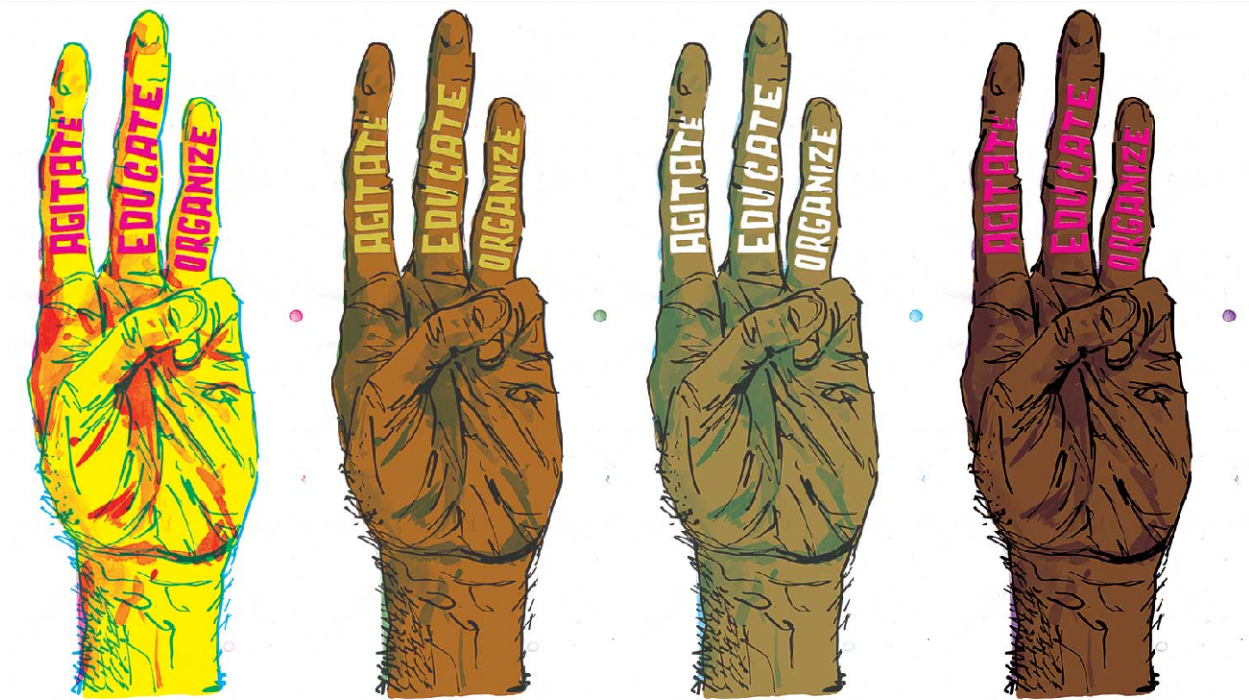


Protesters and Lawyers Working Together

The 2022 Resource Guide
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A PROJECT OF THE ANIMAL LAW CLINIC
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¹ Image: Agitate-Educate-Organize, Josh MacPhee, Justseeds (Nov. 2016), <https://perma.cc/C9N3-V7BQ>.

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PROTESTERS AND LAWYERS WORKING TOGETHER: THE 2021 GUIDE

Introduction

When undertaking protest activity, proper planning is essential. Many protest manuals and guides have been published from reputable organizations that assist in that process. In addition to building on that work and compiling resources relating to this topic, the main purpose of this Guide is to address an additional, but related, issue arising while protestors and lawyers are navigating the legal system – that is, the challenges they may have when working together. This Guide attempts to address the planning and implementation of a protest with an eye towards the legal processes that may apply before, throughout, and after a protest, to improve the attorney-client relationship and assist both parties with common issues. Additionally, in an appendix, this Guide addresses protests in the context of animal protection protests, as a distinct form of activism, which raises unique considerations, as well as using Oregon as an example of the laws might apply. This Guide uses information from many sources as a way of sharing the work of others and helping increase their visibility.

This Guide is intended to highlight legal questions that may need to be addressed to navigate the legal process more successfully and safely. It is not possible to list every possible hurdle, tactic, issue, or outcome related to protests. However, the Guide attempts to facilitate consideration of the process as a whole, keeping in mind the goals of the protest, in order to help protestors plan carefully and consciously and with an understanding of legal concerns. The Guide outlines some of the potential risks and outcomes that can result from choices made when planning or participating in a protest. Examples include, but are not limited to:

- A previous criminal record that may exacerbate problems in future criminal proceedings;
- The effect on school, employment, or student loans;
- The immigration status of a protester²;
- Additional complications for specific classes of individuals during the booking process, if arrested³; and/or
- Potential felony charges.⁴

² See [Section 1.VI.G.](#)

³ For example, issues faced by members of the LGBTQIA+ demographic when encountering gendered spaces, or issues faced by non-English speakers who do not have access to an interpreter. NAT'L CTR. FOR TRANSGENDER EQUAL., LGBTQ PEOPLE BEHIND BARS: A GUIDE TO UNDERSTANDING THE ISSUES FACING TRANSGENDER PRISONERS AND THEIR LEGAL RIGHTS (2018), <https://perma.cc/5CTY-NLA5>; Al Baker & Ray Rivera, *U.S. Reviews New York Police Dealings with People Who Don't Speak English*, N.Y. TIMES (Apr. 9, 2010), <https://perma.cc/4TV2-7BFH>.

⁴ State bills aimed at restricting protesting and related activity and carry varying civil and criminal penalties are pending or have passed in several states. *Anti-Protest Bills Around the Country*, ACLU, <https://perma.cc/KY4U-7FBX>. Additionally, protestors may be charged with a felony under various state anti-rioting laws, or possibly the federal anti-rioting law. 18 U.S.C. §2101 (2018).

Please read the full [disclaimer with respect to this Guide](#). This Guide does not constitute legal advice and is not a substitute for legal advice. For any specific legal questions, one should contact a practicing and licensed lawyer in the relevant jurisdiction. The Guide is separated into different sections and subsections. It should be read in its totality, and with reference to its specific purpose. Please refer to the [Table of Contents](#) for the location of specific topics, concepts, and issues.

The Guide is not intended to suggest a particular course of action, but rather to enable protesters to make appropriate choices that may have legal implications, to work with lawyers more easily, and to equip lawyers with knowledge to work more effectively with protesters.

NOTE: Forewarned is forearmed. Plan carefully and check the applicable laws in the jurisdiction of the protest. The regulation of protests in current times is consistently changing. The state of flux means that there is a need to be aware that the response of local law enforcement may vary.⁵ If protest organizers and protesters suspect that their rights are being violated at any time, they should seek the services of a lawyer. If they want to avoid legal jeopardy, they should plan carefully. For the purposes of this Guide, all legal terms and examples, unless otherwise noted, are based on the laws of the United States of America.

The Guide is divided into three Sections ([Planning a Protest](#), [Engaging in Protest](#), and [Legal Process After Protest](#)) and three Appendices ([Protest Planning Checklist](#), [Animal-Specific Issues in Protest](#), [Oregon-Specific Criminal Aspects](#)). It includes links to resources from other organizations with long histories of supporting and analyzing the legal implications of protest activity and is designed to be a quick reference. The Guide also provides information on [self-care](#) and [preventing burn out](#), which is imperative for activists and attorneys alike.

For purposes of clarity, a few stylistic choices have been made throughout the Guide. Citations have been structured generally using *The Bluebook's* uniform system of citation. To increase accessibility for non-legal readers, the Guide includes the following departures: (1) clickable hyperlinks in citations, (2) appended hyperlinks for sources that do not require a URL, and (3) replacement of internal cross-references (i.e., *infra* and *supra*) with clickable hyperlinks to the relevant Sections or the full original citation with a clickable hyperlink. Finally, unless otherwise stated, any state statutory references provided apply to the state of Oregon. Readers in other jurisdictions should view these Sections as examples and research their specific state and local legislation.

⁵ Laws are being re-written, and in some states there is a move to equate protest activity to terrorism. *See e.g.*, SB 1, 154th Gen. Assemb., Reg. Sess. (Ga. 2017) (Georgia bill attempting to expand the definition of domestic terrorism to include certain activity “intended to advance . . . any ideology or belief”); *see also*, HB 249, 2017-2018 Sess. (N.C. 2017) (North Carolina bill creating the crime of “economic terrorism,” enhancing penalties for protesters who obstruct traffic, and making protesters liable for policing costs). In line with President Trump’s anti-protest rhetoric, there is also a federal move to equate protest activity to terrorism. *See e.g.*, Michael German, *What in the World Is Adam Schiff Thinking with His Domestic Terrorism Bill?*, THE HILL (Aug. 26, 2019), <https://perma.cc/DX2S-473R> (discussing the introduction of a federal bill “that would give Attorney General Barr arbitrary discretion to lay domestic terrorism charges against political opponents of President Donald Trump” and how protesters “will be the most likely target of this law if it passes”).

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DISCLAIMERS

The views expressed in this Guide are not necessarily those of Lewis & Clark Law School or the Animal Law Clinic, its employees, or its representatives.

Any reference in this Guide to any person, organization, activity, product, or services, or any links in this Guide to any website or document of another party do not constitute or imply endorsement or recommendation by Lewis & Clark Law School, or the Animal Law Clinic.

We furthermore do not endorse, nor are affiliated with, any of the organizations referred to in this Guide, nor have we sought the consent of the organizations or news pages, etc., whose public content we have shared. The resources are provided as information sources and to provide a broad overview of the issues that may arise in the context of protests and demonstrations.

While we have attempted to make the information in this Guide as accurate and up to date as possible, we make no claims about completeness, and expressly disclaim liability for errors and omissions in the contents of this Guide. No warranty of any kind is given with respect to the contents of this Guide or its links to other resources. We reserve the right to amend this Guide at any time.

The information provided in this Guide does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this site are for general informational purposes only. Readers of this Guide should contact their attorney to obtain advice with respect to any particular legal matter. No reader, user, or browser of this site should act or refrain from acting based on information on this site without first seeking legal advice from counsel in the relevant jurisdiction.

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DEFINITIONS

For purposes of this Guide, the following expressions (and similar ones) shall bear roughly the meanings used below. Please note that many of these terms are fluid and consistently evolving based on context, jurisdiction, interpretation, law, and various other factors:

- **Accessibility:** The ability for people with disabilities to access products, services, devices, or environments.
- **Activist:** Used as a reference to a protester, participant, defendant, detainee, accused, and other person undertaking or who has undertaken a protest-related activity.
 - The Guide considers the different risks and complications that activists face due to their race,⁶ color,⁷ gender,⁸ sex,⁹ religion,¹⁰ ability,¹¹ ethnicity,¹² sexuality,¹³ national origin,¹⁴ familial status,¹⁵ age,¹⁶ and other factors.
- **Appendix or Appendices:** Refers to any one or all of the three main Appendices of this Guide.¹⁷
- **BIPOC:** An inclusive acronym that stands for Black, Indigenous, and people of color. The term BIPOC seeks to center the voices of the Black and Indigenous community, whose experiences are erased when the term people of color is used to discuss issues that specifically or uniquely affect Black and/or Indigenous communities.¹⁸ See *People of Color (POC)*.
- **Demonstration:** See *Protest*
- **Doxing or Doxxing:** The act of publicly identifying or publishing private information about someone. Doxing is mostly done as a form of punishment, often leading to harassment of the doxed individual. In the context of protest, doxing can be done by protesters, counterprotesters, law enforcement, government officials, or the media.¹⁹
- **Guide:** Used for any reference to this Guide including the Sections and the Appendices.

⁶ See [Section 1.VI.C.](#)

⁷ See [Section 1.VI.C.](#)

⁸ See [Section 1.VI.F.](#)

⁹ See [Section 1.VI.F.](#)

¹⁰ See [Section 1.VI.B.](#)

¹¹ See [Section 1.VI.I.](#)

¹² See [Section 1.VI.C.](#), [Section 1.VI.B.](#)

¹³ See [Section 1.VI.F.](#)

¹⁴ See [Section 1.VI.G.](#)

¹⁵ See [Appendix I.](#)

¹⁶ See [Section 1.VI.D.3.](#), [1.VI.H.](#)

¹⁷ See [Appendix I.](#), [Appendix II.](#), and [Appendix III.](#)

¹⁸ Constance Grady, *Why the Term “BIPOC” Is So Complicated, Explained by Linguists*, VOX (June 30, 2020), <https://perma.cc/V44D-MPKD>.

¹⁹ See, e.g., Micah Lee, *How Right-Wing Extremists Stalk, Dox, and Harass Their Enemies*, INTERCEPT (Sept. 6, 2017), <https://perma.cc/M7MP-VF34>; Alyse Stanley, *St. Louis Mayor Says Sorry for Protesters During Livestreamed Q&A*, GIZMODO (June 27, 2020), <https://perma.cc/9UBX-7RX5>; Dell Cameron, *NYPD Union Doxes Mayor’s Daughter on Twitter*, GIZMODO (June 1, 2020), <https://perma.cc/6DRU-UQX3>; Nellie Bowles, *How ‘Doxing’ Became a Mainstream Tool in the Culture Wars*, N.Y. TIMES (Aug. 30, 2020), <https://perma.cc/AJJ2-54TT>.

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- **Jurisdiction:** In this Guide we refer to Federal, State, and Local jurisdictions. We have not included Tribal jurisdictions as there is less information about those venues, but they are also important to consider.
- **Lawyer:** Used as a common descriptor of any licensed attorney permitted to advise in legal matters.
- **Lawyering:** The work and actions of a lawyer navigating the legal system.
- **Less Lethal Weapons:** Weapons used by law enforcement against protesters to disperse protests. Less lethal weapons include rubber bullets, beanbag rounds, flash bangs, pepper spray, tear gas, and pepper bullets, to name a few. Though these weapons are called ‘less lethal’ or even ‘non-lethal,’ they can and have maimed and even killed protesters.²⁰ More specifically, these military grade weapons have caused life threatening wounds such as loss of eyes, perforated chests, brain damage, cardiogenic shock, and death.²¹ See [Section 2.III.F](#) for information regarding equipment and techniques to reduce risk of serious injury or death.
- **LGBTQIA+:** An umbrella term for all people who have non-normative gender identity, sex, or sexual orientation. LGBTQIA+ is an acronym that stands for Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual. The “+” signifies that there are other non-cisgender and non-straight identities which are not included in the acronym.²²
- **Low Bono:** Work by a lawyer that is undertaken with reduced fees for clients who cannot afford a full-priced attorney. See *Reduced Fee*.
- **Movement Lawyering:** Work done by a lawyer that supports and advances social movements in an effort to achieve systemic legal, institutional, and cultural change.²³ Movement lawyers take direction from directly impacted communities and organizers.²⁴ Movement lawyering often transcends traditional approaches to lawyering and works toward transformative change through building community power and democratizing participation in, and access to, the law.²⁵

²⁰ See generally Janet Loehrke et al., ‘Less Lethal’ Can Still Maim and Kill: A Visual Guide to Weapons Police Use on Protesters, USA TODAY (June 20, 2020), <https://perma.cc/V3Z7-XYGK>; Less-Lethal Weapons That Are Actually Lethal, NPR: ALL THINGS CONSIDERED (July 31, 2020), <https://perma.cc/K8GR-RAZ5>; INT’L NETWORK OF CIV. LIBERTIES ORGANIZATIONS, LETHAL IN DISGUISE: THE HEALTH CONSEQUENCES OF CROWD-CONTROL WEAPONS (2016), <https://perma.cc/7T8X-6XNL>.

²¹ Jonathan Pedneault, *Police Targeting ‘Street Medics’ at US Protests*, HUMAN RIGHTS WATCH (June 17, 2020, 4:32 PM), <https://perma.cc/7A8J-2F3N>.

²² *Acronyms Explained*, OUTRIGHT ACTION INT’L, <https://perma.cc/YV5B-B52H>.

²³ See Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 *Clinical L. Rev.* 663, 664 (2017) (defining movement lawyering as “lawyering that supports and advances social movements, as defined by the building and exercise of collective power, led by the most directly impacted, to achieve systemic institutional and cultural change”).

²⁴ *What We Can Do: Movement Lawyering in Moments of Crisis*, LAW FOR BLACK LIVES, <https://perma.cc/KQK3-WJZG>.

²⁵ *Id.*; *About Us*, LAW FOR BLACK LIVES, <https://perma.cc/UJ8M-DRTV>.

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- **People of Color (POC):** A person who does not identify as white or have solely European heritage.
- **People with Disabilities:** A person or people who identifies as having any physical or mental impairment. There is no definitive list of what conditions or experiences constitute a “disability,” thus the definition of disability varies based on context, with a wide range of differences between how individuals are affected.²⁶
- **Pro Bono:** Work by a lawyer that is undertaken without charge.
- **Protest:** Used as a description of any activity that implicates the considerations in this Guide. Used interchangeably with *Demonstration*, *Rally*, or *Vigil*.
- **Rally:** See *Protest*.
- **Reduced Fee:** Work by a lawyer that is undertaken with a fee lower than that which is normally charged.
- **Section:** Refers to any one of the three main sections of this Guide.
- **Vigil:** See *Protest*.

COMMON ACRONYMS AND ORGANIZATIONS

- American Liberties Civil Union (ACLU)²⁷
- Civil Liberties Defense Center (CLDC)²⁸
- Deferred Action for Childhood Arrivals (DACA)²⁹
- Electronic Frontier Foundation (EFF)³⁰
- Midnight Special Law Collective³¹ (Note that this organization has since been disbanded, however it has useful resources that have been referenced and included throughout this Guide).

²⁶ *Definitions*, NAT’L DISABILITY AUTH., <https://perma.cc/6LNR-D3HQ>.

²⁷ *About*, ACLU, <https://perma.cc/H9PC-JWJH> (“For nearly 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country.”).

²⁸ CIV. LIBERTIES DEF. CTR., <https://perma.cc/HAW4-DBKJ> (“The Civil Liberties Defense Center supports movements that seek to dismantle the political and economic structures at the root of social inequality and environmental destruction. We provide litigation, education, legal and strategic resources to strengthen and embolden their success.”).

²⁹ For more information about DACA, see *DACA*, NAT’L IMMIGRATION L. CTR., <https://perma.cc/R8AS-QCKF>.

³⁰ *About*, ELECTRONIC FRONTIER FOUND., <https://perma.cc/53WT-WJZG> (“The Electronic Frontier Foundation is the leading nonprofit organization defending civil liberties in the digital world. Founded in 1990, EFF champions user privacy, free expression, and innovation through impact litigation, policy analysis, grassroots activism, and technology development. We work to ensure that rights and freedoms are enhanced and protected as our use of technology grows.”).

³¹ MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/MLW4-CZ9A> (“The Midnight Special Law Collective is an independent non-profit organization dedicated to providing legal trainings and accessible, relevant, democratic and accountable legal support to a wide range of activists participating in the struggle for social change.”).

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- National Lawyers Guild (NLG)³²

GENERAL INTRODUCTION TO BASIC LEGAL CONCEPTS FOUND IN THIS GUIDE

Below is a brief introduction to certain legal concepts found in this Guide. This overview is for introductory purposes only and is meant to assist the reader in contextualizing the use of these terms. It is not intended to be a comprehensive guide, and further sources should be consulted for more specific legal concepts. Terms have different meanings in different contexts and based on other relevant considerations:

- *Accused* – a person charged or on trial for a crime.
- *The Constitution* – the Constitution refers to the United States Constitution, which is the supreme law of the land.
- *Right* – a right is something that is due to a person by just claim, legal guarantee, or moral principle *or* a power, privilege, or immunity secured to a person by law.³³
- *Defendant* – a defendant is a person accused of a crime in a criminal prosecution or someone against whom civil relief is being sought in a civil case.
- *Federalism* – although not referenced directly in this guide, federalism refers to the evolving relationship between the states and the federal government in the United States.
- *The Fifth Amendment* – the Fifth Amendment to the Constitution is part of the Bill of Rights and protects individuals from being compelled to be witnesses against themselves in criminal cases.
- *The Fourteenth Amendment* – the Fourteenth Amendment to the United States Constitution effectively incorporates the Fifth Amendment to the states. The text provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

³² *About*, NAT'L LAWS. GUILD, <https://perma.cc/ZSF8-J8Y4> ("Our mission is to use law for the people, uniting lawyers, law students, legal workers, and jailhouse lawyers to function as an effective force in the service of the people by valuing human rights over property interests.").

³³ *Right*, BLACK'S LAW DICTIONARY (11th ed. 2019).

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- *The Fourth Amendment* – the Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures.
- *The Sixth Amendment* – the Sixth Amendment to the United States Constitution provides that in all criminal prosecutions, the accused will have the right to counsel for their defense.
- *The Supreme Court* – the Supreme Court of the United States of America, which is the highest court of the land.

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SECTION ONE – PRE-PROTEST CONSIDERATIONS

I. INTRODUCTION

This Section addresses various pre-protest considerations relevant to organizers and activists (of various backgrounds) and focuses on ways legal difficulties can potentially be minimized or prevented. It also offers considerations relevant to lawyers contemplating assisting such persons or using preventative lawyering as an aspect of their work.

In some cases, consulting reliable sources for guidelines may be enough to avoid potential negative legal consequences. In others, it may be necessary to arrange a meeting with a lawyer to discuss potential concerns.

II. FREEDOM OF ASSEMBLY

As a starting point, it is useful to understand what “freedom of assembly” means, and what activists can and cannot do legally, as there may be common misconceptions.

The First Amendment of the U.S Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of *the people peaceably to assemble, and to petition the Government for a redress of grievances.*³⁴

This provision, however, is not without limitation. To attempt to clarify what is and what is not legally permissible there are free resources available, some of which are set out below. These resources should be used for guidance purposes only and may need to be supplemented with legal advice specific to the particular protest action:

- The National Lawyers Guild (NLG) has produced a significant amount of literature on the right to protest and to demonstrate.³⁵ It would be useful for anyone organizing a protest, demonstration, or picket to consult these sources first.

³⁴ U.S. CONST., amend. I (emphasis added).

³⁵ The NLG has several document resources on protecting the right to protest, including arrest information, how to engage in “militant picketing,” laws concerning protests and civil disobedience, student free speech rights, and other topics. This includes a short pamphlet on the right to demonstrate and protest based on free speech rights. *See Resources*, NAT’L LAWS. GUILD, <https://perma.cc/A4T3-EG35>.

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- The American Civil Liberties Union (ACLU) has also produced material on the topic of protests. Their materials are in a Frequently Asked Questions (FAQ) format and address many common concerns regarding planning a protest, navigating police encounters, and much more.³⁶

Though there are important distinctions between these terms, for the purposes of this Guide, we have used “freedom of assembly” and the “right to protest” interchangeably.

III. THE ACTIVIST ECOSYSTEM: PLAYERS BEFORE, DURING, AND AFTER A PROTEST

A. Legal Observers

Legal observers attend protest to observe, and later report if needed, the activities that took place during a protest. As discussed in detail in [Section 2.VI.B](#), the potential for escalation at protests is not limited to tactics used by activists. Other parties such as counterprotestors and even law enforcement officials can escalate confrontations and engage in violent acts at protests. For example, a 2020 report by Amnesty International USA documented the “widespread and egregious human rights violations by police officers against protesters, medics, journalists and legal observers gathered to protest the unlawful killings of Black people by the police and to call for systemic reform in May and June of 2020.”³⁷ To address the risk of police (or other) violence at protests, legal observers attend protests and “purposely position themselves close enough to demonstrations to be able to accurately watch and report the activities of participants and the law enforcement who interact with them.”³⁸

The National Lawyers Guild’s (NLG) *Legal Observer Training Manual* sets forth the protocol for legal observers.³⁹ The manual explains that “the police employ various means of intimidation . . . includ[ing] marching and striking their batons against their riot gear armor in unison, aiming

³⁶ *Know Your Rights: Protesters’ Rights*, ACLU, <https://perma.cc/3CSM-A3W6>. <https://www.aclu.org/know-your-rights/what-do-if-your-rights-are-violated-demonstration-or-protest><https://www.aclu.org/know-your-rights/what-do-if-your-rights-are-violated-demonstration-or-protest>

³⁷ *USA: Law Enforcement Violated Black Lives Matter Protesters’ Human Rights, Documents Acts of Police Violence and Excessive Force*, AMNESTY INT’L (August 4, 2020), <https://perma.cc/NR9H-WP3J>.

³⁸ *Legal Observer*, CIV. LIBERTIES DEF. CTR. (Apr. 24, 2014), <https://perma.cc/JSE3-QB36>.

³⁹ NAT’L LAWS. GUILD, *LEGAL OBSERVER TRAINING MANUAL 1* (Nat’l Laws. Guild ed., 2003), <https://perma.cc/TT2E-FQHU> (“The primary role of the Legal Observer is to be the eyes and ears of the legal team--to observe and record incidents and the activities of law enforcement in relation to the demonstrators. This includes documenting, for example, any arrest, use of force, intimidating display of force, denial of access to public spaces like parks and sidewalks, and any other behavior on the part of law enforcement that appears to restrict demonstrators’ ability to express their political views.”).

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large canisters of pepper spray at the crowd, jabbing their batons [at activists], and verbal threats.”⁴⁰ The manual explains that “[i]n addition to documenting who is doing this, [legal observers should] pay attention to how this impacts the demonstrators.”⁴¹ Legal observers record the information they observe to share with courts or other officials as needed.

1. Legal Observers, Documentation of Protests, and Other Roles

Several non-profit organizations provide legal observer training.⁴² The most well-known is, perhaps, the National Lawyers Guild (NLG). The organization’s program was “established in 1968 in New York City in response to protests at Columbia University and city-wide antiwar and civil rights demonstrations.”⁴³ NLG describes the purpose of legal observation as “to enable people to express their political views as fully as possible without unconstitutional disruption or interference by the police and with the fewest possible consequences from the criminal justice system.”⁴⁴ Legal observers are “typically, but not exclusively, law students, legal workers . . . and lawyers, who may or may not be licensed locally.”⁴⁵

Legal observers are generally considered objective observers and are not, themselves, part of the protest. However, despite this, they are often treated as protesters by law enforcement.⁴⁶ For example, in protests during the Trump inauguration, legal observers were arrested along with activists and news reporters.⁴⁷ They can also be affected by pepper spray and nonlethal munitions by law enforcement. At the inauguration protest, law enforcement officials’ indiscriminate use of those munitions resulted in Police Complaints Board protest monitors being hit by pepper spray and rubber bullets.⁴⁸ During the protests following the police killings of George Floyd and Breonna Taylor (and other related protests)⁴⁹, not only did police across the country use pepper spray, tear gas, and rubber bullets against legal observers, but police actively

⁴⁰ NAT’L LAWS. GUILD, LEGAL OBSERVER TRAINING MANUAL 8 (Nat’l Laws. Guild ed., 2003), <https://perma.cc/TT2E-FQHU>.

⁴¹ *Id.*

⁴² See e.g., *NLG Legal Observer® Program*, NAT’L LAWS. GUILD, <https://perma.cc/HT5V-YJYU> (“Legal Observer trainings are held several times a year in various locations around the country.”).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ NAT’L LAWS. GUILD, LEGAL OBSERVER TRAINING MANUAL 1 (Nat’l Laws. Guild ed., 2003), <https://perma.cc/TT2E-FQHU>.

⁴⁶ During a protest in Portland, Oregon, one officer shoved a NLG legal observer to the ground, which later resulted in a tort claim against the city of Portland. Doug Brown, *Tort Claim Notice Filed Against City After Portland Cop Shoves Legal Observer to Ground*, PORTLAND MERCURY: BLOGTOWN (Sept. 14, 2017), <https://perma.cc/LV3P-XJX4>.

⁴⁷ Dick Uliano, *Arrests, Pepper Spray Use During Inauguration Protests Panned*, WTOP (Feb. 27, 2017), <https://perma.cc/XFC4-MZF3>.

⁴⁸ *Id.*

⁴⁹ Throughout the Guide we will refer to the protests following the deaths of George Floyd and Breonna Taylor. We are using this as short-hand for many protests that have happened in the last few years that focused on police or other government behavior.

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engaged in physical force and brutality against legal observers (and journalists), including arrest.⁵⁰

2. Deployment of Legal Observers

Legal observers are used in any setting where there is concern about violence, illegal arrests, curtailment of rights, or other problems. They were deployed across the country during protests of the Trump inauguration and subsequent executive orders.⁵¹ In response to what is assumed by the legal community to be an increased need for legal observers, NLG offered the organization's first online legal observer training, which is specifically aimed at training legal observers for presidential inauguration demonstrations.⁵²

3. Recommendations for Legal Observers

Given that one of the main purposes of having legal observers present is to deter illegal activity by law enforcement, it is important for those individuals to “be visible to both activists and police.”⁵³ NLG's manual suggests that participants make themselves visible by wearing identifying clothing, such as hats, armbands, or badges.⁵⁴ Further, it recommends that legal observers announce their presence to demonstrators and set up a table or other area where they can be located, if necessary.⁵⁵ NLG's manual also suggests that legal observers be placed strategically and anticipate problems. For example, it states that legal observers should be placed in locations where they are less likely to be blocked by a parade, or a police checkpoint.⁵⁶ Other organizations also offer resources for legal observers.⁵⁷

4. Peacekeepers

Although not used as often in more recent demonstrations, protests in the past have benefitted from peacekeepers as an alternative or in addition to legal observers. Peacekeepers are

⁵⁰ Press Release, National Lawyers Guild, Statement of Support for Legal Observers Targeted and Brutalized by Police (June 16, 2020), <https://perma.cc/HQ76-DHZ9>. During the George Floyd protests, protest medics, food deliverers, and journalists were also targeted by police across the country. Jeffrey Young, *The Police Are Targeting Protest Medics*, HUFFPOST, <https://perma.cc/T9AT-EXUQ>.

⁵¹ David Thomas, *Keeping a Legal Eye on Demonstrations*, CHI. DAILY L. BULL. (last updated Jan. 27, 2017, 3:54 PM), <https://perma.cc/D6PT-P7KY> (discussing the deployment of thirty-nine legal observers in Chicago, Illinois).

⁵² #J20 Online Legal Observer Training: 1/14/17, NAT'L LAWS. GUILD (Jan. 9, 2017), <https://perma.cc/5P2P-RY44>.

⁵³ NAT'L LAWS. GUILD, LEGAL OBSERVER TRAINING MANUAL 2 (Nat'l Laws. Guild ed., 2003), <https://perma.cc/TT2E-FQHU>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 15.

