



Civil Liberties Defense Center

• www.cldc.org •

SLIDE ONE:

Give your introduction and disclaimer (this is not legal advice and not intended to form attorney client relationship). Make sure to disclose if you are/are not an attorney. Say: "I'm a CLDC volunteer or a first year law student," etc.

Let folks know that the slideshow is available on the CLDC website, www.CLDC.org, so they can go download it and review it as often as they'd like. Also note the video of the training on the website. [**Note to presenters:** Please don't change the slides at all (especially w/out prior permission).]

This training is intended to help you know what is legal and what is not during the upcoming Break Free protests. If you have the Break Free Legal Primer, much of the same information that I'll be covering today is in that primer. So, refer back to it as often as you need to.

Vocab – For this particular action, when I say "cop" or "police" I mean Anacortes City cops, Washington State police, and county sheriffs. We also expect that there may be federal law enforcement present including FBI, US Coast Guard, Homeland Security, and others. Expect that many of these cops will be in plain clothes.

If I use any legal jargon that's unclear, go ahead and raise your hand to ask. Otherwise, hold your questions until the end. [**Note to presenters:** if you are not a lawyer, or if you are not certain of an answer, say so. It is far worse to give incorrect information than to simply say, I don't know, we can look into that.]

SLIDE TWO: BEFORE YOU KNOW YOUR RIGHTS, KNOW YOUR SITUATION

Before getting into the "rights" portion of this Know Your Rights training, there are a few basic things to cover.

If you get arrested, you may have to come back to the county/court where you were arrested. (Skagit County Circuit Court, could also be US Federal Court in Seattle)

You may end up with convictions on your record. You might end up in jail. You might end up on probation or a combination of those things. You may have to pay a fine or restitution. A fine is a penalty paid to the government. Restitution is money paid to a corporation for "damage" done to it during, for example, if a window is broken, etc.



Civil Liberties Defense Center

• www.cldc.org •

Also, if you're in college and on financial aid, know an arrest may cause you to risk losing financial aid in certain circumstances—check with your financial aid office to verify. Lastly, if you are undocumented or here on a visa, your legal right to participate in protests may be severely curtailed.

This is not meant to scare you. There are plenty of students, professionals, and everyday folks (including those without citizenship, etc) that are getting arrested in the name of stopping climate change all of the time.

If you are charged, don't freak out if they throw the book at you. Activists are often charged with a bunch of crimes that they are never arraigned for or convicted of. For example, recently in Maine activists were charged with "terrorist hoax" for hanging a banner. All of those charges were dismissed.

If you are arrested, it's unclear at this time where you might be tried—it could be in federal court, local circuit court, or a municipal court.

If you are arrested, we do not think it is likely that you will end up in the Skagit County Jail (except maybe for processing). It's way too small to handle even a hundred people getting arrested. Most likely, cops will either give you a citation and release you or they will set up some alternative area to hold arrestees. An exception will likely be made if you are charged with a felony.

As far as bail goes, it's unlikely that you will need it in this instance, but if you do, you're going to need someone else to bail you out. You can't bail yourself out. If you take a look at your Break Free Legal Primer, there's a list in the back of the closest bail bond agencies to Anacortes. The bottom line is, if you can't deal with potential consequences of getting arrested, don't intentionally risk arrest. There are plenty of essential roles to fill with limited risk of arrest during an action. And, if you are willing to risk arrest, CLDC will support you—just know what you're getting into first. It makes the whole process easier if you know the potential consequences.

And, just so everyone knows, this is not legal advice intended to form an individual attorney-client relationship.

SLIDE THREE: BASIC TIPS

Here are some basic tips to keep in mind as we go through the training and as you interact with cops at the action and in daily life.



Civil Liberties Defense Center

• www.cldc.org •

You can't lie to cops, but cops can lie to you. It's a criminal offense, for example, to give a false name to the cops. Because cops can lie to you, DO NOT rely on a cop to tell you what your rights are—it is not in their interest for you to exercise your constitutional rights—it makes their job more difficult. Know your rights so you can assert them with confidence.

Keep your hands visible and don't make quick movements. Making quick movements or not keeping your hands visible gives the cops an excuse to escalate the amount of force used against you.

