

Break Free Legal Primer

This legal primer is intended to be a basic legal resource for activists and legal observers during Break Free events throughout the United States.



Knowledge Is Power.

Use this guide to help you understand what you are getting into before taking any action. If you are arrested, you are obligating yourself to the criminal legal system, which may require you to return to the county/state where you were arrested, take up to a year to conclude, and result in a conviction, jail, and/or probation. Act accordingly. If you are not able to deal with the consequences of an arrest and stand in solidarity with your community against government repression, don't risk arrest. Activism can take many forms, so be honest with yourself about how you can be most effective in fighting for the earth.

****Please be aware that this primer is not legal advice.****

Know Your Rights

What to Do When Interacting with the Police

Basic Tips

- You are not allowed to lie to cops, but they are allowed to lie to you (and you should expect them to do so).
- Keep your hands visible and don't make quick movements.
- Don't go anywhere with a cop unless you are under arrest.
- Stay in well-lit areas and where witnesses are present.
- Assume that you are being recorded by the cop at all times, including in cop cars and jail cells.
- If possible, record the cop or have someone else do so. It is legal to record cops in a public place if you inform them that you are recording and you aren't interfering with their business.
- Be polite but firm about asserting your rights.

The police interfere with the rights of individuals in three distinct ways: Conversation, Detention, and Arrest. Identify your situation so you know your rights, and note that if a cop gives you a warning or an order and you disregard it, you may be arrested. *Anything you say can and will be used against you, so stay calm and in control.*

Level I: Conversation

Police officers have the right to approach and ask you questions, but absent any reasonable suspicion that you are involved in criminal activity, an officer cannot detain you. **You do not have to answer any questions.** In most states, you do not have to provide identification to an officer at this level unless you are the driver of a motor vehicle; this includes non-US citizens. Minors (under 18 years of age) do not have to answer any questions by police unless a parent or attorney is present. Determine if you are in a Level I situation by asking if you are free to leave. **If you are free to leave, leave.**

“Am I being detained? Am I free to leave?”

Level II: Detention

If an officer reasonably suspects you have been involved in a crime or are about to commit a crime, they may detain you for questioning. Ask if you are being detained, and if so, ask why you are being detained (what crime are you accused of). You are under no obligation to answer questions. You must reasonably identify yourself upon request at this level (name, address, D.O.B.—not I.D). Giving false information is a crime. Do not consent to a search, but if the police have probable cause or a warrant (which you should ask to see), they do not need your consent. But *never verbally consent*. Repeat: **“I do not consent to this search.”** Police may pat down your clothing if they have a reasonable suspicion that you are carrying a concealed weapon; do not physically resist but make it clear that you do not consent to any further search. You have the right to request a cop of your own gender conduct the search. **Do not talk to the police. Say: “I invoke my Fifth Amendment Right to remain silent. I want a lawyer.”** Police are allowed to lie to you, and anything you say (as well as complete silence) could be used against you and provide the police with probable cause to arrest you. Don’t run away even if you believe what is happening to you is unlawful; this may lead to your arrest and injury. **Remember cop names and badge numbers and write down everything about the incident as soon as possible.**

“Why am I being detained?”

“I do not consent to this search.”

“I invoke my Fifth Amendment Right to remain silent. I want a lawyer.”

Level III: Arrest

Ask for an attorney immediately upon being taken into custody. Repeat this demand as often as necessary. You have the right to remain silent—wait for your attorney before saying anything. In most circumstances, if you refuse to provide a name and address while in custody, you will not be eligible for release or a court-appointed attorney. Within a reasonable time, the police must allow you to make a phone call to your attorney and may not legally listen to that call (but assume they will!). **Call the jail support number only if necessary (write it on your arm before any action).** Do not talk to fellow arrestees regarding the circumstances of the arrest; you never know who might be listening/recording or if you’re actually talking to an informant or undercover officer. You must be provided adequate medical care while in custody. **If you are on medication, inform the jail of that fact immediately and repeatedly, in writing if possible.** If you have