⁵⁷ Midnight Special Law Collective offers a police misconduct report, which is “designed to help victims recall important details and record them in a useful format.” *Police Misconduct Report*, MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/R4JG-XF4V>. The organization also provides a more general guide for legal observers and video observers. *Legal Observer Guide*, MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/438S-G8LT>.

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specialized participants that use nonviolent tactics to act as mediators between protesters and authorities or counterprotesters.⁵⁸ Peacekeepers were present at the Democratic National Convention in 2016 to facilitate peaceful interactions between protesters.⁵⁹

B. Street Medics

Street medics are typically volunteers belonging to the local community, with varying levels of medical training and experience, who attend protests to provide first aid and other medical care to activists or others who need it.⁶⁰ Street medics have been around for decades, originating in the U.S. in 1964 during the Civil Rights Movement.⁶¹ Some street medics work with affinity groups to provide direct care to any members of that group who sustain protest-related injuries,⁶² other street medics render aid to *any* injured person, including those they may disagree with (e.g., counterprotesters).⁶³ Some street medics are movement-based (e.g., they distinguish between someone fighting for liberation and a Neo-Nazi).⁶⁴ Most street medics mark themselves with a red cross to ensure quick identification and accessibility during protests.⁶⁵ As discussed in [Section 1.III.H](#) and [Section 2.IV.B](#), as technology has evolved so has law enforcement equipment, which has led to the use of military grade weapons, often called ‘Less Lethal Weapons,’ which have consistently caused life threatening wounds, including loss of eyes, perforated chests, brain damage, cardiogenic shock, and even death.⁶⁶ With the increased use of such weapons, street medics have become crucial to “preserving life and rendering protests safer for everyone involved.”⁶⁷ Despite their growing importance, street medics have been targeted by police at protests, especially during the protests against police violence, as police across the nation shoved medics, destroyed their supplies, fired so called ‘Less Lethal Weapons’ at medics while rendering medical aid, and engaged in violent arrests of medics.⁶⁸ In Portland, Oregon, street medics, with the help of the ACLU of Oregon, sued the U.S. Department of Homeland Security, the U.S. Marshals Service, and the City of Portland for “targeting and attacking them at

⁵⁸ *Peacekeeping*, NEW. ENG. NONVIOLENCE TRAINING NETWORK, <https://perma.cc/F8JN-GS5W>.

⁵⁹ Lucia Graves, *Meet the Bernie Peacekeepers, the Group Trying to Keep Protests Safe at the DNC*, GUARDIAN (July 26, 2016), <https://perma.cc/CE2P-869F>.

⁶⁰ PAPER REVOLUTION, STREET MEDIC GUIDE (2018), <https://perma.cc/VQ96-EWT6>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ PAPER REVOLUTION, STREET MEDIC HANDBOOK FOR OCCUPY CHICAGO AND THE MOBILIZATION AGAINST THE 2012 NATO SUMMIT 6 (March 7, 2012), <https://perma.cc/9BGH-TPDB>.

⁶⁴ Rachel Kurzius, *Some of the People on Trial for Rioting on Inauguration Day Were There to Dispense First Aid*, WASHINGTONIAN (Dec. 13, 2017), <https://perma.cc/ZU3C-PZG5>.

⁶⁵ PAPER REVOLUTION, STREET MEDIC GUIDE (2018), <https://perma.cc/VQ96-EWT6>.

⁶⁶ Jonathan Pedneault, *Police Targeting ‘Street Medics’ at US Protests*, HUMAN RIGHTS WATCH (June 17, 2020, 4:32 PM), <https://perma.cc/7A8J-2F3N>.

⁶⁷ *Id.*

⁶⁸ Sanya Mansoor & Anne Most, *Portland Medics Arrested and Injured in Protests Say They Were Specifically Targeted by Police and Federal Agents*, TIME (Aug. 9, 2020, 3:29 PM), <https://perma.cc/3MA7-AVEF>.

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Portland protests against police brutality.”⁶⁹ Paper Revolution’s [Street Medic Guide](#) provides helpful information for anyone interested in becoming a street medic, including resources on training, supplies, safety, and appropriate attire.⁷⁰

C. Other Activist Support

Within any given demonstration, there often exists a vibrant activist support ecosystem, with a plethora of people on the ground providing different support services for activists. Alongside the people already discussed, below is a non-exhaustive list of a few other support services and people that may be present at a demonstration:

- **Snacks and Water:** At many protests, there are people and organizations on the ground who provide food and water for activists.⁷¹
- **Corking:** At some protests, there may be folks who use their cars, bikes, or bodies to block vehicles from driving into the crowd. This practice is called “corking.”⁷² Corking is becoming increasingly important as vehicle attacks during protests are on the rise, with at least 50 vehicle-ramming incidents reported between May 27, 2020, and June 17, 2020 alone.⁷³
- **Security:** At some protests, there are people who provide security for activists, including planning safe routes for marches, corking when necessary, providing de-escalation during conflict, and escorting activists to their cars and homes. In rare cases, protest security may be armed.⁷⁴
- **Witnesses or Non-Legal Observers:** Along with legal observers, many protests are also attended by non-legal witnesses, such as Clergy Witnesses, a group of clergy members who attend protests to stand between law enforcement and protesters, bear witness to events that unfold, and provide support to activists. There are many other non-legal witnesses, such as Wall of Moms in Portland, Oregon, who have used their bodies and their identities to support protesters and observe law enforcement engagement.⁷⁵

⁶⁹ *Id.*

⁷⁰ PAPER REVOLUTION, STREET MEDIC GUIDE (2018), <https://perma.cc/VQ96-EWT6>.

⁷¹ See, e.g., SNACK BLOC, <https://perma.cc/EL9T-RC89> (“Supporting the Resistance One Snack at a Time”).

⁷² Jonathan Maus, *Local Riders Create ‘Bike Corking for Social Justice’ How-To Guide*, BIKE PORTLAND (July 2, 2020), <https://perma.cc/CS87-FGJF>; Tuck Woodstock, *Why Do Portland Police Keep Slashing Protesters’ Tires*, THE STRANGER: SLOG (Aug. 28, 2020), <https://perma.cc/NM22-9BPF>.

⁷³ Hannah Allam, *Vehicle Attacks Rise as Extremists Target Protesters*, NPR (June 21, 2020), <https://perma.cc/VLH7-X8XE>.

⁷⁴ See, e.g., Mike Baker, Julie Bosman, & Richard A. Oppel Jr., *As Guns Get Drawn at Protest Sites, Demonstrators Fear a Volatile New Phase*, N.Y. TIMES (Sept. 1, 2020), <https://perma.cc/XZ8U-ZBF6>; Gregory Scruggs, *This Seattle Protest Zone is Police-Free. So Volunteers Are Stepping Up To Provide Security*, WASH. POST (June 16, 2020, 12:16 PM), <https://perma.cc/FMT2-MBAX>.

⁷⁵ See, e.g., Yonat Shimron, *In Portland, This Rabbi Leads the Clergy Resistance*, RELIGION NEWS SERVICE (July 23, 2020), <https://perma.cc/MR98-2LMS>.

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D. Journalists

Freedom of the press is protected by the First Amendment of the U.S. Constitution, and is considered critical to maintaining a democracy in which the government is held accountable.⁷⁶ At protests, journalists are believed to play a vital role in “communicating protesters’ concerns to the government and the public” and documenting any violence perpetrated against, and constitutional violations of, protesters.⁷⁷ While freedom of the press includes protection from arrests designed to prevent reporting on public demonstrations, nearly half of all freedom of the press violations occur at protests.⁷⁸ During the protests following the police killings of George Floyd and Breonna Taylor, journalists experienced unprecedented incidents of press freedom violations, with police across the nation harassing, pepper spraying, shooting, and arresting clearly identified members of the press.⁷⁹ According to the U.S. Press Freedom Tracker, there have been approximately 100 to 150 press freedom violations per year since 2017, yet in May 2020, there were over 100 press freedom violations over a three day period alone.⁸⁰

Journalists serve an important role in giving a voice to protesters and documenting police violence or constitutional violations at protests. However, journalists photographing protests can unintentionally also cause harm for protesters, when their published information results in doxing or arrest.⁸¹ Activists should be cognizant of media presence at protests, and if activists prefer to remain anonymous, they should consider appropriate attire to ensure anonymity. Additionally, activists should be cognizant of the fact that members of the press often publish the names of folks arrested at protests, adding to existing doxing risks: doxing by the state (e.g., police department’s press release before conviction), doxing by counterprotesters (e.g., publicizing protester’s personal information through social media accounts), and doxing by the press (e.g., publication of activist’s names in pieces written about protests). Furthermore, activists should also remember that, depending on the media outlet, some journalists, independent and otherwise, may have the goal of intentionally doxing and vilifying protesters. For example, in Portland, Oregon during the 2020 Black Lives Matter protests, a conservative self-proclaimed ‘freelance journalist’ continually posted the mug shots and full names of arrested activists, citing it as his journalistic “duty” to do so, ultimately subjecting some activists to violence, harassment, and loss of employment.⁸²

⁷⁶ *Freedom of the Press*, ACLU, <https://perma.cc/NPW8-2GXR>.

⁷⁷ REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, POLICE, PROTESTERS, AND THE PRESS 2 (June 2020), <https://perma.cc/R72P-JZQQ>.

⁷⁸ *Id.*

⁷⁹ Jessica Jerreat, Pete Cobus, & Eric Neugeboren, *Across US, Journalists Caught in Protest Crossfire*, VOICE OF AM. (June 2, 2020), <https://perma.cc/XH24-7XQE>.

⁸⁰ *Id.*

⁸¹ David Maas & Taylor Mulcahey, *Tips for Reporting on Anti-Police Violence Protests in the U.S.*, INT’L JOURNALISTS’ NETWORK (June 1, 2020), <https://perma.cc/7EQ5-YDSB>.

⁸² Sophie Peel, *Portland Protesters Say Their Lives Were Upended by the Posting of Their Mug Shots on a Conservative Twitter Account*, WILLAMETTE WEEK (Sept. 16, 2020), <https://perma.cc/GN2S-NMEQ>.

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E. Law Enforcement

Law enforcement presence at, and surveillance of, protests is nothing new, though tactics continually evolve. During the Civil Rights Era, police use of violent dispersion tactics against peaceful protesters, such as police dogs and fire hoses, were widely publicized and criticized, though violent tactics had been regularly used by police for decades against communities of color and others.⁸³ Police violence against impoverished communities dates back to the creation of the first American police department in 1838, and has continued ever since.⁸⁴ As technology has evolved, so has the equipment of law enforcement. Recently, law enforcement's response to peaceful protest is often accompanied by riot gear and military grade equipment.⁸⁵

Documented law enforcement surveillance and infiltration of protests dates back to the 1950s with the creation of the FBI's Counter-Intelligence Program—COINTELPRO.⁸⁶ Despite the FBI's announcement in 1971 that it would be halting any COINTELPRO activities, similar surveillance and infiltration of protests and activist communities has continued, with new forms of surveillance evolving with technology.⁸⁷ Law enforcement tactics against protesters are ever-evolving and context-specific, thus this Guide should be used supplementarily in addition to new resources as they become available. Jurisdictions differ in what uses of force are considered appropriate, with some judges moving to curtail officer use of tear gas and rubber bullets against peaceful protesters.⁸⁸ Law enforcement use of technology, escalation by law enforcement at protests, and law enforcement presence at protests more generally are discussed in [Section 2.IV.B](#), [Section 2.VI.B](#), and [Section 2.VII](#) respectively.

F. Counterprotesters

A counterprotester is any individual or group engaged in a protest meant to counter or oppose another protest.⁸⁹ Counterprotesters have a constitutional right to free speech, but are not allowed to physically disrupt the demonstration they are protesting, nor are protesters allowed to physically disrupt counterprotests.⁹⁰ When protesters and counterprotesters are both present at a demonstration, the police are allowed to keep them separated, but should allow the two groups to

⁸³ Katie Nodjimbadem, *The Long Painful History of Police Brutality in the U.S.*, SMITHSONIAN MAG. (July 27, 2017), <https://perma.cc/Q39S-399Q>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Ryan Grim & Jon Schwarz, *A Short History of U.S. Law Enforcement Infiltrating Protests*, INTERCEPT (June 2, 2020), <https://perma.cc/M7UN-J4ZK>.

⁸⁷ *Id.*

⁸⁸ *See Columbus Police May Not Use Tear Gas, Rubber Bullets on Peaceful Protesters After Running 'Amok', Judge Rules*, WASHINGTON POST (May 1, 2021), <https://perma.cc/53VZ-45HP>.

⁸⁹ *See Counterprotest*, MERRIAM-WEBSTER, <https://perma.cc/NL2D-AH32> (defining *counterprotest* as “a protest staged to counter or oppose another protest”).

⁹⁰ *Protesters*, ACLU S. CAL., <https://perma.cc/NQ9F-TGT2>.

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be within the same general vicinity.⁹¹ The term counterprotester does not indicate a political perspective. Indeed, civil right protesters could be protesting one day, and acting as counterprotesters at a different event the next.

Many social justice movements throughout U.S. history have been met with significant backlash from countermovements, and thus counterprotesters. For example, the Civil Rights Movement was met with support for school segregation and a resurgence of the Ku Klux Klan.⁹² The Black Lives Matter movement has been met with the ‘All Lives Matter’ and ‘Blue Lives Matter’ countermovement⁹³ and the resurgence of white supremacist and Neo-Nazi groups.⁹⁴ During the protests following the police killings of George Floyd and Breonna Taylor, many demonstrations were also counterprotested by the ‘All Lives Matter’ or ‘Blue Lives Matter’ countermovement, often including Trump supporters and various white supremacist and Neo-Nazi groups.⁹⁵

Activists should note that demonstrations with counterprotesters have the potential to turn violent, especially when counterprotesters arm themselves with guns or other weapons.⁹⁶ For example, during the protests in Kenosha, Wisconsin following the police shooting of Jacob Blake, an unarmed Black man who was shot in the back seven times by police in front of his young children, a counterprotester from the ‘Blue Lives Matter’ countermovement shot three protesters with a military-style-semi-automatic rifle, killing two and seriously injuring one.⁹⁷ He was acquitted of the most serious charges against him.⁹⁸ This is not an isolated incident. According to a 2020 report from the Armed Conflict Location and Event Data (ACLED) project, in collaboration with Princeton University’s Bridging Divides Initiative, counterprotests are on the rise, as are the number of counterprotests that turn violent.⁹⁹

G. Prosecutors and District Attorneys

A District Attorney (DA)—sometimes referred to as a Prosecuting Attorney, County Attorney, or State’s Attorney—is “[a] lawyer who is elected or chosen by local government officials to represent the state government in criminal cases brought in a designated county or judicial

⁹¹ *Id.*

⁹² Alea Tiberi, *Talkin’ Bout a Revolution: African American Protest and Counter-Protest Movements in the Twentieth and Twenty-First Century*, GREAT DAY (Apr. 27, 2020), <https://perma.cc/W2DG-6D79>.

⁹³ *Id.*

⁹⁴ Simon Clark, *How White Supremacy Returned to Mainstream Politics*, CTR. FOR AMERICAN PROGRESS (July 1, 2020), <https://perma.cc/8J8D-9Z46>.

⁹⁵ See, e.g., Ben Makuch, *White Supremacist Street Gangs Are Going to BLM Protests*, VICE (June 17, 2020, 5:15 PM), <https://perma.cc/W937-GTCQ>.

⁹⁶ Fabiola Cineas, *Why Some Counterprotests to Black Lives Matter Are Turning Violent*, VOX (Sept. 14, 2020, 3:50 PM), <https://perma.cc/3QUY-DRTL>.

⁹⁷ *Id.*

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⁹⁹ ACLED, *DEMONSTRATIONS & POLITICAL VIOLENCE IN AMERICA: NEW DATA FOR SUMMER 2020* (Sept. 2020), <https://perma.cc/2Y3G-S727>.

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district.”¹⁰⁰ A DA’s primary responsibility is to review police reports, decide whether to bring criminal charges against people, decide what those charges will be, and prosecute criminal cases in court.¹⁰¹ At the federal level, a United States Attorney serves this function.¹⁰² Each United States Attorney is appointed by the President and is responsible for supervising regional offices that are staffed with federal prosecutors called Assistant United States Attorneys.¹⁰³ A prosecutor is “a lawyer who works for the local, state, or federal government to bring and litigate criminal cases.”¹⁰⁴ Unlike DAs or United States Attorneys, prosecutors are neither elected nor appointed. Prosecutors can work at the federal, state, or local level.¹⁰⁵ At the federal level, prosecutors work for the U.S. Department of Justice, while at the local or state level, prosecutors work in the District Attorneys’ Offices and the Attorney Generals’ Offices.¹⁰⁶

If an activist is arraigned with criminal charges, their case will be prosecuted by one of the above attorneys. The likelihood of being formally charged with a protest-related crime often depends on factors such as the type of protest, the specific policies of the local DA, and whether the charge is federal. For example, during the protests in Portland, Oregon following the police killings of George Floyd and Breonna Taylor, District Attorney Mike Schmidt officially announced that his office would not bring charges against protesters in cases that only involved violation of city ordinances or cases that did not involve “deliberate property damage, theft, or threat of force against another person.”¹⁰⁷ Other DAs across the country enacted similar policies,¹⁰⁸ while the federal government and other states felt differently and decided to charge hundreds of protesters, often with vague civil disorder charges.¹⁰⁹

H. Public Defenders and Private Defense Attorneys

In criminal cases, defendants are represented by either a public defender or a private defense attorney. A public defender is “[a] lawyer appointed by the court and paid by the county, state, or

¹⁰⁰ *District Attorney*, NOLO, <https://perma.cc/ZXW7-KF4H>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Prosecutor*, NOLO, <https://perma.cc/S9NL-DEZC>.

¹⁰⁵ *Criminal: Prosecuting Offices Practice Setting*, HARVARD L. SCH., <https://perma.cc/JHF2-SMTR>.

¹⁰⁶ *Id.*

¹⁰⁷ Wright Gazaway et al., *District Attorney Says Office Won’t Prosecute Low-Level Arrests at Portland Protests* (Aug. 11, 2020), <https://perma.cc/MCM6-V8DY>.

¹⁰⁸ See, e.g., Katie Shepherd & Mark Guarino, *Liberal Prosecutors Face Backlash Over Lenient Charges Following Civil Unrest and Looting*, WASH. POST (Aug. 12, 2020), <https://perma.cc/V6DZ-PUHX> (discussing prosecutorial leniency against protesters in Portland, Oregon and Chicago, Illinois); Lauren Frias, *Manhattan DA Says Borough Won’t Prosecute Arrested Protesters*, INSIDER (June 5, 2020), <https://perma.cc/72QU-4CNN> (detailing the Manhattan District Attorney’s office’s announcement that it will not prosecute people who were arrested at the George Floyd protests).

¹⁰⁹ Conrad Wilson, *Trump Administration Brings Federal Charges Against Portland Protesters*, NPR (Sept. 30, 2020), <https://perma.cc/36WA-SZFK>; Lisette Voytko, *DOJ Says Over 300 Hit with Federal Charges Amid Nationwide Protests*, FORBES (Sept. 24, 2020), <https://perma.cc/L4F5-5C32>.

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federal government to represent clients who are charged with violations of criminal law and are unable to pay for their own defense.”¹¹⁰ A private defense attorney is an attorney hired by a defendant to represent them. While private defense attorneys charge defendants for their services, many can and do provide pro bono or low bono services to defendants on a case-by-case basis. The process of getting a public defender or choosing a private defense attorney is discussed in more detail in [Section 3.III.A](#) and [Section 3.III.B](#). It is important for both lawyers and activists to remember that there may be tension between the lawyer’s legal goals and duties and that of the activist. While a shared ideology grounded in a movement may align the client’s political interest with the lawyer’s interest in protecting or challenging certain aspects of the law, lawyers and activists might disagree about how to frame the case (e.g., the lawyer might want to focus on the underlying illegality of the arrest while the activist might want to focus on the use of force during the arrest, or lawyer’s might work to have charges dropped while activists may seek a trial to focus public attention on an issue).

I. Paralegals, Legal Assistants, and Legal Workers

Often the unsung heroes of the legal system, paralegals—previously referred to as legal assistants¹¹¹—provide a diverse panoply of substantive legal services for which a lawyer is responsible.¹¹² The American Bar Association (ABA) defines a paralegal as “a person, qualified by education training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.”¹¹³

Legal workers refer to a broad category of individuals that encompass paralegals, legal activists and organizers, investigators, jury consultants, law librarians, and legal educators—to name a few—who work to help people navigate the legal system. Legal workers, including paralegals, have played an important role in protester defense, especially through the National Lawyers Guild, where legal workers have worked to bridge the gap between lawyers and activists by acting as “liaisons, translating the ideas and practices of the legal world to activists and bringing their voices, concerns, and organizing practices to the lawyers.”¹¹⁴

J. Judges and Magistrates

¹¹⁰ *Public Defender*, LEGAL INFO. INST.: CORNELL L. SCH., <https://perma.cc/QE95-H6XY>.

¹¹¹ The ABA removed the term “legal assistant” from its official definition because “paralegal” more accurately reflects the substantive legal work that is done by these individuals. *Current ABA Definition of Paralegal*, AM. BAR ASS’N, <https://perma.cc/Z5ME-J9QA>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Traci Yoder, *Legal Workers—The Vital Link Between People’s Movements and Movement Lawyers*, GUILD NOTES (Nat’l Laws. Guild Found., New York, N.Y.) Spring 2012, at 10.

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In the legal system, a judge is “[a]n appointed or elected official who decides legal disputes in court.”¹¹⁵ At the federal level, judges are nominated by the President and confirmed by the Senate, while at the state level, judges are either selected by election, appointment, or a combination of methods (e.g., appointment followed by election).¹¹⁶ Most protest-related criminal cases are heard at the state level by state judges.¹¹⁷ More recently during the George Floyd and Breonna Taylor protests, the Trump Administration charged many protesters at the federal level for crimes without a clear federal connection to the arrests.¹¹⁸ This Administration relied on vague civil disorder charges, arguing that protesters’ actions prevented interstate commerce by blocking roads.¹¹⁹ Federal civil disorder charges have been used rarely since their creation in 1968 by several pro-segregationist senators who sought to suppress the civil rights movement.¹²⁰ The Trump Administration’s federal civil disobedience charges have been brought almost exclusively against people protesting the police.¹²¹

Magistrates exist at the local, state, and federal level. At the local or state level, a magistrate is “[a] local official whose authority is limited to whatever has been granted by statute or specified in the appointment.”¹²² In local or state courts, a magistrate can also be “a justice of the peace or other judicial officer who has strictly limited authority and jurisdiction to hear certain cases, often criminal cases or small claims.”¹²³ At the federal level, a magistrate is “a judicial officer who has been appointed by a federal district judge to expedite the judicial process by conducting routine hearings and other proceedings.”¹²⁴

During the protests in Portland, Oregon following the police killings of George Floyd and Breonna Taylor, federal magistrates, who have broad authority to set the terms of release for anyone accused of a crime, set highly controversial terms of release for protesters who were arrested on federal charges.¹²⁵ Many of the release orders prohibited the arrested protesters from “attend[ing] any other protests, rallies, assemblies, or public gatherings in the state of Oregon.”¹²⁶ These release terms, signed by federal magistrates, have been largely criticized as unconstitutional as protesters are forced to relinquish a constitutional right in order to get out of jail.¹²⁷ Protesters who agree to these terms also waive their right to challenge them later.

¹¹⁵ *Judge*, LEGAL INFO. INST.: CORNELL L. SCH., <https://perma.cc/5XMH-8VRP>.

¹¹⁶ *Comparing Federal & State Courts*, UNITED STATES COURTS, <https://perma.cc/AJ33-94A9>.

¹¹⁷ *Id.*

¹¹⁸ Conrad Wilson, *Trump Administration Brings Federal Charges Against Portland Protesters*, NPR (Sept. 30, 2020), <https://perma.cc/36WA-SZFK>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Magistrate*, LEGAL INFO. INST.: CORNELL L. SCH., <https://perma.cc/2R6C-NPT6>.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Dara Lind, “Defendants Shall Not Attend Protests”: In Portland, Getting out of Jail Requires Relinquishing Constitutional Rights, PROPUBLICA (July 28, 2020), <https://perma.cc/MGC4-VW6S>.

¹²⁶ *Id.*

¹²⁷ *Id.*

K. Court Personnel

Within the courtroom, there are a variety of people who play important roles in the legal system. Below is a list of different court and judicial personnel along with a description of their typical duties. As titles and responsibilities will vary by jurisdiction, the list below serves as a general outline of various individuals one may find working in a courtroom alongside judges and attorneys.

- **Law Clerks or Judicial Clerks:** Law clerks, also called judicial clerks, provide assistance to the judge by researching issues, preparing memoranda, coordinating with attorneys on case-related administrative matters, and, in some cases, writing opinions.¹²⁸ Unlike court clerks discussed below, law clerks may also assist judges in making legal determinations, and thus are most commonly law students or recent law school graduates.¹²⁹ Law clerks may also be responsible for preparing all case files that a judge will need for that day, recording and marking all physical evidence introduced at trial, swearing in the witnesses, and taking notes cataloging the recordings, among other things.¹³⁰
- **Court Clerks or Court Staff:** Court clerks, or court staff more generally, are administrative staff for the court who do not assist with making legal determinations. Court clerks are responsible for making sure that everything in the courtroom is in place and that the trial or hearing proceeds smoothly and efficiently.¹³¹ As such, court clerks are expected to have a “vast knowledge of myriad local court rules and protocols, statutes, and administrative rules that govern filing processes, filing fees, filing timelines, accounting, record maintenance, as well as a knowledge of general office practices.”¹³² A court clerk may also be responsible for swearing in anyone who will be testifying under oath, though sometimes this is done by a law clerk.¹³³ During jury trials, a court clerk may also be responsible for ensuring the jury can be moved to various places throughout the courthouse and for acting as the courier if the jury has questions for the judge before deliberation.¹³⁴ The court clerk may also be in charge of all documents, evidence, and forms that may be necessary during a trial or hearing, though sometimes a law clerk is responsible for these items.¹³⁵

¹²⁸ ALISON S. BURKE ET AL., INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM 289 (2019); *Who Works in a United States Federal Court*, FED. JUD. CTR., <https://perma.cc/NZ45-GHPX>.

¹²⁹ *The Players in the Courtroom*, JUD. LEARNING CTR., <https://perma.cc/94N3-BEAC>.

¹³⁰ ALISON S. BURKE ET AL., INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM 289 (2019).

¹³¹ *The Players in the Courtroom*, JUD. LEARNING CTR., <https://perma.cc/94N3-BEAC>.

¹³² ALISON S. BURKE ET AL., INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM 291 (2019).

¹³³ *Id.* at 289, 291.

¹³⁴ *The Players in the Courtroom*, JUD. LEARNING CTR., <https://perma.cc/94N3-BEAC>.

¹³⁵ *Id.*; ALISON S. BURKE ET AL., INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM 291 (2019).

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- **Court Reporter:** A court reporter, also known as a stenographer, creates a simultaneous and accurate record of everything that is said in the courtroom during a trial or hearing.¹³⁶ If a party has a question about something that was said during the course of the trial or hearing, they may request a transcript from the court reporter.¹³⁷ In the case of appeals, the higher court is provided with access to the court record to be reviewed.¹³⁸ Not all hearings or trials have court reporters. Sometimes court reporters are freely available and other times they need to be hired by a party to the case.
- **Court Interpreter:** In cases where a party or witness does not speak English, a court interpreter may be present in the courtroom or may interpret over the telephone.¹³⁹ The court interpreter ensures that the person who does not speak English is able to hear, understand, and participate in the proceedings, and must swear to accurately interpret everything that is said.¹⁴⁰
- **Bailiffs:** Responsible for courtroom security, bailiffs are often local sheriff deputies or other law enforcement officers who work under the supervision of the trial court administrator.¹⁴¹ Bailiffs are responsible for announcing the entry of the judge, ensuring public spectators remain orderly, attending to the jury, keeping out any witnesses who the judge has ordered to be excluded, and calling the session to order.¹⁴² Bailiffs may also be responsible for the transport of in-custody defendants who need to be moved back and forth between the jail and the courthouse.¹⁴³

L. Jail Support

Jail support programs are often two-fold, including a hotline element and a ground support element. Depending on the geographical location and specific organization, these two functions can be performed by one program, or two separate programs.¹⁴⁴ To increase clarity regarding the distinct functions of hotline and ground support respectively, the Guide has broken each down into an individual subsection, but readers should keep in mind that depending on the location and organization, these two distinct functions may be performed by the same program.

1. Hotlines

¹³⁶ *The Players in the Courtroom*, JUD. LEARNING CTR., <https://perma.cc/94N3-BEAC>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ ALISON S. BURKE ET AL., *INTRODUCTION TO THE AMERICAN CRIMINAL JUSTICE SYSTEM* 290 (2019).

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Rebecca Nathanson, *Jail Support: What Is It and How Does It Support Social Movements?*, TEEN VOGUE (June 15, 2020), <https://perma.cc/4NPT-ZRGL>.

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Several legal organizations provide jail support hotlines—sometimes called legal support hotlines—which can be called by activists who have been arrested while at a political demonstration, or by anyone who has witnessed the arrest of an activist.¹⁴⁵ Jail support hotlines are generally staffed by volunteers and operate at the request of community members.¹⁴⁶ Legal support hotlines are generally staffed by lawyers, legal workers, and law students, while jail support hotlines, depending on the organization, can potentially be staffed by a diverse range of individuals. Jail support hotlines track activist arrestees through the system, from arrest, to booking in jail, to release from jail, to arraignment.¹⁴⁷ Jail support hotlines coordinate directly with activist arrestees from inside jail, or with witnesses of the arrest, to ensure the arrestee’s support people are notified, to advocate for any necessary medical attention or provision of medication while the arrestee is in jail, and to explain the process of a recognizance interview,¹⁴⁸ bail,¹⁴⁹ and administrative holds¹⁵⁰ to the arrestee and their support people.¹⁵¹ Jail support hotlines also identify any activist arrestees who require bail and can coordinate bail funds (described in [Section 1.III.A.1](#)) to ensure activists in need are bailed out if that support is available.¹⁵² Jail support hotlines also coordinate with ground support (described in [Section](#)

¹⁴⁵ *Mass Defense Program*, NAT’L LAWS. GUILD, <https://perma.cc/KEE3-XZFV>.

¹⁴⁶ *Id.*

¹⁴⁷ *Jail Support and Solidarity*, UP AGAINST THE L. LEGAL COLLECTIVE, <https://perma.cc/QUW6-W8Q3>.

