



Template that can be adapted to different situations. It is written primarily for the benefit of organizers, activists, and union reps, and not lawyers. However, it does provide lawyers an outline of the main questions you will face and can be a starting point for research. Note that paragraphs 5, 8, and 9 are Pennsylvania specific. This does not contain case citations from different jurisdictions, and the law and its application may vary somewhat from place to place.

COMMON QUESTIONS ON BEING ARRESTED IN PEACEFUL DEMONSTRATIONS, WHILE LEAFLETING, AND/OR FROM DOING CIVIL DISOBEDIENCE

INTRODUCTION

This is not a detailed discussion but is meant to only highlight the most common questions that arise in peaceful demonstrations or while organizing where the possibility of arrest exists. It is not a substitute for personal legal advice tailored to specific facts of a specific arrest or situation.¹

1. Where can I pass out leaflets?

You can pass out leaflets in public spaces that are considered public property. The most common example is sidewalks and public parks. You have no legal right to pass out leaflets on private property, like stores and shopping malls, even if open to the public. There are some exceptions in a few states-California, New Jersey which have extended free speech rights under those state's constitutions to shopping malls, etc. There are other exceptions to this rule. If owners of private property let one group solicit, they have to let all groups solicit. Some owners of private property, for purposes of the law, acquire a public character, for example public authorities such as stadium authorities. Labor union members during the course of a labor dispute may have the right to picket and distribute leaflets under federal labor law at a shopping mall where their employer is located. There is a very large open question about the increasing tendency of government and private interests to "privatize" public spaces and then to ban free speech activity. Examples include, several casinos in Las Vegas and the Mormon Church in Salt Lake City.² Potential issues arising in this area include PPG Plaza in downtown Pittsburgh that the building owners contend is private. Other cities have urban/green spaces ordinances that open up what is technically private property to public uses.

2. Do we need a permit to demonstrate?

You *may* need a permit if you are demonstrating in a public park in large numbers or if

¹ The comments here are based on Pennsylvania and federal law. There are some slight differences between states.

² While there are bad federal court decisions out there, the Courts in those cases found that these were public areas open to leafleting.

you will be marching in the street.(Note that there are some exceptions to this, for example, in Washington, D.C.) You do not need a permit if you are marching on the sidewalk or simply gathering in a small demonstration on the sidewalk. In those situations, to avoid unintended conflict with the police we suggest that the local police station be notified. Note that while you have a right to march, picket, leaflet, and demonstrate on public sidewalks, you do not have a legal right to block the sidewalks so police may insist that you keep a path free on the sidewalk.

Some jurisdictions have ordinances that restrict camping in public parks, or restrict the hours one can be in public parks, and these have sometimes been upheld by courts as reasonable time, place, and manner restrictions under the first amendment. Some places that have them enforce them, others do not. You *may* need a permit if required by statute for a sound system, including bullhorns, above a certain decibel level.

3. What are examples of activities I might be arrested for and those that I might not be arrested for?

a. Leafleting in public areas: Generally, you will not be arrested for this unless you stray onto private property and ignore warnings to get off private property.

b. Peaceful Demonstration (Rally speakers etc.): Generally, you do not risk arrest so long as sidewalks and public access areas are not being blocked. In those situations, someone should be designated to be a contact with the police in case there are problems.

c. Civil Disobedience: (Blocking sidewalks, streets, refusing to leave private areas etc.) Generally, you are warned and given an opportunity to leave. This is not always the case and you can be arrested for this.

d. Marching in Streets Without a Permit: In some places, regardless of the constitutionality of it, you may be arrested for this if you ignore warnings to get out of the street.

e. Arguing with Police: Although you have a constitutional right to tell the police what you think, including cursing at the officer, police may and often do overreact and it is a losing proposition to argue with them on the street. You often end up being charged with resisting arrest or assault on a police officer. Note, even if the police officer's arrest of you is illegal, and even if his or her force is excessive, in Pennsylvania you do not have the legal right to resist the arrest or defend yourself.

4. Have the police and Courts been more restrictive in the wake of 9/11?³

Actually, the restrictions began in the wake of the anti-globalization demonstrations in

³ A broader discussion of crackdown on dissent is beyond the scope of this, but keep in mind the historical tendency towards repression of social movements by this government and by governments around the world. We would suggest people read the history of the abolitionist movement ,the Women's movement, the labor movement ,the Palmer raids(1920's), the McCarthy era, the attacks on the Civil Rights Movement, and the New Left in the late 1960's and 1970's to put this issue in historical perspective.

