

CHAPTER TWO:

RIGHTS OF NEW YORK HEATING FUEL CUSTOMERS

New York's Utility Project Law Manual
8th Edition 2018

New York Public Utility Law Project
90 South Swan Street, Suite 305
Albany, NY 12210
1-877-669-2572

The PULP Law Manual was originally funded in part by a grant from the New York State Bar Foundation. The 7th Edition was funded in part by a grant in 2017 from the Berk Foundation of New York. The 8th Edition was funded in part by the 2017 Berk Foundation grant and by other funds provided by PULP.

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RIGHTS OF NEW YORK HEATING FUEL CUSTOMERS

I. Introduction

More than 2.5 million households in New York heat their homes with home heating fuels.¹ “Heating fuel” is defined in New York State regulations as follows:

No. 2 distillate fuel oil, No. 4 blended fuel oil, No. 6 residential fuel oil, kerosene, liquid propane gas, or any other fuel, other than natural gas or electricity, used for heating residential buildings.²

Residential heating fuel customer consumer protections are limited and distinct from customers of residential natural gas and electricity. As discussed in Chapter 1, the Home Energy Fair Practices Act (“HEFPA”) provides consumer protections for residential customers of natural gas and electricity, and the New York State Public Service Commission is the designated state agency in charge of enforcing HEFPA consumer protections, and resolving consumer complaints. At the state level, residential customers in contract with a heating fuel distributor may file a complaint with the New York State Attorney General.³ Additionally, residential customers located in New York City may file a complaint against their home heating oil business with the Department of Consumer Affairs for the City of New York.⁴ Complaints logged with these entities are typically about illegal credit terms, the heating fuel distributor issuing improper contracts and receipts, or shortchanging the amount of oil dispensed. These agencies are not

¹ See, e.g., <https://eseany.org/about/about-us/>.

² 9 NYCRR § 7870.1(h).

³ The Consumer Protection Bureau also handled complaints, but was superseded the Executive Law §94-a(3)(a)(1), which charges the Division of Consumer Protection to “receive complaints of consumers, attempt to mediate such complaints where appropriate, and refer complaints to the appropriate unit of the department, or federal, state, or local agency authorized by law for appropriate action on such complaints.” This statutory mandate is met through the Consumer Assistance Unit (the “CAU”).

⁴ For an overview of the complaint process see here: <http://www1.nyc.gov/nyc-resources/service/1839/home-heating-oil-company-complaint> (last visited April 2018).

authorized nor can they resolve customer complaints concerning application, payment plans, or the need for special protections due to being elderly or medically frail.

For example, although public utilities must provide gas or electric service to eligible applicants within 5 business days of application⁵ and are subject to payment of a \$25 per day fine to the applicant if they fail, without good cause, to provide timely service,⁶ home heating fuel distributors have no obligation to sell fuel to any applicant and they may refuse to do so in some situations, for example, if the applicant has a poor credit history.

Also, home heating fuel distributors are not required to offer customers deferred payment agreements, allowing customers to pay outstanding fuel charges over a period of time to prevent delivery cutoff.⁷ And, although public utilities cannot terminate residential service of a natural gas or electricity customer during the two-week period encompassing Christmas and New Year's Day, and may only terminate between 8:00 am and 4:00 pm Monday through Thursday, providing those days are not public holidays,⁸ there are no such restrictions on home heating fuel distributors. Also important to note, the procedures that home heating fuel distributors must follow before cutting off delivery of fuel allow short notice, contain no protections for elderly, blind or disabled customers, and make no special provisions to allow for continuation of fuel delivery service in cases of medical emergency.

That being said, State law does protect heating fuel customers from refusal, suspension or termination of service in during the heating season, without due notice, as explained in Part II below.

⁵ PSL § 31(5); 16 NYCRR § 11.3(a)(4)(i-iv).

⁶ PSL § 31(5); 16 NYCRR § 11.3(c).

⁷ *See, e.g.*, PSL § 37.

⁸ PSL § 32(4).