dietary restrictions for health or religious reasons, the jail may be required to provide you with alternative meals. **Inform the jail of your dietary needs as soon as you arrive.** If the jail fails to accommodate those needs, begin the grievance process immediately. Transgender people have the right to be safe while in custody. Inform jail staff of issues of concern. Request to be released from custody on your own recognizance (without posting bail). Don't sign anything except for a release agreement so you can get out of jail. If there are ridiculous conditions within the release agreement, talk with a lawyer immediately upon release from custody. If you are on probation, parole, pretrial release, or are not a U.S. citizen, you may have additional obstacles to get out of jail. Transgender people will be housed according to their current biological anatomy in most circumstances. You can request solitary housing if necessary to ensure your safety. If you are under 18, you will need a parent or guardian to pick you up at jail upon your release.

“I invoke my Fifth Amendment Right to remain silent. I want a lawyer.”

What Happens Next?

Either while in custody, or shortly upon your release, you will be required to appear in court for an arraignment hearing. **Plead NOT GUILTY to all charges.** Apply for a court-appointed attorney if you so choose. You will receive a future court date to appear. **Make contact with your attorney as soon as possible.** It is your responsibility to remain in contact with your attorney; this may be frustrating, but will be essential to your defense! If you choose to go to trial, it may be your responsibility to locate and secure witnesses on your behalf. If you are found guilty at trial, or elect to later plead guilty, you are allowed to delay sentencing at least 48 hours. At the sentencing hearing, you may be ordered to serve jail time, so be prepared to report to jail immediately.

Guide for Canadians imprisoned abroad (note that this is put out by the Canadian government):

<http://travel.gc.ca/travelling/publications/guide-for-canadians-imprisoned-abroad>

Info about arrest of people who are undocumented:

<http://www.nolo.com/legal-encyclopedia/what-happens-when-undocumented-immigrant-is-caught.html>

Security Culture Basics

Don't Brag

You're engaged in activism to protect the planet from further destruction, not to get cool points. Bragging about actions—past, present, or future—puts you and your community at risk. The government may use bragging to gather information about you, your comrades, and actions, and it may also decide to target you to obtain more information. This applies to “real life” as well as electronically—including social media. Government agencies closely monitor email, Facebook and other websites, cell phones, and all electronic communications.

Don't Gossip

Like bragging, gossiping creates a weak link through which the government can gather information about a community to use against it. Additionally, gossip opens up opportunities for the government to exploit or even create disagreements and tensions between activists. Even if the government doesn't use your gossip to do damage, you may do that anyway; gossip can easily lead to good activists dropping out of movements. Online gossip can be especially damaging to individuals and communities, and most issues that arise within activist communities don't need to be broadcast to the public and the government.

Operate on a “Need to Know” Basis

Only share information with others that NEEDS to be known, and only share the information with the people who NEED to know it. Any further sharing creates the unnecessary risks of information getting shared with informants, people who will snitch, and people who did not want the responsibility of knowing information (potential grand jury purposes for instance). Furthermore, when you are sharing sensitive information with select individuals, be aware of who—and what—is around you. Don't share information in the presence of anyone who does not need to know it, or in the presence of any electronic devices, security cameras, places that could be wired, etc.

Not Who You Think They Are

Infiltrator: one who enters into a group or territory with hostile intent, usually with backing from a government agency or corporation.

Informant: one who provides information about an individual or a community to a government agency or corporation.

Provocateur: one who is employed by a government agency or corporation to create problems in a community and/or to encourage a community or individual members to engage in violent actions.

Snitch: one who turns their back on their community and takes on one or more of the above roles.

What to Do

If someone in your community violates security culture, help educate them first; if they continue with bad or dangerous behavior, consider whether their presence is conducive to the effectiveness of your campaign. Assume that infiltrators, informants, and provocateurs are within any given activist community and respond accordingly. Be on the lookout for suspicious behavior from others, and adhere to security culture practices to help reduce the damage that these unwelcome parties can cause. If someone seems to have come out of nowhere, asks too many questions, stirs up unnecessary dissent, creates harmful gossip, pressures others to engage in violent activities, or behaves in other ways which suggest that they do not care about what is best for the cause, other activists, and the community—don't trust them. They may be working for the government or a corporation that is eager to gather information about activists and to try to make effective groups fall apart.

