

Know Your Rights Guide for Bay Area Climate Protesters

Note: this is a general guide to your rights. It is not legal advice and does not create an attorney-client relationship. Laws and procedures vary by city and state. Consult local activists and attorneys for information relevant to your area.

Your Constitutional Rights

To begin with, it's important to familiarize yourself with some basic rights guaranteed by the United States Constitution. Knowing these will help you to protect yourself against police abuse and to more effectively fight for climate justice.

First Amendment (freedom of speech and assembly)

- The First Amendment protects many things. Activists often censor themselves more than they have to.
- Limits to the First Amendment: some things that are not protected include
 - Slander or defamation: Knowingly lie about someone and cause them economic harm
 - Obscenity
 - Incitement or advocating the use of force: have to express an immediate or imminent intent to do violence
 - True threats of violence toward a person or group: unprotected if intended to place the target at risk of bodily harm or death
 - Fighting words: unprotected if it is likely to incite an immediate breach of the peace. Has to be a direct personal insult directed at the person who hears it
 - Dangerous speech: you can't yell "fire" in a crowded theater
- The government can apply reasonable "time, place, and manner" restrictions on protected speech. First Amendment rights are strongest in traditional public forums (e.g. sidewalks or parks), somewhat limited in quasi-public forums (e.g. college campuses), and even more limited in non-public forums (e.g. private property). Furthermore, owners can restrict free speech on private property but even some private places may be deemed a quasi-public forum if it acts like one (e.g. malls).

Fifth Amendment (right to remain silent)

- **Activists should not answer questions from police. Even if you are detained and arrested, you have the right not to answer questions. You do not have to answer questions unless you're in a court situation and a judge compels you to do so.**
- Anything you say may be used against you *and against other people*.
- In order to exercise this right, say: **"I am going to remain silent. I would like to speak with a lawyer."**
- If you start answering questions, you can stop at any point. If you find yourself talking, stop, and say "I am going to remain silent. I would like to speak with a lawyer."

Fourth Amendment (unreasonable search and seizure)

- Law enforcement has to follow procedure to search or seize your belongings
- Most common way: police get consent
 - Silence can be consent
 - Assert this right by saying: **"I do not consent to this search"**

Note these rights apply to all people in the United States regardless of citizenship status. *However, an arrest may negatively impact your immigration status; consider consulting with an attorney prior to engaging in civil disobedience if this is a concern.*

Interactions with Police

Here are some tips for exercising your basic rights in your interactions with police.

General advice

- Remain silent
- Don't lie to police
- Assume you are being recorded
- Keep your hands visible
- Don't touch police officers or equipment, accessories, dogs, vehicles, etc.
- Stay around other people
- After interaction: write down your recollection of the events and keep it in a private place. It is safest to label your notes "confidential" and address them to a lawyer. Include officer names and badge numbers if possible. Trial can happen over a year later. You don't want to rely on the police officer's version of events.
- Communication: All interactions with cops supposed to be in your native language. Cops are supposed to call interpreter service.
- Identifying cops: if you ask, uniformed officers are supposed to give name, badge number, and police agency. If you see cops with their badges covered up, document this (it is illegal). This does not apply to undercover (plain cloths) officers.
- Recording police: In California, you have the right to record a police officer engaged in the performance of official duties if the officer is visible from a public place. To be safe, record yourself giving the notice (say it into the camera).

Generally, there are three levels of public encounters with police. You should invoke your rights at each level.

- Level 1: Casual conversation
 - You have a right to be left alone by police unless you are detained or arrested.
 - If officer tries to question you in public, say "**Am I being detained?**"
 - If officer says no, respond, "**I don't wish to speak with you**". You may legally move away from the officer.
- Level 2: Detention (brief investigatory stop)
 - To detain you, police need a *reasonable articulable suspicion* that you have committed a crime or are about to commit a crime.
 - If you're clearly breaking the law by engaging in civil disobedience, police will have a reasonable articulable suspicion.
 - If an officer detains you, **ask them to tell you why**.
 - If they change their reason later it may be helpful to you in court..
 - If a cop has reasonable articulable suspicion, they can do a brief pat of the OUTSIDE of your cloths and bags.
 - You can request same-gender officer for pat-down search. This may or may not be honored.
 - Cops cannot reach into your pockets or search inside your belongings without either a warrant or your consent.
 - Activists should never consent to searches. Say "**I do not consent.**"
 - Police can and often do search people illegally. Refusing to consent can help you later prove the search was illegal.
 - If possible, say it where a witness or legal observer can hear you (see below for more information on legal observers)
 - If you are detained, police can prevent you from leaving the area but cannot take you elsewhere.