II. Notice of Refusal, Suspension or Termination of Fuel Deliveries in the Heating Season

During the heating season (November 1st through April 15th), home heating fuel distributors must comply with certain notice requirements before cutting off delivery of service to residential customers.⁹ Such notice requirements are intensified in cases of emergency.¹⁰ A “distributor” is “any person, firm, partnership or corporation delivering heating fuel to customers for consumption in residential buildings located within New York State.”¹¹

The notice requirements vary, depending on the type of delivery the customer takes. An *Automatic delivery* account is a contract between a distributor and customer for the delivery of heating fuel to a residential building.¹² The distributor determines when fuel is needed and makes a regularly scheduled delivery automatically, without obtaining a separate request or authorization from the customer.¹³ A *will-call account* is an arrangement for the sale of fuel without a contract.¹⁴ Will-call customers call the distributor whenever they require heating oil and the distributor does not automatically determine that a delivery is needed.¹⁵

Both types of customers may designate a third party (such as a friend, relative or social services agency) to receive notice of automatic or will call delivery cutoffs, in addition to any notification provided to the customer.¹⁶ Distributors are required to contact customers annually,

⁹ 9 NYCRR § 7870.3.

¹⁰ An emergency is a situation when a residential building is without heating fuel or will be without heating fuel within 48 hours.

¹¹ 9 NYCRR § 7870.1(e).

¹² 9 NYCRR § 7870.1(a).

¹³ *Id.*

¹⁴ 9 NYCRR § 7870.1(o).

¹⁵ *Id.*

¹⁶ 9 NYCRR § 7870.2(a)

on or before November 1st, to update their third party notification preferences.¹⁷ For new customers, distributors must collect third-party notification information when new accounts are established.¹⁸

A. *Written and Telephone Notice to Automatic Delivery Customers*

During the heating season, a distributor must give three calendar days written notice to an automatic delivery account customer before suspending or terminating regularly scheduled deliveries.¹⁹ The written notice must:

- Inform the customer of the cutoff and the reason for it;²⁰
- Inform the customer that financial assistance may be available from a local department of social services (“LDSS”);²¹ and
- Provide the customer with the name, address and telephone number of the LDSS for the county in which the residential building is located.²²

In addition to written notice, the distributor must make at least three attempts to notify the automatic delivery customer of a cutoff by telephone, at least three calendar days before the suspension or termination takes effect.²³ In the telephone communication, the distributor must:

- Inform the customer of the cutoff and the reason for it;²⁴
- Ask whether the building is out of fuel and if it is not, ask when the customer anticipates fuel will be needed;²⁵

¹⁷ 9 NYCRR § 7870.2(a)

¹⁸ *Id.*

¹⁹ 9 NYCRR § 7870.4(a).

²⁰ 9 NYCRR § 7870.4(b)(1).

²¹ 9 NYCRR § 7870.4(b)(2)

²² *Id.* The regulations provide a list of the LDSS by county. For a list of county LDSS’, see, also, https://www.health.ny.gov/health_care/medicaid/ldss.htm; and see, <https://bit.ly/2MIhXPO>

²³ 9 NYCRR § 7870.5 (b).

²⁴ 9 NYCRR § 7870.5(c)(1).

- Ascertain whether the building is a one- or two-family house or a multiple dwelling;²⁶
- Ask whether the customer wishes to designate a third-party designee to be notified of the cutoff;²⁷
- Ask whether the customer is unable to protect himself or herself and all other inhabitants of the building from health and safety risks caused by a cutoff, by getting fuel from another source or by securing adequate alternative shelter;²⁸
- Inform the customer that (i) if the affected building is a multiple dwelling, (ii) if the customer is unable to obtain fuel from another source, or (iii) if the customer is unable to secure adequate alternative shelter, then the distributor must notify the customer's third-party designee and the LDSS;²⁹ and
- Inform the customer that financial assistance may be available from the LDSS; and provide the customer with the name, address and telephone number of the LDSS for the county in which the residential building is located.³⁰
- Ask whether the customer wishes to designate a relative or other person to be notified of the cutoff.³¹

If the distributor cannot contact the customer by telephone, it must notify the customer's third-party designee, if any, and the local district social services department where the building is located.³²

B. Telephone Notice to Will-Call Customers

During the heating season, heating fuel distributors must notify will-call customers of suspension or termination of deliveries when the customer telephones to request a delivery.³³ In

²⁵ 9 NYCRR § 7870.5(c)(2).

²⁶ 9 NYCRR § 7870.5(c)(5).

²⁷ 9 NYCRR § 7870.5(c)(7).

²⁸ 9 NYCRR § 7870.5(c)(4).

