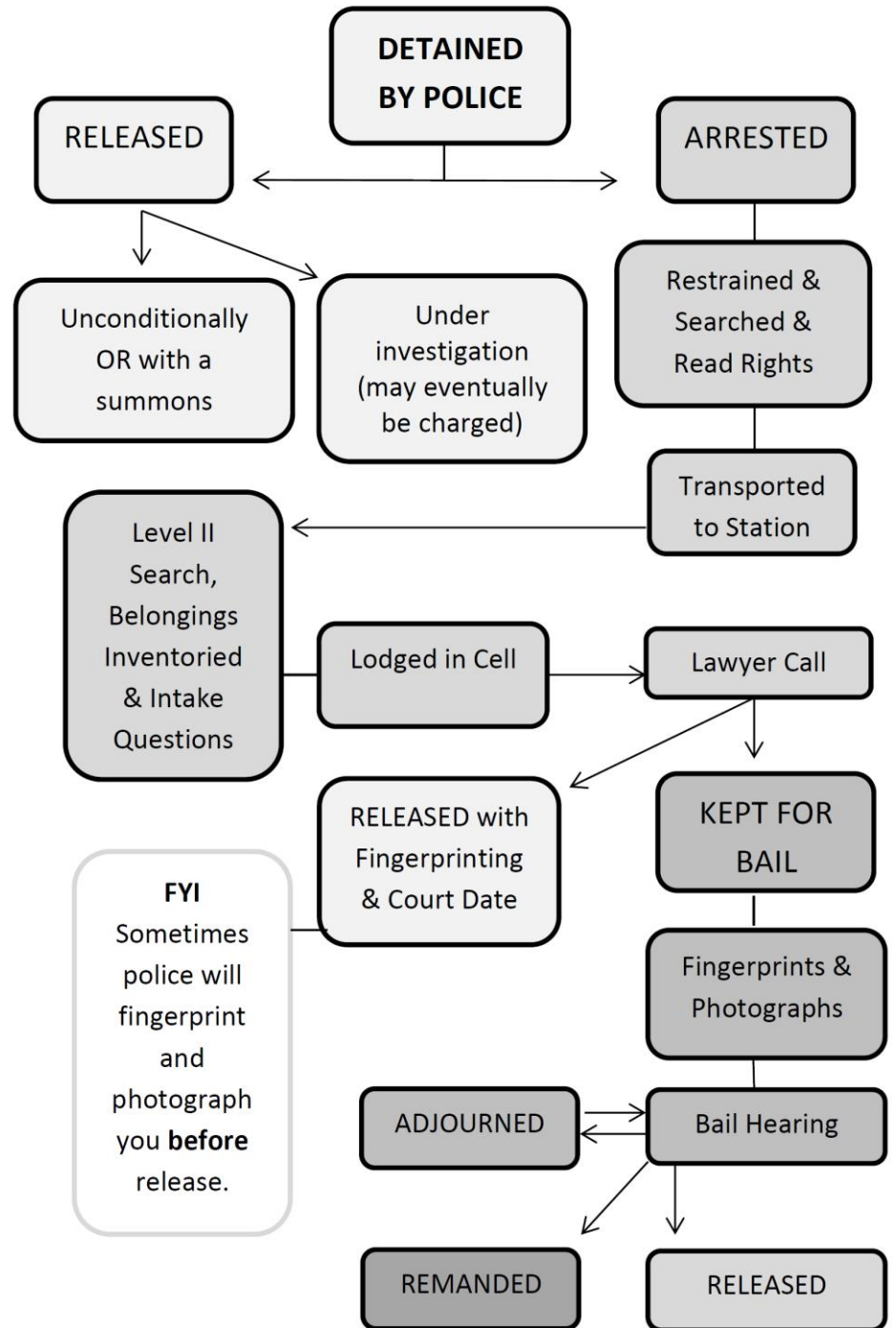
Getting arrested and charged isn't just a day-long commitment. Count on having court appearances for many months. It can take 8 months or longer to resolve charges in even the simplest ways.

WHO ARE YOU TAKING RISK WITH?

People you know well? Strangers? Do you have shared or opposing understandings of systems and ideal outcomes? How could this affect your messaging, goals, legal fundraising, and other organizing/movement work? If you're both in shared organizing groups or good friends, how will you navigate non-associations⁷?