Don't voluntarily go anywhere with a cop unless you are under arrest. Stay in well-lit areas and where witnesses are present.

Assume you are being recorded at all times. In fact, in Anacortes, there are surveillance cameras throughout the city and the port. You can view a few of them on the City of Anacortes website.

If possible, record the cops. It is legal to record cops in public. Note though that it is not legal to interfere with police business (meaning if you are the one being arrested, you can't simultaneously work your phone's camera—nor do you want to have your phone open and accessible if they snatch it from you).

Be civil but firm when you are asserting your rights. Do recognize that if you verbally or physically escalate a situation, the cops will use it as an excuse to use more physical force against you.

SLIDE FOUR: FIRST AMENDMENT

This training is based upon the US Constitution unless specifically noted. This means the information you learn will apply in any state or US territory you may visit. Some states have specific laws that may create other restrictions, so you must research state law in advance of taking action.

There are three basic rights you will learn about today.

These are “fundamental” rights protected by the Constitution, regardless of your age or whether or not you are citizen.

We'll go over your 1st, 4th, and 5th Amendment rights.



Civil Liberties Defense Center

• www.cldc.org •

Let's start with the First Amendment. Your 1st Amendment right to free speech, association, and assembly is not absolute. The extent of your right, here—the amount of freedom you have—is going to depend on where you are protesting and, in part, on what you're saying. The government can impose what are called time, place, and manner restrictions on the exercise of speech—but these restrictions must be “reasonable.”

Your freedom is greatest in places known as “traditional public forums.” These are places like roads, sidewalks, town squares, national forests, parks, and areas where, traditionally, people have gathered to speak their mind [presenter note: if you have a local place like this, mention it as an example. We often use an area in Eugene aptly known as the Wayne Morse Free Speech Plaza.]

We're not really going to be dealing with quasi-public forums in the Break Free actions, so I want to skip to private forums.

A private forum is property owned by individuals or corporations—it's private property. This can be parking lots, railroad tracks, and the area around railroad tracks. Just like other forms of private property, the owner or person in charge can ask you to leave at any time. If you don't leave, you could be arrested or cited for trespassing. Normally, you will be ‘asked’ to leave before facing arrest.

Note: if your protest target is adjacent to a public roadway, there is often a “public right of way,” or a strip of land that will be public property considered a public forum for protection of speech purposes. Research will be required to know where the boundaries of this right of way are located. Also note that regardless of your understanding of public boundaries, if police order you to leave or be arrested, you will be arrested if you refuse to leave—you just might have a defense when it gets to court...

There are also some restrictions based on the content of your speech that are largely irrelevant for Break Free purposes. If you have additional questions about this, please go to our website or talk to us after this training.

SLIDE FIVE: FOURTH AMENDMENT

Fourth Amendment is your right to privacy—or your right to be free from unreasonable searches and seizures.

Before I talk specifically about your Fourth Amendment right, I should point out that no one should be bringing stuff to a protest that they don't want the cops to see



Civil Liberties Defense Center

• www.cldc.org •

or know about—including within your vehicle. This includes drugs, weapons, alcohol, your private journal—anything the cops can use as an excuse to take you away from the action or use against you or the movement you are supporting. Under the Fourth Amendment, the cops can't search you, your house, or your stuff unless certain things happen:

- Consent (most common); note that in this context, silence is consent. If cops ask to search your stuff and you say nothing, in the legal world you've just said: "Why of course, officer. Be my guest and search all of my stuff." So, let the cops know, in no uncertain terms, that you don't consent to the search. If a cop asks you if he can search you or your stuff, you say:

"I DON'T CONSENT TO THIS SEARCH"

If you fail to assert this constitutional right, you give up your right to challenge the search in court. They may search you anyway, and if you resist them they may be able to use force against you to effect the search. But if the search turns out in court to be illegal, the evidence and likely the charges, will be thrown out.

