



# Legal Guide for Activists

## Sections

**\*L**egal Disclaimer: The information in the guide is provided by the Animal Legal Defense Fund for educational purposes only. It is not a substitute for professional legal advice, and legal advice and services are not being offered.

## Basic Legal Principles Applicable With Respect To Activism

The right to protest, demonstrate and speak out is protected in the United States Constitution. The First Amendment to the constitution guarantees the right of people to engage in non-violent speech and assembly, including demonstrations, even if the views they are advocating are unpopular.

However, the government may impose what's known as "reasonable restrictions" on the exercise of these rights. Keep in mind acts of violence are never protected.

There are limits to the right to free expression. Defamation, obscenity and "fighting words" are not protected by the First Amendment. Here's what that means:

**Defamation:** Defamation consists of making untrue statements that damage the reputation of a person or entity. Truth is a complete defense to a claim of defamation.

**Fighting words:** "Fighting words" are defined as personal insults directed at a particular person or small group of people, inherently likely to create a violent reaction and that play no role in the expression of ideas.

Expressive conduct such as burning flags is *not* considered to be fighting words, even if the conduct seriously offends observers. The U.S. Supreme Court has ruled that burning flags and other such expressive conduct is considered "speech," and is protected by the First Amendment.

However, if highly offensive words are directed at one individual and result in a fight— for example, calling a man a lying moth\*\*fu\*\*\*\*—these words are fighting words not protected by the First Amendment.

**Time, Place and Manner Restrictions:** The government may also impose reasonable "time, place and manner restrictions" on the exercise of free speech rights.

These restrictions must not be based on the content of the speech. That means the government can't, say, require folks advocating on behalf of farm animals only to hold their protests at 2 a.m. on Thursdays, while everyone else may demonstrate at other times.

These restrictions must be limited to what is absolutely necessary to achieve a "compelling governmental interest," such as protecting the public safety.

These restrictions must provide sufficient alternative ways for people to communicate their message.

Examples of time, place and manner restrictions include:

**Time:** An ordinance banning loud noises in residential areas during the night.

**Place:** An ordinance prohibiting parades on certain busy streets, and an ordinance prohibiting protests within a reasonable number of feet from locations such as hospitals, courthouses and private residences.

**Manner:** An ordinance restricting the size of signs carried by picketers, and an ordinance restricting noise levels in residential neighborhoods.

**Disorderly Conduct and Disturbing the Peace:** Ordinances prohibiting "disorderly conduct" and "disturbing the peace" are generally considered to be reasonable restrictions on the exercise of First Amendment rights.

These are very common charges used against demonstrators. For example, disorderly conduct may include unreasonable noise, obstructing traffic or refusing a police order to disperse.

**Trespass:** “Trespass” laws generally forbid you from knowingly going onto private property without the consent of the owner. Trespass laws are also generally considered to be reasonable place restrictions on the exercise of First Amendment rights. And if the owner asks you to leave after giving consent, you must do so immediately.

**Curfew Laws For Minors:** If minors are participating in a nighttime demonstration, they may be violating curfew laws and the other demonstrators may be charged with corruption of a minor. Be aware that some but not all courts asked to consider these curfew laws have found them to be an unconstitutional infringement on minors’ First Amendment rights. Consult a lawyer to learn more about the law in your jurisdiction.

**Penalties:** Penalties for violation of time, place and manner restrictions may include arrest, fines and incarceration.

**Right of Privacy:** The First Amendment does not give an activist the right to violate someone’s right to privacy, which includes the public disclosure of private facts. For example, a website giving unlisted home phone numbers and addresses for the executives of a company that is the subject of protests may violate these executives’ right of privacy.

## Planning A Demonstration

**Know the law:** In planning a demonstration, one of the first things you should do is to check the applicable provisions of the municipal code of the city in which your demonstration will be held. If you are planning a demonstration in a residential neighborhood, there will undoubtedly be additional restrictions on your activities.

If at all possible, consult with an attorney regarding the ordinances and regulations that will apply to your demonstration.

**Permits:** If a permit is required by the city you are in, then you should obtain one and comply with any reasonable restrictions in the permit. Many cities require permits if sound amplification equipment will be used. If you are required to obtain a permit and fail to do so, you will be probably be asked to disband—and if you fail to disband, you may be arrested.

**Demonstrating in a private area:** If you are planning to demonstrate in a private area open to the public, such as a shopping center, you should check with an attorney regarding your rights if the owner asks you to leave.

**Attorney:** If it all possible, it is a good idea to have an attorney present during your demonstration to communicate with police officers and to keep a list of individuals who may be arrested.

**Videotaping:** The demonstration should be videotaped by more than one person so you have a record of the actions of individuals and police officers and any incidents that may occur.

**Plan ahead in case of arrest:** Plan in advance what you will do in the event one or more of your group is arrested. For example, you should have plans for securing the release from jail of any arrested demonstrators, including the posting of bail. You should also have an attorney lined up to represent anyone who is arrested.



# Civil Disobedience

Civil disobedience consists of the intentional violation of a law for the purpose of expressing the belief that the law is unconstitutional or immoral with goal being tried to get the law changed.

There is no constitutional protection for engaging in acts of civil disobedience. Anyone who does runs a high risk that they will be arrested and may suffer the maximum criminal penalties for violation of the laws they've broken.

It is an excellent idea to consult with an attorney before engaging in any act of civil disobedience, so that you understand the penalty you will be facing and you have someone ready to defend you in the event you are arrested.

As with all demonstrations, it is a good idea to have an attorney present during any act of civil disobedience, to keep a list of those who may be arrested, and to videotape the event, including any arrest.