CHECKLIST: LOGISTICS

- ✓ **Lawyers:** Do you have a friendly lawyer on standby? Does everyone taking risk know about them? Private lawyers aren't necessary (duty counsel is sufficient), but they can be helpful if trying to avoid harsh conditions or someone arrested is particularly at risk of not making bail.
- ✓ **Sureties:** Do you have an idea of who you will use? Have they consented to the possibility? Do you have their phone number memorized?
- ✓ **Clothing:** Jail is usually cold, and you get to wear one layer only. What are you going to wear?
- ✓ **Medications:** If you require daily/regular access to prescription medication, make sure you have an up to date prescription in your name on you. Make sure the label is legible. You may need people inside or outside the jail (lawyers, supporters, co-accused) to advocate for medication access – let support people know!
- ✓ **Bail Package:** An info sheet you might put together for your pals to give a lawyer that contains info that might help streamline the bail process and reduce the chances of adjournment.



⁷ See page #18

| COMMON TYPES OF CHARGES |

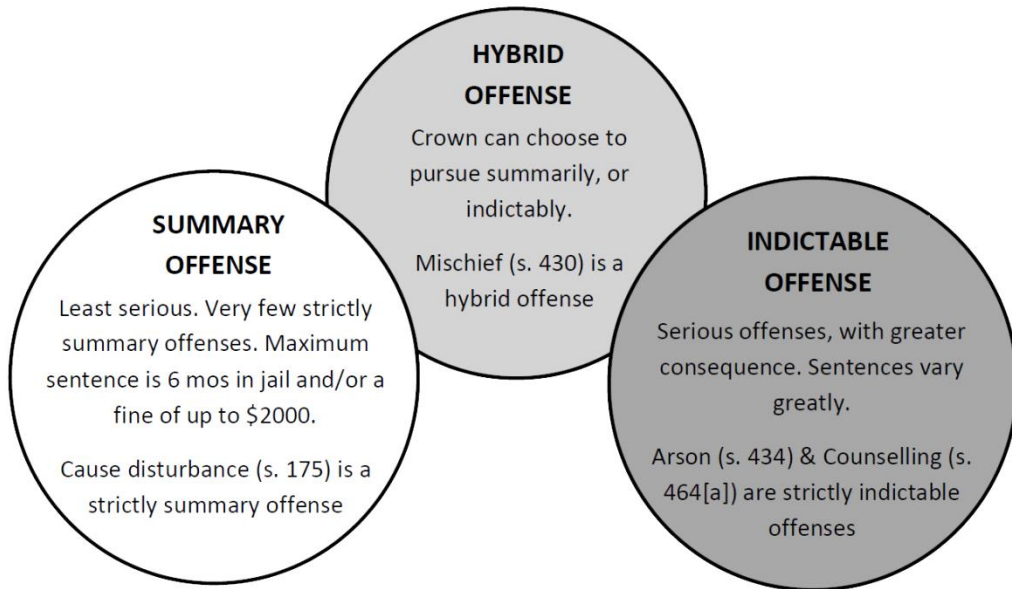
Municipal Bylaw Infraction: Impede traffic, setting off fireworks

Provincial Offenses Notice: Trespass to Property

Criminal Charges: Mischief, Assault, Assault/Obstruct Police, Cause Disturbance

| CRIMINAL CHARGES: SUMMARY, HYBRID, OR INDICTABLE |

BEING CHARGED CRIMINALLY DOESN'T MEAN YOU WILL HAVE A CRIMINAL RECORD!



In hybrid offenses, it is the crown who decides whether to pursue your charge as a summary or indictable offense. Most people will find this out at their first appearance on their crown screening sheet, which also outlines what the crown is seeking for your charges.

| FIGHTING THE FEAR OF REPRESSION |

EXPANDING OUR RISK CAPACITY

The Haymarket Affair. The police bombing of MOVE. Violent state responses against Indigenous People. The RCMP's *Operation Kabriole*.

Positioning ourselves against systemic injustices often means we are positioning ourselves against the state. When we act against the state, we will see repression. Spectacular arrests, police violence, inflated charges, increased harassment & surveillance, strict bail or probation conditions: each are meant to cultivate fear and end resistance.

To know a body with extensive resources is targeting you, your friends, or comrades have sometimes led to people stepping away from individuals, movements, or movement spaces – or verbally separating our own beliefs & actions from targeted individual and their actions.

Police, media, and sometimes other activists aid in this division by feeding or repeating narratives of “peaceful/non-peaceful” or “violent/non-violent” protests and individuals. This type of language and ideology only helps the state – and may be inherently problematic in other ways.

While these responses make sense insofar as being based in fear and self-preservation, the isolation it creates for those experiencing repression also puts them at risk of more. Isolation can lead to movement drop-out and division, mistrust/hurt, or information sharing with police.

It's essential we find ways to support those experiencing repression – and do everything we can to step together in times of intensity. This is not to avoid reflection or critiques, but to lessen consequences of repression and ensure individuals can receive and participate in discussions.

