

## XR guide on police and prison

This guide is for you if you are taking action on behalf of Extinction Rebellion (XR) and might be charged with a criminal offence. It will be particularly relevant if you have taken action before or have other convictions, as this means you are more likely to face remand or sentencing.

We are facing a climate emergency. The situation is drastic and urgent. You might be willing to make personal sacrifices. But it is vital that you have a realistic understanding of what the outcome might be, both short and long-term, so that you can make an informed choice about which actions you are willing to take part in.

Prison conditions can be grim, and the emotional impact on you and your family difficult to deal with. A criminal record could affect your ability to get work, volunteer, travel abroad and get insurance.

This guide explains what action could lead to time in prison, and what the consequences might be. It covers being held on remand in prison and being sentenced to prison after a conviction, for people over 18, and covers the law in England and Wales.

We try to explain technical or unfamiliar terms as we go along, but there is also a [What does it mean?](#) section at the end.

### Routes to prison – the basics

If you are charged with a criminal offence there are two main ways you might end up in prison:

- Being held on remand - having to stay in prison whilst you wait for your hearing or trial, or to be sentenced following a conviction.
- After being found guilty, sentenced to serve a period of time in prison.

## The process

Below we set out briefly what might happen after you are arrested. It only gives an overview and won't be the same for everyone, but should give you an idea of a typical process. There's more advice on what to do in case of arrest later in this guide.



Arrest	The police will tell you you are under arrest, <a href="#">caution</a> you and <a href="#">detain</a> you. You will be taken to a police station and held in a cell.
Interview	You are likely to be <a href="#">interviewed</a> . You are entitled to <a href="#">free legal advice</a> during the interview. The police will question you to find out more information to decide whether to charge you or release you. You have the right to make ' <a href="#">no comment</a> ' but should get legal advice.
Decision to charge	<p>After the interview the police will decide whether to:</p> <ul style="list-style-type: none"> <li>• charge you,</li> <li>• 'release you under investigation',</li> <li>• 'bail you to return to the police station'; or</li> <li>• take no further action.</li> </ul> <p>If they take no further action, you are free to go.</p> <p>If they release you under investigation, you are free to go, while they find out more to help them decide whether they can charge you. If they later decide to charge you, you will probably be sent a summons in the post to attend court. If you don't respond to the summons by attending you may eventually be arrested and brought to court.</p> <p>Alternatively, they may bail you to return to the police station at a specific time and date. They can impose conditions if they bail you to return, for example, excluding you from a specific area to 'prevent further offences'. You may be charged when you return and be handed a charge sheet with a court date.</p> <p>If they charge you, they think they have enough evidence to charge you with an offence.</p> <p>You will either be:</p>

	<ul style="list-style-type: none"> <li>• <a href="#">bailed</a> (allowed to go, but with conditions attached) to attend a magistrates' court for a first hearing; or</li> <li>• <a href="#">remanded</a> (kept in custody at the police station) until your first court hearing. You may be refused bail for a number of reasons, for example, if the police are concerned you might go out and commit further offences or if you might fail to attend court. The decision to bail you or not will be based on a number of things including the seriousness of the alleged offence and your history of previous convictions.</li> </ul>
Bail hearing	<p>A court hearing where the court decides whether you should be bailed (with or without conditions) or kept in custody.</p> <p>There is a different <a href="#">legal aid scheme</a> once you have reached court. What help you get will depend on whether your case ends up in the magistrates' court or the Crown Court. Legal aid is also means tested which means that you may have to contribute towards the cost of your legal representation.</p>
Plea hearing	<p>Once charged, whether bailed or not, everyone attends a court hearing where they have to plead guilty or not guilty to the charge.</p> <p>Some cases can only be dealt with in the magistrates' court, by magistrates or a district judge. Others can go to the Crown Court, where you have a jury and a judge.</p> <p>Which court you go to depends a lot on the seriousness of the charge you face.</p>
Trial	<p>If you plead not guilty there will be a trial, where the court will decide whether or not you are guilty. This will not take place until several weeks, often months, after your first court hearing.</p>
Sentencing	<p>If you are found guilty, or plead guilty there will be a court hearing where a judge or magistrate will decide on your punishment.</p>

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## Three key things to know if you are arrested:

- You don't have to say anything after you are arrested. The police are trained to take note of any comments you make that might be related to the crime they think you committed. Even if they are nice to you, they are still trying to investigate a crime that they think you committed. If you say something that isn't true, even if by accident, it will be used against you.
- Do not go into an interview without a legal representative. Don't think, 'I don't need legal help because I've done nothing wrong'. You are entitled to legal assistance with your police interview for [free](#), so take advantage of it.
- Get a solicitor [with experience of protests](#). 'Duty solicitors' who are available at the police station will not always have expertise in this area. You can ask for your own solicitor.