- Warrant. If you don't consent to the search, the cops normally must get a warrant. The warrant must have proper date, time, and address along with a list of where, exactly, they are searching and what they are looking for.
 - Ask to inspect the warrant for the above information. But when you do, keep your hands visible and in a non-threatening posture.
 - Even with a warrant, let the cops know that you don't consent to the search. If the warrant is defective in some way, it is not necessarily wise to point this out to the cops. They can simply call a judge and get what's called a telephonic warrant to correct any mistakes. So instead of pointing it out then, tell your attorney later.
 - Exceptions to Search Warrant Requirement. There are certain exceptions to the warrant requirement.
 - Exigent circumstances (emergency exception):
 - If the cops say that there is some kind of emergency, they will be able to search you and your stuff without a warrant.



Civil Liberties Defense Center

• www.cldc.org •

- **Automobiles:** If you are stopped in your car, cops can search within your wingspan for weapons. Your wingspan (spread out arms) is fingertip to fingertip. Don't have anything in your car that could get you busted. Clean your car. Don't leave anything in plain view that the cops can bust you for. Note that they may also search your car if they have probable cause (basically being able to give some reason) to believe that evidence or contraband may be located in your car.
- Also, note that you likely can't get into your trunk while sitting in the car—it's beyond your wingspan. Generally, cops are going to need a warrant to get into your trunk.
- Never consent to a search. Even if you think the search is illegal, just repeat: "I don't consent to this search." Don't physically resist as that may get you in more trouble—or it might get you hurt.

SLIDE SIX: FIFTH AMENDMENT

Your Fifth Amendment protects your right to remain silent. Why is it important? Because when you talk to the cops—and we've all heard this in the movies—anything you say can and will be used against you. And it can also be used against your friends and people you care about. It's better to just not say anything. You don't want to end up snitching on yourself, your comrades, or the movement in general.

You never ever have to answer ANY question put to you by anyone unless it is a judge asking you a question in a courtroom. If you do not answer after a judge order's you, you may be held in contempt of court (explain: you will go to jail until you want to answer, or until you can prove that you're never going to answer). Taking the 5th cannot be used against you to prove you committed a crime—it's a right!

In order invoke your 5th Amendment right, you have to say some magic words:

I am exercising my Fifth Amendment right to remain silent. (Or more simply: I'd like to be silent.)

That's it. That's all you have to say. Once you say those words, you've created a kind of "bubble" around yourself and this bubble protects you and requires the cops to stop questioning you. You're the only one that can pop that bubble and you can pop it by speaking to them.



Civil Liberties Defense Center

• www.cldc.org •

But, you can always recreate the bubble by saying those words again. If cops continue to try to ask you questions or lie to you and tell you that you aren't allowed to be silent, ignore them.

Now, in the context of the Break Free actions, there will be designated police liaisons. These are people who have been selected and trained to talk to the cops on behalf of their AG. So if a cop approaches you and begins to ask questions—even innocuous ones like “Gee, isn't this fine whether we're having today?”—direct them to the police liaison. No one other than the police liaisons and authorized attorneys should be speaking with the cops. Why? Well aside from organizational efficiency, it just looks really bad if you're getting chummy with cops and it may lead people to not trust you.

SLIDE SEVEN: LEVELS OF INTERACTION WITH POLICE

There are 3 basic levels of interaction with cops. At each level, your rights change—so it's important to be able to identify what level you are at.

In the following slides, please try to remember as much as possible, especially the words in red. Being confronted by a cop can be stressful and confusing. If you commit a few basic things to memory, it will make things easier.

SLIDE EIGHT: LEVEL ONE: CONVERSATION

The first level is conversation.

Police have the same right as anyone else to approach you and ask you questions. But, just like any other stranger on the street, you don't have to answer. At this level, cops can't search you and you don't have to identify yourself or give your name. If they want to talk to someone, again, direct them to your group's designated police liaison.

I want you to think about two things at this level if you feel compelled to talk with police for some reason (and it's advisable that you do not answer any questions without a lawyer present). First, anything you say can (and probably will) be used against you or one of your friends. Second, cops normally have some type of recording device—and they will likely record you. Think about that—especially if you have a sarcastic sense of humor. The cops, the courts, and folks on a jury might not have a clue that you're being sarcastic. Unless you're a police liaison: don't talk to cops.