¹⁴⁸ A recognizance interview, sometimes called a pre-trial release interview, is an interview conducted when a defendant is in custody and charged with a criminal offense. The interview is voluntary and meant to assess “the defendant’s risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process.” While the specific questions of the interview vary by jurisdiction, interviews generally investigate “the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings.” *Pretrial Release*, AM. BAR. ASS’N, <https://perma.cc/8LBX-HP6X>. If a defendant’s interview suggests they do not pose a flight risk or danger to the community, they will be released on their own recognizance, meaning the defendant is not required to pay bail and is “merely released after promising, in writing, to appear in court for all upcoming proceedings.” *‘Own Recognizance’ Release*, FINDLAW (Jan. 24, 2019), <https://perma.cc/AQ42-KU4W>.

¹⁴⁹ After being arrested, a defendant may be required to pay bail in order to be released from custody. A defendant may be required to pay bail if they are denied release on their own recognizance (see preceding footnote). Bail processes vary by state, thus activists and organizers should familiarize themselves with local bail processes and requirements. For example, unlike most states in the U.S., Oregon has outlawed the commercial bail bond system, thus defendants simply pay bail to the jail itself, rather than going through a commercial bondsman. *Oregon Bail Bonds—How Bail Works in OR, How Much Bail Costs*, BAIL BONDS NETWORK (Sept. 25, 2019), <https://perma.cc/4C5W-TY38>.

¹⁵⁰ Some defendants may be denied pretrial release due to an administrative hold, which can include a hold due to an outstanding warrant, a hold due to charges that are pending in another county, or a hold due to a parole or probation violation. Depending on the nature of the hold, a defendant may be required to go to their arraignment while in custody, may need to see a judge about the parole or probation issue before being released or allowed to pay bail, or may be transferred to another county to clear the hold. *See, e.g., Arrests and Booking at the Multnomah County Detention Center*, PORTLAND GENERAL DEFENSE COMMITTEE (Aug. 31, 2020), <https://perma.cc/KSQ3-9PA8>. Activists should familiarize themselves with the various holds and relevant terminology specific to their jurisdiction.

¹⁵¹ CRASS ZINE WORKING GROUP, UNTITLED, OR WHAT TO DO WHEN EVERYONE GETS ARRESTED 11–25 (2013), <https://perma.cc/9UYC-ASSU>.

¹⁵² *Id.*

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[1.III.A.2\)](#) to ensure that there are people on the ground outside the jail when an arrestee is released.¹⁵³

After an arrestee has been released, jail support hotlines will often provide post-arrest support services, like connecting arrestees with a lawyer, helping arrestees get back property confiscated by law enforcement, providing connection to emotional and financial support resources, explaining the arraignment process, and coordinating court support (described in [Section 1.III.B](#)).¹⁵⁴ Before attending a protest, activists and organizers sometimes write down the local jail support hotline number on their body in permanent marker so it is available when their possessions are taken by law enforcement. It is suggested that activists write the number on an area of the body that the police cannot see, as there have been reports of law enforcement wiping hotline numbers off of arrestees' arms to prevent them from calling jail support.

It is important to note that jail support hotlines are one of many protester support hotlines. For example, Portland, Oregon's NLG chapter has two protester support hotlines: one is a jail support hotline for arrestees calling from *inside* jail (i.e., the number only accepts calls from the local jail number), and the other is a multipurpose hotline for (1) arrestees after they've been released from custody, (2) folks who have witnessed the arrest of an activist, or (3) anyone who has witnessed or experienced state violence (including police brutality and state or federal repression).¹⁵⁵ The NLG chapters in San Francisco and Chicago also have multiple activist support hotlines.¹⁵⁶ NLG National provides a [useful list](#) of various jail support, legal support, and other related activist hotlines on their website.¹⁵⁷

2. Ground Support

One of the most important aspects of jail support is ground support. Ground support provides physical support to activist arrestees by occupying space outside of a jail to provide comfort, food, water, and other necessities to arrestees as they are released from the jail.¹⁵⁸ Ground support volunteers come from a variety of different backgrounds, and are not limited to legal workers.¹⁵⁹ Along with providing help such as food and transportation, ground support also decreases the dehumanization and isolation that often accompanies arrest.¹⁶⁰ Unlike jail support hotlines, in which volunteers are rarely on the ground during shift, depending on the location of the demonstration, ground support volunteers may be physically present in the thick of the

¹⁵³ *Jail Support and Solidarity*, UP AGAINST THE L. LEGAL COLLECTIVE, <https://perma.cc/QUW6-W8Q3>.

¹⁵⁴ CRASS ZINE WORKING GROUP, UNTITLED, OR WHAT TO DO WHEN EVERYONE GETS ARRESTED 11–25 (2013), <https://perma.cc/9UYC-ASSU>.

¹⁵⁵ *Mass Defense Program*, NAT'L LAWS. GUILD, <https://perma.cc/KEE3-XZFY>.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

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protest, and thus have been subject to police violence, with documented cases of arrest, intimidation, and verbal harassment of jail support crews.¹⁶¹ Law enforcement intimidation of jail support, both hotline and ground support, is a well-known repression tactic (see [Section 2.VI.B.2](#) for a discussion on state and federal repression). Again, depending on the location and organization, jail support ground crews may also provide pre-release and post-arrest support services like those mentioned in the hotline section (e.g., tracking arrestees from arrest to release and putting arrestees in contact with lawyers after release).¹⁶²

M. Court Support

Another aspect of arrestee support services is court support. This entails tracking an arrestee through the legal system and being physically present in (or outside) the courtroom during arraignment and any subsequent hearings.¹⁶³ While court support provides unique support services to arrestees, depending on the location and organization, it may be performed by the same program as jail support hotline and ground support. Court support may also provide legal information to allow arrestees to better navigate the legal system. Court support volunteers may also serve as “courtroom observers” who attend an activist’s trial and actively watch the jury in order to analyze body language in response to events in the courtroom, and subsequently compile and interpret notes to allow the activist’s lawyer to make in-the-moment corrections in an effort to increase the lawyer’s efficacy.¹⁶⁴ Unlike legal support hotlines or legal observers, the volunteers of which are generally lawyers, legal workers, or law students, court support volunteers and courtroom observers are often other activists, friends, family, or concerned members of the local community.¹⁶⁵

N. Bail Funds

Bail funds serve an important role in the activist legal support system. Bail funds are created as a tool to address the inequities, racism, and exploitation of the for-profit bail system in the United States.¹⁶⁶ A bail fund is generally comprised of a local collective of volunteers who raise

¹⁶¹ Elizabeth King, *They Came to Support People Getting out of Jail. Then They Were Attacked by Police.*, IN THESE TIMES, <https://perma.cc/3X92-GDTW>.

¹⁶² Elizabeth King, *They Came to Support People Getting out of Jail. Then They Were Attacked by Police.*, IN THESE TIMES, <https://perma.cc/3X92-GDTW>.

¹⁶³ Victoria Law, *8 Way to Support Protests Against the Criminal Punishment System, If You Can’t Get out on the Street*, WAGING NONVIOLENCE (Dec. 12, 2014), <https://perma.cc/RZW3-SABN>.

¹⁶⁴ *Organizing Mass Defense: Or, Wait a Minute, This Thing Might Go to Trial!*, MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/63TR-8VFN>.

¹⁶⁵ *Court Solidarity: Introduction*, MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/RN8Q-V69H>.

¹⁶⁶ See, e.g., THE BAIL PROJECT, <https://perma.cc/H9MC-T9UK> (“The Bail Project™ National Revolving Bail Fund is a critical tool to prevent incarceration and combat racial and economic disparities in the bail system.”). See generally, COLOR OF CHANGE & ACLU, *SELLING OFF OUR FREEDOM: HOW INSURANCE CORPORATIONS HAVE*

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and utilize revolving funds¹⁶⁷ to pay some or all of an arrestee’s bail.¹⁶⁸ When a person is arrested and booked into jail, some may be required to pay bail as a condition of their release pending a trial. The requirement to pay bail may be due to personal circumstances—like prior criminal history, flight risk, employment, or other factors that are considered in recognizance interviews—or may be predetermined based on charge. Bail systems vary by jurisdiction. Thus activists and organizers should familiarize themselves with local bail processes and the different bail funds, if any, that are available. Bail funds can serve specific locations (e.g., residents of a state or city), specific communities (e.g., BIPOC or LGBTQIA+ folks), or specific circumstances of arrest (e.g., immigration, protest, or police violence). The National Bail Fund Network provides a noncomprehensive [directory](#) of community bail funds by state.¹⁶⁹ There are various bail funds across the country committed to supporting protesters arrested during the course of activism, with a plethora of new funds and donations following the police killings of George Floyd, Breonna Taylor and other high profile killing related to people of color. The Bail Funds website provides a noncomprehensive [list](#) of protest-related bail funds (verified by the National Bail Fund Network) organized by state.¹⁷⁰

IV. PRACTICAL ELEMENTS OF PLANNING A PROTEST

For purposes of this sub-section, we have set out certain elements pertaining to the general planning of a protest at various stages (pre-planning, general planning, and implementation planning).

Organizers should consider upfront whether to have a nonviolent protest or one which potentially could be “violent” (here it is important to note the legalities considered with a violent protest, and that we are not encouraging or supporting violence). Understandably, regardless of intentions (as an organizer or even an activist), a nonviolent protest may escalate into a violent protest. However, it is important that the message conveyed by the organizers to the activists,

TAKEN OVER OUR BAIL SYSTEM (May 2017), <https://perma.cc/3RZ2-N4BC> (discussing the racial disparities and exploitation inherent in the for-profit bail system).

¹⁶⁷ A “revolving fund” requires that the bail posted for an arrestee is later returned to the bail fund after that arrestee appears in court, thus allowing the money to be used again for a different arrestee later. While a vast majority of arrestees appear for their scheduled court date, bail funds must account for the occasional forfeited bond. Camila Domonoske, *Protest Arrests Led to Surge of Bail Fund Donations: Impact Could Be Long Lasting*, NPR (June 23, 2020), <https://perma.cc/U33Z-CEJG>.

¹⁶⁸ Andrew R. Chow, *Inside Bail Funds’ ‘Nonstop’ Efforts to Free the Thousands of Protesters Being Detained Across the U.S.*, TIME (June 4, 2020), <https://perma.cc/A8GX-4ZP7>.

¹⁶⁹ National Bail Fund Network, *Directory of Community Bail Funds*, COMMUNITY JUSTICE EXCHANGE, <https://perma.cc/SDW6-MUWE>.

¹⁷⁰ *List of Bail Funds for Protestors Across the Country*, BAIL FUNDS, <https://perma.cc/YN4F-RTSK>.

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prior to the protest, is clear so that there is agreement about the approach. In this way potential negative consequences and liabilities may be limited.

Although it is impossible to prepare for all situations that may arise, distinguishing between these two types of protest may avoid misunderstandings and unintended consequences. Accordingly, for the remainder of this Guide, we have not distinguished between nonviolent and violent protests, but stress that these will have different consequences for those involved, be it legal or otherwise. Different types of protests may also have differing levels of effectiveness that should be considered as part of the planning process.

[Appendix I](#) serves as an indicative and non-exhaustive checklist for persons or organizers considering protest activity. It is meant to serve as a quick reference guide of possible considerations and is not intended to be a complete list of all issues or considerations that may possibly arise.

V. USE OF MEDIA

The use of media is also dealt with in [Sections II, III](#), and [Appendix I](#) of this Guide, however this sub-section focuses specifically on media issues prior to a protest.

A. Introduction

Considering how easy it is for activists to have their voices heard today, particularly with the rise of online platforms and social media, it is useful to note the importance of continuing to exercise the right to engage in, and the risks associated with, “free speech.” More importantly, an activist should understand exactly what falls within the bounds of free speech and what restrictions may be placed on this right.¹⁷¹ First, it is important to note that the right to free speech relates to the right citizens have to be reasonably free from government interference in speaking. This right does not pertain to private entities and the conversation about the ability, or duty, of a private organization to manage speech on its platforms is a rapidly evolving one, and one that protesters should pay close attention to.

When undertaking any form of public speech, in addition to certain limitations on free speech, it is important for an activist not to unnecessarily expose themselves, or their organization, to any potential liabilities, or other negative consequences. These consequences may be criminal, civil and/or reputational. For example, the possibility of being sued for defamation, libel, and slander, among others.

¹⁷¹ In [Section 2.II](#) we examine certain constitutionally protected rights, including the right to free speech as well as certain limitations on these rights.

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It is important to note that a protest organizer may be held responsible for the actions of protesters, regardless of their affiliation, or lack thereof. For example, the 5th Circuit Court of Appeals at New Orleans unanimously held that a Louisiana police officer could sue the organizer of a Black Lives Matter protest for an injury caused by a different protester who threw a heavy object.¹⁷² The American Civil Liberties Union (ACLU) has since asked the U.S. Supreme Court to hear the case, as it has the potential to chill protests and impact activists' First Amendment rights.¹⁷³

In this regard, it is important to make clear before a sponsored event, what will and what will not be tolerated by the organization or organizers of a protest. Disclaimers on websites and other social media platforms of an organization, including any event pages, are one way to address this concern. Disclaimers can take various forms but generally indicate that an organization does not necessarily agree with the views expressed by persons on the organization's page, or statements and actions by protesters during a protest, or any liability arising from their actions. This step, although not completely foolproof, is taken because it may reduce the risk of organizational liability.

Activists considering protest activity should try to familiarize themselves with a sponsoring organization's stance on certain views and behaviors, particularly in relation to the relevant protest action. This allows activists to participate in actions that are better suited to their political and philosophical views and preferences and may alleviate some friction at protests.

B. Defamation, Libel, and Slander

Some online resources provide a basic understanding of defamation, libel, and slander.¹⁷⁴ However, even though there have been many lawsuits involving defamation, there does not appear to be a specifically tailored "defamation for activists" guide. It is important to know what can or cannot be said in public and on a public platform to make well-informed decisions regarding content. For example, making deliberately false statements could clearly lead to liability for an organization. However, liability is less clear for statements that may or may not be true, and for statements believed to be true but are not. As a rule, it is important to "think before you speak" (or type or write) and to consult available resources or legal counsel if you are unsure, as well as to indicate your own policies as suggested above.

¹⁷² Debra Cassens Weiss, *5th Circuit Judge has 'Judicial Change of Heart' in Case that Could Chill Protests*, ABA J. (Dec. 17, 2019), <https://perma.cc/LPM2-X4TQ>.

¹⁷³ *Id.*

¹⁷⁴ *Defamation, Libel and Slander*, FINDLAW, <https://perma.cc/526E-4V7A>.

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A publication by the First Amendment Project¹⁷⁵ provides useful guidance, including a list of seven best practices for avoiding publication liability¹⁷⁶ as well as a guide for non-profits and bloggers in relation to libel.¹⁷⁷ This organization has many additional resources an activist or protest organizer may find useful.¹⁷⁸

In addition to general activist issues, certain types of activism may raise specific issues. For example, in the realm of animal advocacy, “Ag-Gag” legislation is applicable (although not to activism generally). This issue has been dealt with further in [Appendix II: Animal Specific Issues in Protest](#).

Although not particular to this heading, it is important to note that the use of content owned by others (e.g., art, music, literature, articles, photos, pictures, speeches, and other content) may raise intellectual property issues. Therefore, the appropriate use and attribution of material owned by others should be kept in mind at all times to avoid potential action or liability.

C. Using Media to Work to the Advantage of the Activist

Media is an important tool in activism, before, during, and even after a protest. Although this has also been included in [Section Two](#), the Lawyering at the Scene Section,¹⁷⁹ we have included some examples here to give an indication of the breadth of these issues.

For example, in the preventative context, media can be an important tool to tell the activists’ story and gain support for a particular movement or viewpoint.

Media could also potentially influence the level of police presence and escalation during a protest, particularly if certain statements have been made on online platforms that authorities can track. For example, if there are threats of violence or other indicators that a protest may escalate and potentially promote illegal activities (or if authorities could argue that), authorities may prioritize attending the event and come wearing full riot gear.¹⁸⁰ Additionally, posting details about a demonstration ahead of time can lead to law enforcement taking actions including blocking the planned routes or effectively suppressing the demonstration altogether. Furthermore, posting information about a demonstration ahead of time and naming organizations

¹⁷⁵ *About the First Amendment Project*, FIRST AMEND. PROJECT, <https://perma.cc/3JLJ-NRZA>.

¹⁷⁶ See *An Environmental Advocate’s Guide to Avoiding Defamation and Other Publication Lawsuits*, FIRST AMEND. PROJECT (May 2005), <https://perma.cc/V8M5-NQGX>.

¹⁷⁷ Paul Alan Levy, *Writing with Libel in Mind: A Guide for Non-Profits and Bloggers*, PUB. CITIZEN, <https://perma.cc/K33J-6AMU>.

¹⁷⁸ *Resources*, FIRST AMEND. PROJECT, <https://perma.cc/6JE2-NMS5>.

¹⁷⁹ See [Section 2](#).

¹⁸⁰ It’s important to note, that for many protests around the country, law enforcement show up in riot gear as a default, regardless of a supposed threat of violence or illegal activities. See [Section 2.VII.A](#) for information on the militarization of law enforcement.

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or individuals who organized the demonstration might place them at risk of being targeted by police or others. Before posting about a demonstration, activists should ensure that the organizers intend for the information to be shared and are prepared for any consequences. If an activist is uncertain of whether the organizers want the demonstration's details boosted,¹⁸¹ reaching out to the organizers directly to clarify before sharing online will likely avoid unintended consequences.

If legal proceedings follow a demonstration, media may also be used for evidentiary purposes during a trial (e.g., to indicate the tone or intent of the protest, to document police violence, or provide potentially exculpatory evidence). If activists or an organization believe media material related to a protest might be helpful, they should preserve relevant media posts for later use (keeping the risks discussed in the below paragraph in mind). After a protest, media can be used as a tool to put pressure on public officials to release arrestees or dismiss their charges and even to gain public support for activists who may have otherwise received condemnation.¹⁸²

It is important for activists to remember that documentation can be used for or *against* activists. For example, during the protests following the police killings of George Floyd and Breonna Taylor, law enforcement collected images and videos from activists' social media accounts in an attempt to retroactively identify and charge activists who participated in demonstrations.¹⁸³ Law enforcement also used facial recognition technology on images and videos taken during the 2020 Portland protests before the city council ultimately passed an expansive ban on facial recognition technology, citing the technology's well-established "biases against Black people, women, and older people."¹⁸⁴ Images and videos taken during a protest can also be used as a tool by law enforcement, government officials, or counterprotesters to dox activists.¹⁸⁵ For strategies to mitigate the risks and consequences of being doxed, activists should familiarize themselves with anti-doxing techniques, such as those detailed in Equity Labs' [Anti-Doxing Guide for Activists Facing Attacks](#).¹⁸⁶ Activist should be cognizant of media use during a protest, keeping the above risks in mind, and avoid capturing, sharing, or posting the likeness of other activists without their consent.

¹⁸¹ Boosting, or signal boosting, is a way to share information on social media in order to gain traction for a post. To boost a social media post, a multitude of different users will share a single message. *A Guide to Activism in the Digital Age*, MARYVILLE UNIVERSITY, <https://perma.cc/6X5K-FLDE>.

¹⁸² See Fernando Ramirez, 'Dallas Nine' Released from Jail Two Days After Arrest During Peaceful Protest HOUSTON CHRONICLE (Sept. 18, 2018), <https://perma.cc/Y9W2-STKB>.

¹⁸³ Henry Brannan & Joe Opaleski, *As Law Enforcement Scours Social Media, Protesters Are Catching On*, STREET ROOTS (Sept. 23, 2020), <https://perma.cc/4KN8-NSC5>.

¹⁸⁴ Taylor Hatmaker, *Portland Passes Expansive City Ban on Facial Recognition Tech*, TECHCRUNCH (Sept. 9, 2020), <https://perma.cc/8K2U-G9YZ>.

¹⁸⁵ See, e.g., Micah Lee, *How Right-Wing Extremists Stalk, Dox, and Harass Their Enemies*, INTERCEPT (Sept. 6, 2017), <https://perma.cc/M7MP-VF34>; Dell Cameron, *NYPD Union Dokes Mayor's Daughter on Twitter*, GIZMODO (June 1, 2020), <https://perma.cc/6DRU-UQX3>.

¹⁸⁶ EQUITY LABS, ANTI-DOXING GUIDE FOR ACTIVISTS FACING ATTACKS (2017), <https://perma.cc/FR8T-SE26>.

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D. Technology and Surveillance

Technology is a tool used by protesters, organizers, and the authorities alike (including police). As modern technology develops as a tool for activism, it can also be used as a weapon against activists¹⁸⁷ and as a way to monitor them.¹⁸⁸ It is now possible to eavesdrop and collect data (whether on people or activities) through technology that did not exist in previous decades.¹⁸⁹ Data security measures, including preventative steps to avoid leaks of private or potentially harmful information, has therefore become increasingly important.¹⁹⁰ Because this is a complex and rapidly evolving area, it is important to remain up-to-date with the state of the law and the legal implications of technology issues.

The Electronic Frontier Foundation (EFF) provides some useful resources to keep activists and lawyers up to date.¹⁹¹ It offers information on the latest cases involving digital privacy and privacy more generally. EFF's blog is updated daily and is written in a simple, concise, and understandable manner. EFF devotes a section of their website to bloggers' rights, issues surrounding student activism, defense against surveillance, and much more. It also has created great resources to help people protect themselves from surveillance by using secure technology and developing careful practices. Their resources range from basic tips, tools, and suggestions for safer online communications, to very detailed resources for specific issues.¹⁹² In addition, the First Amendment Project¹⁹³ has also developed a guide on how to avoid surveillance.¹⁹⁴

Because blogging is a popular and useful tool for activists, it is important to be aware of the issues activist authors may face. The blogger's section of EFF's website¹⁹⁵ is kept current and provides a basic roadmap to these issues. This knowledge can help protesters understand their rights and encourage free blogging, knowing that legitimate speech is protected. EFF's *Legal*

¹⁸⁷ See, e.g., CANARY MISSION, <https://perma.cc/BQ9H-R58Z> ("Canary Mission documents people and groups that promote hatred of the USA, Israel and Jews on North American college campuses. Canary Mission investigates hatred across the entire political spectrum, including the far right, far left and anti-Israel activists.").

¹⁸⁸ *Major Controversy Erupts over LAPD Spying on Refuse Fascism*, REVCOM.US (July 29, 2019), <https://perma.cc/NA6Z-EBVA>.

¹⁸⁹ Clare Garvie, *You're in a Police Lineup, Right Now*, N.Y. TIMES (Oct. 15, 2019), <https://perma.cc/5L9E-SAQJ>.

¹⁹⁰ See *The Two Most Important Things Protesters Can Do to Secure Their Phones*, PRIVACY SOS (July 10, 2016), <https://perma.cc/S8K7-CAWM> (discussing the importance of protester's using secure texting apps and encrypting their phones before protests to avoid police surveillance and data extraction); see Masha Borak et al., *From FB and Twitter to Telegram, WhatsApp and Signal: How Protest Technology Has Evolved Since HK's Occupy Central*, STAR (June 13, 2019), <https://perma.cc/KN5B-29EF> (discussing protester's use of encrypted messenger apps to coordinate protest efforts while avoiding surveillance and persecution during Honk Kong's Occupy Central protests).

¹⁹¹ *Deeplinks Blog*, EFF, <https://perma.cc/B925-8S66>.

¹⁹² SURVEILLANCE SELF-DEFENSE: TIPS, TOOLS AND HOW-TOS FOR SAFER ONLINE COMMUNICATION, A PROJECT OF THE EFF, <https://perma.cc/SKB9-4NDB>.

¹⁹³ *Resources, FIRST AMEND. PROJECT*, <https://perma.cc/6JE2-NMS5>.

¹⁹⁴ Eva Galperin, *"F the Police: Police Surveillance and How to Avoid It,"* EFF (2015), <https://perma.cc/V5N2-P8MW>.

¹⁹⁵ *Bloggers Rights*, EFF, <https://perma.cc/G5WD-UERJ>.

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Guide for Bloggers is a collection of blogger-specific FAQs addressing issues from fair use to defamation law to workplace whistleblowing.

Regarding computer security more generally, the Midnight Special Law Collective has produced a useful guide. It covers secure passwords, data creation and destruction, and email privacy. The guide focuses on safe habits rather than technical skills and is easy to understand.¹⁹⁶

Cell phone technology has become an increasingly important tool for activists, especially in documenting protesters' interaction with law enforcement on the scene. Protesters often use their cell phones to record or livestream interactions between protesters and law enforcement, especially when interactions are violent or escalating. While recording, protesters must be cognizant of law enforcement orders, as police often claim protesters who remain in an area to record an interaction are "disobeying police orders."¹⁹⁷ When this occurs, a recording of such interactions can be particularly helpful in convincing a judge of law enforcement wrong doing, the absence of protester fault, or both, especially if no order can be heard in the recording.¹⁹⁸

It is important to note that technology and surveillance will continue to rapidly evolve, with several major developments following the outbreak of the global COVID-19 pandemic, the civil unrest following the police killing of George Floyd and Breonna Taylor, and President Trump's announcement that the United States would designate the protest collective Antifa as a terrorist organization. While each of these events, and their respective effects on activism, are discussed in more detail elsewhere in the Guide, this Section will briefly explore their individual and collective effects on technology and surveillance.

1. Technology and Surveillance During the COVID-19 Pandemic

In March 2020, the World Health Organization (WHO) announced that a new strain of coronavirus, COVID-19, had reached the level of a global pandemic.¹⁹⁹ In the wake of the deadly pandemic, states began issuing quarantine orders, forcing many people to attend work and school remotely. Amidst the growing public health crisis, the government demanded new surveillance powers for data collection to track disease transmission.²⁰⁰ These new high-tech surveillance powers raise concerns regarding invasion of privacy, deterrence of free speech, and

¹⁹⁶ *Computer Security for the Everyday User*, MIDNIGHT SPECIAL L. COLLECTIVE (Aug. 23, 2007), <https://perma.cc/AK7H-K8UA>.

¹⁹⁷ Katie Shepherd, *Man Arrested While Filming Right-Wing Protesters at Patriot Prayer Rally Found Not Guilty of Disobeying Police Orders*, WILLAMETTE WEEK (Apr. 7, 2019), <https://perma.cc/4QYT-7JUK>.

¹⁹⁸ Maxine Bernstein, *Man Filming Patriot Prayer Rally Acquitted of Disobeying Federal Officer's Order*, OREGONIAN (Apr. 7, 2019), <https://perma.cc/YUA2-YDYH>.

¹⁹⁹ *Timeline of WHO's Response to COVID-19*, WORLD HEALTH ORG. (June 29, 2020), <https://perma.cc/2UGC-35RA>.

²⁰⁰ Adam Schwartz, *How the EFF Evaluates Government Demands for New Surveillance Powers*, EFF (Apr. 3, 2020), <https://perma.cc/UEZ3-BGBT>.

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disproportionate burdens placed on vulnerable groups.²⁰¹ EFF in particular has voiced concerns that any new government surveillance powers will outlive the pandemic and will be deployed for other purposes, much like the National Security Agency (NSA)'s dragnet Internet surveillance following 9/11.²⁰² Protesters and organizers should be aware that activism during the COVID-19 pandemic will be subject to higher rates of surveillance by the government under the guise of tracking transmission rates, and may want to engage in higher security measures and implement or further promote effective security culture when planning or engaging in protest. The Ruckus Society provides a compressive guide on security culture for activists, with a specific section on managing data and technology.²⁰³

Activists should also note that certain technology that has come into favor during the pandemic, such as Zoom, is neither safe nor secure. In early June 2020, Zoom announced it would *not* provide end-to-end encryption for free users in an effort to better allow Zoom to work with the Federal Bureau of Investigation (FBI) and local law enforcement.²⁰⁴ Furthermore, Zoom has openly admitted to suspending U.S. activists' account in China at the government's request.²⁰⁵ Without encryption, and given its track record of silencing activists and its expressed interest and willingness to work with law enforcement, Zoom is neither a safe nor secure resource for activists. The Civil Liberties Defense Center recommends the use of end-to-end encrypted, open-source apps such as Jitsi.²⁰⁶ Other apps are increasingly being used for such communication including Whatsapp and Telegram, among others, though there may be different concerns when using those platforms.

2. Technology and Surveillance During the George Floyd and Breonna Taylor Protests²⁰⁷

On March 13, 2020, Kentucky police killed Breonna Taylor, a 26-year-old Black woman who was a decorated emergency medical technician with no criminal record.²⁰⁸ Police broke into her apartment unannounced—executing an ultimately fruitless drug search warrant—and shot her eight times.²⁰⁹ On May 25, 2020, George Floyd, an unarmed Black man, was killed in broad

²⁰¹ *Id.*

²⁰² Matthew Guariglia, *The Dangers of COVID-19 Surveillance Proposals to the Future of Protest*, EFF (Apr. 29, 2020), <https://perma.cc/D679-X2V8>.

²⁰³ *Security Culture for Activists*, RUCKUS SOC'Y, <https://perma.cc/3KLP-WB6T>.

²⁰⁴ Matthew Wille, *Zoom Won't Encrypt Free Calls So It Can Work with Cops*, INPUT (June 3, 2020, 6:58 AM), <https://perma.cc/4UAU-64F2>.

²⁰⁵ Jason Slotkin, *Zoom Acknowledges It Suspended Activists' Accounts a China's Request*, NPR (June 12, 2020, 6:20 PM), <https://perma.cc/9ZXR-L549>.

²⁰⁶ Michele Gretes, *Recommendations for Secure Video and Conference Calls*, CIV. LIBERTIES DEF. CTR. (Dec. 6, 2019), <https://perma.cc/52LQ-S75W>.

²⁰⁷ As a reminder, these protests are examples of many that have happened in the past few years. Because we cannot detail all of them, we are using these to illustrate the points to consider.

²⁰⁸ *Breonna Taylor: Lawsuit After US Health Worker Shot Dead by Police*, BBC NEWS (May 13, 2020), <https://perma.cc/5MJ3-KBTD>.