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For more information and tactics on arrest see Extinction Rebellion's [legal briefing](#).

## Possible criminal offences

How might you end up getting arrested? Here we set out some of the criminal offences that activists can be charged with. But there are many other offences, which may come up, depending on the nature of the action. After the April 2019 XR actions police called for tougher sentences.

Offence	What this means	Maximum penalty
Breaching a Section 14 Notice of the Public Order Act 1986 - failing to comply with a condition imposed by police.	The police can set conditions on a protest, for example, how long it can last for, where it is and how many people can take part. If you take part in a way which doesn't follow these conditions, for example, by refusing to leave, or to move into an area the police ask you to, you could be breaching the notice.	If convicted, the maximum penalty is a fine of £1,000.  If you are convicted of organising or inciting others to breach a Section 14 Notice the maximum penalty is three months in prison and £2,500 fine.
Obstructing a highway	Actions such as blocking a road, attaching or chaining yourself to a roadblock or gluing yourself to the road.	£1,000 fine
Obstructing trains or carriages on the railway	Examples include climbing on top of a train or gluing yourself to a train.	Two years in prison
Obstructing a police officer in the execution of their duty	Deliberately doing something which makes it more difficult for the police officer to do their job. For example, giving them false information and physically getting in their way.	One month in prison and £1,000 fine.
Affray – Public Order Act section 3	Using or threatening violence which would cause someone to be	Three years in prison

	afraid for the personal safety.	
Criminal damage	Destroying or damaging property belonging to someone else. For example, smashing windows and in some cases graffiti. XR examples include spraying a building with fake blood.	Depends on the value of the damage. A maximum sentence of 10 years in prison for damage worth more than £5,000.

You can find more information on [laws commonly used at protests](#) from Green and Black Cross.

[The Sentencing Council](#), the organisations which issues guidelines on sentencing that the courts must follow, lists all the different offences and what the court should consider when deciding the sentence, for example, the type and amount of harm caused by the offence, previous convictions, and whether or not you pleaded guilty. In extreme circumstances the courts can step outside these guidelines, and impose more severe sentences, as a deterrent.

If you get fined, but don't pay the fine, the [court may get the money](#) by using bailiffs, or taking it from your benefits or wages, and in extreme circumstances, you may end up going to prison.

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### Be aware!

If you are subject to immigration control, don't get yourself arrested on behalf of XR, without being fully aware that this may have consequences for you - you can be detained under immigration law at any point during your immigration process.

This can also be the case for EU nationals, whatever happens with Brexit.

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## Making an informed decision

If you feel passionately about the cause then you may feel getting arrested, and even going to prison, is worth it. But you need to know what the consequences of a conviction are, and everything that goes with it, so that you can make an informed decision.

## Consequences whilst you are in prison

To begin with you are in prison, deprived of your liberty, and with little support. You can [find out more about life in prison](#) from the Prison Reform Trust.

Here we set out some of the immediate practical consequences:

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### Your children

The courts should bear in mind the rights of your children when deciding on bail and the length of your sentence. But this does not mean that you will not be held on remand or sent to prison just because you are a parent, even if you are a single parent.

Every aspect your child's life is likely to be disrupted if you go to prison.

If you are split from your child's other parent, a conviction could affect your arrangements with them for the child, for example, who your child lives with and how often you see them.

If you are the primary care and split from your child's other parent and you go to prison, but you don't want the other parent to care for your child, you will have no control over this. If it is a longer sentence and the child ends up with other parent, who then doesn't want to return them, you would have to go to a family court to ask the court to make new arrangements for your child. You could easily lose as the other parent could argue that the child is now settled with them.

If a relative has to look after your child while you are in prison, they will have to find the money and time to do so. Even if your prison is near to where your child lives, prison visits are not easy.

If there is no one to look after your child whilst you are in prison, [social services will get involved](#); some children have to go into care. Social services can even get involved in situations where relatives can't agree who should look after the child.

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### Loss of earnings

There's a fair chance you will lose your job if you go to prison. Even if your employer keeps your job for you, you won't get paid while you are in prison. How will you pay all your bills or loans or meet other ongoing financial commitments?

## Loss of housing

If you can't keep up your rent or mortgage, or get evicted you will have nowhere to go when you leave prison.

If you are a council or social housing tenant on housing benefit, you may be able to [continue to receive it](#) for a period of time while you are on remand or in prison, but you will need to get [advice](#) to check how this applies to your circumstances.