Civil Liberties Defense Center

• www.cldc.org •

How do you know if you're at this conversation level? You can ask some "magic words" and the cops answer will let you know what level you are at. So the magic words:

- **Am I being detained? (repeat at often as necessary until you get a yes or no answer)**
- **Am I free to go?**

If you are free to go, put some physical distance between you and the police. Walk away.

If you are not free to go, then what happens? Well, now you're being detained (next slide)

SLIDE NINE: LEVEL TWO: DETENTION

When the cop says you are being detained, ask why. Remember what the cop says as it may be important later for your lawyer.

In a mass action, know that the cops may not tell you individually why you're being detained. Often, in these scenarios, a cop will get on a big bullhorn, tell everyone to leave or face arrest, and then move in and start making arrests. In that kind of situation, they likely are not going answer you when you ask why you're being detained (and, obviously, you are not free to walk away in a situation like this).

Legal observers wearing bright green hats or arm bands may attempt to get your name for action tracking purposes. If you are comfortable doing so, give them your name so they can make sure your AG jail support person has correct info.

Now, in other situations where there is not a mass arrest, when you ask why you're being detained, cops may try to give you a roundabout answer. For example, the cops may say: "you're being detained because I say so" or "because I feel like it." This is not good enough. The cop has to have reasonable or "articulable" suspicion. So if he gives you an answer that is too vague, just ask what his reasonable or articulable suspicion is.

What is your reasonable/articulable suspicion?

You might get patted down at this stage. And you have the right to request that a cop of your own gender do the pat down. It's not guaranteed that you'll get one though. Remember: do not consent to a search.



Civil Liberties Defense Center

• www.cldc.org •

At this level, you are required to provide cops with your identifying information. This includes your name, address, and date of birth. In Washington, unless you are driving, you are not required to produce an ID card. Lots of folks advocate not immediately whipping out ID if you have it because doing so is an act of privilege (people who are undocumented or trans may not have an ID or have one that they want to show to law enforcement), so it can be important to not show ID to be in solidarity with them and to not place additional pressure on people who are more vulnerable to state violence. Discuss whether to bring your ID—if you have one—with your affinity group.

At this stage, you are not required to provide any other information like your SSN, your country of origin, where you work, etc.

If you are currently transient, you can say that (but know that it might create an additional hurdle for release if you are arrested).

Also, giving a false name, DOB, to the cops is a misdemeanor offense.

At this stage, you still have your 5th Amendment right to remain silent. However, if you don't ID yourself, cops can take to jail in order to verify your identity through fingerprints.

SLIDE TEN: LEVEL TWO SUMMARY

See slide. Review “magic” words.

Note: After you invoke your Fifth Amendment right, follow it up by asserting your Sixth Amendment right to counsel: **I'm going invoking my right to remain silent. I want a lawyer.**

SLIDE ELEVEN: LEVEL THREE: ARREST

So, normally, the cops are going to tell you that you're at this stage. They will literally tell you that you're under arrest and then you will be placed in handcuffs or plastic zip ties. If you are planning on getting arrested, we advise people to attempt to place their hands together like this (demonstrate: unfolded praying hands behind back). Try to keep your hands in that position to reduce the rubbing of the handcuffs on the nerves in your wrist, so that you don't risk permanent nerve damage. Zip ties are extra uncomfortable but the more you move around in them, the worse they get. You have the right to demand cops check your cuffs for tightness, but normally you should not be able to fit even a finger between your skin and the cuff--they are supposed to be somewhat tight. ADA questions welcomed at the end (regarding physical disabilities).



Civil Liberties Defense Center

• www.cldc.org •

When you are placed under arrest, immediately ask for attorney—even if you have jail support. Why? It creates an additional legal bubble around you that prevents the cops from questioning you.

Aside from your name, address, and DOB, remain silent until you speak with an attorney. Remember, don't pop that Fifth Amendment bubble. Remember that everyone at the jail, working for the cops processing you, etc. are COPS for the purposes of sharing information with each other—don't tell one what you don't want the rest of them to know...

If you are injured in any way, immediately notify the jail or cops—in writing if you can. Now is not the time to act tough. If you are on prescription medication, carry a copy of the prescription on you.