²⁹ 9 NYCRR § 7870.5(c)(3).

³⁰ 9 NYCRR § 7870.5(c)(6).

³¹ 9 NYCRR § 7870.5(c)(7).

³² 9 NYCRR § 7870.5(b). See, "Notice to Third Party Designees" and "Notice to Local District Social Services Offices," *infra*.

³³ 9 NYCRR § 7870.5(a).

the telephone notification, the distributor must obtain and impart the same information as required for automatic delivery customers, above.³⁴

C. Notice to Third-Party Designees

Home heating fuel distributors are required to contact each customer annually, on or before November 1st, to determine whether the customer wishes to designate a third party (such as a friend, relative or social services agency) to receive notice of delivery cutoffs.³⁵ For new customers, distributors must collect third-party notification information when the new accounts are established.³⁶

If customers have designated third-parties to receive notices of cut-off, during the heating season, the distributor must notify the designee³⁷ by telephone, on the same day the distributor attempts telephone notification to the customer.³⁸ The distributor must make two attempts to notify the designee by telephone.³⁹ If the designee is reached, the distributor must identify the name and address of the customer, and provide the designee with the same telephone notification that the customer is required to receive.⁴⁰

³⁴ 9 NYCRR § 7870.5(c).

³⁵ 9 NYCRR § 7870.2(a)

³⁶ *Id.*

³⁷ 9 NYCRR § 7870.6(a).

³⁸ 9 NYCRR § 7870.6(b).

³⁹ *Id.*

⁴⁰ 9 NYCRR § 7870.6(c).

D. Notice to Local District Social Services Office

Distributors who plan delivery cutoffs to residential buildings during the heating season must also notify the appropriate local social services office where the building is located under the following circumstances:⁴¹

- If distributor's records, or its contact with the customer or the third-party designee indicate that a cutoff will involve a severe or hazardous health situation;⁴²
- Attempts to notify the customer by telephone have been unsuccessful;⁴³ or
- If the residential building affected is a multiple dwelling.⁴⁴

If an emergency exists (defined by the regulations as “a situation in which an occupied residential building is currently without heating fuel or is anticipated to be without heating fuel within 48 hours”⁴⁵) the distributor must notify the LDSS by telephone immediately,⁴⁶ or in all other cases, by messenger on the same day the distributor attempts to give telephone notice to the customer.⁴⁷ In notifying the LDSS, the distributor must provide the following information:

- The name and telephone number of the customer and of any third-party designee⁴⁸;
- Whether the building is a one- or two-family house or a multiple dwelling⁴⁹;

⁴¹ 9 NYCRR § 7870.7(a). For a list of LDSS offices by county, see *Appendix A*.

⁴² 9 NYCRR § 7870.7(a)(1). A “severe or hazardous health situation” is defined by the regulations as “a situation in which a customer is unable to protect himself or herself, and all other inhabitants of the residential building for which the customer is purchasing fuel, from danger to health or safety caused by a cutoff, by obtaining heating fuel from another source or by securing adequate alternative shelter.” 9 NYCRR § 7870.1(k)(1).

⁴³ 9 NYCRR § 7870.7(a)(2).

⁴⁴ 9 NYCRR § 7870.7(a)(3). A “multiple dwelling” is defined by the regulations as “any residential building or structure, or portion thereof, which is either rented, leased, let or hired out to be occupied, or is occupied, as the temporary or permanent residence or home of three or more families living independently of each other.” 9 NYCRR § 7870.1(i).

⁴⁵ 9 NYCRR § 7870.1(f).

⁴⁶ 9 NYCRR § 7870.7(b)(1).

⁴⁷ 9 NYCRR § 7870.7(b)(2).

⁴⁸ 9 NYCRR § 7870.7(c)(1).