We can emerge from intensity never wanting to be involved in the actions or community that brought us there – or knowing we can survive it and be supported. Being arrested or facing repression together can expand our risk capacity if we do the work of being prepared, stepping toward each other during repression, and supporting each other through it.

| EXAMINING ARREST STRATEGICALLY |

It makes sense to recognize that in some political circles and communities an arrest seems to exist as some kind of rite of passage or activist cred. Arrest doesn't – or shouldn't – go hand in hand with credibility, trust, or an understanding of someone's commitment or capabilities.

People do rad, subversive [and “illegal”] actions every single day without getting caught; stealing to support actions or community, crossing borders, engaging in sabotage, redirecting corporate resources, and supporting frontlines without engaging in risk. Avoiding identification and capture leaves them able to continue acting with less detection, surveillance, and consequences – and in a position to act as a surety.

Intentional arrests can be a successful *tactic*⁸. They can also sometimes be a matter of heart or integrity. But they're not the only option, nor are they always the most effective. Using intentional arrest as an entire movement strategy⁹ or an unspoken measure of activist cred of someone's contributions is extremely misguided, at best.

THERE ARE COUNTLESS REASONS INDIVIDUALS CAN'T OR CHOOSE NOT TO TAKE ON PUBLICLY ARRESTABLE ROLES.

| they're doing other rad things and want to keep getting away with it | mental health concerns | being non-status | potential police or prison guard harassment around gender identity | finances – because lawyers and fines cost money | avoiding surveillance | avoiding bail and probation restrictions | avoiding arrest can mean continuity of action | relationship stress | taking or slowing resources other prisoners need to access | existing responsibilities – like kids, pets, or elder care – without community support | because our dreams of justice don't exist within the courts |

⁸ An individual means or action to achieve a goal or objective

⁹ Overall plan, comprised of various tactics

| BYLAW & PROVINCIAL OFFENCE NOTICE |

Charges from actions aren't always criminal. Sometimes police will ticket you with a bylaw infraction (eg. for blocking traffic or setting off fireworks). Other times they may use a PON – especially if you're caught leaving or using a vehicle as part of the demo.

Neither of these has any impact on your criminal record; they are not serious and are similar to a ticket for parking or speeding. They do not need to be disclosed to anyone and typically involve fines - even where legislation suggests the possibility of jail time. Police have often used this as a way to intimidate, harass, or identify individuals involved in a protest.

Be sure to weigh the financial, emotional, time, and socio-political cost of fighting them over paying: sometimes it's worth it, sometimes it's not.

| CIVIL COURT PROCEEDINGS |

These are proceedings brought about privately by individuals or organizations. SLAPP¹⁰ suits – as was enforced against Marineland Animal Defense protestors – are meant to limit what can be said about a corporation or individual. If broken, corporations can seek damages. Injunctions – such as those against recent rail blockades – are also civil court proceedings. The matter is not prosecuted by the state, but by private lawyers. A superior court judge hears the matter.

An injunction is an order against known or unknown persons, sought by a private corporation before the court. Breaching a court injunction can result in a criminal charge (s. 127) if the crown decides it's in the public interest.

The Crown elects to proceed / Le procureur de la Couronne choisit de procéder

Summarily / par procédure sommaire

Summarily if limitation period waived / Par procédure sommaire si le délai de prescription ne s'applique pas

By Indictment

Deferred

¹⁰ Strategic Lawsuit Against Public Participation

| YOU WERE ARRESTED: NOW WHAT? |

**NOT ALL ARRESTS RESULT IN CRIMINAL CHARGES.
NOT ALL CRIMINAL CHARGES RESULT IN CRIMINAL RECORDS.**

When police charge you, you can be released from the scene with a summons, served a summons at your door, arrested (at the location, or at home afterwards) and released from the police station under an OIC (Officer In Charge) recognizance, or kept for a bail hearing. For the first two options, you never see the inside of a police station unless you're required to report for fingerprinting.

| FINGERPRINTING |

Fingerprinting and photographs are straightforward; they tell you exactly what you're supposed to be doing at every point. When you're appearing from a summons, you'll need to leave all your things in a locker and walk through a metal detector. They document your height, weight, photograph you, and fingerprint you. They'll also try to document tattoos you might have by asking if you have any – feel free to wear clothing that covers them and admit to nothing. Remember; you don't need to answer questions about work, kin or anything else if police ask during the process.

| OVERNIGHT AT THE POLICE STATION |

The process of arrest is similar throughout southern ontario: arrest – transport – intake – solo cell – phone call – potential detective interview – fingerprinting – transport to court for bail or video court – bail hearing.

