

KNOW YOUR

RIGHTS

WHEN PROTESTING
WHEN ENCOUNTERING POLICE
WHEN DETAINED OR ARRESTED
AND MORE

ACLU
West Virginia

What is the ACLU-WV

- Non-partisan, nonprofit membership organization
- Our mission:
 - Fulfill the promise of the Bill of Rights for all West Virginians
 - Extend rights to parts of the population who have been traditionally denied their rights including people of color, LGBTQ+ people, prisoners, people with disabilities, etc.



**FREEDOM &
JUSTICE FOR
ALL, Y'ALL**

ACLU
WV



Dissent is Patriotic

“[A] principal function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”

Texas v. Johnson, 491 U.S. 397, 408-09 (1989)

The Right to Protest

- Right to peacefully protest
- “Traditional public forums”
- Wide-ranging

Law enforcement cannot interfere with expression because of *what* is being said.

“The First Amendment means that government has no power to restrict expression because of its message, its ideas, or its content.”

Police Department of City of Chicago v. Mosley,
409 U.S. 92, 95 (1972)

Permits

Usually you do not need a permit to march or protest
(But sometimes you do)



Limitations on the Right to Protest

- The government can limit speech by imposing “time, place, and manner” restrictions. This is most commonly done by requiring permits for large meetings, rallies, and demonstrations.
- A permit requirement is constitutional as long as its requirements are reasonable and treat all groups the same, regardless of the focus of the rally or protest.
- The government cannot impose permit restrictions or deny a permit just because it doesn’t like the message of a certain speaker or group.

Limitations on Speech

- Violation of established laws
- Inciting violence, obscenity, or threatening
 - Arbitrary obscenity enforcement
- They advocate imminent violence or specifically provokes people to commit unlawful actions.

Limitations on Action

- Demonstrators who engage in civil disobedience (non-violent unlawful action as a form of protest) are not protected under the First Amendment.
- People who engage in civil disobedience should be prepared to be arrested or fined as part of their protest activity.
- You don't have a right to block a building entrance or physically harass people.
- Protesting on private property is not protected by the law. You can be arrested if you're trespassing.
- You don't have a right to remain on private property after being told to leave by the owner.
- If you endanger others through the manner in which you choose to protest, you can be arrested.
- Do not interfere with, touch, or verbally antagonize the police.
- Avoid carrying any drugs or weapons. If you happen to be arrested, you could face additional charges for their possession.

Threats to the Right to Dissent

- Mass arrests, illegal use of force, curfews and even corralling protesters into so-called “free-speech zones”
- New surveillance technologies
- Self-censorship
- USA Patriot Act and immigrants

Your Right to Document Police Activity

Your Right to Photograph

- When in public spaces where you are lawfully present you have the right to photograph anything that is in plain view.
- That includes pictures of federal buildings, transportation facilities, and police.
- Such photography is a form of public oversight over the government and is important in a free society.

Private Property and Specific Locations

- When you are on private property, the property owner may set rules about the taking of photographs.
- If you disobey the property owner's rules, they can order you off their property (and have you arrested for trespassing if you do not comply).
- Photography and videos at the airport

Videotaping

There is an important legal distinction between a visual photographic record (fully protected) and the audio portion of a videotape, which some states have tried to regulate under state wiretapping laws.

In WV, you are allowed to record with the consent of just one party to the conversation, therefore you can tape your own interactions with officers without violating wiretap statutes (since you are one of the parties).

- We believe that it is legal to record audio of police actions even when you are not part of the “conversation,” because WV’s prohibition on taping applies only when there is a reasonable expectation of privacy.
- No state court has held that police officers performing their job in public have a reasonable expectation.
- The ACLU believes that laws that ban the taping of public officials' public statements without their consent violate the First Amendment.

Don't Interfere

- Police officers may legitimately order citizens to cease activities that are truly interfering with legitimate law enforcement operations.
- Professional officers, however, realize that such operations are subject to public scrutiny, including by citizens photographing them.
- Note that the right to photograph does not give you a right to break any other laws. For example, if you are trespassing to take photographs, you may still be charged with trespass.

Get a Warrant!