²⁰⁹ *Id.*

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daylight by four police officers, one of which jammed his knee into Floyd's neck for almost nine minutes despite Floyd's repeated pleas that he couldn't breathe and was going to die.²¹⁰ George Floyd's death, which was caught on film, sparked unprecedented protests across the globe.²¹¹ As protests against police brutality and racism continued to rage in cities across the country, local and federal law enforcement, including the FBI and the Department of Homeland Security, engaged in large-scale surveillance of activists' social media, monitoring RSVP lists on Facebook events, sharing information about Slack channels that protestors were using, and citing protesters' posts in encrypted messaging apps.²¹² Law enforcement's surveillance of protesters, primarily through social media, was used not only to plan against and obstruct protests, but also to investigate protesters and charge them with crimes.²¹³ Increased surveillance was placed on BIPOC led organizations, such as the Movement for Black Lives (M4BL), which, as an example, had a shipment of COVID-19 masks made for demonstrators intercepted and seized by law enforcement without explanation.²¹⁴ Activists and organizers should consider surveillance risks when utilizing social media, and per the Civil Liberties Defense Center recommendation, the use of end-to-end encrypted, open source apps for communication.²¹⁵

3. Technology and Surveillance After Trump and Barr Announce Antifa a Domestic Terrorist Organization

In response to the protests sweeping the nation, on May 31, 2020, President Trump announced that the United States would designate antifa as a terrorist organization.²¹⁶ That same day, Attorney General William Barr issued a statement deeming the protests acts of domestic terrorism by antifa and similar groups.²¹⁷ Shortly after, Barr temporarily granted new temporary authority to the Drug Enforcement Administration to conduct "covert surveillance" to "protect against threats to public safety" including the protests.²¹⁸ Barr's orders to "identify criminal

²¹⁰ Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://perma.cc/4FEG-JWMS>.

²¹¹ *Protests Across the Globe After George Floyd's Death*, CNN (June 13, 2020), <https://perma.cc/WM9A-YS3D>; Matthew Countryman, *The Unprecedented Nature of the 2020 Uprisings*, U.S. NEWS (June 8, 2020), <https://perma.cc/3G6V-H2ZE>.

²¹² Aaron Holmes, *Leaked Documents Show How Police Used Social Media to Track George Floyd Protesters*, BUSINESS INSIDER (June 30, 2020), <https://perma.cc/C6QL-N666>.

²¹³ *The FBI Used a Philly Protester's Etsy Profile, LinkedIn, and Other Internet History to Charge Her with Setting Police Cars Ablaze*, PHILADELPHIA INQUIRER (June 17, 2020), <https://perma.cc/YTM6-9BBZ>.

²¹⁴ Ryan J. Reilly, *Law Enforcement Seized Masks Meant to Protect Anti-Racist Protesters from COVID-19*, HUFFPOST (June 5, 2020, 3:45 PM), <https://perma.cc/QYF5-KDVZ>.

²¹⁵ Michele Gretes, *Recommendations for Secure Video and Conference Calls*, CIV. LIBERTIES DEF. CTR. (Dec. 6, 2019), <https://perma.cc/52LQ-S75W>.

²¹⁶ Nicholas Bogel-Burroughs & Sandra E. Garcia, *What is Antifa, the Movement Trump Wants to Declare a Terror Group*, N.Y. TIMES (June 2, 2020), <https://perma.cc/L8TV-LP3K>.

²¹⁷ Press Release, Department of Justice, Attorney General William P. Barr's Statement on Riots and Domestic Terrorism (May 31, 2020), <https://perma.cc/XZ78-9PEE>.

²¹⁸ Igor Derysh, *William Barr's DOJ Gives DEA Authority to Conduct "Covert Surveillance" of Protesters: Memo*, SALON (June 3, 2020, 3:39 PM), <https://perma.cc/3C54-YS8E>.

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organizers” led to nationwide surveillance of suspected antifa activists and intimidation of some of those activists at home and at work.²¹⁹ Under the direction of the FBI, the Joint Terrorism Task Force monitored activists’ Facebook and other social media accounts, targeting those it deemed to have knowledgeable of, or connected to, antifa.²²⁰ For an in depth discussion of the history of antifa, government abuses of terrorism designations, and how the designation of antifa as a terrorist organization will affect antifa, protesters, activists, and movements for racial justice and liberation, watch *Imaginary Agitators: Trump’s Labeling of Antifa as a Domestic Terror Organization*.²²¹

E. Student and Youth Activism

Youth activism is another area that is rapidly evolving and the impacts of which should not be underestimated. Young people are becoming more vocal and creative in their forms of activism and for this reason, keeping up with issues that face student activists is important, as some are unique and raise additional considerations to those of adults.

EFF has specific student resources that are useful, and its website provides information on using the media as a student, organizing public events, and social media advocacy.²²²

VI. ISSUES SPECIFIC TO PARTICULAR COMMUNITIES AND GROUPS

A. Introduction

It is important to note that not all activists are treated equally, and certain vulnerable groups may require additional consideration or protection. We have set out below some prominent issues relevant to particular communities. Although we have not covered all relevant issues, being aware that these issues exist will continue to be important, particularly given the current political climate that is antagonistic to many vulnerable communities.

B. Activists Facing Anti-Muslim or Anti-Arab Discrimination

Members of the Islamic and Arabic communities (and those who are perceived to be Muslim or Arabic) are facing additional problems that their non-Islamic and non-Arabic counterparts do not necessarily face in their activism due to anti-Arabic and Islamophobic sentiment and discrimination. Being aware of this discrimination and what can be done about it in this context

²¹⁹ Chris Brooks, *After Barr Ordered FBI to “Identify Criminal Organizers,” Activists Were Intimidated at Home and at Work*, INTERCEPT (June 12, 2020), <https://perma.cc/RK59-TSW4>.

²²⁰ *Id.*

²²¹ National Lawyers Guild, *Imaginary Agitators: Trump’s Labeling of Antifa as a Domestic Terror Organization*, VIMEO (June 10, 2020), <https://perma.cc/8GMF-W2QJ>.

²²² *Electronic Frontier Alliance*, EFF, <https://perma.cc/53QV-5S2K> (describing EFF’s grassroots network of community and campus organizations designed to educate about the importance of digital rights).

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is important for activists in general and is particularly important for those who may be organizing protests, coordinating volunteers, etc. There are some resources available to help navigate this issue, including some by the American Civil Liberties Union (ACLU). Their extensive *Know Your Rights* page contains information on specific problems Muslims may face.²²³ This includes:

- The Right to Wear a Headscarf or other traditional attire
- Airport and the Border issues
- Religious Freedom for Houses of Worship
- Religious Freedom in Public Schools
- Religious Freedom in the Workplace
- Religious Freedom for Prisoners
- Informants
- Religious Freedom in Public Accommodations and Housing
- Law Enforcement Encounters
- Language rights

The above may become relevant in the context of a protest, when for example, the venue of the protest is at an airport or a school where persons are, or are perceived to be, members of the Islamic or Arabic communities. It is important to consider these issues and any potential consequences, as well as ways to potentially mitigate and even de-escalate these risky situations. For example, organizers can consider the venue of the protest, have allies for safety, and be prepared with responses to attacks.

One organization offering guidance on this issue is The Council on American-Islamic Relations. They have created a *Know Your Rights Pocket Guide*,²²⁴ which can easily be printed and distributed. This guide informs people of their rights when dealing with law enforcement or the Department of Homeland Security (DHS). It also gives advice on traveling by air, dealing with hate crimes, and more, including advice to Muslim students and those who are organizing events to address discrimination against Muslims in the United States.

C. Rights of BIPOC Activists

BIPOC activists may also experience certain discrimination not experienced by others, including but not limited to racial or police profiling, police brutality (including injury and death), disparate sentencing, and unequal access to diversionary programs. In response to this discrimination, the Black Lives Matter movement is working to reduce and eliminate police

²²³ *Know Your Rights: Discrimination Against Immigrants and Muslims*, ACLU, <https://perma.cc/YU5W-H4CN>.

²²⁴ *Know Your Rights and Responsibilities as an American Muslim*, COUNCIL ON AMERICAN-ISLAMIC RELATIONS, <https://perma.cc/5C52-KRD9>.

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violence against persons of color, especially Black people. It is important to note that there are several other issues that can come up in relation to color and race that are not limited to this particular movement.

One example of discrimination that BIPOC activists face is that they are more likely to receive violent treatment or be killed, than their counterparts who do not fall within this category. Following the death of Trayvon Martin in 2012, the media began to pay more attention to the use of excessive force by authorities with respect to BIPOC communities, but often demonized victims of such force and minimized the actions of officers.²²⁵ The police killing of George Floyd in May 2020 was a tipping point for many, with the graphic videos and the subsequent conviction of one officer, educating and activating portions of the population previously unaware of such violence and discrimination. Organizers of protests are increasingly considering the risks to their participants who are BIPOC, and ways to reduce those risks.

1. *Surveillance of Black Lives Matter Movement*

According to the ACLU,²²⁶ based on documents obtained by The Intercept in response to a Freedom of Information Act request, the government has been surveilling the Black Lives Matter movement since 2014.²²⁷ Records from the DHS's Office of Operations Coordination show that since August 2014, DHS officials have been viewing and intercepting public social media accounts, including Facebook, Twitter, and Vine, to map and collect information on Black Lives Matter protests and supposedly related events.²²⁸ This is not surprising, considering that the federal government has a long history of targeting and surveilling Black activists, including the FBI's targeting of "Black Moses" Marcus Garvey in 1919, the FBI's COINTELPRO program that targeted civil rights leaders like Dr. Martin Luther King Jr. in the 1960s, and the FBI's creation of a new domestic terrorism program category in 2017 called the "Black Identity Extremism movement."²²⁹ As discussed in detail in [Section 1.V.D.2](#), surveillance of Black Lives Matter activists and BIPOC organizers has increased dramatically in recent years. Activists involved in the Black Lives Matter movement should be especially aware of the risk of police surveillance and should consider implementing security measures.

²²⁵ Karen Grisby Gates, *A Look Back at Trayvon Martin's Death, and the Movement It Inspired*, NPR: CODE SWITCH (July 31, 2018), <https://perma.cc/KSK4-KASV>; Timothy Williams, *Study Supports Suspicion that Police Are More Likely to Use Force on Blacks*, N.Y. TIMES (July 7, 2016), <https://perma.cc/NDK2-FF37>; Jason Hanna & Madison Park, *Chicago Police Use Excessive Force, DOJ Finds*, CNN (Jan. 13, 2017), <https://perma.cc/JB7D-2VQ8>.

²²⁶ Nusrat Choudhury, *The Government Is Watching #BlackLivesMatter, and It's Not Okay*, ACLU (Aug. 4, 2015, 10:30 AM), <https://perma.cc/C5FP-W9AF>.

²²⁷ George Joseph & Murtaza Hussain, *FBI Tracked an Activist Involved with Black Lives Matter as They Travelled Across the U.S., Documents Show*, THE INTERCEPT (Mar. 19, 2018), <https://perma.cc/3J68-XB3L>.

²²⁸ *Id.*

²²⁹ Michael German, *The FBI Targets a New Generation of Black Activists*, BRENNAN CTR. FOR JUST. (June 26, 2020), <https://perma.cc/HJ2W-ARXY>.

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D. Activists Involved with Sexual Assault and Rape Issues

Concern with sexual assault is another currently high-profile issue amongst students, in the workplace, and in everyday life. It covers a broad range of issues including education and activism regarding sexual violence and other gender and sexual-related issues. These issues are both subjects of protest activity and are concerns during protest activity.

1. Campus Activists Against Sexual Assault (See also High School Activism and the ‘me too’ Movement’)

College and university students domestically and internationally have been engaging in activism related to these issues both on- and off-campus. Activists on-campus face unique challenges because they are not on their own property and campuses are obligated to balance the rights of all their students. Some of the challenges of protesting in this space are outlined in the section on student activism. The Rape, Abuse, & Incest National Network gives good general advice for students who want to engage in this kind of activism.²³⁰

Legal issues related to this type of activism can be the subject of a protest in itself. The ACLU provides general resources on-campus activism, specifically including the recent strategy of bringing Title IX lawsuits²³¹ against schools.²³²

Activists involved in this type of work have reported that they have been treated with some hostility both on- and off-campus, as well as online. There have also been reports of intra-movement racism. Some of the specific issues involved with this kind of activism are addressed on the “Know Your IX” Website.²³³

For organizers of a protest where this issue is relevant, it is important to carefully consider how to approach this issue and particularly to consider the ages of the persons involved and affected. It may be that the affected person wants to be less visible than other activists or may have certain requirements or needs including privacy and trauma informed care.

²³⁰ *Student Activism, RAPE, ABUSE, AND INCEST NAT’L NETWORK*, <https://perma.cc/6K57-5GRP>.

²³¹ Title IX of the Education Amendments of 1972 attempts to prohibit discrimination on the basis of sex within any educational institution that receives federal funding. This includes acts of sexual harassment, rape, and sexual assault against and among students, and it may implicate any institution receiving federal funding from knowledge and/or willful ignorance that its programs or activities are involved in such. *Know Your Rights: Sex Discrimination*, ACLU, <https://perma.cc/8WX7-GHNG>.

²³² *Id.*

²³³ See e.g., *Our Values*, KNOW YOUR IX, <https://perma.cc/3FN2-NJF2> (acknowledging the non-profit’s belief “that sexual and dating violence are manifestations of systemic gender oppression, which cannot be separated from all other forms of oppression, including but not limited to imperialism, racism, classism, homophobia, transphobia, and ableism”).

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An additional consideration is to ensure that, as far as possible, the chances of activists being sexually assaulted during a protest, are limited. Organizers can make clear that sexual harassment or abuse of any kind will not be tolerated, and can develop policies to ban certain behavior, such as a sexual harassment, and put in place protective measures, such as observers and designated persons to address such issues.

2. *The ‘me too’ Movement*

This campaign, which came to the mainstream public attention in 2017, encourages people to speak out against sexual violence and abuse. Their website²³⁴ offers further information about the campaign, issues faced, and potential action that can be taken by activists. Again, this is both an area for protest, and a potential concern during protest activity.

3. *High School Activism and the ‘me too’ Movement*

There is a growing movement to address the ongoing verbal and physical violence against women, youth, and LGBTQIA+ communities taking place in schools across the country.²³⁵ This movement has largely been spearheaded by student activists, demanding enactment and enforcement of meaningful sexual harassment and sexual assault policies.²³⁶ For example, at Madison High School in Portland, Oregon, “120 students held a day-long Restorative Justice Circle demanding the school and district create and enforce a sexual harassment policy.”²³⁷

Unfortunately, some student activism regarding sexual harassment and sexual assault has been met with disciplinary action against such activists. For example, Aela Mansmann was suspended for ‘bullying’ after posting a note in a school bathroom that said, “There’s a rapist in our school and you know who it is.”²³⁸ Prior to posting the note, Mansmann and two other students had brought concerns regarding sexual abuse allegations to the school board, but frustrated by the board’s inaction, took matters into their own hands. The ACLU later filed suit against the school district on Mansmann’s behalf, arguing that the note was “First Amendment-protected speech meant to call attention to sexual assault at the school and to hold the school administration accountable for keeping students safe.”²³⁹ A District Court Judge later granted a restraining order blocking the school district from enforcing the suspension, noting that “[t]he public has an

²³⁴ ME TOO, <https://perma.cc/X5GY-TXJ8>.

²³⁵ Wendy Lu, *What #MeToo Means to Teenagers*, N.Y. TIMES (Apr. 19, 2018), <https://perma.cc/JH87-LZLD>; *#SchoolsToo: Educators’ Responsibility to Confront Sexual Violence*, RETHINKING SCHOOLS (Spring 2018), <https://perma.cc/HLW7-25ZK>.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Ellie Hall, *A 15-Year-Old Who Claimed There Was a Rapist in Her School Won’t Be Suspended After Judge’s Ruling*, BUZZFEED NEWS (Oct. 25, 2019), <https://perma.cc/U58L-SF3W>.

²³⁹ *Id.*

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interest in knowing that neither [Mansmann] nor any other student who expresses a comparable view in similar fashion will be denied access to school simply because her viewpoint offends the sensibilities of school administrators.”²⁴⁰ It is important to note that high school protesting has many hurdles to consider, including underage protesters, and activity on school grounds which are managed by rules that can often withstand First Amendment challenges.

E. Student Activists

As discussed briefly in the above [Section](#), student activists face specific issues and risks when engaging in protest on-campus and in schools. For example, student activists risk disciplinary action including, but not limited to, suspension, expulsion, or disciplinary notes on the student’s transcript. Furthermore, a school can collaborate with the campus police and city attorneys to bring charges against student activists, like the case of the “UCLA 5”.²⁴¹ When students of the University of California, Los Angeles (UCLA) challenged Treasury Secretary Steve Mnuchin, they were dragged out and brutalized by campus police.²⁴² Following the protest, instead of protecting its students, the UCLA administration “actively collaborated with the LA City Attorney and the [campus police] to bring multiple charges and put [the students] on trial.”²⁴³ While the students were eventually vindicated with a “not guilty” verdict, they faced the threat of up to two years in jail.²⁴⁴

In recent years, student activists have convinced their schools to disinvite problematic speakers to (1) avoid providing a platform for dangerous or violent ideology, (2) cultivate emotional and intellectual safety and community on campus, and (3) prevent unnecessary and inappropriate student discipline in response to protest. Amidst this growing form of student activism, the conservative Goldwater Institute has been working to pass model legislation that would prevent schools from disinviting speakers and would provide disciplinary policies for disruptions, including legal fees for anyone disrupted on campus.²⁴⁵ At least 17 states have passed legislation modeled on the Goldwater Institute bill, and many colleges have simply implemented similar policies without action by the state legislature.²⁴⁶ This has resulted in a one-sided application of the First Amendment, protecting the speech of visiting speakers on campus while disciplining the speech of student activists (often referred to as “disruption”).²⁴⁷ Student activists should review

²⁴⁰ *Id.*

²⁴¹ #UCLA5 Trial: A Righteous Verdict Shows Wellspring of Anger and Potential, REVCOM.US (Oct. 15, 2019), <https://perma.cc/5FLK-758A>; Not Guilty Verdict in UCLA Trial, REVCOM.US (Oct. 14, 2019), <https://perma.cc/E6P2-LQ7J>.

²⁴² Not Guilty Verdict in UCLA Trial, REVCOM.US (Oct. 14, 2019), <https://perma.cc/E6P2-LQ7J>.

²⁴³ *Id.*

²⁴⁴ *Id.*; #UCLA5 Trial: A Righteous Verdict Shows Wellspring of Anger and Potential, REVCOM.US (Oct. 15, 2019), <https://perma.cc/5FLK-758A>.

²⁴⁵ P.E. Moskowitz, *Colleges Are Spreading Trump’s Disingenuous Notion of ‘Free Speech,’* NATION (Oct. 16, 2019), <https://perma.cc/3Z6U-8FVS>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

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state legislation and their school's policies to consider the most effective form of activism on their campus and seek expert advice. They should also consider distinctions between protest activity and disruptive activity that is properly regulated by their schools.

F. Employee²⁴⁸ Activists

Activists who are engaged in protest relating to their employment or work face unique challenges and consequences stemming from their activism. Activists may risk loss of employment due to their activism, whether or not it is related to their employment. Employee activism can include walkouts, open letters, petitions, or social media campaigns. Unionizing and collective bargaining may be considered either a form of protest or an alternative to protest.²⁴⁹ It is important for employees to remember that the First Amendment only prevents the *government* from suppressing or compelling free speech, thus the First Amendment does not protect employees from being fired or disciplined by a private employer. For example, college professor Lisa Durden was fired in 2017 for appearing on Fox News to defend a Black Lives Matter party to which only Black folks were invited.²⁵⁰ While Durden's comments were protected by the First Amendment from government restriction, the First Amendment provided no protection from her employer firing her for the alleged "inflammatory" remarks.²⁵¹ In general, while the First Amendment protects free speech, it affords no protection from the employment consequences of engaging in free speech.²⁵² While political speech is not covered by federal employment laws, some state laws restrict how an employer can react to an employee's activities when they are not at work and not functioning in their official capacity.²⁵³ ²⁵⁴ Employee activists should familiarize themselves with laws in their jurisdiction and be sure to carefully read their employer's employment policies. Professional²⁵⁵ athletes are employees who face unique benefits and challenges in the area of protest. From NFL players kneeling during the National Anthem to NBA players organizing a strike during playoffs, athletes face challenges when

²⁴⁸ Employee here includes permanent and temporary employees and potentially also contract employees.

²⁴⁹ Unionization efforts are generally very contested. See ALDF United Wins Union Election, NPEU (Mar. 26, 2021), <https://perma.cc/5R42-PRTJ> (explaining how ALDF United won their union election); See also The ALDF Is Busting Its Union With A Smile, IN THESE TIMES (Jan. 13, 2021) <https://perma.cc/TF5H-8LPU> (highlighting how ALDF refused to voluntarily recognize the union and engaged in union-busting activities, while working to keep their progressive image intact).

²⁵⁰ Fran Slusarz, *The Employees' Field Guide to Protesting: What You Need to Know Before the Rally*, CAREY & ASSOCIATES P.C., <https://perma.cc/5G4J-V6MS>.

²⁵¹ *Id.*

²⁵² David Sparkman, *Can You Fire an Employee for Attending a Protest? Yes, Depending on Your State*, MATERIAL HANDLING & LOGISTICS (Aug. 21, 2017), <https://perma.cc/5HXJ-P9AB>.

²⁵³ *Id.*

²⁵⁴ Include information about woman on bicycle who lost job giving Trump motorcade the finger – she sued.

²⁵⁵ Collegiate athletes face different challenges, as they are not compensated, and thus are not employees. The U.S. Supreme Court is scheduled to hear two cases involving college athletics and federal antitrust laws which will address the issue of compensating college athletes for the use of their name, image, and likeness. Scott Nelson et al., *The College Athletes Bill of Rights: The (Potential) Future of U.S. Collegiate Sports Regulation*, LAWINSPO (Feb. 2, 2021), <https://perma.cc/H74F-T82X>.

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protesting about employment or public issues. Some BIPOC athletes are pioneering new and successful forms of protest.²⁵⁶

G. LGBTQIA+ Activists

LGBTQIA+ activists may experience specific issues of concern both during and after a protest. During a protest, there may be increased violence against such persons, including transgender persons, in particular, transgender women, and other forms of bias sentiment or discrimination. After a protest, should an LGBTQIA+ activist be sent to jail, additional issues could potentially arise, including proper recording of identity and gender in police documentation and access to appropriately gendered cells and hygiene facilities. In holding cells, exposure of trans and non-binary people to a higher risk of violence should also be addressed.

A protest organizer should be aware of these and other issues that could arise and should attempt to mitigate such issues by ensuring as far as possible the safety of particularly vulnerable groups.

H. Citizenship Issues

It is important to be aware that the legal situation for non-citizens is different to that of citizens. Issues of concern include immigration enforcement,²⁵⁷ workers' rights,²⁵⁸ the many proposals of the DREAM Act,²⁵⁹ and the status of Deferred Action for Childhood Arrivals (DACA)²⁶⁰ recipients, to name a few, although there are constantly new issues arising relating to citizenship status. The legal risks for participating in a protest by any of the people affected by these issues

²⁵⁶ Abraham I. Khan, *Let's Call Athletes 'Workers,' and Let's Call These NBA Protests What They Were – Strikes*, THE CONVERSATION (Aug. 28, 2020), <https://perma.cc/Z7SU-Z8HW>.

²⁵⁷ See, e.g., *Immigration Enforcement*, NAT'L IMMIGRATION L. CTR., <https://perma.cc/Q2XD-MEL3> (including information about ICE raids); *Know Your Rights! Protect Yourself Against Immigration Raids*, NAT'L IMMIGRATION PROJECT, A PROJECT OF NLG, <https://perma.cc/G37U-47MR>. Compare Sudhin Thanawala, *Donald Trump's 'Unconstitutional' Plan to Deprive Sanctuary Cities of Federal Funding Blocked by Judge*, INDEP. (Nov. 21, 2017, 6:43 AM), <https://perma.cc/QB5F-DNL4> (recalling that a U.S. District Court judge ruled President Trump's attempt to cut funding to "sanctuary cities"—cities that limit its own cooperation with federal immigration enforcement officers and agencies), with Matt Zapotosky, Robert Barnes, & Devlin Barrett, *Latest Travel Ban Will Probably Affect Tens of Thousands, and It Could Short-Circuit the Court Battle*, WASH. POST (Sept. 25, 2017), <https://perma.cc/G3VR-S7J2> (describing how the interim period before the Supreme Court decides the legal issue of constitutionality of Trump's Executive Order will likely still prevent tens of thousands of migrant families from entering the United States), and David G. Savage, *Supreme Court Leans Toward Upholding Trump's Third Try at a Travel Ban*, <https://perma.cc/7GCG-SPMZ> (explaining the Supreme Court's ruling that President Trump's travel ban is currently upheld as constitutional).

²⁵⁸ *Workers' Rights*, NAT'L IMMIGRATION L. CTR., <https://perma.cc/EL9B-S6MF> (including multiple guides with know your workers' rights information).

²⁵⁹ *The Dream Act, DACA, and Other Policies Designed to Protect Dreamers*, AM. IMMIGRATION COUNCIL, <https://perma.cc/92L8-R5ET>.

²⁶⁰ The National Immigrant Justice Center has provided an explanation of the difference between the DREAM Act (which refers to the Development, Relief, and Education for Alien Minors Act) and DACA (which refers to Deferred Action for Childhood Arrivals) on its website. Isabel Dieppa, *Quick Guide on DACA and the DREAM Act*, NAT'L IMMIGRANT JUSTICE CTR. (Sept. 15, 2017), <https://perma.cc/WXR3-Z67R>.

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can sometimes be exacerbated by the extra threat of federal citizenship complications that also include threats of arrest by Immigration and Customs Enforcement (ICE), detention, and potential deportation.²⁶¹

Non-citizens must be cautious and prepared at any protest or demonstration so they can safely navigate any situation. There are some informal guides available online highlighting common issues that non-citizens face in the legal context.²⁶²

Of recurring importance is the status of DACA Recipients after President Trump announced the end of the program in September 2017.²⁶³ A particularly striking demonstration occurred in cities throughout the nation in reaction to this announcement.²⁶⁴ It was reported that if protesters were cooperative and turned over their personal information to police, including name, address, and date of birth, they were given a special ticket and were not fingerprinted. Those who refused to turn over their personal information were fingerprinted.²⁶⁵ Participants in any protests should attempt to find information about their legal rights in the context of their legal status.²⁶⁶ The federal government has increased deportations, and even people without criminal records who are following DHS and immigration rules have been subject to incarceration, removal, and deportation. On November 12, 2019, the Supreme Court heard oral arguments in consolidated cases concerning President Trump's authority to cancel the DACA program. As arguments took place inside, more than 500 protesters from around the country demonstrated outside. Preceding oral arguments, on November 8, 2019, hundreds of D.C. college students walked out of class to raise awareness about the upcoming Supreme Court arguments. The legal status of DACA recipients and Dreamers continues to evolve after President Biden took office and state and federal officials struggle with these issues.

I. Juveniles

Juvenile activists face specific issues that may not be faced by their adult counterparts. Some of these relate to the pre-protest phase: when considering whether to participate in a protest action, it is particularly important for juveniles to consider the consequences of their actions. Such consequences could affect them for the rest of their lives—including acceptance into college (or

²⁶¹ For an in-depth analysis of problems that non-citizens or migrants with citizenship face when engaging in activism, see Thomas Swertz, *Mobilizing Non-Citizens: Issues, Challenges, and Prospects*, MOBILIZING IDEAS (Dec. 3, 2015, 1:39 PM), <https://perma.cc/5Y49-QDH5>.

²⁶² *Id.*

²⁶³ Texas and other states have challenged the lawfulness of the DACA program, while others have challenged the administration's termination of the program. For an update on current litigation efforts and guidance on how to apply or renew DACA, and guides on understanding the Act and its current status, see *DACA*, NAT'L IMMIGRATION L. CTR., <https://perma.cc/UAY2-YJ8W>.

²⁶⁴ Meghan Keneally, *DACA Announcement Sparks Protest Nationwide, Dozens Arrested at Trump Tower*, ABC NEWS (Sept. 6, 2017, 1:54 AM), <https://perma.cc/FQ5V-3HBV>.

²⁶⁵ *Id.*

²⁶⁶ *Rights When Participating in Demonstrations*, NAT'L IMMIGRATION L. CTR., <https://perma.cc/6XLM-GNP5>.

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potentially losing their enrollment in college or scholarships), eligibility for certain jobs (particularly if they get a criminal conviction due to protest action), reputational issues (amongst their school, college, peers, and others), jurisdictional issues (in particular as to which courts could hear the their case), and the rulings of such court (including which prison the juvenile could end up in, if convicted).

These issues should be discussed with juveniles participating in the protest, as well as their guardians (if applicable). In addition, an organizer may want to get specific permission from parents or guardians of juveniles in certain instances, or may decide not to have juveniles participate at all in the process in order to protect them from risk.

J. People with Disabilities

People with disabilities face unique issues and challenges during and after a protest. Some, though not all, of these issues can be avoided if given adequate consideration by organizers during the planning process of the protest.²⁶⁷ One of the biggest issues people with disabilities face is accessibility at the protest location. For example, buildings may not be wheelchair accessible, or the doorways may not be wide enough to allow people who use wheelchairs to pass through. Organizers should read [Section 2.III.A](#) to familiarize themselves with important accessibility considerations while planning a protest.

People with disabilities also face unique challenges in interacting with law enforcement officials during protests. Law enforcement members at protests rarely provide necessary accommodations for folks who are deaf or hard of hearing, blind or hard of seeing, have mobility restrictions, or suffer from seizures. For example, law enforcement officers only issue dispersal orders verbally, subjecting people who are deaf or hard of hearing to “egregious uses of force for failing to comply with orders and warnings they never received.”²⁶⁸ Additionally, officers use crowd-control tactics that disproportionately affect people with disabilities, such as strobe lights or loud sounds which can cause seizures for people who have epilepsy. In some cases, officers have continued to use such tactics even after being informed by a protester that the flashing light could trigger a seizure.²⁶⁹ Failure to ensure that people with disabilities are provided the same opportunities to safely exercise their First Amendment rights has become the subject of legal action. In November 2020, Disability Rights Oregon filed suit²⁷⁰ against local, state, and federal law enforcement, asserting that law enforcement failed to provide Oregonians with disabilities

²⁶⁷ See [Section 2.III.A](#).

²⁶⁸ Maxine Bernstein, *People with Disabilities Accuse Local, State and Federal Police of Violating Their Free Speech Rights at Portland Protests*, Oregonian (Nov. 2, 2020), <https://perma.cc/HJE2-T7NJ>.