In addition to being cautious about the danger posed by people who've been paid to work their way into activist communities, you should be careful about trusting people who may one day snitch. If for any reason you think that someone would not be able to withstand pressure from the police, FBI, or other government agency—or you think that someone would be tempted by offers of reduced sentences or money for turning on their comrades—don't freely share information with them.

Legal Rights Under the United States Constitution

“The law favors people who both know their rights and assert their rights.”

1st Amendment:

“Congress shall make no law...abridging the **freedom of speech**...or the **right of the people peaceably to assemble**...”

“Freedom” Based on Forum

Speech is most protected in **traditional public forums**, (e.g. sidewalks, town squares, parks), although the State may still regulate with reasonable time, place, and manner restrictions. Check local ordinances for permit requirements, noise ordinances, etc.

Quasi-public forums, such as campuses or malls, may have higher restrictions, such as a permit process.

In **privately owned forums**, the owner or person in charge may ask someone to leave for any reason; not doing so may be trespassing.

“Freedom” Based on Content

Incitement and Advocacy of Crime: “the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence [protected expression] is not the same as preparing a group for violent action and steeling it to such action [not protected expression].”

Not Protected: defamation, obscenity, hate speech, fighting words, true threats, association for illegal activity.

4th Amendment:

“The right of the people to be secure in their persons, houses, papers, and effects, against **unreasonable searches and seizures**, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Cops aren't supposed to conduct a search of you or your property UNLESS:

-- You give **consent**. Your silence counts as consent, so it is important to vocally refuse to consent to any search, whether of your person, residence, or property. Say: **"I do not consent to a search."**

NOTE: Anyone (over the age of 10) that cops believe has common authority over a premises may consent to a search, even if *you* have previously refused consent but are no longer present.

-- They have a **warrant**, which permits them to search the areas described in the warrant. Always look over a warrant for errors in the name, address, etc. that is listed. If the cops go outside the scope of the warrant while searching, take note of it and tell your attorney later. *Cops can get telephonic warrants through a phone call.*

- The situation creates an **exception to the warrant requirement**.

Exceptions to the Warrant "Requirement"

Exigent Circumstances: Cops are allowed to enter places without a warrant when in hot pursuit of a suspect or during an emergency, "but a warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation.'"

Community Caretaking: Cops may enter without a warrant when one's immediate safety is in jeopardy.

Automobiles: Cops may search an automobile, including containers within it (even if they belong to a passenger), where they have probable cause to believe contraband or evidence is located.

Arrests: Cops may search a person and their "wingspan" incident to arrest, as well as do a protective sweep of the area.

Plain View Doctrine: Cops must 1) be lawfully present at the place where the evidence can be plainly viewed, 2) have a lawful right of access to the object, and 3) the incriminating character of the object must be “immediately apparent.”

Applies to all above exceptions as well.

5th Amendment:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a **Grand Jury...nor shall be compelled in any criminal case to be a witness against [themselves]**, nor be deprived of life, liberty, or property, without due process of law...”

Not Being a Witness Against Yourself [or others!] ...and Grand Juries

The 5th Amendment provides protection against being forced to incriminate yourself, both in regard to testifying at trial and supplying a statement during an investigation.

Grand juries are used as investigative tools, and so they are a tool that the State uses to both investigate and disrupt activist movements. If you receive a grand jury subpoena, contact a lawyer immediately.

The State has the ability to grant immunity to compel testimony, and attempts to use this tactic to compel activists to betray their activist community. If someone talks to the cops during an investigation or before a grand jury, the State will forever consider them to be a source of information and it is not safe to continue to allow the person to be a part of a resistance movement.

You have to invoke your 5th Amendment right in order to use it. Silence is not enough. You must say that you are exercising your 5th Amendment right to remain silent, and THEN REMAIN SILENT.