- The reason for the fuel cutoff and the type of fuel⁵⁰;
- Whether contact with the customer or the customer's third-party designee indicates that a severe or hazardous health situation is involved⁵¹;
- The date on which the customer is expected to require a supply of heating fuel⁵²; and,
- Whether the building is currently without fuel or is anticipated to be without fuel within 48 hours.⁵³

When a distributor notifies the LDSS of a cutoff, the LDSS must investigate the customer's circumstances and take appropriate steps, including providing financial assistance to eligible customers and providing or arranging for other forms of assistance that may be available from the LDSS or from other government agencies.⁵⁴ The Home Energy Assistance Program (HEAP) helps low-income people pay the cost of heating their homes. If eligible, a customer may receive one regular HEAP benefit per year. A customer may also be eligible for emergency HEAP benefits if he is in danger of running out of fuel or having utility service shut off. For an overview of the HEAP program, refer to the New York State Office of Temporary and Disability Assistance (<https://otda.ny.gov/programs/heap/>)⁵⁵. However, all customers with an emergency must contact their local social services office for assistance.

⁴⁹ 9 NYCRR § 7870.7(c)(1).

⁵⁰ Id.

⁵¹ 9 NYCRR § 7870.7(c)(2).

⁵² 9 NYCRR § 7870.7(c)(3).

⁵³ Id.

⁵⁴ 9 NYCRR § 7870.9(a).

⁵⁵ Detailed information of employment and income support programs is also available in the NYS Office of Temporary and Disability Assistance publication "Temporary Assistance Energy Manual" available here: <https://otda.ny.gov/programs/temporary-assistance/TAEM.pdf> (last visited April 3, 2018).

E. Notice to an Emergency Agency

If the distributor cannot contact the LDSS by telephone after two attempts, it must contact an “emergency agency.”⁵⁶ An emergency agency is defined by the regulations as “the municipal or county agency or private organization for a municipality or county. . . .”⁵⁷ If initial attempts to contact the emergency agency are unsuccessful, the distributor must continue to call until it reaches the emergency agency.⁵⁸ In notifying the emergency agency, the distributor must provide the same information notification that it would give the LDSS.⁵⁹

When an emergency agency receives notice of a cutoff from a distributor, it must “take any reasonable action as if immediately necessary on a temporary basis to prevent loss of life or serious danger to public health.”⁶⁰ The emergency agency is also charged with notifying the appropriate LDSS by telephone on the next business day following its receipt of notification from a distributor, to advise the LDSS of the circumstances and to describe the temporary actions it has taken to prevent loss of life or danger to public health.⁶¹

⁵⁶ 9 NYCRR § 7870.8(a).

⁵⁷ 9 NYCRR § 7870.1(g). The regulations provide a list of emergency agencies by county. The list of LDSS and emergency agencies is also at: [https://govt.westlaw.com/nycrr/Document/I4fbd97c1cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/I4fbd97c1cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

⁵⁸ 9 NYCRR § 7870.8(a).

⁵⁹ 9 NYCRR § 7870.8(b).

⁶⁰ 9 NYCRR § 7870.9(b)(1).

⁶¹ 9 NYCRR § 7870.9(2).

APPENDIX A

LIST OF MUNICIPAL AND COUNTY SOCIAL SERVICES AGENCIES FOR NOTICE OF REFUSAL, SUSPENSION OR TERMINATION OF HEATING FUEL DELIVERIES MUNICIPAL DISTRICT OFFICES

New York City - multifamily dwellings:

Department of Housing Preservation and
Development
Basic Operations Division
125 Church Street, 2nd Floor
New York, NY 10007
212-566-7332

New York City - other:

Department of General Social Services
250 Church Street
New York, NY 10013
212-533-6393

DSS

COUNTY/DISTRICT OFFICES

Albany County

40 Howard Street
Albany, NY 12207
Fuel Unit 518-471-5923

Allegany County

Allegany County Court
House
Belmont, NY 14813
716-268-7612 Ext.276

Broome County

36-38 Main Street
Binghamton, NY 13905
607-772-2832

Cattaraugus County

265 No. Union Street
Olean, NY 14760
716-372-0030

Cayuga County

County Office Building
160 Genesee Street
Auburn, NY 13021
315-253-1355

Chautauqua County

Hall R. Clothier Health &
Soc. Serv. Building
Mayville, NY 14757
716-753-4374

Chemung County

203-209 William Street
Elmira, NY 14901
607-737-2874

Chenango County

County Office Building
Norwich, NY 13815
607-355-4568

Clinton County

30 Durkee Street (Mail-P.O.
Box 990) Plattsburgh, NY
12901
518-563-4560 Ext.357

Columbia County

610 State Street
Hudson, NY 12534
518-828-9411

Cortland County

133 Homer Avenue
Cortland, NY 13045
607-753-9681 Ext.40

Delaware County
126 Main Street
Delhi, NY 13753
607-746-2325

Dutchess County
County Office Building
14 Academy Street
Poughkeepsie, NY 12601
914-431-5000 Ext.237