²⁶⁹ *Id.*

²⁷⁰ Complaint for Declaratory, Injunctive Relief, and Damages & Demand for Jury Trial, Wolfe v. City of Portland et al., No. 3:20-cv-01882-BR (D. Or. Nov. 1, 2020), <https://perma.cc/89FC-SFXD>.

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equal access to Portland, Oregon demonstrations during the continued 2020 Black Lives Matter protests.²⁷¹

People with disabilities also face unique concerns if arrested during a protest. For example, people with mobility restrictions may require alternative safe transport from the place of arrest to the jail. People who are deaf or hard of hearing may require a text telephone (TTY) device in order to make a phone call from jail, and people who rely on medication may require immediate access to such medication while in jail.²⁷² While the Americans with Disabilities Act (ADA) requires reasonable modifications of law enforcement policies, practices, and procedures to ensure accessibility for people with disabilities,²⁷³ activists with disabilities commonly experience problems related to their disability during the arrest process. For example, activists are routinely separated from their service animals,²⁷⁴ denied access to medication,²⁷⁵ and transported to jail in unsafe conditions.²⁷⁶ Note that during the COVID-19 pandemic, what constitutes a disability under the ADA has become more complicated.²⁷⁷

Activists with disabilities should consider including their disability and any required accommodations in their arrest plan to ensure that their support people and jail support volunteers can advocate for necessary accommodations during the arrest process. Activists should create an arrest plan²⁷⁸ so they are prepared if they are arrested. See [Section 1.III.A](#) for information on jail support volunteers and the role they play during the arrest process.

K. Housing Issues

²⁷¹ Press Release, Disability Rights Oregon, Lawsuit: Law Enforcement Fails to Provide Oregonians with Disabilities Equal Access to Portland Demonstrations (Nov. 1, 2020), <https://perma.cc/F29X-S5UC>.

²⁷² CIVIL RIGHTS DIVISION, U.S. DEP'T OF JUSTICE, COMMONLY ASKED QUESTIONS ABOUT THE AMERICANS WITH DISABILITIES ACT AND LAW ENFORCEMENT (Feb. 25, 2020), <https://perma.cc/WB2P-7JLD>.

²⁷³ *Id.*

²⁷⁴ See, e.g., Kaela Roeder, *Federal Agents Target Nonbinary Portland Protester*, WASH. BLADE (Aug. 5, 2020), <https://perma.cc/R5EY-4KSC> (reporting the arrest of an activist who was inappropriately separated from their service dog during arrest, including video of the arrest and separation).

²⁷⁵ See, e.g., Liz Brazile & Ashley Hiruko, *Denied Anti-Seizure Medicine, A Knee in the Neck. Seattle Protesters Say They Feared Death Following Arrests*, KUOW (Aug. 17, 2020), <https://perma.cc/7TT8-U7J2> (reporting the arrest of an activist with epilepsy who was denied access to anti-seizure medication and had several seizures while in custody).

²⁷⁶ See, e.g., Press Release, Disability Rights Ohio, Columbus Police Department Revises Policies for Transporting Arrestees with Mobility Impairments (July 9, 2019), <https://perma.cc/HJ76-LQJR> (announcing revisions to policies for transporting arrestees with mobility impairments following an investigation that revealed that activists with mobility impairments who were arrested at a demonstration two years prior were not transported to jail “in a safe, appropriate, or accessible manner” as required by the ADA).

²⁷⁷ See, e.g., *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (Dec. 16, 2020), <https://perma.cc/7WSE-V797>; *COVID-19: Know Your Rights*, DISABILITY RIGHTS OREGON, <https://perma.cc/EZ3E-7TBS>.

²⁷⁸ Sue Basko, *Arrested at a Protest: How to plan for it*, OCCUPY PEACE BLOG, <https://perma.cc/G9MG-2VVU>.

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Issues related to housing can intersect with any of the above group issues, as well as other group issues not addressed in this Guide. Various resources are available for housing issues in various contexts, and activists should conduct research regarding housing issues specific to the group affected. Below are some general resources that may assist activists in organizing around housing issues:

- **Adequate Housing as a Human Right:** United Nations Human Rights Office of the High Commission has published [guidelines](#) for the implementation of the right to adequate housing as a human rights issue.²⁷⁹
- **Fair Housing and Disability Rights:** Many disability rights organizations provide materials that address both state and federal issues regarding fair housing rights for folks living with disabilities. For example, Fair Housing Council of Oregon provides a comprehensive [Guide](#) on such issues.²⁸⁰
- **Housing Discrimination:** There are many resources available online outlining housing discrimination more generally, explaining the law and remedies available. For example, the John Marshall Law School Fair Housing Legal and Support Center & Clinic has published [A Layperson’s Guide to Fair Housing Law](#).²⁸¹
- **Gentrification:** Gentrification of historically BIPOC neighbourhoods poses its own challenges, and there are organizations and activists providing resources to fight gentrification. For example, [Taking Ownership PDX](#) renovates and revives Black-owned homes to deter predatory investors and realtors to deflect the gentrification process. Additionally, many activists are engaging in eviction defence when BIPOC families are being evicted, like the case of the [Red House protests](#) in Portland, Oregon.²⁸²
- **Houselessness:** Folks experiencing houselessness face unique challenges in their activism and in navigating the legal system. Many organizations provide resources specific to the rights of people experiencing houselessness and how to navigate a specific state’s legal system. For example, the Homeless Youth Handbook provides [guides](#) for different states with information about rights, responsibilities, and resources based upon state-specific law.²⁸³ Few organizations focus on the challenges of protest activity for this community.

L. Other Group Issues

²⁷⁹ HUMAN RIGHTS COUNCIL, UNITED NATIONS, GUIDELINES FOR THE IMPLEMENTATION OF THE RIGHT TO ADEQUATE HOUSING (Mar. 2020), <https://perma.cc/MCX6-8JR2>.

²⁸⁰ FAIR HOUSING COUNCIL OF OREGON, FAIR HOUSING RIGHTS FOR PEOPLE LIVING WITH DISABILITIES (2019), <https://perma.cc/56SP-DSAG>.

²⁸¹ JOHN MARSHALL LAW SCHOOL FAIR HOUSING LEGAL AND SUPPORT CENTER & CLINIC, A LAYPERSON’S GUIDE TO FAIR HOUSING LAW (2014), <https://perma.cc/KH8L-VL5H>.

²⁸² Gillian Flaccus, *Oregon Eviction Protest Fueled by History of Gentrification*, AP NEWS (Dec. 9, 2020), <https://perma.cc/4GBB-L7YN>.

²⁸³ *Homeless Youth Handbook*, HOMELESS YOUTH, <https://perma.cc/K6JM-K5CS>.

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For purposes of this Guide, we have not delved into all issues specific to particular communities or groups and acknowledge that unaddressed issues may arise in relation to being a member of a specific religious group, other persons of color, and other potentially marginalized groups. Significantly more attention will be needed for increased protest activities after the overturning of *Roe v. Wade*. Many organizations have been focusing on this work for decades, and others are incorporating pro-choice work into a larger focus on inequality within the legal system, such as: https://www.ifwhenhow.org/?utm_source=substack&utm_medium=email.

VII. INTERACTIONS WITH LAWYERS—PREVENTATIVE LAWYERING

A. *Protest Preparations*

For the final part on protest preparations, we have included this information for both lawyers of activists, as well as activists themselves. We have set out some useful actions that may be beneficial:

- Come up with a list of questions that you have about potential legal considerations (for example, potential venues for a protest, whether a permit is required, accessibility considerations, etc.) See Appendix 1.
- Check existing sources to see whether any of them address the general or specific concerns identified.
- If free existing sources are insufficient, legal assistance may be useful or required. In this regard, the following should be considered when selecting a lawyer:
 - If an organization has a lawyer who usually assists with legal work, it is likely best to approach that person first;
 - Identify lawyers who may be willing to assist on a pro bono (free) basis, or at a reduced fee;
 - This information may be hard to find other than by word of mouth or through connections with other organizations;
 - Identify lawyers who have experience with activists or with the specific issue;
 - Identify lawyers who may be sympathetic to the cause, objective, or community;
 - Jurisdictional issues that may arise;
 - This will include distinctions between city, county, state, and federal regulations; as well as different enforcement bodies, such as city police, county sheriffs, and federal agents.
 - Potential conflicts of interest: This may arise in the context of a lawyer working for a firm or even a lawyer working on their own:
 - When working with a law firm, certain associational or reputational issues may arise (either in relation to assisting the organization or individual acting against a certain organization or individual for acting for a specific cause). For example, it may not be possible for a lawyer to work for a

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particular organization or take on a case if that lawyer has a conflict of interest. This could be because the firm is already involved in the matter on behalf of another party, or it may have an agreement with another client that prevents them from doing certain work. Also, there could be personal relationship issues that come into account that potentially bar lawyers or firms from becoming involved.

- Even if a lawyer works in private practice rather than a firm, some of the same conflict issues may arise.
- In addition to the above, there may be several other reasons a lawyer will not take on a particular case.
 - Once an appropriate lawyer has been selected, the activist should focus on getting clear agreements about the scope and nature of the work and on the common and specific questions.
- Ensure that both parties are comfortable with the scope of services to be offered; the fees; details of the representation (including but not limited to who the client/s is/are), the scope of the representation, potential conflicts, and any other limitations that may apply (including exactly what the appropriate boundaries of the client-attorney relationship are). This should be included in a written retainer or engagement letter and signed by the relevant parties to avoid potential confusion in the future.
 - It is a good idea to make clear with the attorney what experience you have with lawyers, be it in your capacity as an activist or otherwise.
- In addition to the above, the parties may want to clarify who the point of contact is; how to make best use of the time with a lawyer; and clear up any questions about confidentiality.
- It may be useful to discuss with the lawyer any potential “dos” and “don’ts” relating to the specific protest action, limitations on the rights of activists, the powers of police and the potential legal consequences that may be involved.
 - Other services that could be provided by a lawyer include:
 - Preparation of the activists participating in the protest;
 - Preparation of a limitation of liability document to be signed by participants;
 - A list of potential actions that may lead to arrest;
 - Advice about what to do if arrested (i.e., what are the rights of activists);
 - A review of media statements and other online statements with respect to the protest given in advance; and
 - Approval of wording of signs, advertisements, etc. to be used during the protest.
- In addition to the above, it may be useful for a lawyer to advise clients before the event what to do if arrested. For example, a common tactic used by police is to attempt to get arrested or detained persons to make certain statements or sign

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documents. A lawyer should advise the activists of what to do in these circumstances and try to equip the activist for the process ahead, particularly about intimidation techniques and other relevant issues if arrested.

- An additional useful piece of advice to activists considering protest action, and particularly in the case of arrest, is compliance with police instructions and not obstructing justice. An example would be to advise clients not to give police false details or make false statements.

B. *Well-Informed Choices*

While lawyers may be able to advise activists as to what they can do *legally*, they are not able to control the actions of activists. However, lawyers may provide a good service by explaining (among other things) what the laws are, how severe the consequences of breaking them can be, and under what circumstances there is higher risk. This can enable activists to make informed decisions. It might be useful, for example, for a lawyer to highlight possible social, economic, reputational, and other outcomes that could ensue after participation in a protest or a subsequent criminal conviction.

VIII. SELF-CARE

The work of an activist can be both mentally and physically challenging and can lead to burnout due to direct and vicarious trauma. Activists often put themselves in harm's way, witness harm to others, or provide physical and emotional support for others who have been harmed. The best way for activists and organizers to prevent burnout for themselves and their fellow activists is to engage in consistent and proactive self-care.²⁸⁴ This Section will discuss preventative self-care and planning that can be incorporated into an activist's or organizer's pre-protest considerations. Recognizing the signs and symptoms of traumatic stress, resources for addressing trauma, and information on regular emotional support or therapy to address burn out is discussed in [Section 3.V](#).

It's common for activists to view self-care as selfish or a waste of time and energy that could otherwise be used elsewhere. This feeling is often described as "activist guilt" and prevents activists from setting boundaries or taking time for self-care. One of the most important steps an activist or organizer can take to help counterbalance this guilt and ensure the emotional safety and well-being of themselves and their fellow activists is to create and promote a culture of self-care within their activist community.²⁸⁵ Cultivating a culture of self-care ensures that the burden to advocate for healthy boundaries and space to care for oneself does not fall only on the

²⁸⁴ *Stay Healthy So You Can Stay on the Streets*, BOSTONCOOP.NET, <https://perma.cc/ZU7Y-GQJH>.

²⁸⁵ *Self-Care for Activists: Sustaining Your Most Valuable Resource*, NEW TACTICS IN HUMAN RIGHTS, <https://perma.cc/ZZU7-55AE>.

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individual activist.²⁸⁶ Activists and organizers can promote a culture of self-care by (1) providing self-care resources before, during, and after a demonstration, (2) organizing group meetings to debrief after a demonstration, (3) supporting other activists if and when they assert boundaries or take time off to care for themselves, (4) celebrating wins—no matter how small—and praising those responsible,²⁸⁷ and (5) not overemphasizing winning, but rather taking a long view of the work.

On an individual level, activists can implement proactive self-care by (1) taking care of their body by remembering to eat and drink and making time to get enough sleep, (2) nurturing supportive relationships, (3) engaging in activities unrelated to their activism such as exercise, going out with friends, or relaxing hobbies, and (4) finding a therapist or counselor to speak with on a regular basis (not just in times of crisis).²⁸⁸ Frontline AIDS, with other organizations, has created a useful [self-care workbook](#) for activists with self-care explanations and suggestions as well as a personal self-care worksheet for activists.²⁸⁹ Activists can gauge the efficacy of their current self-care regimen by completing a brief self-care assessment, like the one [here](#).²⁹⁰

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ Alexandra Smith, *Self-Care for Activists*, EXPERIENCE LIFE (July 16, 2020), <https://perma.cc/P7X4-8DMU>.

²⁸⁹ FRONTLINE AIDS ET AL., SELF-CARE AND PREVENTION OF BURN OUT AMONG ACTIVISTS—TOOLS FOR EVERYDAY LIFE (2018), <https://perma.cc/CA8A-ZLDX>.

²⁹⁰ SCHOOL OF SOCIAL WORK, UNIVERSITY OF BUFFALO, SELF-CARE ASSESSMENT (2010) (adapted from KAREN W. SAAKVITNE ET AL., TRANSFORMING THE PAIN: A WORKBOOK ON VICARIOUS TRAUMATIZATION (1996)), <https://perma.cc/DB34-RHZ3>.

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SECTION TWO – LEGAL CONSIDERATIONS AT THE SCENE

I. INTRODUCTION

Despite the fact that activists and organizers of a protest can plan many aspects of the event in advance (some of which have been dealt with in [Section I](#) and [Appendix I](#) of this Guide), there are a number of issues that may arise during the actual protest. Section II aims to deal with some of the issues that may arise during the actual protest and how an activist or organizer may potentially deal with them.

II. LOCATION

Activists must consider a variety of issues related to the location of the demonstration. These include: obtaining a permit, abiding by permit restrictions, and First Amendment free speech protections - which can vary depending on the type of forum in which the demonstration will be held. While it is ideal for these issues to be considered in the planning stages, they may also be relevant at the time of the event.

A. Obtaining a Permit

Those responsible for planning a protest are advised to research whether a permit is required for the event they intend to hold. Permits are not always necessary. For example:

“The First Amendment generally bars government from requiring a permit when one person or a small group protest in a park, or when a group of any size protest on a public sidewalk in a manner that does not burden pedestrian or vehicle traffic. Such non-permitted protests might involve speeches, press conferences, signs, marches, changes, leaflets, expressive clothing, and efforts to speak with a passerby.”²⁹¹

B. Abiding by Demonstration Permits

Regardless of whether a permit is unnecessary, or one has already been obtained, the protest must be limited to public property. Protest organizers should attempt to restrain participants from trespassing on private property. On numerous occasions, protests have taken place outside private residences, which can lead to a variety of issues. The American Civil Liberties Union (ACLU) offers additional information about when a permit is needed on their website.²⁹²

²⁹¹ *When Can Government Require a Permit to Protest?*, ACLU ILL. (Apr. 24, 2012), <https://perma.cc/JZQ4-4M76>.

²⁹² *Id.*

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C. Degree of First Amendment Free Speech Protection

In *Perry Education Association*, the U.S. Supreme Court identified three categories of free speech forums: traditional public forums, limited public forums, and nonpublic forums.²⁹³ The Court held that “[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue.”²⁹⁴ These three categories are explained in more detail below.²⁹⁵

1. Traditional Public Forums

The first category relates to traditional public forums. Traditional public forums “by long tradition or by government fiat have been devoted to assembly and debate”²⁹⁶ In traditional public forums, which afford the most free speech protection to demonstrators, “the rights of the state to limit expressive activity are sharply circumscribed.”²⁹⁷ Traditional public forums generally include streets and parks because they “have immemorially been held in the trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.”²⁹⁸ In traditional public forums, the government is prevented from prohibiting all speech.²⁹⁹ Further, when the government seeks to exclude speech based on content, “it must show that its regulation is necessary to serve a compelling state interest and that [the regulation] is narrowly drawn to achieve that end.”³⁰⁰ The state is allowed to regulate the time, place and manner of speech, as long as the regulations are “content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”^{301 302}

²⁹³ *Perry Education Association v. Perry Local Educator’s Association*, 460 U.S. 37, 45–46 (1983).

²⁹⁴ *Id.* at 44.

²⁹⁵ *Id.* at 45–46.

²⁹⁶ *Id.* at 45.

²⁹⁷ *Id.*

²⁹⁸ *Id.* (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)).

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² Samantha Max, *Tennessee Gov. Bill Lee Signs Law That Will Increase Punishments For Protestors*, WPLN NEWS (Aug. 21, 2020), <https://perma.cc/C426-G8VF> (explaining new Tennessee law that makes it a felony to camp on state property, facing up to six years in prison and loss of their voting rights.); and Colby Itkowitz & Amy Gardner, *Tennessee Adopts New Law That Could Strip Some Protestors Of Voting Rights*, WASHINGTONPOST.COM (Aug. 22, 2020), <https://perma.cc/EHG7-C6BL> (adding analysis of the racial motivation underlying the Tennessee law, as argued by Kristen Clarke, president of the Lawyers’ Committee for Civil Rights Under Law, stating “It’s a clear backlash response to the Black Lives Matter movement and to people who are decisively protesting racial injustice and police violence.”).

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One example of a legitimate government regulation on a traditional public forum is a content-neutral permitting scheme. In *Thomas v. Chicago Park District*, the Supreme Court upheld a municipal park ordinance requiring individuals to obtain a permit for events comprised of more than fifty individuals.³⁰³ In doing so, the Court determined that the ordinance's grounds for denying a permit were not based on the content of the speech.³⁰⁴ Instead, the park district could only deny a permit based on one or more of a specific set of reasons, which include incomplete applications or whether a permit has already been issued for the same time or place.³⁰⁵

Cities have passed ordinances meant to limit violent protests under the time, place, and manner doctrine by limiting the duration, location and size of the protest. Some of these ordinances have been challenged in court as unconstitutional.³⁰⁶

2. Limited Public Forums

The second category relates to limited public forums. Limited public forums “consist of public property which the state has opened for use by the public as a place for expressive activity.”³⁰⁷ The government is not required to allow the continued use of the designated area as a public forum, however, “as long as it does so it is bound by the same standards that apply in a traditional public forum.”³⁰⁸

3. Nonpublic Forums

Not all public property is a public forum. The *Perry* Court noted that the “First Amendment does not guarantee access to property simply because it is owned or controlled by the government.”³⁰⁹ Government property that is not within one of the two categories listed above is considered a nonpublic forum. With regard to this type of property, “[i]n addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.”³¹⁰

4. Private Property

³⁰³ *Thomas v. Chicago Park District*, 534 U.S. 316, 318 (2002).

³⁰⁴ *Id.* at 324.

³⁰⁵ *Id.*

³⁰⁶ Alex Zielinski, *Are Mayor Wheeler’s Proposed Protest Rules Legal?*, PORTLAND MERCURY (Oct. 16, 2018), <https://perma.cc/6TYZ-CHEW>.

³⁰⁷ *Perry Education Association*, 460 U.S. at 45.

³⁰⁸ *Id.* at 46.

³⁰⁹ *Id.* (citing *United States Postal Service v. Greenburgh Civic Ass’n*, 453 U.S. 114, 129 (1981)).

³¹⁰ *Id.* at 47.

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Private property is often not addressed in free speech discussions because the First Amendment extends only to the government and therefore public property. A demonstrator at an event held in an auditorium or a stadium will be subject to the rules of that particular venue. The ability of private security persons to use force to remove an individual is governed by state law. In Oregon specifically, a private security guard may use reasonable force to remove someone who has entered or remained unlawfully.³¹¹

Attention was brought to the “Valve Turners” case, where a group of environmentalists trespassed onto the private properties of TransCanada Corporation in four states to turn shut-off valves for the Keystone Pipeline. The protesters called the company in advance to tell them what they were doing and waited by the valve pipes for arrest. The protesters were charged, among other things with criminal trespass.³¹²

5. Generally

The ACLU provides a guide, *Know Your Rights: Demonstrations and Protests*, that discusses these issues, as well as other First Amendment topics.³¹³

Protesters should note that while the First Amendment protects certain free speech, protesters can still be subject to *unconstitutional* arrest and lengthy legal battles, even for forms of free speech long-since established to be protected under the First Amendment. For example, in Cleveland, Ohio protesters were arrested and subject to a year-long legal battle for burning an American flag outside the 2016 Republican National Convention.³¹⁴ Protesters were arrested even though *Texas v. Johnson* clearly established that flag burning in protest is constitutionally protected free speech.³¹⁵ After suing, the City of Cleveland later paid nearly one million dollars in settlements to the protesters who were wrongly arrested.³¹⁶

III. CONSIDERATIONS FOR ACTIVISTS

There are several location- and environment-specific issues that activists should consider before, and during, protests. They include, but are not limited to: accessibility, weather, clothing, food, water, and shelter. If a long-term event is expected, or is even a possibility, activists might

³¹¹ OR. REV. STAT. § 161.225 (2011).

³¹² Michelle Nijhuis, ‘I’m Just More Afraid of Climate Change Than I Am of Prison,’ N.Y. TIMES (Feb. 13, 2018), <https://perma.cc/N757-T7N3>. See [Section 3.IV.C.1](#) below for a discussion of the attempt to use a necessity defense in court.

³¹³ *Know Your Rights: Demonstrations and Protests*, ACLU, <https://perma.cc/BT4J-S22E>.

³¹⁴ *City of Cleveland Pays \$650,000 to 13 People Wrongly Arrested After American Flag Burned in Protest Outside 2016 Republican National Convention as Trump Was Nominated*, REVCOM.US (Sept. 26, 2019), <https://perma.cc/9LK7-SK9Y>.

³¹⁵ *Id.*

³¹⁶ *Id.*

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consider setting up outside support from others, which could range anywhere from assigning the organization's members to specific tasks or even collaborating with other organizations, depending on the expected goal of the event.³¹⁷ Similarly, activists should prepare to have someone standing by who can bring food, water, and other necessary supplies if an event lasts longer than expected.³¹⁸

A. Accessibility³¹⁹

When choosing the location(s) of a protest, activists should consider accessibility (i.e., whether the location is accessible to people with disabilities, and factors such as:

- Is the protest accessible to those utilizing public transportation? Is there accessible parking nearby? Are there accessible toilets nearby?
- If the protest is in a building: Does the building have ramps? Are the doorways wide enough to allow wheelchairs to enter? If there's seating, is there space for wheelchairs?
- If the protest is a march: Does the path of the march take place on smooth surfaces? Are there seating options along the march route that will allow for rest breaks? Is there a safe space along the route of the march where folks who are unable to march can congregate and participate?
- If the protest is outside: Is there an *accessible* covered space to provide shade from the sun or to provide shelter from rain, snow, and other inclement weather?

After choosing the location(s) of the protest, activists should consider creating a committee who can address and coordinate accessibility issues throughout the planning process, including designated activists who will be on the ground during the protest to address any issues that arise on-site. Activists should consider providing:

- Designated seating for people with disabilities in the front of the room and near exits, (this should include clear signage).
- Sign language interpretation and Communication Access Realtime Translation (CART).
- Wheelchair-accessible shuttles and other transportation to and from the protest location(s).

³¹⁷ There was a Facebook page (no longer working) that had an updated list of donations needed for those in the Dakota Access Pipeline protest. For a similar list, see *Needed Supplies*, CAMP OF THE SACRED STONES, <https://perma.cc/2ABQ-VU6F>.

³¹⁸ See *id.* (describing list of necessities for those occupying a camp during the Dakota Access Pipeline protests); Saul Elbein, *These Are the Defiant "Water Protectors" of Standing Rock*, NAT'L GEOGRAPHIC (Jan. 26, 2017), <https://perma.cc/D43Y-WGXR> (describing the various camps long-term protesters stayed in).

³¹⁹ Much of this subsection was informed by Rooted in Rights literature. For more detailed information about accessibility, see ROOTED IN RIGHTS, <https://perma.cc/J4JR-N9YH>.

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B. Weather

Activists should be prepared for the weather conditions prevailing at the time of the protest, but it is often unclear how long an event will last. Therefore, participants should prepare for all weather possibilities, including rain, snow, sun, heat, and cold. This may mean that in addition to dressing appropriately, other items such as raincoats, umbrellas, sunscreen, bug spray, shade structures, blankets, portable heaters at meeting spots should be brought, as well as anything else that is necessary to keep participants comfortable in a variety of weather conditions.

C. Clothing

As mentioned above, demonstrations can extend beyond the time for which they were scheduled. Therefore, participants should prepare for a variety of weather conditions. Participants should wear or bring varying layers of clothes, so that they can make adjustments to accommodate the full spectrum of possible temperatures and circumstances.³²⁰ In addition to the clothes the activist is wearing, it may be essential to bring items such as hats and sunglasses to protect from the sun, gloves and scarves to protect from the cold, rain jackets, a variety of short and long sleeve shirts of varying weight, etc., to allow activists to adjust to a variety of weather conditions. The type of event should also be considered if preparing a bag. For example, a shorter event may require an activist to carry their bag throughout the day, whereas a longer event may or may not have the space to accommodate larger loads. Additionally, there are some instances when activists may not want to have a bag at all.

In addition to the practicalities of clothing during a protest, clothing has also been used, in and of itself, to make a statement. For example, 2017 saw activists welcome President Trump after an overseas visit wearing all white to commemorate the suffragist movement, and the 2017 Wear Orange Campaign encouraged participants to be visibly vocal about their position on National Gun Violence Awareness Day.³²¹ Women donned pink hats at International Women's Day Marches³²² or clothes were eschewed altogether at 'SlutWalk' protests.³²³ These methods can be effective, and often fun, but it may be important to consider what potential consequences could

³²⁰ For instance, during the 2016 Dakota Access Pipeline protests, police defended their use of water cannons against occupants in freezing temperatures. Alan Taylor, *Water Cannons and Tear Gas Used Against Dakota Access Pipeline Protestors*, ATLANTIC (Nov 21, 2016), <https://perma.cc/67RK-WAQS>. In addition to requiring sets of clothes for an extended protest, activists would have required immediate changes of clothes to protect themselves from extensive injury or sickness as a result of the incident.

³²¹ Bonnie Wertheim, *The Color of Protest*, N.Y. TIMES (May 5, 2017), <https://perma.cc/M4DJ-3J2X>.

³²² Do-it-yourself knitted or crocheted hats, dubbed "Pussy Hats" were promoted by two California artists to make a unique collective visual statement at marches across the country on March 8, 2017. *Mission*, PUSSYHAT PROJECT, <https://perma.cc/M2L7-W6CB>.

³²³ For example, some activists choose to wear fewer items of clothing with messages such as "My Dress Is Not a Yes" to draw attention to "slut shaming," victim blaming gender double standards, sexual assault, and rape. *See e.g.*, Joetta L. Carr, *The SlutWalk Movement: A Study in Transnational Feminist Activism*, 4 J. FEMINIST SCHOLARSHIP 24, 25 (Spring 2013), <https://perma.cc/U5AF-W5BC>.

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arise from using clothing as a method of communicating a message.³²⁴ Regardless, if an activist is participating in a protest demonstration through or represented by a particular organization, it is always a good idea to check with that organization to make sure the overall message is being represented in the most effective manner. See [Section 2.III.F.1](#) for an in-depth discussion of various types of protective gear that activists may consider wearing to a protest, and [Section 2.III.F.2](#) for a discussion of black bloc as a tactic.

1. Masks and Other Face Coverings

While demonstrators may want to wear face masks for protection against the cold or tear gas and pepper spray, they should be aware that many jurisdictions have anti-mask laws. These laws have been challenged on First Amendment grounds but have been upheld in several states.³²⁵ It is important to know the individual state or city law regarding face-coverings before engaging in protest. After the Standing Rock protests, for example, North Dakota enacted a bill prohibiting the wearing of masks during the commission of a criminal offense.³²⁶ Another significant problem with these statutes, is their possible use as a restriction of individuals who wear facial covering as part of their religious expression to participate in protest activity. Additionally, specific types of masks have and can be used as a form of protest.³²⁷

Conversely, it is important to note that during the COVID-19 pandemic, protesters donned face masks and coverings across the country while participating in protests. In fact, many states had mask mandates requiring everyone to wear masks in any public places to reduce the transmission of the coronavirus. At the time of the writing, many mask mandates remain in place for indoor settings, but this area of regulation is constantly changing. Indeed, many protests have taken place against mask mandates. It is not yet clear whether protesters arrested during the pandemic will be affected by anti-mask laws. Further, there does not seem to be a consensus that protests outdoors during the pandemic by people without masks caused the spread of Covid-19.

To protect against tear gas and pepper spray while avoiding violation of anti-mask laws, some protesters soak a bandana in apple cider vinegar or lemon juice, and carry that bandana in a zip-lock bag.³²⁸ If pepper spray is used, protesters will remove the bandana from the zip-lock bag

³²⁴ For example, an activist may have the desire to cover her face for either safety or identification reasons. However, consider that after violence between Trump supporters and “anti-fascist” activists erupted in Berkeley, California on August 27, 2017, police made arrests of participants who—among other things—wore masks, which was a violation of the city’s emergency rules. James Queally et al., *Violence by Far-Left Protestors in Berkeley Sparks Alarm*, L.A. TIMES (Aug. 28, 2017, 1:10 PM), <https://perma.cc/8DLY-UATJ>.

³²⁵ See Timothy Cuffman, *The Inexorable Anti-Mask Movement*, COLUM. J. TRANSNATIONAL L., <https://perma.cc/6EXH-TX39>.