Waiting it out can feel long. The cells are often painted cement blocks with a metal slab bed/bench and a classic stainless steel toilet/sink combo and a bright light. The cell bars are sometimes reinforced with plexiglas, which makes sound louder and voices echo. The prisoner area is usually kept pretty cold. You may need to request toilet paper. You get one (sometimes none, sometimes two) thin institutional blankets.

| ARRESTED WITHOUT STATUS |

If you are arrested at a time you do not have citizenship (on a visa, non-status, or permanent resident) an immigration officer will be notified of your charges. The situation can get complicated quickly, and initiate a review of your presence in so-called Canada.

If a Canada Border Services Agent or police officer asks you questions when you are not in an immigration inquiry, you do not have to answer them - although you should identify yourself. **Do not rely on CBSA staff to be truthful about the law.** Have a lawyer on standby, and try not to sign any papers before speaking with them.

For more detailed information, go to
<http://toronto.nooneisillegal.org/knowyourrights>

| ARRESTED WHILE TRANS |

Toby's Act and the Ontario Human Rights Code have impacted the most recent Ontario legislation for the treatment and placement of trans folks. Trans people are now supposed to be "housed" according to their self-identified gender and chosen names and able to:

- choose the gender of personnel searching upon admission
- allowed access to personal items or prosthetics necessary to express gender
- allowed private bathroom and shower access for safety

It's important to note that despite this trans folks still face a lot of violence from and within the justice system. Intense questioning and harassment by prison staff, misgendering, deadnaming, administrative segregation, and placement in facilities based on initial determinations of sex at birth. Rights and policies won't prevent mistreatment, but may remedy them – especially with pressure from lawyers and supporters. Check out *Female Keep Separate* on <https://north-shore.info> for more to think about.

| ARRESTED WHILE PARENTING |

If you have children with you and are arrested, police will ask you for the contact information of someone to pick up any children so they are not alone. In some cities, police will take your children to an “emergency daycare”. Your contact will be expected to pick them up, likely within a few hours. If they do not show up, the daycare will contact Children’s Aid (CAS). When they do show up, the daycare will perform a criminal record check, and only release children if they are satisfied with the results.

| ARRESTED AS A YOUTH |

If you are between 12-17 years of age and arrested, your parents/guardians will automatically be notified. If you are under the age of 12, you cannot be charged with a criminal offense but may be detained by police. You are allowed to have a lawyer and a parent/guardian present for any questioning by police.

| ARRESTED...AGAIN |

Lots of folks have been arrested more than once. In fact, being arrested makes you more of a target of surveillance, police harassment that can end in other charges – this is one reason some folks avoid being a public face of an action. Multiple charges are not the end of the world, but make a reasonable effort to not get caught breaching a release order (recognizance, or bail). If you are arrested while on a form of release, your bail is automatically revoked, new charges are added, and you’ll have a contested, reverse-onus bail hearing (section 524 bail hearing).

Depending on the situation, it could mean you’re remanded to custody for the duration of your charges or that the state collects money from your surety – who likely won’t be able to be a surety again. It will also make it harder to convince the courts to release you again – and it will always be something the crown can hold against you at a later bail hearing.

| ARRESTED: YOUR PHONE CALL |

Unless you have a friendly lawyer who has access to your surety plan - or good pals who know your plan AND that you’ve been arrested - try to memorize your surety’s phone number to share with a lawyer when they contact you. [See P.14 for info on sureties.]

You don’t need to memorize your lawyer’s number (unless you are using a movement committee, like MDC) because police can look it up

There is no “one phone call” in Canada: you don’t get to call anyone you want when arrested – police will generally notify one lawyer, and leave a message if they don’t answer directly. This means you may or may not hear from your preferred lawyer before you appear in court. If you haven’t heard anything from your lawyer or their office by morning, you may need to ask to speak with duty counsel and either have them run the bail hearing, or arrange a different date for bail court (if you don’t want to use duty counsel). This would mean you are remanded into custody until at least that date.

If you’ve been arrested and managed to have your phone locked/encrypted and turned off DO NOT UNLOCK IT to access anyone’s number. If a phone is unlocked, police are allowed to access what’s on it and use the contents in court. It’s not just your privacy you’re protecting; it’s everyone you’ve texted, emailed, taken photos of, googled, etc. See P. 29 for info & resources on security culture.

ON AT LEAST ONE OCCASION HAMILTON POLICE TRIED TRICKING AN ANARCHIST INTO UNLOCKING THEIR PHONE BY STATING THEY COULDN’T FIND THEIR LAWYER’S NUMBER IN THE DIRECTORY.

They “kindly” offered to retrieve the individual’s phone so they could look up the number. The arrestee had managed to turn off their phone prior to arrest and knew it was off and encrypted. They refused, insisting police check again or notify duty counsel.

Soon after, police miraculously found the lawyer’s phone number.