- Police officers may not confiscate or demand to view your digital photographs or video without a warrant.
- The Supreme Court has ruled that police may not search your cell phone when they arrest you, unless they get a warrant.
 - It is possible that courts may approve the temporary warrantless seizure of a camera in certain extreme “exigent” circumstances such as where necessary to save a life, or where police have a reasonable, good-faith belief that doing so is necessary to prevent the destruction of evidence of a crime while they seek a warrant.
- Police **MAY NOT DELETE** your photographs or video under any circumstances.
 - Officers have faced felony charges of evidence tampering as well as obstruction and theft for taking a photographer’s memory card.

Photo/Video Tips

- Be courteous with law enforcement
- Keep yourself safe
- Try not to hide your face behind the camera
- Upload your video anonymously to Youtube or share through a live app (like Facebook live)
- Think about who is in your photo/video before you share

If Stopped

- *Always remain polite and never physically resist a police officer.
- If stopped for photography, the right question to ask is, "am I free to go?"
- Until you ask to leave, your being stopped is considered voluntary under the law and is legal.

If Detained

- If the officer says you are not free to go, then you are being detained
- You cannot be detained without reasonable suspicion that you have or are about to commit a crime or are in the process of doing so.
- If you are detained, politely ask what crime you are suspected of committing, and remind the officer that taking photographs is your right under the First Amendment and does not constitute reasonable suspicion of criminal activity.

If You're Arrested

- Do not run or resist. It may result in additional charges.
- The whole process, from arrest to release on bail, should take about 24-36 hours.
- The police will ask you for basic biographical information and will take your fingerprints and photograph, unless you have been charged with a very minor crime.
- You will then be interviewed by a court agency so that bail can be assessed. You do not have to answer their questions, but giving accurate information will speed the process.
- You can hire an attorney to represent you at the arraignment and present arguments regarding bail.
- The judicial officer will set bail according to several factors (local connections, seriousness of the crime, how many other protesters have been arrested, etc.).
 - Bail hearings

Police Street Encounters

- You have a right to be free from unreasonable searches/seizures on the street. However, police may briefly detain you in order to investigate or gather information as long as they have reasonable suspicion of illegal activity.
- In order to keep you from leaving, the officer must have reasonable suspicion of illegal activity, which is something more than an "unarticulated hunch".
 - An investigative detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop..." (*Florida v. Royer*, 460 U.S. 491, 500 (1983)).
 - The methods of investigation employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short time.
 - During an investigative detention, LEO can put you in handcuffs (usually under the guise of officer safety) and can even frisk you for weapons (*Terry v. Ohio*, 392 U.S. 1, (1968)).

Best Practices: When You're Stopped by Police on the Street

- LEOs may briefly detain you on the street if they have reasonable suspicion that you may be involved in criminal activity.
 - If you are stopped on the street, you generally do not have to speak to the police. If you do not wish to speak to the police, and they do not have reasonable suspicion to detain you, you should calmly and politely ask LEO if you are free to leave.
 - You have the right to remain silent. This is rooted in the 5th Amendment. If you choose to remain silent, you should be polite, but affirmatively assert your desire to remain silent (say it out loud and clearly).

Best Practices: When You're Stopped by Police on the Street - Identification

- In West Virginia, you may be asked to provide identification.
 - Under certain circumstances, LEO can charge you with obstruction for refusing to identify yourself.
 - - For example, the basis for the obstructing charge isn't enough, there would need to be either the addition of 1) if you are required to do so expressly by statute or when 2) refusal occurs after LEO has communicated the reason why the citizens' name is being sought in relation to the officer's official duties.

Best Practices: When You're Stopped by Police on the Street - Identification

- In *Wingate v. Fulford*, the Fourth Circuit ruled that the initial seizure of the person must be constitutional before police officers can enforce a stop and identify statute. For a person to be briefly detained, or what is commonly referred to as a Terry stop, police must have reasonable, articulable, and particularized suspicion that the person is engaged in criminal activity.
- Some questions are off-limits (immigration).
 - You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country. (Separate rules apply at international borders and airports as well as for individuals on certain nonimmigrant visas, including tourists and business travelers).

Best Practices: When You Are Stopped and Frisked/Searched

- During an investigative detention, you may be frisked (briefly searched) for weapons (*Terry v. Ohio*, 392 U.S. 1).
 - If an officer feels something that has physical characteristics that make it immediately identifiable as a weapon or contraband, the officer can briefly seize the evidence with reasonable suspicion.
 - You should always be vocal about not consenting to a search. It may not stop the search, but this will be useful in future court proceedings.

