

Legal Questions to Consider When Planning Civil Disobedience and Protest Activities

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This document contains several categories of questions that may be useful when considering engagement in civil disobedience (CD) and protest. Before engaging in CD and protest, it is important to have as much information as possible about what the legal risks are and what the different outcomes may be. This is important not only for those participating but also for those organizing, observing and providing support.

We hope you have attorneys to help you navigate this process, though that may not always be the case. Speaking to someone experienced with representing or supporting protesters in your area, even if they cannot represent you in court, to get the answers to the following questions can be extremely helpful. While you can also search for some of this information online, talking with someone experienced with the local police and court system will most often give you a better grasp of how to prepare before engaging in CD and protest.

What are the state laws and local (county/parish/municipality) laws governing:

- Marching / parades on the sidewalk
- Marching / parades in the street
- Gatherings on sidewalks
- Gatherings in public vs. private parks
- Camping on public property
- Camping in private parks / on private property
- Trespassing
- Wearing masks (individual vs. groups)
- **Signs:** what can signs be made out of (plastic/wood/metal/cardboard), how big can they be, are there any other restrictions to be aware of?
- **Sound:** do you need a permit for amplified sound, how far can it reach?
- **Parking:** do you need a permit to park a truck / car in the vicinity? Can you have a stage on a vehicle?
- What are the risks to carrying identification or answering questions related to personal identity?
- **Immigration:** does your municipality or local police agency share immigration information with federal immigration authorities? This often happens through programs called “287(g)” or “Secure Communities” or “Criminal Alien Program.” Are immigration agents stationed in the jail(s) or police station(s)? Might local charges put immigrants without citizenship status at risk of deportation?
- Are there any **special considerations** in your local laws or detention policies for (i) juveniles; (ii) people with prior convictions; (iii) people with bench warrants or open cases; (iv) people on probation or parole; (v) people receiving public assistance; (vi) people with jobs that require reporting of arrests; or (viii) trans, non-binary, or intersex people?

This resource is not legal advice. For answers to legal questions, please obtain the advice of a qualified attorney in your area. For more support consider contacting one of the national or local legal organizations listed below.

What might you expect if you are arrested while engaging in CD and protest?

- **What are the typical charges for being arrested while engaged in civil disobedience?** (By “typical” we refer to what charges were given most often in the past 5-10 years for those arrested for any type of protest, and/or what kind of charges have been brought more recently in similar contexts)
 - Are they violations, misdemeanors or felonies?
 - Have felonies ever been given in your city/state/jurisdiction for protest-related activities? If so, what type(s) of felony charges?
 - Is there a different process for violations/misdemeanors/felonies? Is there a “cite and release” policy for protests?
 - Is there normally a fine associated?
- How long are people typically held after being arrested before release / arraignment?
- Are people fingerprinted when charged, held and/or arrested?
- Are people typically bonded or bailed out? What is / is there a typical cost?
- Does having a past criminal record or pending prior charges affect where and how long you will be held?
- What is the process for people with known medical conditions or disabilities who will need medication or access to personal medical equipment if they are jailed (for example HIV or diabetes medication, mobility equipment, prosthetics, or glucose monitors)? Can they take their medication and/or equipment with them into the jail? Will they need paperwork / prescription identification? Will police possibly view medication/equipment as drug paraphernalia or other contraband?
- What personal information do protesters have to share if arrested? What if someone’s ID displays an incorrect name or gender?
- How do police determine where protesters will be held based on their perceived gender?
- Will people be strip-searched? What factors typically affect whether police decide to perform strip-searches of arrestees?
- What are the risks for non-citizens to provide foreign identification at booking/arrest? Will the police accept a union card or other non-state ID?
- Are there pay phones in the jail? How much do they cost?
- What happens if people are required to report arrests to their job? How does this reporting requirement operate across different jurisdictions with different levels of charges?

Logistical Questions

- Where do you go to get permits? How much do they cost? Are there any time-related restrictions? How much information are you obligated to provide to police or other city agencies in order to get a permit?
- Where are people arrested on CD and protest-related charges normally held immediately after arrest? List all possible places, or all possible types of places. What are the addresses and phone numbers for these facilities?
- Where are people who are transferred to immigration custody from the jail normally held?
- Where are juveniles normally held?
- Is there a central phone number or website you can call to get arrest information?
- Where are people who have been arrested usually arraigned? Are members of the public or family allowed to attend?

- If items are confiscated or taken by police during a protest, is there a location where they can be picked up? What is the contact information for that location, and when is it open? What types of forms and/or ID do you need to access your confiscated property?
- What happens if personal property is retained following the arrest as evidence, or under civil asset forfeiture?
- What kinds of sensitive information might be accessible to authorities if individuals do not adequately secure digital devices?