Even if you have your medication on you, the jail normally won't let you take it. They normally have to get it from an outside pharmacy. Having your prescription will speed that process up. Be assertive and repetitious about getting your meds. Tell the jail when you need your meds and what happens if you don't get them. If you have critical medication, keep that in mind if you're thinking about getting arrested—there can be a major delay.

If you end up at a jail, the jailers are going to house you based on current biological anatomy. But jails do have a duty to keep everyone safe, and trans people are sometimes placed in segregation.

All piercings must be removed if you are taken into jail custody. See CLDC's transdermal KYR and keep a copy with you upon your arrest. Many jailers do not realize you need a piercer to remove transdermal jewelry.

When you are arrested, do not speak to anyone but your attorney about your arrest. If you call your attorney, do not discuss details over the phone. If you make phone calls at the jail, it's being recorded by the jail. Do not call jail support just to tell them you're there. Only call if something is wrong.

SLIDE TWELVE: LEVEL THREE: ARREST, CONT.

At the jail, ask to be released on your own recognizance without posting bail. Released on your own recognizance basically just means that, when they let you go, you promise to come back for your next court date. In order to be eligible for this kind of release, you may have to sign a release agreement. Sign it. If the conditions



Civil Liberties Defense Center

• www.cldc.org •

for release are ridiculous, take it to a lawyer. Other than a release agreement, don't sign anything.

While we don't expect it, if you have to deal with bail bondsmen, they will charge a fee. If you have to post bail to get out, usually you're only going to have to put up a small portion of the bail. Please note that the government will keep a portion of that bail for the lovely service of arresting you. And again, you cannot bail yourself out. Someone has to do it for you. In your own affinity group, discuss how you want to deal with this situation if it comes up.

If you are currently on probation, parole, or have failed to appear for a past court dates, or you're not a US citizen, there can be additional challenges to getting you out of jail. Please come talk to us if you're in that situation. If you're in one of those categories, you need to think about whether you want to risk arrest.

SLIDE THIRTEEN: LEVEL THREE: ARREST, CONT.

If you are under 18, you have all of the same constitutional rights as an adult. However, if you are arrested you may be treated differently.

For example, you may be taken to a different location upon arrest, like a juvenile detention facility. Normally, your parent/guardian must physically retrieve you from jail upon your release. This can be avoided by having a parent sign a consent (permission slip) to allow another adult who will be with you to come pick you up from jail with the signed authorization. For more, see me after the training.

SLIDE FOURTEEN: POST-ARREST

Your first court appearance is called an arraignment. Normally, you will be arraigned shortly after your arrest. In Washington, you must be arraigned within 72 hours of arrest. In Skagit county—if you're held at the jail—arraignments will take place the first business day after your arrest.

If you're taking part in an action outside of Washington, research the local procedures.

When you are arraigned, always plead not guilty. You can change a not guilty plea later. You cannot, however, change a guilty plea. Once you plead guilty you waive a bunch of your rights and you are essentially throwing yourself at the mercy of the court. It's not a good spot to be in.



Civil Liberties Defense Center

• www.cldc.org •

Again, I want to stress that given the amount of folks that have indicated a willingness to be arrested, it is our understanding that the cops will likely cite and release for misdemeanors—meaning—cops will take you off site, give you a citation, and let you walk away without physically going to jail. If that occurs, you won't have to deal with a bunch of these jail procedures. Felonies, jail likely. US Coast Guard citations normally do not involve in custody jail.

SLIDE FIFTEEN: KNOWLEDGE IS POWER: KNOW WHAT YOU ARE GETTING INTO BEFORE YOU'RE THERE...

The Break Free actions are designed to challenge the fossil fuel industry. Many of these actions are at locations that are designated by the government to contain “critical energy infrastructure.” Disrupting or damaging things at these places can mean that you'll face some rather unique charges as well as possible sentencing enhancements if convicted.

For example, during the Shell NO port protests, the Coast Guard took jurisdiction and there was a civil penalty process in a military tribunal (2 cases dismissed thus far, 3 pending). Other folks have targeted railroads and were subject to additional charges because, although it may not be obvious, railroads are energy infrastructure. And it's not just the tracks, but also 30, 40, or 50 feet away from the tracks.