Hamilton Police Service
YOUTH PARENTAL NOTIFICATION

| BAIL HEARINGS |

If you're charged with a criminal offense you may be (but aren't always) kept overnight at the police station for a *bail hearing*. This is an appearance before a court to decide whether to release you, or remand¹¹ you to custody until the charges are resolved. Many bail hearings in Ontario are now being done as video court, unless requested otherwise by you and your lawyer. Video court means you don't leave the police station; instead of being taken to court you're taken to a room set up for video conferencing.

After your appearance, you will either be released from the courthouse or police station, or brought to a local detention facility if you were denied bail (remanded) or they didn't have time to hear your case that day (adjourned¹²).

A hearing cannot be adjourned for longer than 3 days without an accused's consent.

SINCE 2004, THE NUMBER OF ADULTS AWAITING TRIAL IN CUSTODY HAS OUTNUMBERED THOSE WHO HAVE MADE A PLEA OR BEEN FOUND GUILTY AND SENTENCED.

BAIL HEARINGS CAN BE ON CONSENT, OR CONTESTED

ON CONSENT | the crown agrees to your release as long as you're willing to follow the bail conditions set in court. If you can't or don't want to follow some of the proposed conditions, the bail hearing becomes a contested hearing and will be argued before a judge (likely on another day).

CONTESTED | the crown is arguing against your release because you have breached bail, or the charges are serious - or you are fighting initial bail conditions. You may need a surety.

¹¹ Remand: to keep you in custody until your charges are resolved

¹² Adjournment is to bring your matter back before the court another time/day

| ACCOMMODATIONS |

Sourced & paraphrased from the Movement Defense Committee at <https://movementdefence.org/>

Under the Ontario Human Rights Code, people with different abilities may require and request accommodation from police. "Disability" within the OHRC covers a broad range of visible and invisible conditions.

If you require "accommodation" from police, request it as early in the arrest as possible. Use the term "accommodation" or "disability" and make the request under the "Human Rights Code".

The police may not accept your request for accommodation. You may be asked to provide supporting information about your disability-related needs. If you think that this might happen, you might want to bring prescriptions, letter from a health professional, your health care provider's contact information etc.

Always **consider whether revealing your need for accommodation may lead to targeting or harassment** - by the police or others around you.

It is likely that personal aid/mobility devices will be taken away if you are arrested and it will be difficult to get them back. People with serious health issues, including anaphylactic allergies may be put in segregation if they are remanded or sentenced to jail.

Police are known to refuse over the counter medications, even with a medical note or prescription.

Prescription medications are supposed to be provided to you as prescribed but this is not always the case.

If trying to access prescription medications in custody, also consider what information the medication itself will give to police and how it may affect you. For example, psych or HIV meds may affect how you're treated and where you are placed [segregation] in jail. Information police have has been known to be shared with border services.

| SENTENCING & RELEASE |

Sentencing for pleas¹³ and uncomplicated trials is often the same day. Sentencing arguments for complicated matters may be adjourned to a different day. In most cases, you are taken in to custody immediately after sentencing if you've been given a custodial sentence¹⁴.

Once you leave the courtroom, officers inventory some of your belongings and place them in a bag to be transported to the jail. In Hamilton, if a DNA order has been granted they will take it at the courthouse.

If your sentence is short, you'll likely serve it in a local detention centre, otherwise you are held there until there's room in a provincial (less than 2 years) or federal facility (2 years or more).

STATUTORY RELEASE | mandatory release for most prisoners after 2/3's of their sentence is completed (not for life or indeterminate sentences).

PAROLE | people are eligible to apply for parole if they're sentenced to more than 6 months of custody. The first eligibility for parole happens when someone completes 1/3 of their sentence.

Federal early parole can occur after serving 1/6 of a sentence – but you must be serving 3+ years.

When you accept parole, you waive your earned remission. This means that if you're caught on a breach during parole you no longer qualify for your statutory release at 2/3 of your sentence; you will serve it entirely in custody.

¹³ Plea: an admission of guilt, usually in exchange for lighter sentence

¹⁴ Custodial Sentence; being sentenced to jail

BURDEN OF PROOF | In a bail hearing, it's up to the crown to prove why you shouldn't be released unless: you're accused of committing a crime while on a form of release; the crime is associated with a criminal organization; the accused does not have status in Canada; it involves certain drug trafficking or weapons offenses. When you must prove why you should be released, it is called a *reverse-onus* bail hearing.

RELEASE PROGRAMS | Ontario has an alternative to surety releases through its bail verification and supervision programs to accused persons who lack a suitable surety but are otherwise candidates for release. The programs are delivered through contracted agencies such as John Howard, and are not necessarily province-wide.