## Cost

If you are not entitled to [legal aid](#) you will have to pay for legal advice and representation in court to help you defend your case. You may also have a fine to pay. And you may also have to pay prosecution costs. This is where the magistrate or judge decides that you have to pay an amount of money, which is basically a contribution towards the prosecution's cost of bringing the case against you.

## Consequences that last longer than prison

### A criminal record

Records of convictions, cautions and arrests stay on the National Police Computer until you are 100.

Whether or not you have to tell people or organisations about your criminal record depends on whether they ask, and whether or not your conviction is '[spent](#)'.

Most convictions have a [rehabilitation period](#) which is a set amount of time, determined by what your sentence is. After the rehabilitation period convictions should not count against you.

- Convictions which are 'unspent' have not yet reached the end of the rehabilitation period.
- Prison sentences over four years never become [spent](#)
- A [simple caution](#) is immediately spent. A [conditional caution](#) is spent after three months.

Unspent convictions can count against you in some situations and will show up in [Disclosure and Barring Service](#) (DBS) checks which you might need to have for a job.

## Work

You do not have to tell an employer about an unspent conviction, unless they ask you. An employer should not refuse you a job just because you have a spent or unspent conviction, unless a DBS check shows that you are unsuitable for it. And some employers may be understanding about a conviction as a result of activism.

But in reality people with convictions do face discrimination and find that it can limit opportunities in many areas, including volunteering.

Unlock provide more information on how your [criminal record can affect employment](#).

### Insurance

You may have to tell the insurance company about any conviction which is not spent, and this may affect whether or not they will give you insurance. This can also be true for someone else trying to get insurance which will cover you, for example travel, home or car insurance.

Money Advice Service have more information on getting [insurance if you have a criminal conviction](#).

### Buying a home

If you are [asked by a mortgage provider](#) if you have an unspent conviction you have to tell them, and this may affect their decision to lend to you. Also, to get a mortgage you usually have to have buildings insurance in place, and as mentioned above, having a criminal record can making getting insurance harder.

### Renting a home

Landlords may ask you if you have a criminal conviction. You only have to tell them about unspent convictions. If a tenant has an unspent conviction it may be difficult for the landlord to get insurance for the property. However, landlords should not have a blanket policy of refusing people with a conviction. In practice, though, many people leaving prison have a very hard time getting housing.

### Travel abroad

If you want to [go abroad](#) you may find a criminal record makes it difficult or impossible to visit some countries, for example, the USA, Australia and New Zealand. Currently UK citizens can move freely across Europe, but we still don't know whether individual EU countries may impose their own rules on criminal convictions after Brexit.

### Family

Being sent to prison can affect your whole family. It is emotionally draining to visit a loved one in prison. You may not be serving your sentence near to where they live, weekend visits are limited, so family members may have to take time off work to see you and bear the cost of travelling to your prison.

### Reality check

Prison is not to be taken lightly. You will be isolated from your friends and family and the wider world. Conditions are worst in the local prisons where remand and newly sentenced prisoners are held. There isn't a lot of support, especially on remand. You may be left with debts, and your access to work, volunteering, housing, insurance, loans and travel may be limited. Possibly for many years.

## More help and information

Here we list some more sources of information and support.

### Legal advice and support

- Links to solicitors who are experienced at dealing with police and protest cases from [Green and Black Cross](#).
- [Prisoners Advice Service](#) offers free legal advice and support to adult prisoners throughout England and Wales regarding their human and legal rights.
- The charity Liberty can give advice on [human rights and protest](#).

### Remand

- Information on remand and rights on remand from [Jigsaw Visitors Centre](#).
- Housing advice, including on benefits, whilst on remand from [NACRO](#).
- Your rights on remand from [Prison Reform Trust](#).

### Housing

- Keeping your home when in prison from [Shelter](#).

### Preparing for prison and your rights in prison

- [‘An insider’s view’](#) - blog
- Activists who have been to prison recommend ‘Prison – A Survival Guide’ by Carl Cattermole, published by Penguin. A very practical guide about going to prison.
- [Prisoners Advice Service](#) provide a range of information sheets and self help toolkits.

## What does it mean?

### Bail

Bail (or ‘remand on bail’) is when the police or the court release you, including when they attach conditions to your release. These restrictions are usually to make sure that you attend court, for example you might have to give the court your passport until your court date. You may also be bailed to return to the police station with specific conditions for example, excluding you from returning to the protest area. For minor crimes, you will often be released without bail conditions until your court date.

### Caution

There are two meanings of the word ‘caution’:

- The warning the police give you before asking questions (‘You do not have to say anything but it may harm your defence ...’)
- A formal warning instead of being prosecuted for an offence.