- If you are detained, you have a right to remain silent and should not answer any questions except to give your name, address, and date of birth, which may shorten the detention. You are not required to (and should not) give any other information such as your immigration status, country of origin, or social security number
- Level 3: Arrest
 - To arrest you, police need *probable cause* that you have committed a crime (sometimes with civil disobedience or direct action, this might be easy for them).
 - You have an absolute right to remain silent and should invoke it.
 - Do not answer any questions other than your name, date of birth, and address.
 - If police ask you any other questions say, **“I am going to remain silent. I would like to speak to an attorney.”**
 - If you ask for an attorney police are legally required to stop questioning you. They may continue questioning you anyway. If so, keep saying it over and over.
 - If you’re arrested, police are allowed to search you and make you remove any valuables (e.g. jewelry) (including piercings).
 - They may make an inventory search of everything in your possession. Saying “I do not consent to the search” may be useful for the record.
 - Search must be done by an officer of the same gender.
 - If you make it hard for them to arrest you, such by hiding your hands or by going limp, this can lead to additional charge depending on the jurisdiction; check local laws.

Practical Considerations Related to Protesting

How do these rights play out in practice? Here are some pointers for protecting yourself and your movement:

Before the protest

- Form affinity groups: these are groups of people who are participating in the action in various ways and will support each other. People who are engaging in civil disobedience and risking arrest should have someone who knows their plan, keeps track of their belongings, updates their family or other contact, knows any medical issues, etc.
- Know the plan for jail and legal support.
- Fill out a jail support form and leave it off site at a pre-arranged private location. (Coordinate with legal support people to make sure they have access to this information.)
- Familiarize yourself with these key roles:
 - Police liaison: Empowered to speak with police on behalf of the group. Assesses police tactics and keeps open a line of communication. Other people should not talk to the police.
 - Jail support people: Do not risk arrest. Track arrests and help coordinate release and legal support. Get jail support forms to the legal team if necessary.
 - Media spokespeople/communications people: Execute publicity plan for the action. Empowered by group to speak with media. Should be different from the police liaison.
 - Bail: Make sure you know the plan for whether everyone will be bailed out, whether some people will be bailed out, or whether people will opt to stay in jail until arraignment (the first court appearance).

At the protest

- Bring:
 - ID
 - Cash for cab fare: if you’re arrested, you could be released at any time of the day or night
 - Medication: must be unexpired and clearly marked with the same name as on your ID
 - Comfortable clothes/layers (jail is often cold)
 - Closed-toed shoes

- Sunscreen
- Snacks, water
- Some situations: protective eyewear, bandana, earplugs
- Don't bring:
 - Weapons
 - Controlled substances
 - Valuables, including jewelry
 - Some jails will take your shoelaces and belts
 - Anything you don't want police to have
 - Consider not bringing your entire wallet, just what you need.
 - Cell phones: Consider leaving them at home. Turn off Touch ID and keep locked with passcode instead. Consider deleting sensitive data.
 - For more information, consult the Electronic Frontier Foundation's [guide](#) on electronic privacy for activists.

Legal support

- If you are organizing a protest and will need legal support, reach out to the National Lawyers Guild as early as possible. The NLG may be able to provide legal observers, a hotline for people who are arrested, and on-call attorneys. Visit www.nlg.org for more information.
- Legal observers are volunteers who attend protests to witness and record the actions of law enforcement and other authorities such as private security guards. It is recommended that you request legal observers at protests where there is a potential for arrests or other confrontation with law enforcement. When on duty, legal observers cannot participate in protests as activists or help fill other roles.
- Write the relevant legal hotline on your body in permanent marker somewhere out of sight. The Bay Area National Lawyers Guild jail hotline for people in custody is (415) 285-1011. People out of custody reporting arrests should call (415) 909-4NLG (4654). Note that this hotline is only staffed if an organization has requested it to be operational during a protest. If so, you should call this number once you are arrested.
- If there are NLG legal observers present — they're the ones with the bright green hats — identify them when you arrive. Part of their job is to write down the names of people who are arrested. Be prepared to shout out your name as you're being arrested.
 - This is important: jail support needs to be able to track you.