Seattle in 1999. September 11th and the “Patriot Act” passed shortly thereafter have only accelerated these trends. Since that time, we have witnessed the following:

- a. More aggressive police tactics in major demonstrations;
- b. The designation of “free speech areas”, or pens where demonstrators are directed and herded into;
- c. Arrests for conduct that in the past would not have led to arrests;
- d. More serious charges for conduct that in the past would only have led to minor citations;
- e. Increased surveillance of activist/dissident groups; and
- f. Broad federal conspiracy indictments directed against environmental and animal rights activists.

5. What could I get arrested for in demonstrations?

a. The most common charges stemming from arrests in peaceful demonstrations are Disorderly Conduct, Obstructing Traffic, or Trespass, all summary offenses carrying maximum fine of \$300 and maximum jail sentence of 90 days in jail. In Pennsylvania, this can be heard and adjudicated by a magistrate, usually involving one hearing. It is rare for anyone to receive a jail sentence on these charges.

b. The most common misdemeanor charges include more serious levels of Disorderly Conduct and Trespass as well as Obstructing Administration of Law and Failure to Disperse. This can only be adjudicated in regular criminal court, usually involving several hearings, where the right to a jury trial exists.

c. If you demonstrate at federal buildings, and particularly a/inside military bases or inside recruiting stations, you could face federal charges, which are sometimes more serious. For example, people arrested at the School of the Americas are routinely being given 6 month jail terms. The other situation where federal charges could be more serious is arrests at national security events, and inside designated national security zones--Political conventions, G-20 meetings, Super Bowls, and World bank or WTO meetings.

d. CAUTION: Avoid confrontations with police officers during the course of an arrest, that always dramatically increases the charges and the numbers of people arrested (usually without any political benefit coming out of it). If arrested, do not resist or struggle. Altercations with police officers can lead to Resisting Arrest (Misdemeanor) or Aggravated Assault (Felony) charges. This is where a danger of jail time arises.

6. If there is a risk I may get arrested, are there things I should be aware of?

a. Do not get arrested if you are not a U.S. Citizen. An arrest may impact your immigration status and harm your chances of obtaining Lawful Permanent Resident status or citizenship. A conviction for more serious offenses (“Aggravated Felonies” or crimes of “Moral Turpitude”, which both have very broad definitions) could subject you to deportation from the

United States

b. If you are on probation or parole, you are required to report any arrest to your probation or parole officer. An arrest can be considered a violation of probation or parole.

c. If you do not live in the Pittsburgh area, you should understand the Court hearings are not scheduled at your convenience, and you will be required to return to Pittsburgh for Court hearings.

d. Do not carry weapons of any kind, even a pocket knife. You inadvertently could find yourself facing a weapons charge.

e. If you take medication, do not assume you will have access to it after arrest.

f. To avoid problems getting released on bail, and/or to avoid lengthy processing carry a picture ID with a valid address on it.

g. If you are a minor, your case may be handled separately from others in Juvenile Court, and you might not be released until a parent or guardian comes to pick you up.

h. If you are claustrophobic do not place yourself in danger of arrest. It could be several hours to one or two days before you are released, and you will spend time in confined places.

i. If you are a student, there may be consequences from an arrest that can vary greatly depending on the circumstances and charges, but might include things such as cancellation/suspension of financial aid and discipline from the school/university up to and including expulsion under the school's disciplinary code.

7. Will the police warn me prior to arresting me?

Sometimes. In many situations, warnings are first given by private security and then the police, and indeed some charges require a warning by the police. This is particularly true when the incident involves a simple trespass or perhaps leafleting on what might or might not be private property. However, warnings are not always given, and sometimes when given, particularly in large demonstrations, are not heard by everyone.

8. What will happen when I am arrested?

a. Summary Offense: If you are arrested for a summary offense, you will be given a Citation on site by a police officer or at one of the police stations. Then you will have to fill out a form on the Citation, entering a plea of not guilty and requesting a hearing.

b. Misdemeanor or Felony: If arrested for a misdemeanor or a felony, you may go through a processing procedure at the County Jail and Municipal Courts Building. **However, recently for some misdemeanors (and where there are no problems with the police and you**

have Valid Identification showing a legitimate local address), there is a new procedure in which you are released without that processing, and will later receive a summons in the mail directing you to appear in Court on a certain date.