## Charged

A charge is an accusation by the state that you have committed a crime. When you hear that someone has been 'charged', it means that the police or the Crown Prosecution Service have decided that they have enough evidence to formally accuse that person of the crime and take them to court for it.

## Conditional caution

A formal warning with conditions attached as an alternative to being prosecuted. If you don't follow the conditions you may be prosecuted.

## Conviction

Conviction is another term for a person being found guilty of a crime. The opposite is acquittal, which is when someone is found not guilty.

## Crown Court

This court deals with serious crimes ('indictable offences'), such as murder, and some 'either way' offences which can be heard in either a magistrates' court or the Crown Court, depending on their severity. Cases in the Crown Court are heard by a judge and a jury.

## Crown Prosecution Service (CPS)

The public body which handles cases investigated by the police once they reach court. A bit like the police's solicitors in prosecutions.

## Defendant

The person accused of committing a crime.

## Disclosure and Barring Service

The public body which processes and maintains criminal record checks.

## Evidence

Evidence is any information which would be used to get to the truth in a court hearing. For example, the tape of a person answering questions in a police interview is a piece of evidence, as it is a recording of a person giving statements of fact. When a witness answers questions in court, they are giving evidence by providing the court with information. Anything that might prove facts can be evidence, like receipts, fingerprints, emails, video camera footage etc.

## Hearing

A hearing is a meeting held in court. You might attend a bail hearing or a sentencing hearing.

## Indictable offence

Certain charges which are so serious the defendant can only be dealt with in the Crown Court, for example robbery or murder.

## Legal aid

Public funding to help meet the costs of legal advice and representation. There are different rules for legal aid at the police station, cases which end in the magistrates' court and the Crown Court.

## Magistrates Court

This court hears cases for minor crimes ('summary offences') such as speeding charges. They can also hear some cases for more serious crimes ('either way offences') such as burglary. They cannot hear the most serious crimes ('indictable offences') such as murder - they have to pass those on to the Crown Court. Magistrates can also decide on bail hearings, and can give out short prison sentences and fines. Trials here are heard by magistrates, without a jury.

## Offence

An offence is another name for a crime. If you attach yourself to a roadblock, you might be charged with the offence of Obstructing the Highway.

## Plea

A plea is how a defendant answers a charge - usually 'guilty' or 'not guilty'. A plea hearing takes place before the Trial. If a defendant pleads 'guilty', they will skip the Trial and go straight to a sentencing hearing.

## Rehabilitation period

The rehabilitation period is a period of time determined by the sentence given, after which a conviction is considered 'spent'. After this time convictions should not count against you.

## Prosecution

Legal action against you to try to prove you are guilty of the offence you have been charged with.

## Prosecution costs

If you are found guilty the court may order you to pay an amount of money, which is a contribution towards the prosecution's cost of bringing the case against you.

## Release under investigation (RUI)

You are free to go, while the police or CPS find out more to help them decide whether they can charge you. It is important that you don't say or do anything at this stage which may incriminate you.

## Remand

This means being 'sent' or 'ordered'. You might be 'remanded in custody' (sent into custody) or 'remanded on bail'. If you are charged with a crime, you will then either be bailed or remanded in custody. If the police/prosecution wish to remand you into custody, they will have to go to a hearing and convince a judge that there is a good reason for it.

## Representation

Having a lawyer to speak for you and represent you in court.

## Sentenced

A sentence is a punishment that can be ordered by a criminal court of law, for example prison time, a fine, community service etc.

## Simple caution

A formal warning given by police once you have admitted to the offence.

## Subject to immigration control

You are subject to immigration control if you need permission to enter and leave the UK, but don't have it; if you have permission to enter the UK on the grounds you don't claim benefits or use other public funds; or on the grounds that someone else signed an agreement to support you.

## Tenant

A person who rents from a landlord.

## Trial

A criminal trial is the court hearing where the prosecution and defence come together to present evidence, which is then decided on by a magistrate or district judge (in a magistrates' court) or a judge and jury (in the Crown Court).

## Unspent convictions

Convictions which have not yet reached the end of the rehabilitation period – the amount of time after which convictions cannot be counted against you.

## About this guide

The information in this guide applies to people over 18 in England and Wales.

The law is complicated. We have simplified things in this guide. Please don't rely on this guide as a complete statement of the law. We recommend you try and get more information and advice from the sources we have suggested.

The cases we refer to are not always real but show a typical situation. We have included them to help you think about how to deal with your own situation.

This guide was written by Law for Life's Advicenow project for Extinction Rebellion Legal Support. Advicenow would like to thank all those who provided advice and feedback on this guide including Mike Schwarz, lawyer, and the Prisoners Advice Service.

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