Erie County
95 Franklin Street, 8th
Floor
Buffalo, NY 14202
716-846-8642

Essex County
Essex County Court House
Elizabethtown, NY 12932
518-873-6301; 716-284-
3067

Franklin County
Franklin County Court
House
Malone, NY 12953
518-483-6767

Fulton County
County Building
Johnstown, NY 12095
518-762-4671 Ext.48

Genesee County
3837 West Main Road
Batavia, NY 14020
716-344-2580

Greene County
465 Main Street
Catskill, NY 12414
518-943-3200

Hamilton County
Hamilton County Court
House
Lake Pleasant, NY 12108
518-548-3462

Herkimer County
County Office Building
Herkimer, NY 13350
315-867-1222

Jefferson County
175 Arsenal Street
Watertown, NY 13601
315-785-3141

Lewis County
Stowe Street, P.O. Box 193
Lowville, NY 13367
315-376-3536

Livingston County
Livingston County Campus
Building No. 3
Mt. Morris, NY 14510
716-658-2801 Ext.20

Madison County
Wampsville, NY 13163
315-366-2211 Ext.219

Monroe County
111 Westfall Road, Rm.
660
Rochester, NY 14620
716-442-4000 Ext.2613

Montgomery County
County Office Building
Fonda, NY 12068
518-853-3491

Nassau County
Administration Building

900 Ellison Avenue
Westbury, NY 11590
516-535-2064

Niagara County
100 Davison Road (P.O.
Box 506)
Lockport, NY 14094
716-284-3067

Oneida County
County Office Building
800 Park Avenue
Utica, NY 13501
315-798-5021; 315-798-
5059

Onondaga County
Onondaga County Civic
Center
421 Montgomery Street
Syracuse, NY 13202
315-425-2793

Ontario County
120 North Main Street
Canandaigua, NY 14424
716-394-1440

Orange County
Quarry Road, Box Z
Goshen, NY 10924
914-294-9361

Oswego County
County Office Building
Spring Street
Mexico, NY 13114
315-963-7271

Orleans County
Route 31
Albion, NY 14411
716-589-5676

Otsego County

County Office Building
197 Main Street
Cooperstown, NY 13326
607-547-4292

Putnam County
50 Main Street
Brewster, NY 10509
914-279-7185

Rensselaer County
133 Bloomingrove Drive
Troy, NY 12180
518-283-2000

Rockland County
Building L
Sanatorium Road
Pomona, NY 10970
914-623-1155; 354-0200
Ext. 3130

St. Lawrence County
Harold B. Smith County
Office Building Judson
Street
Canton, NY 13617
315-379-2150; 315-379-
2174

Saratoga County
Saratoga Municipal Center,
Bldg. A
Ballston Spa, NY 12020
518-885-5381

Schenectady County
487 Nott Street
Schenectady, NY 12308
518-382-3468

Schoharie County
Professional Building
Schoharie, NY 12157
518-295-8173/34

Schuyler County
County Office Building
Watkins Glen, NY 14891
607-535-4965, 2780 and
2789

Seneca County
R.D. No. 3, Box 179
County Road 118
Waterloo, NY 13165
315-568-9854

Steuben County
County Home, Box 631
Bath, NY 14810
607-776-7611

Suffolk County
Box 2000, 10 Oval Drive
Hauppauge, NY 11787
516-348-4000 Ext. 4375

Sullivan County
Box 231 (Infirmary Road)
Liberty, NY 12754
914-292-4900 Ext. 28

Tioga County
Box 394, Rt. 38
Owego, NY 13827
607-687-5000 Ext. 64

Tompkins County
108 East Green Street
Ithaca, NY 14850
607-274-5289

Ulster County
Ulster County Office
Building
244 Fair Street
Kingston, NY 12401
914-331-9300

