

Legal Briefing for People Considering Non-Violent Civil Disobedience

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Questions addressed:

General warnings

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General Warnings

This is basic legal information being provided to people so they can make informed decisions about their choice to commit nonviolent civil disobedience protest actions. It is not advice on how to violate the law. People should make their own decisions and not be subjected to any pressure to act in any way. Most organizing for change does not put a higher value on the actions of people who decide on their own to engage in civil disobedience than the efforts of others who pray, educate, or lobby legislators. Every single person has to make their own informed decision.

People who are considering committing civil disobedience should be prepared for almost certain arrest, being sent to jail until they are bailed out, and a real possibility that they can be ordered to go to trial. Sentences for convictions of minor civil disobedience crimes can involve community service, or jail for periods of up to 6 months, and/or fines up to \$500. More serious charges can result in more serious consequences.

What kinds of non-violent civil disobedience actions can end up getting me arrested?

The First Amendment to the US Constitution generally protects your right to engage in protests and political speech. However, the courts have said that the government can limit where and how political protests are made. So, blocking the sidewalk, trespass on private or restricted property, blocking the street, and failure to follow lawful orders of law enforcement officers can get you arrested even if you are still involved in protest activity. Further actions of non-cooperation after you have been arrested, like going limp, can result in additional criminal charges.

What is the difference between state and federal charges?

If your civil disobedience takes place on federal property like the federal building or military properties, you will likely face federal charges. If your civil disobedience takes place on state or local property like regular sidewalks or streets, you will likely face state or local charges.

If you are arrested for state or local charges, you will be brought to the local jail and decisions about your bond, your arraignment, your trial date and your case will be made by the local District Attorney or the local City Attorney. Possible state charges include: criminal mischief 14:59(7) up to 6 months & \$500; disturbing the peace, unlawful assembly, 14:103, up to 90 days and \$100; obstruction of highway 14:97, up to 6 months & \$200; obstruction of sidewalks, doors, etc 14:100.1, up to 6 months & \$500; resisting officer or interference with officer, 14:108, up to 6 months & \$500; trespass 14:63 or 14:63.3 - 1st offense up to \$500 fine.

If you are arrested for federal charges, you may be brought to the local jail but all decisions about your case will be made by the U.S. Attorney. In general, federal charges for minor non-violent civil disobedience are more serious than state and local charges.

What will happen to me if I am arrested?

You will be handcuffed and searched on the spot. Arrested people will then usually be transported to a local jail where they will be processed by being identified, fingerprinted, photographed, and issued individual citations which will require you to appear in court on a specific date and time.

If you are arrested you should expect to spend a number of hours in police custody. There are circumstances where you could end up staying in jail overnight or over the weekend.

You may have to stay in jail until there is a court hearing to set bail to assure that you will return to court whenever required. You can ask a friend to post bail for you after it is set, or you can stay in jail and wait until a hearing before the judge. Many civil disobedience actions plan ahead for this so that people can be bailed out without staying in jail overnight, but you should always expect to stay in jail at least several hours.

What are the chances that I will have to go to trial if I am arrested?

It is impossible to know how the authorities will react to civil disobedience arrests, but you should always be prepared to go to trial several weeks or months after your arrest.

The usual process after arrest is that a person is required to appear before a court fairly soon after their arrest, within one to two days. At that court hearing you will be asked if you want to plead guilty or not guilty to the crime for which you were arrested. If you want to plead not guilty, you will be given a date to return for trial, usually several weeks later. If you plead guilty to a minor non-violent act of civil disobedience you may be sentenced right then.

Will I have to report to schools and employers that I have been arrested?

Yes, if you are asked, you must tell the truth. If asked you should advise that you were arrested for the offense in connection with an act of non-violent civil disobedience.

What are the consequences of just being arrested (and not prosecuted or convicted)? E.g. will it hurt my chances of getting a job or getting into graduate school or getting a nursing or law or medical license?

There are many reports of people having to disclose that they were arrested. Being arrested usually requires an explanation on formal applications. In the past few people lost jobs or were denied admission to a school or denied any licenses just for being arrested. However, times are changing. No one knows for sure how seriously the government or private employers or licensing boards or schools will take non-violent civil disobedience actions in these days. There have been reports of people having job difficulties *after they were convicted*. People who are convicted of a crime can expect to have to explain that on employment, schooling and professional applications. Anyone who is arrested faces the possibility that they will be tried and convicted and thus have to explain their convictions.

What are the consequences if I am prosecuted and found guilty?

People who are prosecuted have to return to court for their trial and possibly at other times for their arraignment or sentencing. People who are prosecuted face the very real possibility of fines, probation, or jail time.

Does it make a difference if I am not a citizen?

Yes. Non-citizens will likely face significantly more legal difficulties than citizens who engaged in civil disobedience. Non-citizens face both immigration problems and criminal problems if they engage in civil disobedience.

Does it make a difference if I am under 18?

Yes. People under the age of 18 who are arrested are often taken to separate facilities from everyone else. People under 18 may not be allowed to be released from jail until their parent or guardian arrives to pick them up. People under 18 can be prosecuted in different courts and given different sentences from people over 18.

What are the consequences of going to jail for student grants?

Again, it is not the arrest that gets people in trouble. People who are convicted of crimes and sentenced to prison often have federal benefits taken away from them while they are serving time in jail. For example, people in jail or prison cannot receive Pell Grants while they are in prison. 20411 of 1994 Violent Crime Control and Law Enforcement Act.

Resources for Additional Information:

National Lawyers Guild, www.nlg.org

212-679-5100

“Exercising Your Rights of Political Protest Manuals” (for Washington DC, Philadelphia and Massachusetts) and “Checklist for Legal Observers of Protests” (7 pages) available at www.nlg.org/resources/organizing.htm

Also have Know Your Rights Pamphlets which can be downloaded

Partnership for Civil Justice Legal Defense and Education Fund

1901 Pennsylvania NW, Suite 607, Washington, DC 20006 202-530-5630

www.justiceonline.org

Excellent Overview of Political Protest & Civil Disobedience:

“Exercising Your Right to Political Protest in Washington, DC” (13 pages)

http://www.justiceonline.org/webdocs/dc_rights.html

(Prepared by Partnership and NLG Washington DC)

Demonstrating and Civil Disobedience: A Legal Guide for Activists (Nuts and Bolts Pamphlet for Organizing a Protest and Possible Civil Disobedience)

by Gary Francione and Anna Charlton www.animal-law.org/library/pamphlet.htm

Francis Anthony Boyle, Defending Civil Resistance Under International Law: Special Edition for Pro Se Protestors (Transnational 1988) available in paper thru Amazon.com

Memos on: Overview of Federal Criminal Trial; Overview of Federal Sentencing; Summary of Legal Options; What Happens After Sentencing; Problems Paying Fines; and Trial Memos on International Law and Necessity Defenses for the federal misdemeanor civil disobedience trials of protestors at School of Americas in Columbus GA available on Bill Quigley's Loyola Law website

<http://law.loyno.edu/~gwlong/soa85.html>

Midnight Special Law Collective <http://www.midnightspecial.net/>

510-834-1883 1837 8th Avenue, Oakland, CA 94606

Information and handouts about setting up legal team, office, phone, arrest intake form, organizing mass defense, etc. Very helpful information