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Custodial Offenses

~ CHAPTER 23 ~

Topics and concepts included in this chapter:

1. Relevant terms related to custodial offenses.
2. Penal Law offenses pertaining to resisting arrest, obstructing governmental administration, and escape.



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As police officers, we pledge to uphold the Constitution and to respect the dignity of each individual. However, there are times when police officers may need to use force to detain offenders, make arrests, or protect themselves. We are sworn to respect the dignity of each individual, including suspects that have been arrested. Tactically sound police officers will always strive for voluntary compliance when arresting offenders. However, a good officer will always remain alert to the possibility that conflicts may arise. A suspect may attempt to resist being arrested, to prevent lawful duties from being performed, or to attempt to escape after being arrested.

As a police officer, you need to know how to prevent and overcome these efforts, and will be taught how to do so during other components of your training. You are also required to understand the elements that constitute custodial offenses such as **resisting arrest** and **escape**.

PART I: RELEVANT TERMS RELATED TO CUSTODIAL OFFENSES

Definitions of Terms:

- **Authorized Arrest** – An arrest is authorized if made in compliance with Article 140 of the New York State Criminal Procedure Law, which states that a police officer may arrest a person for any offense when he or she has reasonable cause to believe that such person(s) has committed such offense. You should recognize this as the *probable cause* standard.
- **Active Resisting** – Includes physically evasive movements to defeat a member of service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- **Uncooperative Actions** – Circumstances that occur during or subsequent to an arrest when the person and/or persons being arrested become completely limp or refuse to provide assistance in movement, or have to be carried from the arrest location, effectively taxing police resources during an arrest. Uncooperative actions alone would not support a charge of *resisting arrest*, though they may support a charge of **obstructing governmental administration 2nd degree** – misdemeanor.
- **Detention Facility (P.L. 205.00, subd. 1)** – Any place used for confinement pursuant to an order of the court, usually a city or county jail or a state prison. Examples include Rikers Island, Horizon Juvenile Center, Sing-Sing Correctional Facility, Greenhaven Correctional Facility, etc.
 - **Note:** A detention facility includes those places where confinement is the result of a court order. This includes juvenile delinquents



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being confined to a facility for juveniles pursuant to a Family Court order, as well as a prisoner confined to a hospital bed or under house arrest.

A witness or victim can also be confined - for example - in a hotel room, until they testify in court, pursuant to an order from a Criminal Court.

- **Custody (P.L. 205.00, subd. 2)** – Restraint by a public servant pursuant to an authorized arrest or an order of a court. For example:
 - A prisoner in handcuffs, awaiting transportation to the station house;
 - A prisoner seated in the back seat of an RMP;
 - A prisoner in a precinct holding cell.
- **Public Servant** – This term is defined in Penal Law Section 10.00, subd.15. It includes a public officer or employee of the state, county, town, city, village or governmental instrumentality within the state. The term also includes anyone exercising the functions of such person, or anyone who has been elected as or is designated to be such a person. Examples include police officers, traffic agents, school safety agents, sanitation workers, public school teachers, city employees, mayors, and the Governor, etc.

PART II: RESISTING ARREST- GENERAL (P.L. 205.30)

Resisting arrest involves the attempt by a person to prevent their own arrest or the arrest of another, being made solely by a police officer or a peace officer. Thus, a resisting arrest charge cannot be filed against anybody who resists an arrest by an ordinary citizen. **The arrest or attempted arrest of a suspect must be an authorized arrest in order to add the charge of resisting arrest.** It does not require that the person being arrested use force or violence. Consequently, it may be filed against people who sit or lie down on their hands, preventing police officers from handcuffing them. The key element is the intent to prevent a police officer or peace officer from making the actual arrest.

It is important to note that citizens do not have the right to resist even improper arrests. This subject is addressed in Penal Law Section 35.27, **Justification; Use of Force in Resisting Arrest Prohibited** and is also commonly referred to as the “No Sock Law.” It states that a person may not use physical force to resist an arrest, whether authorized or unauthorized, which is being effected or attempted by a police officer or peace officer.



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Take this example: While on patrol, Police Officer Jones observed a man named Joey, whom he reasonably suspected to be a drug dealer. Officer Jones improperly attempted to place Joey under arrest, but Joey pushed the officer away. After finally making the arrest, the officer searched Joey's clothing and recovered two vials of crack cocaine. Because the police officer's original arrest was not based on probable cause, the drug charges (for criminal possession of a controlled substance) were not authorized and will not stand in court. The charge of harassment (for pushing the police officer), however, will stand. Assault charges may also apply if the officer sustained a physical injury.

It may seem strange to prohibit citizens from resisting unlawful arrests, but this is a sensible law. The legislature's reasoning was that it is wiser to settle these situations in court (or precincts) than to permit citizens to fight police in the street.

- **Resisting Arrest - Misdemeanor (P.L. 205.30)** is committed when a person intentionally prevents, *or* attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or herself or another person.
 - **Example:** Joe is arrested by a police officer who observed him driving a car that had been reported stolen by the owner. In an attempt to prevent his own arrest, Joe pushed the officer and ran away. He was caught and arrested after a short chase. In addition to the initial charge(s), Joe will also be charged with resisting arrest because he intentionally attempted to prevent the police officer from arresting him (by pushing the officer and running away).
 - **Note:** If during Joe's arrest, his friend John had grabbed the police officer with the intent of preventing Joe's arrest, John also could be charged with resisting arrest. Before a police officer can charge a person with resisting arrest, the officer must be able to establish that the offender knew or had reasonable grounds to believe that he or she was a police officer.
- If police officers are in uniform at the time of the arrest, arrestees are presumed to recognize their authority as police officers.
- If police officers are in civilian clothes, police officers must identify themselves by, for example, showing their shields or police identification card, or by declaring verbally that they are police officers.