Arrests

- Pay attention: During a protest, depending on the situation, you may or may not have an opportunity to disperse. Cops are supposed to give a dispersal order before they move in and arrest people. However, this does not always happen. In fact, in some cases, cops “kettle” protesters or make it so they can't leave even if they want to, and then arrest everyone.
- If you are arrested, you will likely be taken to a police station/jail. The location depends on where you are arrested; try to find out the likely location ahead of time.
- In many protest cases, instead of a full arrest, police will cite and release protesters at or near the incident.
- If you are booked into custody, you will be fingerprinted and searched and your photo will be taken. If it is a felony arrest you may have a cheek swabbed for DNA. The booking process may take many hours.
- Call your attorney or legal hotline when you can.
- While in custody:
 - *Do not discuss the action, pre-action organizing, or any other organizing while in custody. Assume you are being recorded. Be careful not to implicate anyone else.*

- If you are injured while in custody: photograph the injury if possible. Request medical attention. You may have to ask repeatedly.
- Medical issues: they may not let you use medication you bring in. Alert jail authorities as early as possible and be persistent. Be prepared to give doctor's information, prescription information, etc. Document what happens in jail as much as possible.
- People who are not cited and released or bailed out, in California, will generally be arraigned within one to three court days of the arrest. The actual numbers of days you may be in jail varies depending on factors including:
 - Where you're held.
 - Practices for scheduling arraignments (varies from county to county).
 - How many people you're arrested with: the bigger the group, the longer it may take.
 - When you do the action: if you are arrested on a Monday, Tuesday, or Wednesday, you can expect to have your arraignment on or before Friday. If you are arrested on a Thursday, Friday, or a weekend, you may be held over the weekend. Intervening court holidays may extend your time in jail.

Arraignment

- An arraignment is your first court appearance. It is not a trial, but there is a judge *and you are entitled to a lawyer*. If you don't have your own lawyer, a public defender will be provided.
- The arraignment is used to announce the charges against you and to determine whether bail will be set or you will be released on your own recognizance. Judges and lawyers may also discuss the charges and the evidence for them, and in some cases may seek to resolve the case right there. Arraignments are not typically used to determine guilt or innocence.
- Factors that may influence your bail and whether or not you're released on your own recognizance:
 - Past criminal record
 - Severity of the charges
 - Open warrants, including in other states
 - Ties to the community
- It's often best to let lawyers do the talking during arraignments, as it's largely a procedural affair. You will have a chance to argue for the justice of your cause later.
- Always enter a "not guilty" plea.
 - You can change this plea later, but there's little to no advantage to pleading guilty at this point.

Release

- You will likely be released on bail or on your own recognizance.
- Minors have the same rights as adults, but cannot be released on their own recognizance. Minors must be released to a parent or guardian. Parents can designate someone else as the guardian; they should put this in writing and the minor should carry it with them.
- Ahead of time, think about where you're going to be released: you could be released at any time. You could also be released in a weird location (e.g. out the side door of the building).
- Jail support people should plan ahead to:
 - Find out where arrestees are taken
 - Physically go there so that when people are released, they are greeted
 - Bring food/water/warm clothes
 - Arrange transportation
 - Update family/friends of people arrested

Court appearances

- Show up to court appearances! It can cause you many more problems if you miss court appearances. You do not want this hassle.

- If you have a lawyer, stay in touch with them
- Defendant solidarity is really important: discuss legal goals and plans with your group ahead of time.
- You will need to decide whether to accept a plea deal or go to trial
 - This is 100% your decision.
 - If you choose to accept a plea deal, you will plead guilty or no contest.
- If you are interested in a political trial or would like to use arguments such as the climate necessity defense, contact [Climate Defense Project](#) at info@climatedefenseproject.org.

Some specific considerations for engaging in civil disobedience

- While everyone can engage in civil disobedience, the process (from arrest to jail procedure to potential charges to the impact of a record) impacts people differently. Factors like race, gender, class, and age will often affect how people are treated by the criminal legal system.
- You may want to check in with an attorney, or at least let your jail support people know ahead of time, if there are issues around: immigration status, gender identity, if you're a minor, if you have warrants out here or in another state, or if there are other circumstances that the police may be able to use against you.

Potential consequences of civil disobedience

- Charges will vary depending on the action. In the Bay Area, mass actions often result in misdemeanor charges such as trespassing, which are generally resolved without jail time and sometimes without creating a criminal record. Higher-risk actions may carry more severe charges. Results of a plea deal or conviction can include jail time, fines, and/or probation.
- Consider speaking with a local attorney and/or experienced activists before you engage in civil disobedience to learn about the likely consequences.
- Probation: note that in some cases, as part of your sentence, you can face probation. Standard requirements include not breaking the law again for a certain period of time. If you have conditions, make sure you know what they are and what will happen if you violate them.
- Restitution: This is different from a fine and involves paying someone back for costs that they say your action caused. Public entities such as police departments sometimes file restitution requests for, e.g., the time that police officers spend responding to a protest. Corporations file restitution requests for many things, often under the heading of lost profits. These requests are often wildly inflated and poorly documented, and activists should be prepared to challenge them in court in a timely fashion.

This guide was prepared by [Climate Defense Project](#) and [National Lawyers Guild SF Bay Area](#).