³²⁶ N.D. CENT. CODE § 12.1-31-15 (2018).

³²⁷ For example, many groups, including Anonymous for the Voiceless, use Guy Fawkes masks in their demonstrations. ANONYMOUS FOR THE VOICELESS, <https://perma.cc/R9MF-CMWZ>.

³²⁸ *Activist Defense Tactics Against Police Pepper Spray Attacks*, RED POWER MEDIA: INDIGENOUS ISSUES AND RESISTANCE, <https://perma.cc/W5HQ-YHXX>.

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and place the bandana over their nose and mouth to provide temporary protection.³²⁹ There are many resources addressing how to survive the use of chemical weapons during protest which include discussion of protective clothing.³³⁰ During the 2020 Black Lives Matter protests, gas masks became more common among protesters, though they remain prohibitively expensive for many, and banned in some places.

D. Water and Food

As with clothing, activists should prepare to have food and water for an extended event. It is important to note, as is discussed below, that food and water requirements can vary wildly depending on individual and group needs. This is particularly true of water consumption. If possible, organizers should take steps to ensure food and water is present to meet the needs of demonstration participants. In practice, there are often groups and individuals who attend protests to provide free food and water for activists. Organizers should not assume this will be the case, and thus are encouraged to conduct some brief research before their demonstration to identify whether there are any local organizations or individuals who provide food and water for demonstrations, and if so, reach out to request support.³³¹

1. Water

There are two preliminary questions that must be asked before attempting to estimate water needs. First, is there a nearby source of potable water for drinking? Second, it is important to know how participants expect to use the water. For example, for a one-day protest, it is likely that participants will only expect to need water for drinking. However, those participating in a long-term protest may need water for cooking, sanitation, and hygiene. And others may want access to water to deal with tear gas or other responses to the protest.

The World Health Organization (WHO) estimates that for basic survival, such as drinking and food needs, an individual will need approximately 2.5 to 3 liters per day.³³² This equates to about 0.6 to 0.7 gallons per day. However, this is only a rough estimate and activists need to consider their own individual needs.

For long-term demonstrations, water needs will increase. WHO estimates that the amount of water needed for an individual for survival, basic hygiene practices, and basic cooking needs increases to 7.5 to 15 liters per day. This is approximately 2 to 4 gallons per day. Again, this is

³²⁹ *Id.*

³³⁰ Boston Digital Street Medic, *OH SHIT We're Gonna Get Sprayed*, FACEBOOK (2018), <https://perma.cc/29JF-H46Y>.

³³¹ *See, e.g.*, SNACK BLOC, <https://perma.cc/EL9T-RC89> (“Supporting the Resistance One Snack at a Time”).

³³² *Technical Notes on Drinking-Water, Sanitation and Hygiene in Emergencies: How Much Water Is Needed in Emergencies*, WORLD HEALTH ORG.: WATER, ENGINEERING AND DEV. CTR. (2011), <https://perma.cc/F8MM-P4RY>.

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only an estimate and individual needs may vary. Further, estimates of water needs must consider waste and spillage.³³³

Another important consideration is individuals' priorities for water. "People do not always have predictable needs. In some cultures, the need to wash sanitary towels or to wash feet before prayer may be perceived to be more important than other water uses."³³⁴ WHO notes that it is important to "[t]alk to people to understand their priorities."³³⁵

The complete WHO guide, *How Much Water Is Needed in Emergencies*, can be found on the organization's website.³³⁶

2. Food

Considerations about the type and quantify of food to bring to a demonstration should be made based on the nature of event, the potential duration, and the participants who are involved. For example, for a single day-long march, bringing compact snacks is appropriate for a physical and relatively brief task.³³⁷ Alternatively, if the event takes the form of a long-term encampment, organizers may or may not take on the responsibility of soliciting local food banks for donations and setting up kitchen tents. As part of attendees' pre-planning, researching an event's food supply will help determine how much they should bring for themselves and if they can, or would like to, assist others. Organizers should also consider whether the food provided is consistent with the overall goals of the protest (e.g., if protesting animal cruelty, organizers should not provide food that is the product of animal cruelty, or if protesting unfair labor practices, organizers should not provide food that is a product of unfair labor practices). Lastly, dietary restrictions and cultural practices that involve food should be taken into consideration; an attendee should not expect that their restrictions will be observed, and all participants should be respectful of dietary choices and traditions of others.

E. Shelter and Sanitary Facilities

An activist should also check with the organizer, if possible, to learn about shelter and facility accommodations. Ordinances or zoning restrictions may make temporary structures illegal, which could be a problem for both organizers and attendees. Thus, if an activist is planning to participate in an extended protest movement, appropriate materials to bring for personal shelter

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ See e.g., Lisa Ryan, *The Ultimate Guide to Preparing for the Women's March*, CUT (Jan. 16, 2017, 7:00 AM), <https://perma.cc/JQZ8-APB5> (suggesting that participants to the 2017 Women's March bring snacks like granola or protein bars).

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could range from as little as blankets, sleeping bags, to actual forms of temporary shelter like tents. There may be ample space to bring large structures or even RVs to sleep in, or if the movement is taking place in a city, hardly any room for personal space at all. A good general rule is to never bring anything to a protest that you can't afford to have stolen, confiscated, lost, or destroyed.

It is important for someone attending a prolonged event to make sure that they consider shelter options to protect them from weather elements, but also that provides a level of comfort and safety from other people. While it is easy for activists to feel safe amongst other people who are a part of the same movement, personal safety should not be taken for granted before either heading out to a demonstration.³³⁸ However, it is never a good idea to bring weapons to either a short- or long-term demonstration, as they could be misused or interpreted as a threat.

A final, and extremely important, consideration is the availability of restrooms for participants. Failing to consider this will lead to serious sanitation and health and safety issues. Even a single day or short-term protest will require consideration of where activists can use the facilities. Considerations such as whether a Porta-Potty need to be rented, or whether there are easily accessible public restrooms. If there is an easily accessible restroom, organizers should confirm whether it is accessible for people with disabilities and whether the bathrooms are gender neutral or gender inclusive, to allow safe access for transgender, intersex, and nonconforming people. Organizers and individual activists should determine ahead of time what facilities are or should be available and can potentially make arrangements with local businesses in this regard.

F. Costs

Activists should consider the various costs, both predictable and unpredictable, that they may incur before, during, and after a protest. Below is a non-exhaustive list of some potential costs that may arise during the course of activism:

³³⁸ Helen Freund, *Zuccotti Protestors Put Up Women-Only Tent to Prevent Sexual Assaults*, N.Y. POST (Nov. 11, 2011, 4:00 AM), <https://perma.cc/SF7U-SNNY>.

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- **Protective Gear:** Depending on the type of demonstration, protective gear may be necessary. Protective gear may include a gas mask or respirator,³³⁹ goggles,³⁴⁰ helmet,³⁴¹ shield,³⁴² or an umbrella.³⁴³ General price estimates for each item is included in the respective footnotes below. For a more detailed discussion about protective gear, including benefits and potential risks see the [Section](#) below.
- **Medical Supplies:** Many activists carry medical supplies with them to demonstrations, such as a basic first aid kit, which *generally* costs between \$10 and \$50 depending on various factors. Activists sometimes also bring water, a saline solution, or a solution of liquid antacid and water (LAW) for flushing eyes in case of tear gas or pepper spray exposure. Liquid antacid (which should be plain not mint) *generally* costs between \$2 to \$5 depending on various factors.
- **Medical Expenses:** Depending on the type of protest, the risk of injury is a looming possibility. At protests with police or counterprotester presence, especially those in which the use of ‘Less Lethal Weapons’ exists, activists are at risk of sustaining serious injuries (both physical and mental). The cost of medical expenses will vary widely depending on the nature and severity of the injury, as well as whether the injured activist has medical insurance. Some bail funds and activist support organizations will help pay for an activist’s medical expenses, including counselling. Activists who are concerned about their ability to pay for medical expenses should contact any bail funds that serve their location, community, or circumstances to inquire as to whether they help pay for medical expenses. The Bail Funds website provides a noncomprehensive [list](#) of protest-related bail funds (verified by the National Bail Fund Network) organized by state.³⁴⁴ See [Section 1.III.C](#) for a detailed discussion about bail funds and role they play in the activist ecosystem.
- **Bail:** If an activist is arrested, they may be required to pay bail in order to be released from police custody. Bail processes vary by state, thus activists and organizers should familiarize themselves with local bail processes and requirements. While bail funds will

³³⁹ Military gas masks or respirators start at around \$200, with most being in the \$500 range. Some military gas masks or respirators can be purchased on the surplus market, though finding one can be hit or miss, for \$30 to \$100. Civilian full-face gas masks or respirators can range from \$60 for generic brands to \$200 for name brands. Civilian half-face gas masks or respirators can be purchased for as little as \$8 for generic brand and \$30 for name brand. *A Demonstrator’s Guide to Gas Masks and Goggles*, CRIMETHINC, <https://perma.cc/GQ5F-Z7UX>.

³⁴⁰ Pyramex V2G Plus goggles are highly recommended by various resources as they cost less than \$20 and are ballistic rated (to protect against impact munitions) and use dual-lens thermal anti-fogging. *Id.*

³⁴¹ There’s a wide range in helmet prices, with cheap skate helmets costing around \$20, cheaper tactical helmets costing between \$40 and \$200, and high-end ballistic helmets costing as much \$500. *A Demonstrator’s Guide to Helmets*, CRIMETHINC. (2020), <https://perma.cc/QA5C-RHU2>.

³⁴² Shields are generally made from other materials, and thus the costs will vary depending on the materials. Shields use for shield walls are generally made of heavier material, like plywood, while shields used for personal protection from munitions are generally much lighter and can be made from boogie boards, skateboards, sleds, and plastic barrels. Cost of a shield will depend on the cost of whatever material the activist chooses.

³⁴³ An umbrella can be purchased for as little as \$5, though activists should consider the risk that a poorly made umbrella might rip when shot with impact munitions.

³⁴⁴ *List of Bail Funds for Protestors Across the Country*, BAIL FUNDS, <https://perma.cc/YN4F-RTSK..>

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help an activist post bail and some will even reimburse activists who were forced to pay bail themselves, if a bail fund is low on money or the activist does not fall within the community the bail fund serves, an activist may need to pay for bail themselves. This [link](#) provides information with a list of protest-related bail funds organized by state.³⁴⁵

- **Attorney’s Fees:** If an activist is arrested and formally charged with a crime, they will need to obtain a lawyer. An activist who is unable or unwilling to pay for an attorney, will be assigned a court appointed public defender who will defend the activist for free. If an activist chooses to hire their own private attorney, they will need to pay for that attorney’s services. Additionally, an activist who hasn’t been charged with a criminal offense, but wishes to bring a civil suit against the city, an officer, or the police department, will need to pay for the services of a private attorney. See [Section 1.III.K](#) for an explanation of public defenders and private defense attorneys. See [Section 3.V.A](#) for a discussion on civil suits. The cost of legal fees will depend on a variety of factors such as location, whether the attorney charges hourly or offers a flat fee, access to pro bono or low-bono services, and the severity or complexity of the crime or civil suit.
- **Fines:** Some activists who are charged with a crime or violation may be required to pay a fine. Protest-related laws and accompanying fines vary by state, thus activists should familiarize themselves with protest-related laws and ordinances in their jurisdiction. The International Center for Not-for-Profit Law provides a [US Protest Law Tracker](#), in which activists can review a non-comprehensive³⁴⁶ list of protest-related laws and accompanying fines in their jurisdiction using the “Enacted” search tool.³⁴⁷
- **Loss of Employment or Lost Wages:** Activists who are arrested or spend time in jail may also face loss of employment or lost wages.
- **Property Replacement:** Activists who are arrested may have their property—such as backpacks, phones, protective gear, bikes, or even a car—confiscated and held as evidence until after trial. For essential items, like a phone or a bike, activists may be forced to pay for a replacement while waiting for their legal proceedings to conclude. Further, during the chaos of a protest, or the violence of an arrest, property may be lost or destroyed. The cost of replacing property will depend on the item, thus activists should be cognizant of any items they bring to a protest and consider the potential costs of replacing an item. If an activist’s property is lost, destroyed, or confiscated by police, activists may be able to request funds or reimbursement from a bail fund.³⁴⁸ See [Section 1.III.C](#) for a detailed discussion on bail funds, and click on the link in the footnote below to access a list of protest-related bail funds organized by state.³⁴⁹

³⁴⁵ *List of Bail Funds for Protestors Across the Country*, BAIL FUNDS, <https://perma.cc/YN4F-RTSK>.

³⁴⁶ The *Tracker* has followed protest-related initiatives at the state and federal level since November 2016, thus only includes protest-related law from November 2016 to present.

³⁴⁷ *US Protest Law Tracker*, INT’L CTR. FOR NOT-FOR-PROFIT LAW, <https://perma.cc/E463-H9ER>.

³⁴⁸ See Sanya Mansoor, *DOJ and DHS Watchdogs Launch Investigation into Federal Response to Portland Protests. Here’s What to Know*, TIME (July 21, 2020, 7:06 PM), <https://perma.cc/5H6S-EEC4> (reporting that a bail fund in Portland, Oregon helped pay for activists’ property that was destroyed or stolen by police).

³⁴⁹ *List of Bail Funds for Protestors Across the Country*, BAIL FUNDS, <https://perma.cc/YN4F-RTSK>.

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- **Transportation:** Activists might need to carpool, pay for parking or transportation to and from a demonstration site, especially when a demonstration is in an area with limited parking, or when they do not have a car. Additionally, as discussed above, an activist who has been arrested may have their car, bike or other method of transportation confiscated as evidence and held until after trial, in which case, an activist may need to pay for daily transportation (whether it be a ride-hailing app, rental car, or public transit pass) until their trial concludes.

G. Protective Gear, Tactics, Tools, and Technologies

Before planning or attending a demonstration, activists should consider the use of protective gear, appropriate protest tactics, and potentially useful tools and technology, including the various benefits and potential risks they pose.

1. Protective Gear

- **Protective Eyewear:** Protective eyewear may be necessary to protect against law enforcement use of chemical weapons, such as pepper spray, teargas, and impact munitions, or the use of these or other items by counterprotesters. Ballistic glasses protect against impact munitions, which—against protocol and intended use—are routinely shot at activists’ faces, leading to permanent loss of vision or even loss of the eye itself. Even when used appropriately, impact munitions can still cause the above injuries, thus ballistic glasses are the safest way for activists to protect their eyes at a protest. See [Section 2.VI.B.1.a](#) for a discussion of the various injuries and even death caused by so-called ‘Less Lethal Weapons.’
- See also ‘Masks and Other Face Coverings’ section above
- **Protective head gear or Helmets:** Deciding whether to wear protective head gear, such as a helmet, and if so, what kind of helmet, is highly dependent on the circumstances of the demonstration. If an activist anticipates that others will not be wearing a helmet, they might consider purchasing a “bump cap” which looks like a normal baseball cap, or a low-profile skate or bicycle helmet. Being the only person in a crowd wearing a helmet might make an activist a target for police or counterprotesters. If attending a demonstration in which others will likely be wearing helmets, or there’s a high chance of police use of ‘less lethal weapons,’ activists can consider wearing a ballistic helmet to best protect against serious head trauma.
- **Shields:** Activists may use shields for individual protection against impact munitions or act cooperatively to form a shield wall.³⁵⁰ Protesting with a shield may bear certain risks,

³⁵⁰ Activists stand or squat side-by-side, holding up shields (often body-length) to create a shield wall that protects the group as a whole from police use of force, and can also be used to prevent the movement of the group by police force. See <https://www.motherjones.com/politics/2020/11/activists-protesters-building-shields-police-violence/>.

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such as being targeted by police or counterprotesters, especially if on the front lines of a shield wall. Additionally, in some jurisdictions it may be illegal to possess a shield during a protest, depending on its material.³⁵¹ Activists should familiarize themselves with laws in their jurisdiction to confirm whether there is a ban or limitation on the use of shields during protest.

- **Umbrellas:** Originating in the 2014 Hong Kong protests, later dubbed the Umbrella Revolution,³⁵² umbrellas became an important tool for activists to protect themselves from police use of ‘less lethal weapons.’³⁵³ Umbrellas can be used alongside shields to block protesters from ‘less lethal weapons’ (though it should be noted that umbrellas provide less protection than a shield). Like a shield, using an umbrella at a protest may put activists at risk of being targeted, especially when on the front lines of a shield or umbrella wall. As of 2022, the writers of the Guide are unaware of any laws, local or federal, that prohibit the use of umbrellas during protest. For this reason, some activists may opt for an umbrella in a jurisdiction with prohibitions or limitations on protest shields. The use of umbrellas as a protest tactic to block the view of unwanted cameras or police gaze while implementing other tactics is discussed further in the [Section](#) below.
- **Body Armor:** Some activists attending demonstrations opt to wear body armor, including bulletproof vests. Many states prohibit the use of body armor during the commission of certain crimes, meaning if an activist is wearing body armor and is arrested while protesting, they may be at risk of an additional charge related to the use of body armor.³⁵⁴ For example, under Oregon law, a protester wearing a bulletproof vest who is arrested at a protest and charged with menacing,³⁵⁵ could also be charged with unlawful possession of body armor.³⁵⁶ Activists should familiarize themselves with local laws to adequately gauge the risk of wearing body armor to a protest in their jurisdiction. Additionally, activists should note that under federal law, it is illegal for a person

³⁵¹ See L.A., CAL., MUNICIPAL CODE ch. V, art. 2, § 55.07(a)11 (stating that no person shall carry or possess shields made of metal, wood, hard plastic, or any combination thereof while attending or participating in any demonstration, rally, protest, picket line, or public assembly).

³⁵² Zach Wener-Fligner, *What Is the Meaning of the Umbrellas in Hong Kong’s “Umbrella Revolution”?*, QUARTZ (Sept. 29, 2014), <https://perma.cc/PSV6-L3H6>.

³⁵³ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>; Allison Williams, *How Umbrellas Became the Symbol of Seattle Protests*, SEATTLE MET (June 3, 2020, 3:57 PM), <https://perma.cc/5GLF-4BSE>.

³⁵⁴ See, e.g., OR. REV. STAT. § 166.643 (2020) (“A person commits the crime of unlawful possession of body armor if the person, while committing or attempting to commit a felony or misdemeanor involving violence, knowingly . . . [w]ears body armor.”).

³⁵⁵ OR. REV. STAT. § 163.190 (2020) (“A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.”).

³⁵⁶ Under Oregon law, menacing is considered a “misdemeanor involving violence,” thus falls under Oregon’s unlawful possession of body armor statute. See OR. REV. STAT. § 166.470(1)(g) (2020) (“As used in this paragraph, ‘misdemeanor involving violence’ means a misdemeanor described in ORS . . . 163.190 (Menacing).”); OR. REV. STAT. § 166.643 (2020) (“A person commits the crime of unlawful possession of body armor if the person, while committing or attempting to commit a felony or *misdemeanor involving violence*, knowingly . . . [w]ears body armor.”) (emphasis added).

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convicted of a violent felony to purchase, own, or possess body armor, with limited exception.³⁵⁷ For example, during the 2020 Black Lives Matter protests, the U.S. Attorney's Office charged a man who wore a bulletproof vest to a protest in Portland, Oregon with one count of felon in possession of body armor.³⁵⁸

2. Tactics, Tools, and Technologies

a. Lasers

During protests, lasers are used as both a tactic and a tool by activists and law enforcement alike. Activists sometimes use lasers at protests to disorient police or obstruct surveillance cameras, drones, and helicopters. While lasers have been used by activists around the globe as a cheap, nonviolent form of disruption,³⁵⁹ such use in the United States has become increasingly criminalized. Shining a laser in a law enforcement officer's face is expressly illegal in many states across the country.³⁶⁰ Additionally, though not related to protesting, shining a laser at an aircraft or the flight path of an aircraft is a federal crime.³⁶¹ In addition to these legal risks, activists using lasers are commonly targeted by police for arrest or use of 'less lethal weapons.' For example, during the 2020 Black Lives Matter protests in Portland, Oregon, federal agents were expressly authorized to use 'less lethal weapons' on any activists using lasers.³⁶² Additionally, the use of lasers could cause harm to individuals, both protesters and law enforcement so significant care should be taken if used. Activists should familiarize themselves with local laws to gauge the risk of using a laser pointer in their jurisdiction. A link in the footnote below provides a noncomprehensive list of various laser pointer laws by state.³⁶³

Police sometimes use lasers during protests to identify activists for targeting, alongside other marking methods, such as paint balls.³⁶⁴ If an activist notices that they've been marked, by paint or by laser, they should prepare for arrest or imminent use of 'less lethal weapons.'

³⁵⁷ 18 U.S.C. § 931 (2020), <https://perma.cc/B5XT-KT4W>.

³⁵⁸ Hannah Ray Lambert, *Feds Bring Body Armor Charge Against Portland Man*, KOIN (Oct. 20, 2020), <https://perma.cc/EH2Z-SKLG>.

³⁵⁹ Jeremiah Kim, *Lasers: The Future of Protests*, HARVARD POL. REV. (Mar. 19, 2020), <https://perma.cc/9TEX-B6X6>.

³⁶⁰ See, e.g., OR. REV. STAT. § 163.709 (2020) (stating that a person commits the crime of unlawful directing of light from a laser pointer if the person knowingly, and without consent, directs light from a laser pointer at a peace officer or uniformed private security professional while on duty).

³⁶¹ 18 U.S.C. § 39A (2020), <https://perma.cc/856T-B3UM>.

³⁶² Stephen Dinan, *'Remarkably Dangerous': Agents Increase Force Against Portland Protesters Using Lasers*, WASH. TIMES (July 26, 2020), <https://perma.cc/9T77-6P25>.

³⁶³ *U.S. National, State and Local Laws*, LASERPOINTERSAFETY.COM, <https://perma.cc/Y3GY-SWQZ..>

³⁶⁴ Paintball guns are becoming an increasingly common tool for law enforcement during protests, despite the many cases of traumatic eye injuries they've caused in 2020 alone. Like other 'less lethal weapons,' paintball guns are deceptively dangerous. See *Police Using Paintball Guns More for Crowd Control*, CRIME REPORT (June 15, 2020), <https://perma.cc/P8KW-PJZ4> (explaining that police use paintballs to mark activists for arrest despite the fact that

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b. Flashlights

Much like lasers, activists and law enforcement use flashlights as both a tool and a tactic during protests. Some activists use flashlights to disorient police and make it difficult for law enforcement or unwanted cameras to get a good visual read on the crowd.³⁶⁵ As of 2022, the writers of the Guide are unaware of any law, local or federal, criminalizing the use of flashlights at protest. For this reason, some activists may opt for a flashlight in a jurisdiction with prohibitions or limitations on lasers. Regardless of its criminality, utilizing flashlights at a protest may put activists at risk of being targeted by police.³⁶⁶

Police use flashlights to mark activists for arrest, disorient and confuse activists, and have even used flashlights to prevent civilians and journalists from recording police interactions by shining flashlights into cameras.³⁶⁷ Police obstruction of media's reporting on protests implicates freedom of press violations. See [Section 1.III.G](#) for further discussion of the role of journalists at protests, protections for freedom of press enshrined in the Constitution, and freedom of press violations by law enforcement.

c. Umbrellas

Like lasers and flashlights, umbrellas can be used as a tactic to block the view of unwanted cameras or police gaze while implementing other tactics.³⁶⁸ As of 2022, the writers of the Guide are unaware of any laws, local or federal, that prohibit the use of umbrellas during protest. For this reason, some activists may opt for an umbrella in a jurisdiction with prohibitions or limitations on lasers.

this tactic is rarely successful and noting the number of traumatic eye injuries caused by the use of such weapons); Jenny Gross, *The Latest Police Tool in Protests: Paintball Guns*, N.Y. TIMES (June 12, 2020), <https://perma.cc/4XSU-8U67> (detailing law enforcement's increased use of paintball guns at protests and the dangers paintball guns pose to activists).

³⁶⁵ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

³⁶⁶ See *id.*

³⁶⁷ See Maxine Bernstein, *People with Disabilities Accuse Local, State and Federal Police of Violating Their Free Speech Rights at Portland Protests*, OREGONIAN (Nov. 2, 2020), <https://perma.cc/HJE2-T7NJ> (noting police use of strobe lights against protesters, triggering epileptic seizures for some); Tony Cantu, *Austin Police Under Investigation After Preventing Activist From Filming Traffic Stop (Video)*, PATCH (Nov. 15, 2020), <https://perma.cc/DPG9-CDG5> (reporting an officer's use of a flashlight to prevent an activist from recording a police-citizen interaction); Richard Henley Davis, *NYPD Use Strobe Lights to Stop Occupy Wall Street Filming*, ECONOMIC VOICE (Oct. 17, 2011), <https://perma.cc/6G79-B52L> (discussing the NYPD's use of a strobe light to obscure filming at an Occupy protest).

³⁶⁸ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>; Allison Williams, *How Umbrellas Became the Symbol of Seattle Protests*, SEATTLE MET (June 3, 2020, 3:57 PM), <https://perma.cc/5GLF-4BSE>.

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d. Drones

Drones are utilized as a relatively new technology at protests, by both activist and law enforcement officials. Activists and journalists have used drones at protests as a tool for documentation, storytelling, and advocacy.³⁶⁹ Drones are also used by activists to survey a protest scene, transmitting real-time information that can be used strategically to guide the protest and counteract police tactics, such as kettling.³⁷⁰ Like any other technology with the ability to record, drones can also serve as a tool for documenting police brutality and gathering other evidence that may become relevant if an activist is arrested. Activists and journalists employing drones should familiarize themselves with anti-doxing practices to ensure they do not unintentionally bring harm to activists who are recorded as well as laws restricting their use. For strategies to mitigate the risks and consequences of being doxed, activists should familiarize themselves with anti-doxing techniques, such as those detailed in Equity Labs' [Anti-Doxing Guide for Activists Facing Attacks](#).³⁷¹

Police have controversially used military-grade drones as a surveillance tool against protesters, with little-to-no transparency regarding the extent of the technology, raising concerns about privacy violations due to largely unregulated mass aerial surveillance.³⁷²

e. Graffiti, Street Art, and Murals

Activists sometimes use graffiti as an act of defiance, to share inspiring messages, or as a tool for commentary. Graffiti has been used as a popular form of resistance in the United States since the 1970s.³⁷³ Street art is considered a subgenre of graffiti, and murals are considered a form of street art.³⁷⁴ Graffiti is also considered vandalism and is often illegal. Murals in the United States have roots in the Chicano movement, with over 1,000 murals painted in Los Angeles since 1965.³⁷⁵ Street art and murals are generally afforded a higher status than graffiti, with

³⁶⁹ See, e.g., Sara Rafsky, *Standing Rock and the Future of Drone Activism and Journalism*, WITNESS MEDIA LAB (Nov. 2017), <https://perma.cc/P3RT-28ES> (discussing the use of drones by activists and journalists at the Standing Rock protests for documentation, storytelling, and advocacy purposes).

³⁷⁰ Kettling is a police crowd-control tactic in which police corral activists into a confined space from which activists are unable to escape. Once activists have been confined, police begin making arrests. This tactic can be extremely dangerous when police use 'less lethal weapons' or physical force, as activists are unable to flee to safety. Jen Kirby, *The "Kettling" of Protesters, Explained*, VOX (June 6, 2020), <https://perma.cc/SR6J-QSZD>.

³⁷¹ EQUITY LABS, *ANTI-DOXING GUIDE FOR ACTIVISTS FACING ATTACKS* (2017), <https://perma.cc/FR8T-SE26>.

³⁷² Jay Stanley, *Protests, Aerial Surveillance, and Police Defunding*, ACLU (June 24, 2020), <https://perma.cc/3Z2D-P4WK>.

³⁷³ Guillaume Marche, *Expressivism and Resistance: Graffiti as an Infrapolitical Form of Protest Against the War on Terror*, 131 REVUE FRANÇAISE D'ÉTUDES AMÉRICAINES 78, 82 (2012), <https://perma.cc/KG39-PZVK>.

³⁷⁴ Lisa K. Waldner & Betty A. Dobratz, *Graffiti as a Form of Contentious Political Participation*, SOC. COMPASS, May 2013, at 378, <https://perma.cc/TD9S-RZNL>.

³⁷⁵ *Id.*

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communities encouraging the commission of murals while simultaneously criminalizing unsolicited graffiti.³⁷⁶

Legally, murals are afforded a higher status as they are often done with express permission from the building owner,³⁷⁷ as opposed to unsolicited street art and graffiti which, depending on the jurisdiction, can fall under the legal definition of vandalism,³⁷⁸ defacement of property,³⁷⁹ or an explicit crime in and of itself, such as unlawfully applying graffiti.³⁸⁰ Activists should familiarize themselves with laws in their jurisdiction to gauge the potential risks of using graffiti, street art, or murals as a protest tactic. While the use of street art as a form of protest is nothing new, the police killings of George Floyd and Breonna Taylor sparked a new street art movement across the globe, in “what might be the largest global explosion of street art addressing one single event or subject in history.”³⁸¹ Activists who consider themselves to be allies within a movement, should be cognizant of the spaces they use for graffiti, street art, or murals and seek input from organizers and folks at the heart of the movement before utilizing spaces.³⁸²

f. Paint Bombs

Similar to lasers, flashlights, and umbrellas, activists use paint bombs³⁸³ as a tactic to obscure the vision of police wearing visors or using transparent shields.³⁸⁴ Activists can also use paint bombs as a tool for commentary, such as when thrown on objectionable images or buildings, or when made to look like fake blood and thrown at an individual or object. While the writers of the Guide are unaware of any local, state, or federal laws as of 2022 expressly banning the use of paint bombs, activists employing the use of paint bombs have been charged with variety of other

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ See, e.g., CAL. PENAL CODE § 594(a)(1) (2020), <https://perma.cc/84DF-Q8PM> (“Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases other than those specified by state law, is guilty of *vandalism*: (1) Defaces with graffiti or other inscribed material.”) (emphasis added).

³⁷⁹ See, e.g., 720 ILL. COMP. STAT. 5/21-1.3 (2020), <https://perma.cc/ST2F-8Z9Y> (“A person commits criminal *defacement of property* when the person knowingly damages the property of another by defacing, deforming, or otherwise damaging the property by the use of paint or any similar substance, or by the use of a writing instrument, etching tool, or any other similar device.”) (emphasis added).