If taken into custody you will be interviewed by the bail agency, photographed, and fingerprinted. You will then be taken before a magistrate who will set a date for a Preliminary Hearing (usually within 7 to 10 days) and will set bail. If you are from the area and have no prior record, you should be released without having to post bail. The processing before release on bail will take from several hours to 1-2 days. At the Preliminary Hearing, the magistrate will decide if there is sufficient evidence to hold the case for regular criminal court involving several hearings and potentially a jury trial.

9. What will be the result of the criminal charges?

It depends on the factual circumstances, and each circumstance is unique. However, in over 1,000 arrests in Western Pennsylvania and Ohio involving peaceful demonstrations, leafleting, and civil disobedience, in the last 10 to 15 years, few people have been sentenced to jail except for some persons who, on principle, refused to pay a fine. We do remain concerned over the increasing tendency of the authorities to react more harshly in demonstration situations.⁴ We are also concerned concerning greater use of federal statutes and conspiracy laws in cases involving recruiting stations and military bases, animal rights and environmental activists.

The most common results of demonstration arrests from peaceful civil disobedience in Western Pennsylvania have been as follows⁵:

- a. Guilty verdicts/pleas and payment of a fine (as high as \$300) or costs;
- b. Dismissal of charges in exchange for community service work (Example: Voter Registration, Community Food Bank etc.) sometimes with payment of costs, sometimes not;
- c. Dismissals of all or most of charges.

10. What else should I be aware of?

If you are going to a demonstration where there is a risk of arrest, or if you are engaging in civil disobedience, it is helpful if you do it with an affinity group and/or persons who can do support work for those who get arrested, including getting the names of people arrested to lawyers and legal observers. If you have never been arrested before in a demonstration, it is

⁴ Decisions often need to be made in the course of legal proceedings, the principal one often being whether to proceed to trial on the original charges filed or to accept a plea bargain to reduced charges. While it is encouraged, that people act as a group as much as possible, that decision is a decision each individual needs to make, with the advice of lawyers, the decision depending upon individual facts/politics of the case and individual.

⁵ This varies depending on facts of the individual case, what Judge we have, the politics of the situation, and whether there was any confrontation with the police above and beyond people just being arrested for peaceful civil disobedience.

strongly encouraged that you participate in a civil disobedience training session before you place yourself in a position where there is a possibility of arrest. Training tends to minimize confrontations with the police that may dilute the message of the demonstration, and tends to minimize legal entanglements.

11. Can legal observers be helpful?

Legal observers can be helpful witnesses and help keep track of who was arrested, who may have been injured, and to monitor the conduct of the police. Legal observers should not engage in crowd control, speak to the media, interfere with an arrest in progress, place themselves in danger of arrest, provide legal advice (unless an attorney in the jurisdiction) or provoke actions. Legal observers collect information and their presence alone can sometimes deter unconstitutional law enforcement conduct. Union representatives can and often do serve as legal observers.

12. Do I have to answer questions asked by police after I am arrested and will the police tell me what I am being charged with?

While sometimes police will tell you the charges at the time of arrest, you usually will not know for several hours what the exact charge is. You have no obligation to answer police questions at the time of the arrest. You should provide your name and contact information to ease the process in being released on bail or without having to post bail. Generally, police will not read you “Miranda warnings” at the time of your arrest, and that failure only becomes important when the police case against you depends on a statement you made after you were in police custody. Miranda warnings are generally read to you by the Magistrate at the time of your Preliminary Arraignment, when bail is also set, and a date for a Preliminary Hearing is set.

13. How is bail set and what will happen if a refuse to give my name and address?

If you are arrested for a felony or misdemeanor (and taken into custody), you will be interviewed by a Court employee on background information including name, address, phone number, references etc. This is used for purpose of setting bail. If you fail to give the person background information bail will not be set. Sometimes persons engage in bail solidarity and refuse to give that information, including refusing to give their name. People should understand the consequences of doing that, with some exceptions you generally will not be released on bail without giving that information.

Solidarity and Good Luck

Mike Healey & Glen Downey