Warren County
Warren County Municipal
Center
Lake George, NY 12845
518-792-9951

Washington County
6 Church Street
Granville, NY 12832
518-642-2800 Ext. 23

Wayne County
16 Williams Street
Lyons, NY 14489
315-946-9733

Westchester County

150 Grand Street

White Plains, NY 10601

914-682-2469

Wyoming County

466 North Main Street

Warsaw, NY 14569

716-786-3111

Yates County

County Office Building

P.O. Box 257

Penn Yan, NY 14527

315-436-4451

APPENDIX B

LIST OF MUNICIPAL AND COUNTY EMERGENCY AGENCIES FOR NOTICE OF REFUSAL, SUSPENSION OR TERMINATION OF HEATING FUEL DELIVERIES

NYC Human Resources Administration
(212) 483-1193

New York City Multiple Dwelling
NYC Housing Preservation & Development
(212) 960-4800

New York City Single Dwelling
NYC 311 is available for emergency heating assistance
Dial 311 or 212-NEW-YORK (212-639-9675) if outside NYC
<https://www1.nyc.gov/311/connect-with-us.page>

NYC Public Advocate
(212) 669-7250

COUNTY AGENCIES

Albany County

Red Cross (716) 938-2021 or 945-5114

Sheriff
(607) 334-2000

Allegany County

DSS Answering Service
(716) 593-1864

Cayuga County

DSS
(315) 253-1333

Clinton County

Community Action (Ad Hoc Committee)
(518) 561-8800

Broome County

Red Cross
(607) 722-1240

Chautauqua County

Sheriff
(716) 753-2131

Columbia County

Sheriff
(518) 828-3344

Cattaraugus County

Office for the Aging
(716) 372-0303

Chemung County

DSS Answering Service
(607) 737-2077

Cortland County

Sheriff
(607) 753-3311

Community Action

Chenango County

Delaware County
Sheriff-Delhi
(607) 746-2336

(914) 471-0200

Erie County
Sheriff

(716) 846-6300

Essex County
Sheriff
(518) 873-6321

Dutchess County
Red Cross

Franklin County
State Police - Malone
(518) 483-5000

Fulton County Sheriff
(518) 762-3151

Genesee County
Nursing Home
(716) 344-0584

Greene County
Sheriff
(518) 943-3300

Montgomery County
Sheriff
(518) 853-4312

Nassau County
DSS Emergency
Number
(516) 542-3143

Niagara County
CPS Answering Service
(716) 284-8332

Oneida County
Sheriff
(315) 736-0141

Onondaga County
Volunteer Center
(315) 474-7011

Ontario County
Sheriff
(716) 394-4560

Orange County
Sheriff
(914) 294-6166

Orleans County

Hamilton County
Child Protective
(518) 548-3113

Herkimer County
DSS Staff:
(315) 866-7036
(315) 866-6875
(315) 823-4545

Jefferson County
Sheriff
(315) 785-3050 Ext.
3175

Sheriff
(716) 589-5527

Oswego County
Sheriff
(315) 343-5490

Otsego County Sheriff
(607) 547-2500

Putnam County
Sheriff
(914) 225-5523

Rensselaer County
DSS Switchboard
(518) 283-2000

Rockland County
DSS Energy Unit:
(914) 623-1115

St. Lawrence County
Sheriff
(315) 379-2222

Saratoga County
Sheriff
(518) 885-6761

Lewis County
Sheriff
(315) 376-3511

Livingston County
Sheriff
(716) 243-1212

Madison County
Sheriff
(315) 366-2311

Monroe County
Child Protective
(716) 461-5690

Schenectady County
DSS Answering Service
(518) 382-3470

Sheriff
(518) 382-3300

City Police
(518) 374-7744

Schoharie County
Sheriff
(518) 295-8114

Schuyler County
Sheriff
(607) 535-2767

Seneca County
Sheriff
(315) 539-9241

Steuben County
Civil Defense
(607) 776-3333

Suffolk County
DSS Answering Service
(516) 348-4000

Sullivan County
DSS Answering Service
(914) 292-6444

Sheriff
(914) 338-3640

Sheriff
(315) 946-9711

Warren County Sheriff
(518) 792-9921

Westchester County
DSS Answering Service
(914) 592-3791

Tioga County
Sheriff
(607) 687-1010

Washington County
Sheriff--Salem
(518) 854-7487

Wyoming County
Sheriff
(716) 786-2255

Tompkins County
County Dispatch
(607) 273-8000

Sheriff--Hudson Falls
(518) 747-4623

Yates County
Sheriff
(315) 536-4438

Ulster County

Wayne County