Best Practices: When You Are Stopped and Frisked/Searched

- **How to Reduce Your Risks**

- Stay calm
- Do not run, resist or obstruct the officers
- Do not lie or give false documents
- Always be aware of your body language, such as your hands

- **Note: Developing Probable Cause During Investigative Detention**

- An investigative detention can result in an arrest. If the LEO develops probable cause during the detention, the officer may then make an arrest and conduct a full search incident to that arrest.

If Your Rights Are Violated - Options

- If you feel your free speech rights are being violated by a police officer, calmly ask if you can speak to a supervisor and explain your position to them..
- Point out that you are not disrupting anyone else's activity and that the First Amendment protects actions.
- If you do not obey an officer, you may be arrested and taken from the scene.
- You should not be convicted if a court finds your First Amendment rights have been violated.

If Your Rights Are Violated - Next Steps

- As soon as you can, write down:
 - The officer's badge number
 - The officer's name
 - Any other identifying information (including department/agency)
- Try to seek witnesses and ask for their names.
- If you are injured, take pictures
- Call a lawyer or contact your local ACLU office (acluwv.org)
- Make a complaint to local law enforcement and the city

Things to Remember

- What you say to the police is always important.
 - You have the right to remain silent
 - You have the right to request an attorney
 - “I want a lawyer, and I refuse to answer any questions.”
- You never have to consent to a search.
- You can always ask if you’re free to leave.
- In West Virginia, you’re only required to show identification if the officer is investigating a crime and asking you for your name for the purpose of an investigation.

Planning a Protest for Safety

Protest Roles - Organizers

- Thoughtful consideration of the issue, the environment, the response, etc.
 - What are we protesting?
 - Why are we protesting?
 - Why in this place? Why in this way? Why this target(s)?
 - What are our goals? What is the outcome we want to achieve?
 - What agreements can be made about our action?
 - What backup plans are needed?
 - What kind of participation are we asking for?
 - What is the chain of command?
 - Do we need additional support/expertise?
 - Other questions...?
- Planning, coordinating, publicizing and recruiting, etc.
- Understanding the location, entrances and exits, etc.

Protest Roles - Marshals

- Not a direct participant
- Help to ensure the health and safety of the participants
 - Support crowd management and intervention in the event of an issue
 - Manage perimeters of events
 - De-escalate and distract when appropriate
- Keeps the environment positive and spirits up
- May require lots of movement and physical endurance
- *Should be visible (high-vis vests - usually orange/yellow - or other way of identifying them)
- *Should be trained and well-informed of the plan.
- Types of marshals to consider:
 - Lead
 - Runners
 - Logistical/Directional (esp. for marches)
 - Police liason

Protest Roles - Legal Observers

- Non-participants
- Neutral observers
- Document information (written and some photo/video) about the action and can be called upon as a witness later if an incident occurs
- Can be a deterrent for unconstitutional behavior BUT do not intervene and are not acting in a security capacity
- *Useful in situations where there is expected or likely conflict between the public/protesters and security or law enforcement.

Protest Roles - Others

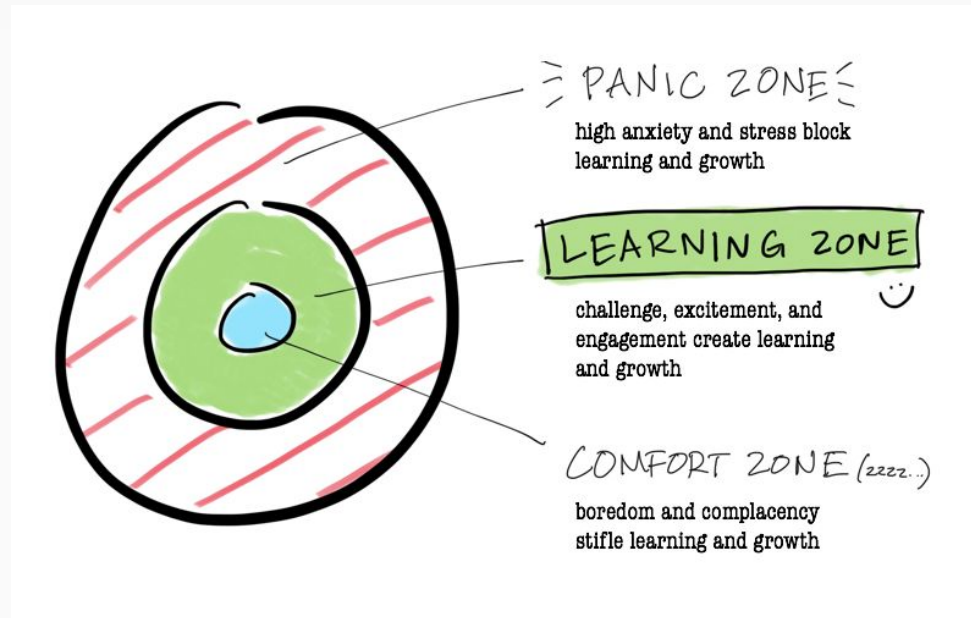
- Speakers
- First aid
- Media liaison
- Community liaison
- Comfort captain
- Others...?