³⁸⁰ See, e.g., OR. REV. STAT. § 164.383 (2020), <https://perma.cc/KA3S-G8PD> (“A person commits the offense of *unlawfully applying graffiti* if the person, having no right to do so nor reasonable ground to believe that the person has such right, intentionally damages property of another by apply graffiti to the property.”) (emphasis added).

³⁸¹ *How the Death of George Floyd Sparked a Street Art Movement*, SMITHSONIAN (Sept. 3, 2020), <https://perma.cc/DG2A-EZNN>.

³⁸² Alexis Allston, *Mural Raises Concerns About Representation in Art Responding to George Floyd’s Killing*, STAR TRIBUNE (July 8, 2020, 6:45 PM), <https://perma.cc/9UJ5-TVNA>.

³⁸³ Paint bombs are objects filled with paint that explode on impact. Activists often create paint bombs by (1) inflating a balloon, dipping it in wax repeatedly until it can hold its own shape, then popping the balloon and filling the mold with paint, or (2) filling preexisting hollow objects, such as Christmas tree ornaments, with paint.

³⁸⁴ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

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crimes, such as assault, obstructing governmental administration, disorderly conduct, harassment, criminal mischief, and reckless endangerment.³⁸⁵ The environmental consequences of this tactic should also be considered.

g. Fireworks

At demonstrations with law enforcement presence, some activists use projectile fireworks to disorient police.³⁸⁶ These activists argue that the use of fireworks against police is justified when police are wearing military-grade protective gear, as the risk of injury is minimal.³⁸⁷ Regardless, many states have banned the use of fireworks that fly, explode, or travel a certain distance off the ground, with further firework restrictions within city limits.³⁸⁸ Additionally, shooting a firework at a law enforcement officer could result in a charge for felony assault on a police officer.³⁸⁹ Activists should familiarize themselves with laws in their jurisdiction in order to gauge the risk of using fireworks at a demonstration. Activists should also note that some protesters have reported that the booms from fireworks trigger PTSD responses as a consequence of police use of flash-bang grenades and other loud 'less lethal weapons.'³⁹⁰ Thus, while an activist may wish to target police, the effects of fireworks could inadvertently harm other activists or nearby pedestrians, businesses or residents, both physically and mentally.

Other factors such as fire bans, warnings, and firework bans should also be considered in light of their harmful impacts to the environment, as well as potential harms including wildfires.

h. Leaf Blowers

The use of leaf blowers to dispel tear gas particulate matter has roots in the 2019 Hong Kong protests.³⁹¹ A single leaf blower can be used to blow away gas from a tear gas canister while awaiting other activists to extinguish it, or multiple leaf blowers can be used at once to blow

³⁸⁵ See, e.g., Dana Sauchelli et al., *Bratton Throws the Book at Fake Blood Splasher*, N.Y. POST (Nov. 25, 2014), <https://perma.cc/D7CJ-J24K> (reporting the arrest and subsequent charging of an activist who threw a fake blood paint bomb at Police Commissioner Bill Bratton).

³⁸⁶ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

³⁸⁷ *Id.*

³⁸⁸ See, e.g., OR. REV. STAT. § 480.120 (2020), <https://perma.cc/VA5Y-GGPD>; PORTLAND, OR., CODE § 31.40.070 (2020), <https://perma.cc/Z8PW-827V>.

³⁸⁹ See, e.g., Press Release, D.C. U.S. Atty's Off., Dep't of Justice, Woman Charged for Throwing Lit Device at Metropolitan Police Officer, <https://perma.cc/6JFC-JWZQ> (detailing the arraignment of a protester who was charged with felony assault on a police officer for allegedly throwing a firework).

³⁹⁰ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

³⁹¹ Tim Hume, *Traffic Cones, Leaf Blowers, and Other Brilliant Tactics U.S. Protesters Are Taking From Hong Kong's Playbook*, VICE (June 3, 2020), <https://perma.cc/Y4DQ-FPES>.

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away large clouds of gas from multiple canisters.³⁹² For example, during the 2020 Black Lives Matter protests in Portland, Oregon, leaf blowers were used in consort by multiple activists at once to successfully dispel immense clouds of tear gas.³⁹³ The legal and environmental consequences of this tactic should be considered.

i. De-Arrests

During the course of an arrest, some activists may attempt a “de-arrest” in which activists physically engage with police to assist in the escape of an activist who is in the process of being arrested.³⁹⁴ De-arrests are generally attempted when there are enough activists to overwhelm the arresting officers.³⁹⁵ Interfering with an arrest is expressly illegal under state law³⁹⁶ and federal law,³⁹⁷ and attempting de-arrests can lead to increased violence by police and higher and additional criminal charges.³⁹⁸

j. Strategic Crowd Movement

Strategic crowd movement is a tactic used to counteract and prevent the police tactics of kettling and mass arrests. Kettling is a tactic to move protesters into one area where their exits are blocked by vehicles or personnel. To avoid kettling, activists will stick together in a large group, moving slowly and calmly. Maintaining a large, tight group to avoid arrests is especially important in the face of a “bull rush” in which police run forcefully at a group of activists, often while deploying tear gas, pepper spray, and impact munitions, picking off activists for arrest amidst the chaos.³⁹⁹ The failure to follow police instructions in directing crowd movement can lead to additional charges and increased use of force.

k. Encrypted Communication Channels and Data Protection

³⁹² *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

³⁹³ *Id.*

³⁹⁴ *Id.*; Shawn Fleek, *Defensive Black Bloc Tactics*, PORTLAND OCCUPIER (Feb. 28, 2012), <https://perma.cc/M5AX-WFMV>.

³⁹⁵ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

³⁹⁶ *See, e.g.*, OR. REV. STAT. § 162.247(1)(a) (2020), <https://perma.cc/4SW2-HQJW> (“A person commits the crime of interfering with a peace officer or parole and probation officer if the person . . . [i]ntentionally acts in a manner that prevents, or attempts to prevent, a peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person.”).

³⁹⁷ 18 U.S.C. § 111(a)(1) (2020), <https://perma.cc/3WHJ-MGRQ>.

³⁹⁸ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

³⁹⁹ *Id.*

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Many activists employ the use of end-to-end encrypted communication channels—such as Signal, Keybase, Jitsi, Element, and Protonmail—to avoid law enforcement surveillance before, during, and after a protest.⁴⁰⁰ Activists also utilize other data security technology such as VPNs (which allow activists to change their IP address to anywhere in the world to avoid any tracing of online activities), password protection on all electronic devices, and two-factor authentication wherever possible.⁴⁰¹ The Civil Liberties Defense Center’s [Digital Security \(DS\) Program](#) offers comprehensive resources for activists interested in implementing digital security measures.⁴⁰²

l. Face Masks

Some activists wear face masks at protests to protect against the cold or chemical weapons such as tear gas and pepper spray. As discussed above, before COVID-19, many jurisdictions had anti-mask laws,⁴⁰³ which several states have since suspended during the pandemic for public health reasons.⁴⁰⁴ Activists should familiarize themselves with the status of anti-mask laws as well as mask mandates in their jurisdiction. See [Section 2.III.B.1](#) for a discussion about anti-mask laws more generally.

m. Black Bloc

Despite its common misuse as a term, black bloc is a protest tactic, not a group. Black bloc is a tactic in which protesters wear all black,⁴⁰⁵ often including face masks, in an attempt to promote anonymity.⁴⁰⁶ The use of black bloc as a tactic dates back to the 1970s, and has not been limited to any specific group or movement (e.g., while black bloc is often associated with Antifa or anarchists, it’s also been used by European Neo-Nazis).⁴⁰⁷ Black bloc can be used to avoid police identifying and arresting individual activists, to avoid counterprotesters identifying and doxing activists, and to promote unity and solidarity.⁴⁰⁸

Using black bloc as a tactic has obvious risks, considering the common misuse of the term to refer to various far-left groups that are accused of being radical, militant, and recently called

⁴⁰⁰ *Rebel Security Guide*, EXTINCTION REBELLION, <https://perma.cc/Z2FX-BR9G>.

⁴⁰¹ *Id.*

⁴⁰² *Digital Security (DS) Program*, CIV. LIBERTIES DEF. CTR., <https://perma.cc/CL7P-CU3U>.

⁴⁰³ See, e.g., MICH. COMP. LAWS § 750.396 (“A person who intentionally conceals his or her identity by wearing a mask or other device covering his or her face for the purpose of facilitating the commission of a crime is guilty of misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.”).

⁴⁰⁴ Ephrat Livni, *Coronavirus Pits Anti-Mask Laws Against Public Health*, QUARTZ (Apr. 15, 2020), <https://perma.cc/4KGW-5XZ2>.

⁴⁰⁵ Dressing in “bloc” can be done in any color, as was in seen in Portland, Oregon with Wall of Moms wearing yellow bloc and DadBloc wearing orange bloc. Marissa J. Lang, *‘What Choice Do We Have?’: Portland’s ‘Wall of Moms’ Faces Off with Federal Officers at Tense Protests*, WASH. POST (July 22, 2020, 3:42 AM), <https://perma.cc/T4LF-WNPN>.

⁴⁰⁶ Harsha Walia, *10 Points on the Black Bloc*, ANARCHIST LIBRARY (2010), <https://perma.cc/Y7CQ-T26Y>.

⁴⁰⁷ *On the Role of Black Bloc: A Critical Look*, PAPER REVOLUTION, <https://perma.cc/BDG5-VDMF>.

⁴⁰⁸ Harsha Walia, *10 Points on the Black Bloc*, ANARCHIST LIBRARY (2010), <https://perma.cc/Y7CQ-T26Y>.

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terrorists by the former Trump Administration. Several of these risks include (1) police specifically targeting activists in black bloc, (2) escalation of police violence in general, (3) accusations that activists in black bloc are members of radical, militant, or terrorists organizations, (4) misrepresentation of a peaceful protest as a violent protest in which activists needed to obscure their identities, and (5) erasure of groups, movements, or organizers (e.g., media erroneously referring to a demonstration as organized by Antifa or anarchists rather than Black Lives Matter). While many of these risks are due to unfair rhetoric, deep-seeded misunderstandings, and state repression tactics, they bear consideration. Activists should also consider deferring to the organizers of a demonstration or movement regarding the use of black bloc as a tactic, especially if activists are acting as an ally.

IV. THE USE OF TECHNOLOGY

The use of technology at protests is a common occurrence. Some uses include the use of cell phone cameras by activists,⁴⁰⁹ body cameras by law enforcement, or broadcast equipment by local or national media.⁴¹⁰ Activists should consider the consequences of having their photo taken at an event and broadcast.⁴¹¹ However, many other forms of technology are used by protest participants, law enforcement, and third parties, some of which are discussed below.

A. Activists' Use of Technology

In recent years, the use of mobile devices, such as cell phones, at demonstrations has become ubiquitous. The most common use is to document the event, which can be used in many ways.⁴¹² Pictures and videos taken by protest participants can be live-streamed or uploaded to

⁴⁰⁹ While there is a possibility that the public 'opposition' or bystanders will take video or camera footage of an event, some groups may actively plan to have a coordinated effort to document certain stages of the event, which should be outlined prior to the protest and implemented throughout.

⁴¹⁰ In addition to recording the demonstration, there are ways to use technology to aid in the dissemination of a message—consider the way the “cube of truth” protests are done where activists wear masks and hold laptops which show slaughterhouse videos. Toby McCasker, *'Cube of Truth': Anonymous Hit Streets With Violent Footage of Animal Farming*, GUARDIAN (Jan. 30, 2017), <https://perma.cc/8Y2U-J84T>. Also, in the documentary *Racing Extinction*, the filmmakers projected images of animals across various buildings in order to attract attention. Andy Isaacson, *New Documentary Racing Extinction Explores How Humanity Is Killing the World*, WIRED (Nov. 29, 2015), <https://perma.cc/H5CS-DQ99>. There are a number of ways which technology can be utilised for protests. Alex Hudson & Peter Price, *How Is Technology Changing Protests*, BBC (Apr. 12, 2011), <https://perma.cc/KMF9-ESTK>; Michel Corey, *How Technology Has Affected Protest Movements*, REPORTER (Sept. 10, 2015), <https://perma.cc/JW3Y-4ELE>.

⁴¹¹ For example, after the white nationalist rally in Charlottesville, Virginia, many took to social media to 'out' participants, some of whom lost their jobs or were harassed following their identification. Alyssa Newcomb, *Twitter Users Are Outing Charlottesville Protestors*, NBC NEWS (Aug. 14, 2017), <https://perma.cc/24FK-H4VQ>.

⁴¹² See Geoffrey Fowler, *You Have the Right to Film Police. Here's How to Do It Effectively – and Safely.*, WASHINGTON POST (April 22, 2021), <https://perma.cc/7ZQW-U6ZA> (For a quick guide on how to effectively film police).

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various platforms and social media sites. It is important to note that law enforcement officials can, and often do, monitor activists' activities on social media. Social media is discussed in more detail below.⁴¹³ EFF provides a variety of resources for individuals to “defend[] civil liberties in [a] digital world.”⁴¹⁴ See also the section above relating to the Use of Media prior to a Protest.

The Ninth Circuit has recognized a “First Amendment right to film matters of public interest,”⁴¹⁵ which includes a clearly established right to record officers as they are carrying out their official duties.⁴¹⁶ While this right has been recognized by most courts in the U.S., it is limited to situations where the recording of police officers does not interfere with the performance of their duties.⁴¹⁷ Even if a demonstrator is exercising their First Amendment right without interfering with legitimate law enforcement operations, an officer still may order the activist to stop recording or even confiscate or delete recordings. The American Civil Liberties Union (ACLU) advises that in this situation, an activist should “strive to calmly and politely yet firmly remind the officer of [their] rights while continuing to record the interaction, and not turn the camera off.”⁴¹⁸ Another tactic used by officers—because most officers know that bystanders are aware of their legal right to record—is to accuse them of interfering. In this situation, the “back-up” game is a tactic to perform strict legal compliance with the officer’s instructions.⁴¹⁹ Standing a good distance away from where the encounter is taking place and using the zoom function may protect an activist from charges of interfering. A final consideration for an activist: there is always the potential for police or counterprotesters to turn belligerent and dangerous; in which case a judgment-call about the importance of what the activist is doing should be made.⁴²⁰ Outlining the risk activists are willing to take versus their own sense of justice, prior to the demonstration, can help if unanticipated situations arise.

Activists can also engage in digital activism separate from on-the-ground protests, whereby activists utilize digital tools such as the internet and social media to bring about social or political change.⁴²¹ Digital forms of activism can include online petitions, blogs, micro-blogs (such as

⁴¹³ See [Section 2.V](#).

⁴¹⁴ *About EFF*, EFF, <https://perma.cc/94GQ-WG6T>.

⁴¹⁵ *Fordyce v. City of Seattle*, 55 F.3d 436, 437–39 (9th Cir. 1995).

⁴¹⁶ *Crago v. Leonard*, No. 2:13-cv-531-TLN-EFB PS, 2014 WL 3849954, at *3 (E.D. Cal. Aug. 5, 2014) (quoting *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2001)).

⁴¹⁷ *Id.*

⁴¹⁸ Robinson Meyer, *What to Say When the Police Tell You to Stop Filming Them*, ATLANTIC (Apr. 28, 2015), <https://perma.cc/7AXX-WDP3>.

⁴¹⁹ See *id.* (explaining how Copwatch in the Bronx, a program organized by the Justice Committee (a New York advocacy group) that films officer interactions in low-income neighborhoods, recommends strict legal compliance while still asserting one’s right to film by taking individual steps back if an officer demands a person to stop filming them).

⁴²⁰ See *id.* (offering the ACLU’s advice in this situation, which is to make a judgment call “about the importance of what you’re doing, and about the risk you’re willing to take, versus your own sense of justice”).

⁴²¹ *Digital and Online Activism*, RESET, <https://perma.cc/LFX5-N5EJ>.

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Twitter), and crowdsourcing, to name a few.⁴²² It is also worth noting that there are increasingly prevalent forms of activism that take place virtually arising out of the COVID-19 pandemic, especially among youth.⁴²³ Activists engaging in virtual and digital activism should familiarize themselves with best practices for online activism. Tactical Tech provides a comprehensive guide for using tools and technologies for protest,⁴²⁴ and the Ruckus Society provides a comprehensive guide on security culture for activists.⁴²⁵ If organizing an online action with the use of video conference technologies, organizers should seriously consider whether it is appropriate to record such events (most sources suggest not recording), and if an organizer decides to record an event, they should ensure all participants are informed and consent.

B. Law Enforcement Use of Technology

In addition to other technologies, in recent years, more law enforcement agencies have begun using “[o]n-officer recording systems (also called body cams).”⁴²⁶ Interest in body cam technology grew after the fatal shooting of Michael Brown, and the painstaking work of his family and community to require police around the nation to wear body cams.⁴²⁷ In many situations, law enforcement officers may be afforded some discretion as to when to record interactions with the public.⁴²⁸ The use of body cams has been viewed by human rights groups as a positive tool for increasing transparency and police accountability; accordingly, the aim of police departments during protest activities is to *prevent* the image that law enforcement officers are present at protest events in order to watch activists.⁴²⁹

Law enforcement officers have been known to use airplanes and helicopters to monitor or quell protests. This was found inappropriate when done by a police department and by members of the Army.⁴³⁰

⁴²² *Id.*

⁴²³ Zoë Pelter, *Pandemic Participation: Youth Activism Online in the COVID-19 Crisis*, UNICEF (Apr. 14, 2020), <https://perma.cc/VA6N-HHT8>.

⁴²⁴ TACTICAL TECH, THE INFO-ACTIVISM HOW-TO GUIDE, <https://perma.cc/HXR2-BZQJ>.

⁴²⁵ *Security Culture for Activists*, RUCKUS SOC’Y, <https://perma.cc/3KLP-WB6T>.

⁴²⁶ Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, ACLU (last updated Mar. 2015) (internal quotation marks omitted), <https://perma.cc/FK8D-F35Q>.

⁴²⁷ *Id.*; Josh Sanburn, *The One Battle Michael Brown’s Family Will Win*, TIME (Nov. 26, 2014), <https://perma.cc/P2PM-7YHL>.

⁴²⁸ Peter Hermann & Keith L. Alexander, *D.C. Police Body Cameras: Off at Demonstrations, on for Criminal Behavior, Public Interaction*, WASH. POST (Jan. 19, 2017), <https://perma.cc/L8ZF-U9YG> (describing the Washington, D.C. police departments policy at recent demonstrations as only turning on recording devices if they witness criminal behavior or are interacting with the public).

⁴²⁹ *Id.*

⁴³⁰ Debra Weiss, *Spy Plane Surveillance Violates Fourth Amendment, en banc Appeals Court Rules*, ABA JOURNAL (June 24, 2021), <https://perma.cc/9PRH-VHTW>; Alex Horton, *D.C. Guard Misused Helicopters in Low-Flying confrontation with George Floyd Protesters, Army Concludes*, WASHINGTON POST (April 15, 2021), <https://perma.cc/75MD-A6BD>.

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C. Third Party Use of Technology

It is possible that broadcast media will be present at demonstrations, especially large, pre-planned events. This means that they will likely be recording the demonstration and perhaps broadcasting it live. [Section I\(V\)\(C\)](#) outlines potential factors an organization might consider when dealing with the media at a demonstration. Images and videos taken during a protest can be used as a tool by law enforcement, government officials as evidence, or by counterprotesters to dox activists.⁴³¹ For strategies to mitigate the risks and consequences of being doxed, activists should familiarize themselves with anti-doxing techniques, such as those detailed in Equity Labs' [Anti-Doxing Guide for Activists Facing Attacks](#).⁴³² Activist should be cognizant of media use during a protest, keeping the above risks in mind, and avoid capturing and posting the likeness of other activists without their consent.

V. SOCIAL MEDIA

It should be noted that law enforcement entities regularly monitor social media for civil unrest in an attempt to manage its impact. The United States Department of Justice (DOJ) has explained that “[m]onitoring for civil unrest is done for situational awareness of possible impending protests, so that law enforcement can prepare for traffic and crowd control safety needs while the public exercises their rights guaranteed under the First Amendment of the Constitution”⁴³³

Many social media sites—such as Facebook, Instagram, YouTube, Twitter, and Twitch, among others—allow for live broadcasting. This has been used by activists to document standoffs with law enforcement.⁴³⁴ Facebook live has been described as “a tool to bypass the mainstream media in order to spread a message to tens of thousands of viewers in real time.”⁴³⁵

In addition to the monitoring of social media sites, law enforcement may seek warrants to review additional material on those sites. For example, in February 2017, the Whatcom County Sheriff's Department served Facebook with a warrant to access data on Dakota Access Pipeline

⁴³¹ See, e.g., Micah Lee, *How Right-Wing Extremists Stalk, Dox, and Harass Their Enemies*, INTERCEPT (Sept. 6, 2017), <https://perma.cc/M7MP-VF34>; Dell Cameron, *NYPD Union Dokes Mayor's Daughter on Twitter*, GIZMODO (June 1, 2020), <https://perma.cc/6DRU-UQX3>.

⁴³² EQUITY LABS, ANTI-DOXING GUIDE FOR ACTIVISTS FACING ATTACKS (2017), <https://perma.cc/FR8T-SE26>.

⁴³³ *Events with the Potential to Go Viral: Identification and Response*, COPS, <https://perma.cc/9TJP-TFNK>.

⁴³⁴ Hanna Kozłowska, *Dakota Pipeline Protesters Are Broadcasting Their Tense Standoff with the Police Using Facebook Live*, QUARTZ (Oct. 29, 2016), <https://perma.cc/K2VP-EWTK>.

⁴³⁵ *Id.*

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activists and individuals that were in contact with the group.⁴³⁶ The American Civil Liberties Union (ACLU) filed a motion to block the warrant, arguing that the warrant was overbroad and had far-reaching implications about political speech and advocacy.⁴³⁷ In March 2020, the Whatcom County prosecutor voluntarily withdrew the search warrant, in what the ACLU called “a demonstration of how this process is supposed to work.”⁴³⁸

VI. THE POTENTIAL FOR ESCALATION

A. Escalation by Demonstration Participants and Non-Participants

Several protests described as “violent” have made national news in recent years. These protests often started out as peaceful demonstrations, and many of which remained peaceful but were later described as violent. For example, despite media reports of “violent” protest sweeping America following the murder of George Floyd, a 2020 report from the Armed Conflict Location and Event Data (ACLED) project, found that more than 93% of all demonstrations connected to the Black Lives Matter movement following the police killing of George Floyd involved peaceful protest (i.e., demonstrators did not engage in any violence or destructive activity).⁴³⁹

Of the few protests that escalate to the point of violence or property destruction, police often fail to separate peaceful protesters from those causing property damage, thus activists should remember that *all* protesters are at risk when *any* protesters engage in unlawful behavior.⁴⁴⁰

Of increasing and particular importance is violence at protests by non-participants and counterprotesters. Activists and organizers should be aware that demonstrations with counterprotesters have the potential to turn violent, especially when counterprotesters arm themselves with guns.⁴⁴¹ Despite increasing violence at the hands of counterprotesters, especially the Proud Boys and other white supremacist groups, law enforcement consistently provide such counterprotesters with preferential treatment. For example, in New Port Richey, Florida, when Black Lives Matter protesters and Proud Boy counterprotesters clashed, police

⁴³⁶ Amrita Khalid, *ACLU Fights Police Warrant for Facebook Group Protesting Dakota Access Pipeline*, DAILY DOT (last updated Mar. 13, 2017, 4:58 AM), <https://perma.cc/WF3P-GWP8>.

⁴³⁷ *Id.*

⁴³⁸ *Following ACLU Motion, Whatcom Prosecutor Withdraws Warrant to Search Facebook Page of Group Protesting Dakota Access Pipeline*, ACLU (Mar. 13, 2017), <https://perma.cc/LV7E-PYZ6>.

⁴³⁹ ACLED, DEMONSTRATIONS & POLITICAL VIOLENCE IN AMERICA: NEW DATA FOR SUMMER 2020 (Sept. 2020), <https://perma.cc/2Y3G-S727>.

⁴⁴⁰ For resources on nonviolent demonstrations see INT’L CTR. FOR NONVIOLENT CONFLICT, <https://perma.cc/GR39-DP4F>.

⁴⁴¹ Fabiola Cineas, *Why Some Counterprotests to Black Lives Matter Are Turning Violent*, VOX (Sept. 14, 2020, 3:50 PM), <https://perma.cc/3QUY-DRTL>.

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enforced a rarely used noise ordinance against *only* the Black Lives Matter protesters.⁴⁴² Some of these counterprotesters attend protests specifically to escalate the situation into one of violence or chaos. Police are often unclear about who is responsible for escalation, and thus all protesters are at risk in these situations.

Escalation by non-participants and counterprotesters can also happen virtually as journalists (unintentionally and intentionally) and counterprotesters have directed violence towards protesters through doxing.⁴⁴³ For strategies to mitigate the risks and consequences of being doxed, activists should familiarize themselves with anti-doxing techniques, such as those detailed in Equity Labs' [Anti-Doxing Guide for Activists Facing Attacks](#).⁴⁴⁴

B. Escalation by Law Enforcement

The potential for escalation at protests is not limited to tactics used by activists. Law enforcement officers are often responsible for escalating confrontations and engaging in violent acts at protests. For example, a 2020 report by Amnesty International USA documented the “widespread and egregious human rights violations by police officers against protesters, medics, journalists and legal observers gathered to protest the unlawful killings of Black people by the police and to call for systemic reform in May and June of 2020.”⁴⁴⁵

Data collected in 2020 suggest that police violence at protests is disproportionately enacted against specific groups or movements, such as the Black Lives Matter movement, and use of force against such groups has significantly increased since 2019. According to a 2020 report from the Armed Conflict Location and Event Data (ACLED) project, in collaboration with Princeton University's Bridging Divides Initiative, since the police killing of George Floyd, more than 93% of all demonstrations connected to the Black Lives Matter movement involved peaceful protest (i.e., demonstrators did not engage in any violence or destructive activity).⁴⁴⁶ Despite the fact that demonstrations associated with the Black Lives Matter movement during that period were “overwhelmingly peaceful,” more than 90% were met with government intervention, as compared to 3% of all other demonstrations.⁴⁴⁷ Furthermore, in over 54% of the Black Lives Matter demonstrations in which the government intervened, law enforcement used violence against protesters, including ‘less lethal weapons’ such as rubber bullets, tear gas,

⁴⁴² Tim Craig, *Proud Boys and Black Lives Matter Activists Clashed in a Florida Suburb. Only One Side Was Charged*, WASH. POST (Feb. 4, 2021), <https://perma.cc/J842-TNL2>.

⁴⁴³ David Maas & Taylor Mulcahey, *Tips for Reporting on Anti-Police Violence Protests in the U.S.*, INT'L JOURNALISTS' NETWORK (June 1, 2020), <https://perma.cc/7EQ5-YDSB>.

⁴⁴⁴ EQUITY LABS, ANTI-DOXING GUIDE FOR ACTIVISTS FACING ATTACKS (2017), <https://perma.cc/FR8T-SE26>.

⁴⁴⁵ USA: *Law Enforcement Violated Black Lives Matter Protesters' Human Rights, Documents Acts of Police Violence and Excessive Force*, AMNESTY INT'L (August 4, 2020), <https://perma.cc/NR9H-WP3J>.

⁴⁴⁶ ACLED, DEMONSTRATIONS & POLITICAL VIOLENCE IN AMERICA: NEW DATA FOR SUMMER 2020 (Sept. 2020), <https://perma.cc/2Y3G-S727>.

⁴⁴⁷ *Id.*

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pepper spray, and beating protesters with batons.⁴⁴⁸ The same data reveal that police use of force at Black Lives Matter protests has increased almost 50% between 2019 and 2020.⁴⁴⁹

To address the risk of police violence at protests, legal observers attend protests and “purposely position themselves close enough to demonstrations to be able to accurately watch and report the activities of participants and the law enforcement who interact with them.”⁴⁵⁰ More information about legal observers and the role they play at protests can be found in [Section 1.III.D](#).

1. Law Enforcement Tactics

Law enforcement tactics at protests are ever evolving, with certain tactics being used disproportionately against specific groups or in specific contexts. For example, in the 1960s, police used high-pressure water hoses and attack dogs against civil rights protesters, especially against Black activists.⁴⁵¹ As police tactics and technology evolved, attack dogs and high-pressured hoses were gradually replaced by ‘less lethal weapons’ such as rubber bullets, tear gas, and pepper spray. Despite this evolution in tactics, attack dogs and high-pressured hoses continue to be used sporadically and disproportionately against BIPOC activists to this day.⁴⁵² Before planning or attending a demonstration, activists should familiarize themselves with current law enforcement tactics and gauge the likelihood of use at a demonstration.⁴⁵³ Below are some examples of common police tactics used at protests as of January 2022.

⁴⁴⁸ *Id.*

⁴⁴⁹ See *Id.* (the data reveal that in 2019, approximately only 5% of Black Lives Matter linked demonstrations were met with force by authorities, as opposed to over 54% in 2020).

⁴⁵⁰ *Legal Observer*, CIV. LIBERTIES DEF. CTR. (Apr. 24, 2014), <https://perma.cc/JSE3-QB36>.

⁴⁵¹ *The Birmingham Campaign*, PBS: BLACK CULTURE CONNECTION, <https://perma.cc/E9PY-BFSY>.

⁴⁵² See, e.g., Sydney Trent, *Trump’s Warning That ‘Vicious Dogs’ Would Attack Protesters Conjured Centuries of Racial Terror*, WASH. POST (June 1, 2020), <https://perma.cc/UN9A-T7QA> (“Dogs were employed as instruments of terror against [B]lack people long before the civil rights movement, beginning with their use aboard slave ships . . . and are still used disproportionately by police against African Americans today.”); Daniel Borenstein, *Borenstein: Bay Area Police Sicced Biting Dog on Black George Floyd Protester*, MERCURY NEWS (June 4, 2020, 5:10 AM), <https://perma.cc/W96J-94A6> (detailing the use of attack dogs at the George Floyd protests in the Bay Area, and the attack of a young Black man who was bitten by a police dog after police had already brought him down to the ground); Joshua Barajas, *Police Deploy Water Hoses, Tear Gas Against Standing Rock Protesters*, PBS (Nov. 21, 2016), <https://perma.cc/JDT3-55Q3> (reporting the use of water cannons against primarily Indigenous protesters—called water protectors—during the Standing Rock protests); *Standing Rock Special: Unlicensed #DAPL Guards Attacked Water Protectors with Dogs & Pepper Spray*, DEMOCRACY NOW! (Nov. 24, 2016), <https://perma.cc/LTX6-4BSF> (discussing the use of attack dogs against primarily Indigenous water protectors at the Standing Rock protests).