Please refer to your Break Free Legal Primer for more details on these charges. We also have another primer online that deals specifically with critical energy infrastructure. NOTE: despite many onerous sounding crimes and penalties, there have been very few instances where climate activists have been hammered upon conviction. We want you to know the potential risks, but also know these risks are fairly low at this time.

SLIDE SIXTEEN: COP-WATCHING

Everyone can be a cop watcher and assist legal observers in obtaining video or photographic evidence of police misconduct or other instances of interest.

If you capture something you think is important for the legal team to have, upload your images to the following secure attorney website: xxx

Before you upload unedited action footage to YouTube, Facebook, dropbox or other corporate servers, consider that video intended to document abuses by police could also be used in legal proceedings against folks risking arrest (if you capture crimes being committed).



Civil Liberties Defense Center

• www.cldc.org •

If you are able to be identified as the videographer or person who posted the video, also know that the State could attempt to subpoena you to a trial or grand jury designed to prosecute and/or imprison your fellow activists.

SLIDE SEVENTEEN: NECESSITY DEFENSE (1)

As part of this movement to address the extreme urgency of the impacts of climate change, people arrested in actions against the fossil fuel industry and other extractive industries are attempting to assert what's called a "necessity" or "choice of evils" defense. In order to even present this defense, you have to meet certain requirements and get permission from a judge to present it to a jury for their consideration.

-First, faced with two evils, you choose the lesser evil. In this case, the greater evil is the destruction of the planet, and the lesser evil is breaking a law.

-The greater evil must be an imminent (or extremely likely) harm or a harm that is already occurring (like the effects of climate change) and your actions are meant to prevent that harm.

-Next, you have to show that there is a direct relationship between your conduct and preventing the greater harm.

-Lastly, you have to have no other legal alternative.

It's a useful defense for activists to assert, but don't count on it to get you out of trouble because very often Courts will not allow you to argue it to a jury.

In addition, the Break Free actions are meant, in part, to highlight the extreme urgency of the need to protect the earth. Part of the messaging is about the "necessity" of acting now to protect the atmosphere with the understanding that the atmosphere is in what's called the "public trust." When something is in the public trust it means that the government has a duty to protect it for the welfare of the people. Not protecting the public trust may be a violation of the constitution. CLDC has been getting creative with other activist defenses that may be used to keep the story focused on the issues of the campaign—have your lawyer contact us as needed.

SLIDE EIGHTEEN: NECESSITY DEFENSE (2)

In order to even present this defense, your lawyer has to ask the judge for permission to present it to the jury.



Civil Liberties Defense Center

• www.cldc.org •

It is extremely rare that the judge will allow the jury to hear a necessity defense. So far, only a small handful of cases have been allowed to present the defense. And even then, no cases have been won because of it. In the Delta 5 case, the defendants were allowed to present the necessity defense, but the judge later instructed the jury to disregard it. Those defendants were acquitted in part.

Again, don't bank on this defense.

SLIDE NINETEEN: AFFINITY GROUPS

By now you should know that the PNW Break Free organizes in smaller affinity groups to ensure effective, safe actions. Each affinity group should have at least their own jail support person and someone to attend campaign updates, including legal briefings.

Check in with organizers after this training if you don't have an affinity group yet. Come to the CLDC legal team table (or contact cldc.org) if your affinity group has legal support needs or if you want to participate as a legal observer (LO training required) at the action(s).

SLIDE 20: BEFORE YOU KNOW YOUR RIGHTS, KNOW YOUR SITUATION

I want to leave you all with a few additional resources. First, if you are copwatching, this is the website you can upload videos and photos to. Again, please be aware that uploading to corporate servers like facebook could be risky. If you see something that looks like police abuse or misconduct, report it. The CLDC will be assisting and organizing attorney representation and involvement. If you have a legal problem, just contact us and we'll do our best to help you out.

We also recommend that you check out the St. Paul principles. These are principles that were developed during protests against the RNC and the DNC a few years back with the goal of improving solidarity and cross movement organizing.

We've also including a resource for Canadian citizens who may face arrest as well as a resource about undocumented folks that may get arrested.