Information about Court Appearances

- Where is the courthouse located? Are there multiple courthouses for different types of appearances or charges (arraignment / bond / summons court vs. criminal court)? What time does the courthouse open? How long does it take for the public to get through security into the court?
- What types of information and ID do people who are appearing in court need? Do family members or supporters also need to bring ID?
- Do immigration officials arrest people in court or at arraignments?
- What happens if you can't show up for your court date?
 - Is there a process for an attorney to still represent you if you are unable to appear?
 - Is there a way to adjourn your court date to a different date when you can appear?
 - Will the judge issue a bench warrant if you do not appear? How can you get the bench warrant lifted?
- Can your case be dismissed before your court date? How will you be notified?
- Are there NLG lawyers or other low/pro bono attorneys available to represent you? What are the limits of their representation (are they only available for first appearance or are they willing to provide pro bono services through any additional appearances including (unlikely but possible) trial)?
- What information is available about public defenders who may represent you in court?
- What types of pleas are typical for people charged with protest-related activities? What are typical fines associated with these pleas? Are there court surcharges in addition to these fees? What happens if you cannot afford the fine? How does this differ for violations, misdemeanors, and felonies?

Additional Considerations Regarding Consequences of Arrests

It's important to think about what could happen to individuals who are funneled into or subject to certain systems, such as prison and re-entry, immigration, social services, and child protective services. Convictions, and even arrests, could impact access to vital resources that people rely on, have consequences for their jobs or immigration status, and/or risk their return to prison, initiation of deportation proceedings, or their losing custody of children.

What might be the impact of different levels of charges, or of any charges, for (i) immigrants without citizenship status; (ii) people in industries requiring background checks and reporting of charges including those who work with children; (iii) people with prior convictions; (iv) people on parole; (v) people in public housing or accessing other public benefits; (vi) people receiving federal aid for student loans; (vii) parents; or (viii) people who rely on pensions, for example?

Finding an Attorney

Finding an attorney to help with a CD action or political protest in general can be difficult. Most attorneys who do this kind of work are usually very busy balancing their protest work (often done for free) with their regular keep-the-lights-on paid work. There is no formula for getting an attorney, but persistence, patience, and politeness will go a long way.

- **Lawyers can be trained.** Political legal work is not the same as regular criminal defense or other types of litigation. For example, a typical criminal defense attorney might advise a client to testify against a co-defendant in exchange for favorable plea-bargain; an experienced protest attorney will know that political co-defendants will likely want to act in solidarity with each other. But this does not mean that you should avoid attorneys not experienced with political protest. If you know a lawyer who wants to help, but does not have experience with political lawyering, have them contact one of the legal organizations listed below. Some, but not all, public defenders are also well-versed in more political criminal defense work.
- **Networking.** Like any group of people, attorneys who do protest and political work know each other. If you make contact with somebody and it turns out that they cannot help you, always remember to ask them if they know of anybody who can.
- **You do not need a lawyer for everything.** A little research can get you a long way. Local ordinances are usually available online. You can also learn a lot from other local activists who have done actions in your area. Reach out!
- **Someone local is always better than somebody far away.** Even if the local person is not as experienced with protest work, knowing the local police, judges, and DAs is incredibly valuable.
- **Low Bono.** It is not a bad thing to give your attorney even a small sum of money if you can afford to. Lawyers who do a lot of protest work often do not make a lot of money; every little bit helps!

National and Local Legal Organizations

Below are national legal organizations and links for finding attorneys who may be able to help.

National Lawyers Guild (NLG)

<https://www.nlg.org>

The National Lawyers Guild is a national progressive membership organization whose members often have extensive experience with protest preparation, criminal defense, and civil rights litigation. NLG attorneys may charge a fee.

- **How to find an NLG attorney:**
<https://www.nlg.org/resources/referral-directory/>

American Civil Liberties Union (ACLU)

<https://www.aclu.org>

The ACLU is another organization of lawyers, many of whom do protest work primarily in the realm of civil litigation. The ACLU has chapters in many cities and localities.

- **How to find an ACLU chapter or affiliate near you:** <https://www.aclu.org/affiliates>

State Bar Associations

Every state and many cities will have a criminal defense bar association. Try searching for “(your state or city) criminal defense bar association” on the internet.

Public Defenders and Legal Aid

<https://www.lawhelp.org/find-help>

Every state and city will have a public defender’s office. They cannot help plan a protest, but many will be available to do defense work – you might consider contacting them ahead of time if you are considering a protest. They may also have connections with local defense attorneys who might be of assistance.

National Association of Criminal Defense Lawyers (NACDL)

<https://www.nacdl.org/>

NACDL is a trade organization for criminal defense attorneys. These are not explicitly protest or political lawyers, but they might, nonetheless, be of assistance.

- **NACDL attorney finder:**
<https://www.nacdl.org/directory/public>