Peace and Justice Framework

- Negative Peace
 - The absence of violence or fear of violence
 - Absence of conflict/tension
- Positive Peace
 - The attitudes, institutions, and structures that create and sustain peaceful societies
 - Presence of justice

De-escalation

- Consider the participants and their lived experiences
- Consider the current environment
- Consider your own feelings and emotional/mental/physical state
- Consider your goals



Goals of De-escalation

- Keep the action going and focused on the target
- Building safety and belonging
- Helping to meet unmet needs
- Recognizing conflict vs harm
- Returning an individual/group to a baseline and preventing violence

Stages of De-escalation:

Observe

- Tasks and tactics
 - *Maintain your own emotional regulation (have a buddy and share with them!)
 - Reminding others of the engagement agreements
 - Monitoring the overall action by walking around the group/action
 - Noting exits and features of the location
 - Attentive to the energy of individuals/the group and any changes or shifts
 - Looking for things that are out of place
 - Clothing is not appropriate for the weather/situation
 - Someone's emoting is not in line with the rest of the group
 - Someone's volume or behavior is changing
- *Paranoid observation is not helpful!
 - e.g. people walking outside of a building looking at protesters = employees on break
- Proximity or someone being caught/noticed *can* be enough to de-escalate but you may need to act

Stages of De-escalation:

Discernment and Decision-making

- Ask yourself questions
 - Is proximity enough?
 - Is this someone I know/someone acting with me or a counter-protester, etc.
 - Is engaging welcome by the target of the escalation?
 - Am I making assumptions?
 - Do I need to see/know more (e.g. continue monitoring)?
- Pause and take a breath - make a conscious decision rather than reacting

Stages of De-escalation:

Action

- Remind people of agreements
- Offer options to people on edge
 - bio break or walk
 - request assistance (“Can you get some water bottles for ____”)
- “Lightning rod” or buffer mentality
 - Body positioning is very important (*esp in conjunction with a buddy)
 - Ask a non-sequitur, ask open-ended questions, etc.
 - can think of topics ahead of time
 - Move them away from their targets (slowly, creatively, etc.)
 - Think about your identities (and safety)
 - Monitor responses - being quiet vs. matching energy (in control and not AT them)
may be appropriate in different situations
- Be a non-anxious presence for others; stay grounded and focused
- Call in assistance/tap in and out if needed; support your buddy in this, too

Stages of De-escalation:

Disengagement and Debrief/Aftercare

- You may have a lot of feelings after a situation, especially as your adrenaline wears off (*remind your fellow de-escalators of this, too!)
- Don't let perfect be the enemy of the good
 - Nobody can be a perfect de-escalator all the time; think about the situation and what you might change or if that might be a scenario where you would tap in someone else in the future
 - Some tactics may have been less/more successful
 - De-escalating doesn't have to be linear
 - Slowing down the progression but not stopping it is still good
- Connect with others who were de-escalating and debrief, talk about the experience, etc.

Being a *Thoughtful, Healthy* Advocate

- Beware of fear mongering and panic
- Reacting \neq thoughtful response
- Take care of yourself
- Look out for others
- Think about your safety and boundaries NOW, not in the moment!

Additional Resources

- ACLU-WV Website
- *Infographics
 - Check the source!
- ACLU Know Your Rights Page
 - Browse by issue
 - Special Issues including DACA, and your rights at the border or the airport
 - Available in English and Spanish
- “We Have Rights” - What to Do When Interacting with ICE
 - Animated videos by issue (at home, if arrested, etc.)
 - Available in English, Spanish, Urdu, Arabic, Haitian Creole, Russian, and Mandarin



**WE THE PEOPLE
DARE TO CREATE
A MORE PERFECT
UNION**

ACLU

Contact Us

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