## Interacting With The Police

There are some basic rules you should follow when interacting with the police:

- Do not argue with the police. Say as little as possible, which generally means say nothing other than your name if asked. Anything you say can be used against you.

- Do not interfere with or resist the officer: Don't interfere with or resist the officer, even if you think he/she is wrong. Interfering with a peace officer is typically defined to include any act designed to impair an officer's ability to do his or her job, including the simple refusal to obey a lawful order by an officer.
- Do not run and do not touch the officer. Do not complain or tell the officer you are going to file a complaint against him or her.
- Remember the officers' badge and patrol car numbers And write everything down as soon as you have an opportunity.
- Try to find witnesses and get their names and phone numbers.
- If you are injured, take photos as soon as you can.
- Obey the instructions of the police and submit to arrest, even if you believe that you have done nothing wrong. Otherwise, you may be charged with additional crimes, for example resisting arrest or interfering with a peace officer, and you could be convicted of these other charges even if the other charges are dismissed.
- Videotaping all activities, incidents and events, including arrests, is extremely important to avoid disputes about who or how injuries or property damage occurred.

When interacting with police officers, you need to be aware of your rights:

- When you are stopped in a car by a police officer, you must show your driver's license, proof of insurance and registration.
- Police officers may ask for your name if you have been properly detained, and in some states you can be arrested for refusing to give it. However, as more fully discussed below, you otherwise do not have to answer any questions if you are detained or arrested.
- You should never make any statements regarding the incident. Furthermore, you do not have to consent to a search of yourself, your car or your house. Of course, if the police have a search warrant, then you must allow them to proceed.
- You should never interfere with or obstruct the police, since you could be arrested for it. If the police are doing anything that violates your rights, your remedy is to file a complaint with the Internal Affairs Division of the police department or the Civilian Complaint Board, or, if you are arrested and charged with a crime, to challenge the officers' actions in court.
- If you are detained by police officers, your 5th Amendment right not to incriminate yourself, including your rights under the Miranda decision of the U.S. Supreme Court, come into play.  
This means that before a police officer asks you any questions other than questions seeking biographical information such as name and address, the officer must give you the following Miranda warnings:
  - that you have the right to remain silent,
  - that anything you say may be used against you in court,
  - that you have the right to consult with an attorney and to have that attorney present during questioning,
  - and that, if you cannot afford to hire an attorney, one will be provided at no cost to represent you.

- Do not talk to the police under these circumstances. Insist on seeing an attorney. Often, police officers will attempt to get you to talk by saying that things will be better for you if you talk, promising to try to help you if you talk, or making other statements to show affinity with you or your cause. Statements of this type are generally not true, and you should not be induced to talk by such statements or promises made by police officers. People charged with crimes almost always hurt their case by talking to the police.
- If you are arrested, ask to speak to a lawyer at the first available opportunity. Do not tell the police anything other than your name and address without a lawyer.
- Within a reasonable time after your arrest, you have the right to make a local phone call. Hopefully, you will have planned in advance to call a particular attorney. If not, call someone who can help you post bail and get an attorney to represent you.
- You must be taken before a judge on the first court day following your arrest, at which time your attorney can ask for you to be released without bail or at least to have your bail lowered. Speak to a lawyer before making any decisions regarding your case.
- Demonstrators should obey any court orders restricting their activities, even if they believe the court is wrong. An unlawful court order may be challenged through the judicial process, but it should not simply be ignored.

# Animal Enterprise Terrorism Act

The Animal Enterprise Terrorism Act—“AETA”—is a federal law criminalizes some kinds of demonstrations or acts on behalf of animals, and classifies these demonstrations as acts of “terrorism.”

The act makes it a crime designated as “terrorism” to damage or interfere with an “animal enterprise” by:

- intentionally damaging property of either an animal enterprise or anyone with an animal enterprise,
- intentionally placing a person or a member of their immediate family in reasonable fear of death or serious bodily injury through threats, vandalism, property damage, criminal trespass, harassment or intimidation, or
- conspiring or attempting to do any of the above.

**Here are some key points to bear in mind:**

- The definition of an “animal enterprise” under this law is expansive, and includes zoos, circuses, rodeos, farms, animal laboratories, pet stores, animal shelters, furriers and “any fair or similar event intended to advance agricultural arts and sciences.” **You can read the whole statute here.** [↗](#)
- This law applies not only to “animal enterprises” themselves, but also targets activity against any person or company that does business with any animal enterprise.
- The law makes it a crime to intentionally place a person or their family members in reasonable fear of death or serious bodily injury through a course of conduct of threats, vandalism, property damage, criminal trespass, harassment or intimidation. his language is very broad and could cover protests outside the home or office of an executive by people wearing masks as part of a nationwide campaign to get a company to stop testing on



animals. It could also cover investigations by activists who enter a facility on false pretenses—arguably criminal trespass—or by breaking locks, which could constitute property damage, to film animal suffering. Under AETA, these types of conduct could be prosecuted as terrorism.

- The penalty for non-violent action that causes damage of up to \$10,000 is a fine or imprisonment of up to one year or both. Thus, non-violent civil disobedience may constitute “terrorism” under AETA and result in an activist spending a year in prison. The penalties increase from there.
- There are First Amendment protections. Under AETA, the definition of “economic damage” “does not include any lawful economic disruption such as a lawful boycott based on the disclosure of information regarding an animal enterprise.” Additionally, AETA states that it does not prohibit expressive conduct protected by the First Amendment. This acknowledgement is redundant, since any legislation that violates the First Amendment is invalid, whether or not it says so.



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