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ACTIVE VS. PASSIVE RESISTANCE

Resisting arrest does not require that the person use force or violence.

The key element is a person with the intent to prevent the officer from effecting an authorized arrest of himself or another. Arrestees who sit on their hands, lie on their hands, pull away from or swing their arms or engage in any of the actions described in the above definition of active resisting is engaging in resisting arrest.

Engaging in uncooperative actions such as sitting, lying down and/or refusing to comply with an officer's request (as is common at demonstrations) does not amount to the charge of resisting arrest – misdemeanor, though they may support the charge of obstructing governmental administration 2nd degree – misdemeanor.

PART III: OBSTRUCTING GOVERNMENTAL ADMINISTRATION (P.L. 195.05)

Obstructing governmental administration (“**O.G.A.**”) is the attempt by a person to prevent a **public servant** from performing his/her official lawful duties. P.L. 195.05 defines the **misdemeanor** classification of this offense, and states that it consists of interference with the performance of government or the attempt to prevent a public servant from performing his or her official duties. This crime differs from resisting arrest in that resisting arrest is concerned only with an arrest made by a police or peace officer.

A person can be charged with **obstructing governmental administration 2nd degree– misdemeanor** when he or she intentionally obstructs, impairs or perverts the administration of law or other governmental function **or** prevents or attempts to prevent a public servant from performing an official function **by means of:**

- Intimidation;
- Physical force;
- Interference;
- Any independently unlawful act;
- Interfering with governmental telecommunications, whether or not physical force is involved;
- Releasing a dangerous animal with the intention that the animal obstructs governmental administration.

The actions of intimidation, physical force, interference, an independently unlawful act and interfering with a telecommunications system are defined as follows:

1. **Intimidation** – To frighten, compel or deter by threats.



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- **Example:** “If you give my mother a summons, I will punch you in the face.”
2. **Physical Force** – Any physical contact against a police officer or anyone else in such a manner as to prevent or attempt to prevent administration of law.
 - .. **Example:** Physically restraining a health inspector to keep him from inspecting a restaurant.
 3. **Physical Interference** – An act that physically interferes with a public servant from performing an official function or impairs or prevents the administration of law or other governmental function.
 - .. **Example:** Lying down in front of a police vehicle to prevent it from moving or intentionally parking your car in front of a hydrant to prevent the fire department from putting out a fire.
 4. **Independently Unlawful Act** – Refers to any other action committed by a person that is prohibited by a specific statute and tends to facilitate his or her attempt to obstruct governmental administration. There must be a law that specifically prohibits the person’s act(s) being used as a basis for that charge. If there is no law that prohibits the act, then there are no grounds to charge obstructing governmental administration.
 - **Example:** Slashing the tires of an RMP with the intention of preventing the police from removing a prisoner. The slashing of the tire constitutes an independently unlawful act of criminal mischief.
 5. **Interfering with a Telecommunications System** owned or operated by the state, county, city, town, village, fire district or emergency medical service. This refers to a person who jams or interferes with a communication system used for governmental function.
 - **Example:** Finding a police radio and shouting false distress messages over the air.

The following would **not** be considered obstructing governmental administration:

- A person who refuses to identify himself or herself;
- A person who shouts obscene language towards a police officer during an arrest;
- A person who resists an **unlawful** search and/or seizure;
- A person who takes photographs or videotapes of officers;
- Remaining in the vicinity of police operations, as long as established police lines are not crossed.



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Obstructing Governmental Administration 1° - Felony (P. L. 195.07) involves interfering with a telecommunications system, thereby causing **serious physical injury to another person**.

- **Example:** A private citizen finds a police radio and shouts a distress message over the air. While responding to the false emergency, an RMP crew gets into a collision and one of the officers is seriously injured.

Obstructing Governmental Administration By Means Of a Self Defense Spray Device – Felony (P.L. 195.08) involves causing temporary physical impairment to a police officer or peace officer by intentionally discharging a self-defense spray device with intent to prevent a police officer or peace officer from performing a lawful duty.

- **Example:** To prevent being evicted by the City Marshal, Joe sprays the Marshal in the eyes with mace.
- **Note:** Additional charges of assault, criminal possession of a weapon, and/or unlawfully possessing or selling noxious material would also apply in such cases.

PART IV: ESCAPE

Escapes from police custody usually arise from two factors: desire and opportunity. You may not be able to control a prisoner’s desire to escape, but you can **take appropriate steps to eliminate the opportunity**. By carefully following Department guidelines and using sound tactics, the chances of a prisoner’s escape will be greatly minimized. The offense of escape can be **either a misdemeanor or a felony**, depending on the original charge and the location from which the prisoner escapes.

ESCAPE – MISDEMEANOR (P.L. 205.05)

A person may be charged with this offense when he or she has been arrested for a misdemeanor or petty offense **and** escapes from custody.

- **Example:** A person held in police custody in a police car, after being arrested for disorderly conduct, a violation, flees.
- **Example:** Fleeing from inside a station house cell after being arrested for theft of services, a misdemeanor.
 - **Note:** A person running away from you **before** you have him in custody has not committed the offense of escape.



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ESCAPE – FELONY (P.L. 205.10, 205.15)

A person is charged with this offense when he or she:

- Escapes from a detention facility; **or**
- Escapes from custody having been arrested for, charged with, or convicted of a felony; **or**
- Has been adjudicated a youthful offender and escapes from either custody or a detention facility. The term “youthful offender” is defined in New York State Criminal Procedure Law § 720.10.
 - **Example:** A person escapes from a precinct holding cell after being arrested for robbery, a felony.
 - **Example:** A prisoner escapes from Rikers Island after being convicted of petit larceny, a misdemeanor.