SURETY | someone who acts as a guarantor for your release. They pledge an amount of money (not usually required up front) and agree to supervise you and ensure you don't breach your bail terms. If you breach them, both of you may owe the court money. A surety must be someone who can be seen as having a position of influence or authority over the accused. A potential surety can't have a recent criminal record or be acting as a surety for anyone else, must at least 18 years old, and a Canadian citizen, and not doing so for gain. They should be able to say they've known the person for a good amount of time. Sometimes – not always – you will be required to live with a surety.

IN 2018, DURING A BAIL HEARING IN HAMILTON, THE CROWN USED THE ARGUMENT THAT ANARCHISTS ARE ORGANIZED CRIMINALS AS AN ATTEMPT TO HAVE THE COURT DENY BAIL.

WHILE NOT FULLY SUCCESSFUL, THE ARGUMENT AIDED IN COMPLICATING THE BAIL PROCESS.

did commit mischief in relation to property situated at property of a value not exceeding \$5,000.00, contrary

| RETAINING A LAWYER: CONSIDERATIONS |

You DO NOT need a lawyer before your first court appearance unless you need one for a bail hearing. You don't need one for a bail hearing unless you are particularly at risk of being remanded to pre-trial custody. Factors that would contribute to that risk include breaches of bail, a lengthy criminal record with jail time, facing very serious charges, dealing with very publicized and denounced charges, and being poor, Black, Indigenous or a person of colour. Duty counsel typically does a fine job at running simple bail hearings; they have plenty of experience and established working relationships with crown counsel that can be beneficial.

There is also no rush to sign a representation agreement with a lawyer after you've been charged or released. The first several appearances, which happen over the course of many months, look like you sitting in court for half a day, waiting to be called and given additional disclosure.¹⁵

Don't diminish or dismiss the experiential knowledge fellow comrades have of legal systems and processes – and when the stakes are high, consider getting a lawyer involved.

| QUALIFYING FOR LEGAL AID |

Receiving a certificate through Legal Aid Ontario (LAO) for a free lawyer is not as easy as it once was. If you are in pre-trial detention you are eligible. Otherwise, you need to qualify in two ways.

- 1. JAIL:** You must be at risk of going to jail if found guilty of your charges. This means the crown must be asking for custody, which is unlikely unless you are a repeat offender, have been to jail, or are facing serious charges.
- 2. FINANCIALLY:** If your charges qualify you for legal aid, you must also qualify financially by making less than \$22, 720/year¹⁶ as a single person. Check out the LAO website for eligibility for families.

¹⁵ Any evidence they have, incriminating or exculpatory

¹⁶ Legal Aid Ontario, May 1, 2020

| AFTER BEING CHARGED |

Remember: the process is the punishment. Charges drag out in court for many months – even years if trial is involved. This is time spent under restrictive bail conditions that can keep you from organizing, distract people from the original goal, and lose energy and momentum to fundraising or court appearances. Even if your charges are withdrawn, there is a cost.

FIRST APPEARANCE

You will likely sit around for at least half a day, receive crown screening and initial disclosure. Crown screening lays out what sentence the crown wants from you (discharge, probation, fine, jail etc.). No lawyer needed.

SET DATES

Series of dates 3-4 weeks apart while awaiting additional disclosure, outcomes of legal aid applications etc. Count on these taking at least half the day as well. No lawyer needed.

CROWN RESOLUTION

A meeting that you or your lawyer have with the crown to see if an agreeable plea can be reached. From here you either plead and are sentenced, or go on to pre-trial

JUDICIAL OR CROWN PRE-TRIAL

Finalizing trial details and booking it with the trial coordinator. If you are getting a lawyer, they should be involved by this stage.

TRIAL

FINDING/VERDICT

sometimes finding/verdict and sentencing are the same day as trial.

SENTENCING

sometimes the finding/verdict an sentencing are the same day as trial.

| ARREST AND JAIL SUPPORT & SOLIDARITY |

Arrest support and solidarity is essential to building our capacity for confrontation, defensive communities & risk. It can look like a lot of things.

SUPPORT & SOLIDARITY

- X stay at the police station until arrestees are released, or are confirmed scheduled for bail hearings
- X offer rides, a taxi or company going home
- X go to court appearances; bail hearings as well as offering to attend set dates after. They're boring!
- X Have snacks, a meal, coffee etc. to offer post-release
- X Step up to be a surety & help ensure release
- X solidarity actions & prison demos
- X letting pals with kids know you could be an emergency contact or sitter – and getting it all set up beforehand
- X pet care/bill management if in detention or prison
- X calling in sick or filling in for gig work where possible, to reduce life/finance complications
- X offering to start and bottomline a fundraiser
- X writing and visiting if they're held in custody (sometimes closer pals make visiting schedules according to the person's needs – make sure you check in with the person's close pals before visiting!)
- X advocacy if they need access to medications, accommodation, or if they're gender queer, non-binary or trans and need specific gender placement
- X media engagement & messaging to accomplish a specific goal the individual(s) support

| DUTY COUNSEL, OR NOT |

Duty counsel is essentially a court appointed lawyer, present in the courthouse at all times and meant to be available to represent people who can't afford private counsel for bail hearings, set dates and crown resolutions.