****Do not answer any questions, about yourself OR others.
No one can ever compel you to answer questions
except a judge in a courtroom.****



Railroads

You should know:

Railroad tracks, and usually the land extending up to 50 feet on either side, are private property of railroad corporations. Railroad police have interstate jurisdiction and can investigate and enforce all state law crimes against the railroad whether or not the officers are on railroad property.

What are the risks?

There are special **state and federal charges** that may be brought against protesters interfering with railroads and trains.

1. Federal charges typically involve the use of violence, **but many non-violent actions may face serious charges.** Federal charges dealing with railroads include:

- ***Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air*** (18 U.S.C. § 1992)

This is a big charge. It covers lots of non-violent behavior that's not usually considered "terrorism."

Disabling, wrecking, or derailing any on-track equipment or vehicle, as well as making tracks, depots, bridges, tunnels, signals, warehouses, etc., unusable or unworkable, qualifies as a "terrorist attack" under this statute.

You may also be charged under this statute for removing, damaging, or impairing a dispatch, crossing, or control signal, as well as interfering with drivers, engineers, or conductors with a reckless disregard for safety.

It's also important to note that *collecting information, surveiling, photographing, videotaping, or diagramming railroads or equipment to assist in any of this behavior* also qualifies as a "terrorist act," as does attempting, threatening, conspiring, or conveying false information about an attempt to do any of the above.

This is a **Class C felony** punishable by up to 20 years in prison and/or fines

(Note: this charge applies only to trains or mass transportation carriers involved in interstate or foreign commerce, or to individuals who cross state lines to commit the acts.)

- ***Destruction of national-defense materials, national-defense premises, or national-defense utilities*** (18 U.S.C. § 2155)

Despite its name, this charge covers lots of railroads. Injuring or destroying national-defense material, premises, or utilities is crime, as long as you have to have the intent to injure, interfere with, or obstruct national defense. *It's also a crime to attempt to do so.*

"Materials, premises, and utilities" include any railroad that might carry defense materials or troops — which could be most railroads.

This is a **Class C felony** punishable by up to 20 years in prison and/or fines.

- ***Entering train to commit crime*** (18 U.S.C. § 1991)

It's a crime to enter a train with the intent to injure property or a person, whatever that injury might look like.

This is a **Class A misdemeanor** punishable by up to 1 year in prison (injury to property or person) or a **Class C felony** punishable by up to 20 years (robbery or murder), and/or a fine.

2. State Charges also exist for railroad-specific behavior. Examples are below for Washington and Oregon, and other states may have similar charges that can be researched on state legislature websites.

In **Washington**, charges exist for:

- ***Obstructing or delaying train*** (RCW 81.48.020)

This charge is pretty broad and criminalizes obstructing, hindering, or delaying a railroad car.

This is a **misdemeanor** punishable by up to 90 days in jail and/or a \$1,000 fine.

- ***Malicious injury to railroad property*** (RCW 81.60.070)

Tampering with any railroad equipment or structure is a crime in Washington. *Railroad structures include embankments and culverts.* Technically, you have to tamper in a way that endangers the safety of the property or people. Also note that this statute covers throwing a "dangerous missile" at a railcar.

This is a **Class B felony** punishable by up to 10 years in state prison and/or a \$5,000 fine

- ***Sabotaging rolling stock*** (RCW 81.60.080)

“Rolling stock” means something rolling along a railroad track. If you take, remove, damage, alter, or interfere with any part of a railcar, and you intend to injure the railcar or deprive its owner of it, you’ve committed this crime.

This is a **Class C felony** punishable by up to 5 years in state prison and/or a \$1,000 fine

3. Some states do not have any special charges dealing with railroads or trains, but railroad protests may still attract special legal attention.

In **Oregon**, entering or remaining on railroad yards, tracks, bridges, or rights of way automatically constitutes **Criminal trespass in the first degree**, a **Class A misdemeanor** punishable by up to 1 year in jail and/or a fine of \$6,250.

Interfering or obstructing the service of a railroad, or using, rearranging, manipulating, or damaging railroad property automatically constitutes **Criminal mischief in the first degree**, a **Class C felony**, punishable by up to 5 years in prison and/or \$125,000 fine.

What we’ve seen so far in Railroad actions. . .

- In a series of labor protests in 2013 at the new EGT grain station in Longview, WA, a strong union town, union members broke down fences, blocked trains and even released the grain cargo during their protests. The most common charges that were pursued against the activists were Criminal trespass and Obstructing or delaying train (see above). Most other charges (such as disorderly conduct, obstructing a police officer, malicious mischief) were dropped, and the others ended in plea deals or trials (with some juries refusing to find guilty verdicts). Punishments mostly consisted of community service and fines.
- In September of 2013 and April 2014, 5 to 20 activists in Missoula, MT, blocked the path of a coal train by standing close enough to the tracks to make it unsafe for the train to pass. They were given a warning to clear the tracks and told that those who remained would be cited. Those who were cited primarily faced charges of trespass and disorderly conduct. The train was slowed but it was not stopped.

Note: Across the country, **criminal trespass** remains the most common charge for activists involved in railroad actions. Keep in mind that, as in other types of actions, protesters may also be charged with **criminal trespass, criminal mischief, disorderly conduct, or public nuisance**.



Ports

You should know:

Ports are considered separate municipalities chartered by the state (like a city or a town). Port property is likely either owned by the port municipality or by private individuals. State law applies in ports, but some federal charges may also apply because ports are considered critical infrastructure of commerce. Ports, like other municipal entities, have their own police forces to investigate and enforce laws concerning port property.

What are the risks?

As with railroads, there are special **state and federal charges** that may be brought against protesters' conduct actions at ports.

1. Federal charges typically involve the use of violence, **but many non-violent actions may face serious charges**. Two federal charges are worth noting:

- ***Boarding vessels before arrival*** (18 U.S.C. § 2279)

Boarding a vessel before it has completely moored — that is, before it has come to a rest at port — is a crime.

This is a **Class B misdemeanor** punishable by up to six months in prison and/or a fine

- ***Destruction of national-defense materials, national-defense premises, or national-defense utilities*** (18 U.S.C. § 2155)

We saw this one under railroads, too. The charge covers injuring or destroying national-defense material, premises, or utilities, which can include port facilities. You have to have the intent to injure, interfere with, or obstruct national defense. *It's also a crime to attempt to do so.*

“Materials, premises, and utilities” covers docks, wharves, piers, bridges, dams, canals, locks, boats, or buildings that could potentially be involved in moving defense material or troops.

This is a **Class C felony** punishable by up to 20 years in prison and/or fines.

2. State Charges are less common for port activity. An example for Washington is below; other states may also have charges.

In **Washington**, charges exist for:

- ***Obstructing navigation*** (RCW 88.28.050)

This charge covers obstructing the navigable portion or channel of a harbor, bay, river or stream in any way.

This is a **misdemeanor** punishable by a fine up to \$300.

What we've seen so far in Port actions. . .

- On December 12, 2012, Occupy activists successfully shut down the Port of Portland. There were no charges for activists at the shutdown itself (others were arrested away from the protest site).
- Two people locked down to equipment and delayed the departure of Megaload shipments at the Port of Umatilla on December 2, 2013. They faced charges of disorderly conduct.
- The labor action described above under Railroads took place on private property on port land in Longview and Vancouver, WA.
- Shell No activists locked to an anchor and entered a designated “safety zone” within US Coast Guard jurisdiction. They face civil penalties with the USCG Hearing Office. Cases are still pending at this time.

Note: some states, like Oregon, do not have any special charges dealing with ports. But, again, protesters may face typical activist charges such as **criminal trespass, criminal mischief, disorderly conduct, or public nuisance.**



Utilities

You should know:

Utilities, or “public utilities,” are the infrastructure producing or transmitting energy to the public, or the companies that own such infrastructure. Electricity, gas, oil, water, and sewage are all utilities. Although usually private, utilities enjoy special legal protections because of their importance to the general public.

What are the risks?

There are special **federal charges** that may be brought against protesters interfering with utilities.