Duty counsel is unlikely to take a particular interest in your case, and in general does not represent people in trial (free lawyers for trial are obtained through Legal Aid). They are a fine choice to run your bail hearing if your bail is uncontested and you agree with the proposed release plan, or your case is not complicated by immigration status, current/previous bail breaches, or intensely scrutinized/publicly denounced politicized charges [think Locke Street charges in Hamilton]. Duty counsel is also perfectly fine to use for set dates and appearance until you're ready for resolution or judicial pre-trial. Most people in the criminal court systems use duty counsel, unless they qualify for a legal aid certificate.

Private counsel (more specifically friendly movement lawyers) will take slightly more interest in your case and be willing to argue for amenable release conditions. If you don't qualify for legal aid, you can expect to pay a private lawyer anywhere between \$500-\$1500 for a bail hearing, depending on who they are and how complicated it is. Movement-associated and sympathetic lawyers can sometimes offer better deals, but need to be figured out beforehand.

It's easy to panic when facing or dealing with a sudden arrest, but remember it's not often necessary or sensible to hire private counsel, and that funds may be best contributed towards the projects you were arrested for in the first place - or a good trial lawyer.

Not every case is one that needs to go to trial, which take up inordinate amounts of time, mental and financial resources.

| RELEASE & BAIL |

Think about release conditions you'd be okay with.

Jail isn't a place you want to be, but there can be worse things. If getting out of jail means you have to live with parents who don't respect your gender, or a surety that intends to isolate you from your support network it might be worth considering a contested bail hearing before a judge.

A fully contested bail hearing is when your lawyer (speaking for you) and the crown can't come to an agreement around the release conditions. In a contested hearing the crown and your lawyer submit arguments around bail conditions for a judge to make a decision on. Typical bail hearings are often heard by a Justice of the Peace (JP) who are often conservative community members without legal backgrounds who apply individual bias.

A contested hearing may mean spending a little bit of time in remand detention, but will likely get you better release conditions and set a better precedent if others are arrested.

If a contested hearing doesn't provide an amenable result, and you are positive you will end up with a *significant* amount of jail time, you may wish to consider staying in pre-trial detention. Each day in pre-trial custody is 1.5 days at sentencing and those in custody get fast-tracked trial dates which can ultimately reduce how much time you spend in institutions.

ADULT CHARGE SCREENING FORM
 FORMULAIRE DE VERIFICATION DES ACCUSATIONS PORTÉES CONT
 ADULTE

NOTE: This form tells you the criminal charges you are facing and where possible, the consequences of each charge. It also provides information on how to apply for bail. Please read this form and any attached disclosure to your lawyer. Ce formulaire vous indique les charges criminelles auxquelles vous êtes confronté(e) et, dans la mesure du possible, les conséquences de chacune d'elles. Il fournit également des renseignements sur la façon de demander la libération. Veuillez lire ce formulaire et toute divulgation jointe à votre avocat(e).

| RELEASE & BAIL CONDITIONS |

Under the Charter of Rights, release conditions are supposed to be the least restrictive/onerous possible, but ultimately the crown or JP/judge can argue for any kind of condition they think serve the public interest.

Bail conditions that have been used regularly against anarchists & activists in the area include:

- x reside with surety at a fixed address
- x notify police of changes in address or occupation
- x do not associate or communicate with (co-accused or victims)
- x do not possess weapons
- x do not attend (an area)
- x do not participate or organize in any demonstration, rallies, or protests unless peaceable and lawful.

The condition of "do not associate or communicate directly or indirectly" (often referred to as "nons") can be isolating and is often applied to anyone arrested in a particular action. When planning for intentional arrest, plan for this condition accordingly; how will it impact your life and organizing? Attending public events and organizing spaces? Unfortunately, power imbalances in radical communities sometimes still exist via social capital, which sometimes informs who is likely to become most isolated.