1. Federal charges typically involve the use of violence, **but many non-violent actions may face serious charges.** Federal charges include:

- ***Destruction of an energy facility*** (18 U.S.C. § 1366)

Contrary to its name, this charge covers more than just “destruction.” It’s also a crime to damage a facility involved in the production, storage, transmission, or distribution of energy, *or to attempt to do so.*

If this damage causes a significant interruption in the facility’s production (or if you cause \$100,000 in damage), this is a **Class C felony** punishable by up to 20 years in prison (interruption or \$100,000 in damage) and/or a fine.

It’s a **Class E felony** punishable by up to 5 years in prison and/or a fine if you cause \$5,00 in damages and no significant interruption.

Note: this charges applies *even to facilities that are not functional* — either under construction or off-line.

- ***Destruction of national-defense materials, national-defense premises, or national-defense utilities*** (18 U.S.C. § 2155)

We saw this in the railroad and ports sections. The charge covers injuring or destroying national-defense material, premises, or utilities. You have to have the intent to injure, interfere with, or obstruct national defense. *It's also a crime to attempt to do so.*

“Materials, premises, and utilities” includes electric plants, lines, gas mains, pipes, poles, buildings, or structures supplying energy to national defense premises or armed forces. There are lots of national defense premises and lots of armed forces, so this includes a lot of utilities.

This is a **Class C felony** punishable by up to 20 years in prison and/or fines.

- ***Criminal penalties for damaging a pipeline or facility*** (49 U.S.C. § 60123)

This is a special punishment-enhancement law that applies specially to pipelines.

Damaging or destroying an interstate gas or hazardous liquid pipeline facility, or a pipeline facility used in interstate commerce — that is, most pipelines — is a crime. *So is attempting to do so.*

This is a **Class C felony** punishable by up to 20 years in prison and/or fines

2. States may or may not have special charges dealing with utilities. Again, Washington and Oregon examples are below, but charges for other states may be researched.

However, in **Washington**, causing an interruption or impairment in utility service by physically damaging or tampering with utility property automatically constitutes **Malicious mischief in the first degree**, a **Class B felony** punishable by up to 10 years in prison and a fine of \$20,000.

Causing a substantial risk of such interruption or impairment by damaging or tampering with utility property automatically constitutes **Malicious mischief in the second degree**, a **Class C felony** punishable by up to five years in prison and a \$10,000 fine.

In **Oregon**, interfering or obstructing the service of a utility, or using, rearranging, manipulating, or damaging utility property automatically constitutes **Criminal mischief in the first degree**, a **Class C felony**, punishable by up to 5 years in prison and/or \$125,000 fine.

What we've seen so far in Energy Facility actions. . .

- In Asheville, North Carolina, in February 2012, Greenpeace members climbed fences to access a Progress Energy Facility, locked down to equipment, and hung a banner from the top of an inactive smokestack. Sixteen people were arrested and charged with trespass and a few with breaking and entering.
- In July 2012, the Oakridge 3 cut through 3 fences at Y-12 Nuclear Storage Facility in Oak Ridge, Tennessee and vandalized the outside of a building. They were charged with a variety of crimes, but were ultimately convicted of damaging national defense premises (see above). One of the activists, a nun, received 3 years in prison. The two others, who had longer criminal histories, were sentenced to 5 years.

Note: It's worth repeating: in addition to the charges listed above, protesters may face typical activist charges such as **criminal trespass, criminal mischief, disorderly conduct, or public nuisance.**

Always remember that it's hard to predict what charges prosecutors will bring. Just because they didn't pursue a certain charge this time doesn't mean they won't in the future.

Understand what conduct is illegal.

Recognize that actions such as *making plans, scouting, threatening, attempting, and conveying false information* are often covered by the charge.

Plan accordingly.

Demand of Rights

- **I will not talk to you or anyone about anything.**
- **I demand to have an attorney present before I speak to you or anyone.**
- **I will not answer any questions, or reply to any charges, without my attorney present.**
- **I do not agree to perform any test, consent to any searches, or participate in any line-ups.**
 - **I will not sign anything unless my attorney agrees I should do so.**
- **I will not waive any of my constitutional rights.**



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