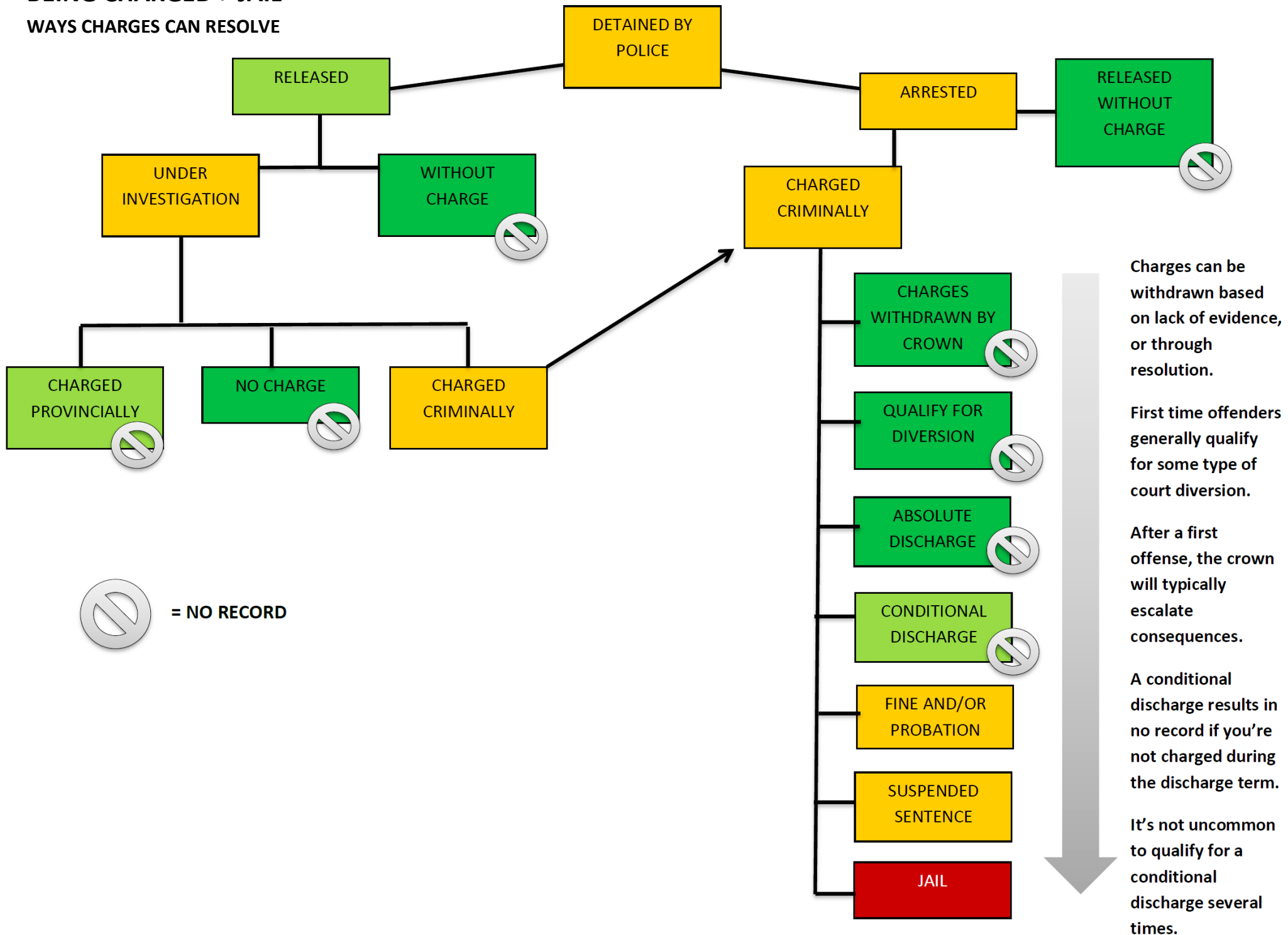
IF SOMEONE – SAY YOUR PARTNER – SIGNS THE NON-ASSOCIATION CONDITION AND YOU FIGHT IT, THE TWO OF YOU STILL WON'T BE ABLE TO COMMUNICATE.

If you live, work, volunteer, or are in a relationship with someone it may be possible to have the non-association with that individual dropped or modified. The court also needs to allow for self-represented individuals to communicate with each other for the purposes of creating a legal defense.

PROBATION (A TYPE OF SENTENCE) CAN OFTEN INCLUDE SIMILAR CONDITIONS TO BAIL. IT CAN ALSO INCLUDE RESTITUTION, COMMUNITY SERVICE, A DNA ORDER, REPORTING TO A PROBATION OFFICER, OR A FINE. THERE IS ALSO A VICTIM SURCHARGE FINE OF \$100 PER CONVICTION.

BEING CHARGED ≠ JAIL

WAYS CHARGES CAN RESOLVE



Charges can be withdrawn based on lack of evidence, or through resolution.

First time offenders generally qualify for some type of court diversion.

After a first offense, the crown will typically escalate consequences.

A conditional discharge results in no record if you're not charged during the discharge term.

It's not uncommon to qualify for a conditional discharge several times.