⁴⁵³ Mike Baker, *Police Presentation in Portland Celebrated Violence Against Protestors*, THE NEW YORK TIMES (Jan. 14, 2022), <https://perma.cc/KY4U-MHP2> (explaining training materials released by the Portland Police Bureau as part of an that included a image which contained text that mocked protestors as “dirty hippies” and suggested that the protestors would be left “stitched and bandaged.” The materials came to light as part of an investigation into excessive force used by Portland Police Officers.).

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a. Less Lethal Weapons

Police often use ‘Less Lethal Weapons’ as a crowd control tactic. Less Lethal Weapons include rubber bullets, beanbag rounds, flash bangs, pepper spray, tear gas, and pepper bullets, to name a few. While these weapons are touted by law enforcement as ‘less lethal’ or even ‘non-lethal,’ for decades these weapons have maimed and even killed protesters.⁴⁵⁴ More specifically, these military grade weapons have caused life threatening wounds such as loss of eyes, perforated chests, brain damage, cardiogenic shock, and death.⁴⁵⁵ See [Section 2.III.F.1](#) for information regarding protective gear to reduce risk of serious injury or death caused by ‘Less Lethal Weapons.’ Activists should familiarize themselves with various ‘less lethal weapons’ to better prepare for imminent use (e.g., activists who are able to visually identify a revolving launcher for tear gas grenades can put on a mask before grenades are launched). Activists should also note police behavior to gauge the likelihood of weapon use (e.g., if police begin putting on gas masks, it’s likely they are preparing to deploy chemical weapons such as tear gas or pepper spray). For a visual guide to ‘less lethal weapons’ click on the link in the footnote below.⁴⁵⁶

b. Lasers and Paint

Police sometimes use lasers during protests to identify activists for targeting, alongside other marking methods, such as paint balls.⁴⁵⁷ Some activists bring a readily accessible change of clothes with them to demonstrations in case they are singled out.⁴⁵⁸ If an activist notices that they’ve been marked, by paint or by laser, they should prepare for arrest or imminent use of ‘less lethal weapons.’ See [Section 2.VI.B.1](#) for a discussion on the role of police “spotters” in marking activists.

⁴⁵⁴ See generally Janet Loehrke et al., ‘Less Lethal’ Can Still Maim and Kill: A Visual Guide to Weapons Police Use on Protesters, USA TODAY (June 20, 2020), <https://perma.cc/V3Z7-XYGK>; Less-Lethal Weapons That Are Actually Lethal, NPR: ALL THINGS CONSIDERED (July 31, 2020), <https://perma.cc/K8GR-RAZ5>; INT’L NETWORK OF CIV. LIBERTIES ORGANIZATIONS, LETHAL IN DISGUISE: THE HEALTH CONSEQUENCES OF CROWD-CONTROL WEAPONS (2016), <https://perma.cc/7T8X-6XNL>.

⁴⁵⁵ Jonathan Pedneault, *Police Targeting ‘Street Medics’ at US Protests*, HUMAN RIGHTS WATCH (June 17, 2020, 4:32 PM), <https://perma.cc/7A8J-2F3N>; Heather Murphy, *Hundreds Reported Abnormal Menstruation After Exposure to Tear Gas, Study Finds*, New York Times (2021), <https://perma.cc/EL6W-EYN9>.

⁴⁵⁶ Janet Loehrke et al., ‘Less Lethal’ Can Still Maim and Kill: A Visual Guide to Weapons Police Use on Protesters, USA TODAY (June 20, 2020), <https://perma.cc/V3Z7-XYGK>.

⁴⁵⁷ Paintball guns are becoming an increasingly common tool for law enforcement during protests, despite the many cases of traumatic eye injuries they’ve caused in 2020 alone. Like other ‘less lethal weapons,’ paintball guns are deceptively dangerous. See *Police Using Paintball Guns More for Crowd Control*, CRIME REPORT (June 15, 2020), <https://perma.cc/P8KW-PJZ4> (explaining that police use paintballs to mark activists for arrest despite the fact that this tactic is rarely successful and noting the number of traumatic eye injuries caused by the use of such weapons); Jenny Gross, *The Latest Police Tool in Protests: Paintball Guns*, N.Y. TIMES (June 12, 2020), <https://perma.cc/4XSU-8U67> (detailing law enforcement’s increased use of paintball guns at protests and the dangers paintball guns pose to activists).

⁴⁵⁸ Johanna Neeson, *10 Things You Should Wear (and Bring) to a Protest*, READER’S DIGEST (June 17, 2020), <https://perma.cc/6NMU-DNVY> (“It is also advised to bring an extra set of clothes in case you are hit with harmful chemicals, you are arrested, or you are singled out.”).

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c. Flashlights

Police use flashlights (and flashlights' strobe light function) to mark activists for arrest, disorient and confuse activists, and have even used flashlights to prevent civilians and journalists from recording police interactions by shining flashlights into cameras.⁴⁵⁹ Police obstruction of the media's reporting on protests implicates freedom of press violations. See [Section 1.III.G](#) for further discussion on the role of journalists at protests, protections for freedom of press enshrined in the Constitution, and freedom of press violations by law enforcement.

d. Drones

Police have controversially used military-grade drones as a surveillance tool against protesters, with little-to-no transparency regarding the extent of the technology, raising concerns about privacy violations due to largely unregulated mass aerial surveillance.⁴⁶⁰ Some activists will use lasers to disable drones, though it should be noted that shining a laser at an aircraft or the flight path of an aircraft is a federal crime.⁴⁶¹

e. Kettling

Kettling is a police crowd-control tactic in which police corral activists into a confined space from which activists are unable to escape.⁴⁶² Once activists have been confined, police begin making arrests.⁴⁶³ Kettling is an ancient military tactic, broadly referred to as envelopment.⁴⁶⁴ Kettling can be extremely dangerous when police use 'less lethal weapons' or physical force, as activists are unable to flee to safety.⁴⁶⁵ Human Rights Watch concluded that the NYPD's use of kettling during a 2020 Black Lives Matter protest was a "planned assault" on protesters and a serious human rights violation.⁴⁶⁶ Activists have used drones, encrypted communications, and

⁴⁵⁹ See Maxine Bernstein, *People with Disabilities Accuse Local, State and Federal Police of Violating Their Free Speech Rights at Portland Protests*, Oregonian (Nov. 2, 2020), <https://perma.cc/HJE2-T7NJ> (noting police use of strobe lights against protesters, triggering epileptic seizures for some); Tony Cantu, *Austin Police Under Investigation After Preventing Activist From Filming Traffic Stop (Video)*, PATCH (Nov. 15, 2020), <https://perma.cc/DPG9-CDG5> (reporting an officer's use of a flashlight to prevent an activist from recording a police-citizen interaction); Richard Henley Davis, *NYPD Use Strobe Lights to Stop Occupy Wall Street Filming*, ECONOMIC VOICE (Oct. 17, 2011), <https://perma.cc/6G79-B52L> (discussing the NYPD's use of a strobe light to obscure filming at an Occupy protest).

⁴⁶⁰ Jay Stanley, *Protests, Aerial Surveillance, and Police Defunding*, ACLU (June 24, 2020), <https://perma.cc/3Z2D-P4WK>.

⁴⁶¹ 18 U.S.C. § 39A (2020), <https://perma.cc/856T-B3UM>.

⁴⁶² Jen Kirby, *The "Kettling" of Protesters, Explained*, VOX (June 6, 2020), <https://perma.cc/SR6J-QSZD>.

⁴⁶³ Jen Kirby, *The "Kettling" of Protesters, Explained*, VOX (June 6, 2020), <https://perma.cc/SR6J-QSZD>.

⁴⁶⁴ Fearghal Fitzgibbon, *Riot Tactics and Their Origins: How Modern Policing is Influenced by Ancient History*, MEDIUM (Aug. 28, 2020), <https://perma.cc/U9FP-ZU26>.

⁴⁶⁵ *Id.*

⁴⁶⁶ Eric Levenson, *NYPD Planned Assault and Mass Arrest of Protesters with 'Kettling' Tactic, Human Rights Watch Says*, CNN (Oct. 1, 2020), <https://perma.cc/3EYK-Z33Y>.

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strategic crowd movement to counteract kettling. See [Section 2.III.F.2](#) for an in-depth discussion on these and other activist tactics, tools, and technology.

f. Line Formations

Depending on the type of demonstration, police will strategically stand in a line formation, with each officer standing side by side, in front of important buildings or streets.⁴⁶⁷ In many cases, a line formation will not advance until after the police have deployed ‘less lethal weapons,’ usually tear gas.⁴⁶⁸ In some cases, after deploying tear gas, police will march slowly in formation, pushing the crowd back.⁴⁶⁹ In other cases, police will rush or charge the crowd, utilizing force as they make contact with protesters.⁴⁷⁰ See the [Section](#) below for more information on bull rushes. Activists counteract line formations by creating barricades from makeshift items, forming shield walls, and maintaining their own line formations that can break apart police formations when the two collide.⁴⁷¹ While line formations are the most common, police also utilize column, wedge, and echelon formations against protesters.⁴⁷² The link in the footnote below provides explanations and images of various military crowd control formations which may prove illustrative to activists.⁴⁷³

g. Bull Rushes or Charges

After creating a line or other formation, police will sometimes “bull rush” or charge the crowd, running at full clip toward protesters.⁴⁷⁴ During a bull rush, police will use ‘less lethal weapons’ such as tear gas, pepper spray, impact munitions, and batons against protesters, attacking any protesters in their path and making arrests while doing so.⁴⁷⁵ Activists counteract bull rushes, and arrests during a bull rush, by accurately gauging when one is about to happen and staying ahead of the police lines.⁴⁷⁶ Activists also counteract bull rushes with shield walls and barricades.⁴⁷⁷ The link in the footnote below includes multiple videos of police bull rushing

⁴⁶⁷ *Defeating Police Tactics in Protest Settings: Learnings from the Black Bloc*, CROOKED BOUGH, <https://perma.cc/FR37-AHBM>.

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*; Fearghal Fitzgibbon, *Riot Tactics and Their Origins: How Modern Policing is Influenced by Ancient History*, MEDIUM (Aug. 28, 2020), <https://perma.cc/U9FP-ZU26>.

⁴⁷¹ *Defeating Police Tactics in Protest Settings: Learnings from the Black Bloc*, CROOKED BOUGH, <https://perma.cc/FR37-AHBM>;

⁴⁷² See *Defensive Tactics for Police*, POLICE ONE ACADEMY, <https://perma.cc/GPD4-M6PJ> (noting the use of column, line, and wedge formations as a crowd control tactic).

⁴⁷³ *Crowd Control Formations*, GLOBALSECURITY.ORG, <https://perma.cc/K6UE-VUJ3>.

⁴⁷⁴ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Defeating Police Tactics in Protest Settings: Learnings from the Black Bloc*, CROOKED BOUGH, <https://perma.cc/FR37-AHBM>.

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activists during the 2020 Black Lives Matter protests in Portland, Oregon, which may prove helpful in illustrating what this tactic looks like amidst the chaos of a demonstration.⁴⁷⁸

h. Mass Arrests

Mass arrests, as well as unlawful or violent arrests in general, are a police crowd control tactic—as well as a state and federal repression tactic—used to intimidate protesters, and in some cases, repress their constitutional right to protest.⁴⁷⁹ Mass arrests often follow after police have kettled a crowd of protesters.⁴⁸⁰

i. Snatch and Grab

A snatch and grab is a type of arrest in which a group of police officers target a single protester, swarming that protester together, and placing them under arrest in front of the crowd.⁴⁸¹ A group of officers performing snatch and grabs are often called “snatch squads.”⁴⁸² Police use the snatch and grab technique to intimidate protesters as a crowd control tactic.⁴⁸³

j. Barricades

Police sometimes install concrete or metal barricades to establish zones where protesters are unable to march, congregate, or organize.⁴⁸⁴ When organizing or arriving at an action, protesters should be cognizant of any areas that have been barricaded, keeping exit strategies in mind in the event of kettling.⁴⁸⁵

k. Mobile Response Teams

As an arrest and crowd control tactic, police will sometimes deploy mobile response teams which consists of one or more vehicles with a group of officers, some of whom may be standing on the outside of the vehicle, who are deployed to specific locations to make arrests, control or contain the crowd, or psychologically intimidate protesters.⁴⁸⁶ Activists should remain vigilant

⁴⁷⁸ *Tools and Tactics in the Portland Protests: From Leaf Blowers and Umbrellas to Lasers, Balloons, and Power Tools*, CRIMETHINC. (2020), <https://perma.cc/GC9Q-KRKC>.

⁴⁷⁹ See *Repression of Peaceful Protest*, ACLU, <https://perma.cc/XD9V-37GW> (“[T]he government has developed new tactics to disrupt and restrict lawful assembly and protest. Those who wish to join together in peaceful protests or assembly risk police violence, mass arrests, infiltration, surveillance, and the criminalization of protests itself.”).

⁴⁸⁰ Jen Kirby, *The “Kettling” of Protesters, Explained*, VOX (June 6, 2020), <https://perma.cc/SR6J-QSZA>.

⁴⁸¹ See, e.g., Matthis Chiroux, *NYPD Using Army “Snatch and Grab” Techniques Against OWS Protesters*, HUFFPOST NEWS (Jan. 17, 2012), <https://perma.cc/27XS-MM4B>.

⁴⁸² WARRIOR, CROWD CONTROL & RIOT MANUAL 8–9, <https://perma.cc/L6V9-PE8V>.

⁴⁸³ *Id.*

⁴⁸⁴ *Methods of Crowd Policing*, BRITANNICA, <https://perma.cc/2GGY-AND4>.

⁴⁸⁵ See [Section 2.VI.B.e](#).

⁴⁸⁶ See, e.g., CAL. COMM’N ON PEACE OFFICER STANDARDS AND TRAINING, CROWD MANAGEMENT AND CIVIL DISOBEDIENCE GUIDELINES 21 (2003), <https://perma.cc/D543-PW5M> (describing the use of mobile response teams as a crowd control and containment tactic); CITY OF SACRAMENTO, SACRAMENTO POLICE DEP’T, CROWD & RIOT

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regardless of whether they are in an area with low police presence and coordinate with other activists on the ground to track the movement of any mobile response teams.

1. Spotters

During large demonstrations, police deploy “spotters” on the rooftops of nearby buildings as a way to monitor and control crowds.⁴⁸⁷ Sometimes spotters are equipped with lasers or other marking devices which they use to single out activists for arrest or as targets of ‘Less Lethal Weapons.’⁴⁸⁸ If an activist notices that they’ve been marked, they should prepare for arrest or imminent use of ‘Less Lethal Weapons.’ See [Section 2.VI.B.b](#) for a more detailed discussion on the use of lasers and other marking devices.

m. Plainclothes or Undercover Officers and Agents-Provocateur

Police will often deploy ‘plainclothes’ or ‘undercover’ officers to survey a protest from within the crowd.⁴⁸⁹ Plainclothes and undercover police officers can sometimes be identified by a combination of the following characteristics: steel-toed boots, colored armbands to help uniformed officers identify them, hidden wire peeking out of their clothes, outline of handcuffs in their back pockets, or an outline of a bullet proof vest under their shirt, among others.⁴⁹⁰ Data suggests that plainclothes officers are involved in a shocking number of civilian deaths and may actually “encourage crime.”⁴⁹¹ During the 2020 Black Lives Matter protests, plainclothes and undercover officers were criticized across the country for making violent arrests and shoving protesters into unmarked vans.⁴⁹² Plainclothes or undercover officers will often videotape and photograph protesters during a demonstration, sometimes using the footage to make arrests after the fact.⁴⁹³

Law enforcement, both local and federal, also frequently use plainclothes or undercover officers as ‘agents-provocateur’ who urge real protesters to engage in violence, and in some cases, commit acts of violence themselves.⁴⁹⁴ The best documented case of the U.S. government using

CONTROL MANUAL 13, <https://perma.cc/8P6X-HPFW> (discussing the use of mobile response teams as an arrest tactic to “[g]ain psychological and tactical advantage over a crowd”).

⁴⁸⁷ POLICE EXECUTIVE RESEARCH FORUM, POLICE MANAGEMENT OF MASS DEMONSTRATIONS: IDENTIFYING ISSUES AND SUCCESSFUL APPROACHES 54, <https://perma.cc/A4JH-QAVY>.

⁴⁸⁸ See [Section 2.IV.B.b](#).

⁴⁸⁹ Rachel Tashjian, *Why Are Undercover Police Officers Wearing Such Bad Disguises?*, GQ (June 11, 2020), <https://perma.cc/5BWZ-C5K4>.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² See, e.g., Alana Wise & Brian Mann, *New York Police Draw Anger After Plainclothes Officers Throw Woman in Unmarked Van*, NPR (July 29, 2020, 4:30 PM ET), <https://perma.cc/L8YH-7B4K>.

⁴⁹³ See, e.g., Maxine Bernstein, *Feds Conduct Surveillance from Courthouse, Analyze Social Media Videos, Post Undercover Agents in Crowd, Records Show*, OREGONIAN (July 20, 2020), <https://perma.cc/3VTP-R5XD>.

⁴⁹⁴ Ryan Grim & Jon Schwarz, *A Short History of U.S. Law Enforcement Infiltrating Protests*, INTERCEPT (June 2, 2020), <https://perma.cc/M7UN-J4ZK>.

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provocateurs occurred during the FBI's Counter-Intelligence Program (COINTELPRO), including one incident where local police and FBI burned down a building at the University of Alabama, then declared an unlawful assembly and arrested 150 demonstrators.⁴⁹⁵ COINTELPRO's targeting of BIPOC activists is discussed in [Section 1.VI.C.1](#). Police infiltration of movements more generally is further discussed in [Section 2.VI.B.n](#) below.

n. Surveillance and Infiltration

Law enforcement members can surveil and infiltrate protests and organizations before, during, and after a demonstration. As discussed in more detail in [Section 1.V.D](#), police virtually monitor and surveil activists' and organizations' social media both before and after protests, in many cases disproportionately targeting BIPOC activists and organizations.⁴⁹⁶ Police also physically surveil and infiltrate demonstrations as plainclothes or undercover officers, as discussed in [Section 2.VI.B.m](#) above. Activists should be cognizant of what they post online and who they interact with at protests, keeping in mind that law enforcement may be surveilling their social media accounts and likely have plainclothes or undercover officers on the ground at demonstrations.

2. State and Federal Repression Tactics

All of the aforementioned police tactics can be seen as a form of state and federal repression, that is, the use of force by the state or the federal government in an attempt to control its citizenry's ability to engage in political discourse. State and federal repression tactics can also include anti-free speech and anti-protest legislation, appropriation of funds to militarize police forces, or upgrades to security on state or federal buildings. The ACLU has a searchable section on its website for "[Repression of Peaceful Protest](#)" which includes informative press releases addressing various forms of state and federal repression tactics.

VII. LAW ENFORCEMENT PRESENCE

The presence of law enforcement at protests varies depending on the context and circumstances of such protest. When law enforcement officers are present, activists must anticipate the potential for encounters. Several organizations provide a variety of detailed resources that focus on this topic.⁴⁹⁷ Note that law enforcement presence can take many different forms depending on the

⁴⁹⁵ *Id.*

⁴⁹⁶ *See supra* [Section 1.4.D](#).

⁴⁹⁷ The NLG provides as a resource, *You Have the Right to Remain Silent: A Know Your Rights Guide for Law Enforcement Encounters*. The guide, is available in English, Spanish, Arabic, Bengali, and Urdu. *Know Your Rights*, NAT'L LAWS. GUILD, <https://perma.cc/T6BU-5RJK>. The ACLU also provides a short protest guide, which offers a list of questions and answers discussing what activists should do if their rights are violated at a demonstration or protest. *Know Your Rights: Demonstrations and Protests*, ACLU, <https://perma.cc/UJA3-7FLG>. The Midnight

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type of activism and the environment (e.g., online surveillance while engaging in virtual activism). For example, during the COVID-19 Pandemic, the National Lawyers Guild (NLG) created a new “Know Your Rights” resource specific to law enforcement presence during the pandemic.⁴⁹⁸

A. Militarization of Law Enforcement Agencies

Law enforcement agencies often respond to protests with military-style gear and weapons.⁴⁹⁹ The American Civil Liberties Union’s (ACLU) 2014 report, *War Comes Home: The Excessive Militarization of American Policing*, explains that police use military-style weapons, such as battering rams and flashbang grenades.⁵⁰⁰ Special Weapons and Tactics (SWAT) teams “typically wear combat helmets and ‘battle dress uniforms’ (BDUs), fatigues designed for U.S. Army use.”⁵⁰¹ Police departments also sometimes use armored personnel carriers (APCs), including Mine Resistant Ambush Protected vehicles.⁵⁰² Given the amount of military equipment acquired by law enforcement agencies, as discussed in the next section, it is no surprise that officers often show up to protests in armored vehicles carrying assault rifles. Protesters should be aware of the risk of violence at the hands of law enforcement and possible subsequent legal recourse.⁵⁰³

B. Executive Order 13688

In 2015, President Obama issued Executive Order 13688, that addressed the issue of the militarization of law enforcement.⁵⁰⁴ The President’s executive order aimed “to ensure that [Law Enforcement Agencies] have the proper training regarding the appropriate use of controlled

Special Law Collective also provides a variety of resources about dealing with police, basic legal information, and a legal steps and choices chart. *Know Your Rights Materials*, MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/UJF4-B9Z8>. The CLDC’s website has resources and information ranging on topics from Know Your Rights training and the militarization of the police, to practical guides about “cop watching” or even what to do with one’s subdermal piercings if arrested. *Outreach Materials*, C.L. DEF. CTR., <https://perma.cc/436C-5H5Y>.⁴⁹⁸ *Know Your Rights During COVID-19 (Coronavirus)*, NLG (last updated Mar. 27, 2020), <https://perma.cc/LU5A-6J55>.

⁴⁹⁹ ACLU, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING* (June 2014), <https://perma.cc/85VP-99Z9>.

⁵⁰⁰ *Id.* at 3.

⁵⁰¹ *Id.* at 22.

⁵⁰² See generally *id.* at 5–6 (listing general findings by the ACLU based on combined research and data, including “the use of violent tactics and equipment, including armored personnel carriers”).

⁵⁰³ Maxine Bernstein, *Three Counter-Protesters File Federal Civil Rights Suit Against City of Portland, Police*, OREGONIAN (Oct. 8, 2019), <https://perma.cc/6KT9-2WMA>.

⁵⁰⁴ Exec. Order No. 13,688, 80 Fed. Reg. 3,451 (Jan. 16, 2015).

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equipment, including training on the protection of civil rights and civil liberties.”⁵⁰⁵ The Executive Order was revoked on August 28, 2017, by Donald Trump.⁵⁰⁶

C. Police Violence During the George Floyd Protests

During the George Floyd and Breonna Taylor protests, police across the country engaged in violent militarized tactics against protesters, including pepper spraying children, shooting protesters in the face with rubber bullets, and using tear gas—a chemical weapon banned under the Geneva Convention—in spaces in which protesters were unable to evacuate (forcing them to breathe in the highly toxic chemicals for extended periods of time). Law enforcement also engaged in elaborate “psyops” or “psychological operations” against protesters, using “imagery and ideology drawn from U.S. wars abroad.” Amidst calls for the defunding and abolition of police in the U.S., law enforcement continued to unabashedly engage in the very behaviors activists were protesting. In the wake of these protests, some states have adopted reactionary, ‘pro-law enforcement’ laws which increase penalties for actions against a law enforcement officer.⁵⁰⁷ Other jurisdictions are trying to pass legislation that increases accountability and efforts to de-escalate.

VIII. WEAPONS IN PUBLIC FORUMS

Some activists choose to carry firearms to a protest. Different jurisdictions have differing rules about the legality of taking, or “carrying,” weapons in public.⁵⁰⁸ Additionally, certain public places, such as airports and government buildings, ban firearms by default.⁵⁰⁹ Before activists choose to attend a protest with a firearm, they should check not only the laws about whether they are allowed to do so at all, but also how choosing to bring a weapon can unintentionally elevate an altercation with other activists or the police.⁵¹⁰ While firearms are by no means the only

⁵⁰⁵ *Id.*

⁵⁰⁶ *Presidential Executive Order on Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources*, WHITE HOUSE: EXEC. ORDERS (Aug. 28, 2017), <https://perma.cc/VQT5-AY92>.

⁵⁰⁷ Paul LeBlanc and Maria Cartaya, *Florida Governor Signs Controversial ‘Pro-Law Enforcement’ Law Cracking Down on Riots*, CNN, (April 19, 2021), <https://perma.cc/SY4N-BHWJ>.

⁵⁰⁸ For a summary of Federal and State laws concerning the open carry of firearms, see *Open Carry*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://perma.cc/RCP8-AEJQ>.

⁵⁰⁹ *Id.*

⁵¹⁰ Laurel Wamsley, *Gun-Carrying Protestors Create ‘Tricky’ Question for ACLU*, NAT’L PUB. RADIO (Aug. 18, 2017, 5:56 PM), <https://perma.cc/T5QG-H8SB> (stating that after representing the leader of a far-right rally that turned brutal, the ACLU has reconsidered their position on supporting the free speech rights of people who carry firearms to a protest); Joe Palazzolo, *ACLU Will No Longer Defend Hate Groups Protesting with Firearms*, WALL STREET J. (Aug. 17, 2017, 6:54 PM), <https://perma.cc/EG7A-K942>.

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weapon that may be present at a demonstration,⁵¹¹ this section discusses firearm policy specifically.

A. *Legal Open Carry*

“Open carry” refers to the lawful practice of openly carrying a firearm in a public place. Each state has passed varying laws permitting or restricting open carry of firearms in differing circumstances. Oregon is a permissive rural open carry state,⁵¹² meaning that traditional open carry laws apply but local legislations have the authority to pass laws specific to those jurisdictions to restrict some open carry uses.⁵¹³ For example, cities such as Portland, Beaverton, Tigard, Oregon City, and Salem have passed loaded weapon bans in public places.⁵¹⁴ “Public buildings” also uniformly ban weapons, unless the citizen has a concealed carry permit.⁵¹⁵ Of particular note is that firearms are legally allowed at public universities in Oregon, although they may be allowed only on the grounds and not allowed inside university buildings.⁵¹⁶

B. *Legal Concealed Carry*

Oregon is a shall-issue concealed carry state.⁵¹⁷ In other words, the carrying of concealed firearms is permissible throughout the state, unless in “public places” in some local jurisdictions or in “public buildings,” *except* if the state issues a concealed carry permit to the citizen. The overlapping regulations regarding when a citizen may legally carry a weapon in any space potentially considered “public” should be carefully scrutinized by anyone considering doing so.⁵¹⁸ Furthermore, it is useful for an activist to be aware of the pertinent laws in the event that she finds herself in a situation where a firearm is present.

⁵¹¹ See, e.g., Jazmine Ulloa et al., *7 Stabbed at Neo-Nazi Event Outside Capitol in Sacramento*, L.A. TIMES (Jun. 26, 2016), <https://perma.cc/Z7RX-U8P3> (describing how in June 2016 in Sacramento, white nationalists and counter protesters clashed leaving at least seven people stabbed and many others with bruises, scrapes, and cuts).

⁵¹² Oregon, OPENCARRY.ORG, <https://perma.cc/X6FP-RK36>.

⁵¹³ OR. REV. STAT §166.171–166.175 (2018).

⁵¹⁴ *State v. Christian*, 354 Or. 22, 46 (2013). The Oregon Supreme Court ruled that an ordinance banning loaded firearms in public places did not violate the Second Amendment or Article I, Section 27 of the state’s constitutional guarantee of the right to bear arms. *Id.*

⁵¹⁵ OR. REV. STAT §166.370 (2017) (regarding the possession of a firearm or dangerous weapon in a public building or court facility); OR. REV. STAT §166.370(3)(g) (2017) (permitting those with concealed carry permits under §166.291 to be exempt).

⁵¹⁶ *Oregon Firearms Educational Foundation v. Board of Higher Education*, 264 P.3d 160, 162, 165 (2011). The Oregon Court of Appeals invalidated a public university restriction of firearms on campus grounds as being preempted by the statutory provision. *Id.*

⁵¹⁷ OR. REV. STAT §166.291 (2017) (regarding issuance of a concealed handgun license).

⁵¹⁸ H.R. 38 – *Concealed Carry Reciprocity Act of 2017*, CONGRESS.GOV, <https://perma.cc/JJ34-VWJB>. In January 2017, the Concealed Carry Reciprocity Act of 2017 was introduced as H.R. 3.8., which would grant individuals who have obtained a concealed carry permit in one state the authority to carry a concealed weapon in any other state that generally allows concealed carry. Gun-control advocacy groups such as The Coalition to Stop Gun Violence urge

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C. Protests About Weapons

An increasingly contested topic in U.S. politics is gun control and differing views on the right to bear arms. As additional instances of violence involving firearms appear on the news, so do clashes of people’s views from all corners of the debate. This subject can be particularly precarious due to the subject of the debate itself. For example, even though the debate implicates the constitutional right to free speech, the American Civil Liberties Union (ACLU) has stated that the organization will not represent any protest participant who brings a gun to a demonstration⁵¹⁹ Without endeavoring to acknowledge every aspect of this issue, it is important for activists to consider all possible scenarios—both for their personal safety and their legal liability—when deciding whether or not to participate in these activities.

It is important for any activist who is considering participating in a demonstration about weapons, to ensure they do not engage in teaching or demonstrating the making or use of a weapon. This is because it is a federal offense “to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction”⁵²⁰ either intending or knowing that the recipient will use “the teaching, demonstration, or information . . . for, or in furtherance of, an activity that constitutes a Federal crime of violence.”⁵²¹

against these types of laws because it has the effect of reducing otherwise strong gun-control laws to that of the lowest common denominator. *Guns in Public*, COAL. TO STOP GUN VIOLENCE, <https://perma.cc/L4DX-BPCX>.

⁵¹⁹ Joe Palazzolo, *ACLU Will No Longer Defend Hate Groups Protesting with Firearms*, WALL STREET J. (Aug. 17, 2017, 6:54 PM), <https://perma.cc/EG7A-K942>.

⁵²⁰ 18 U.S.C. § 842(p) (2018).

⁵²¹ 18 U.S.C. § 842(p)(2)(a).

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SECTION THREE – LEGAL CONSIDERATIONS AFTER THE FACT

In case of an arrest, there are resources available to navigate the steps activists may take. The Midnight Special Law Collective produced a flow chart of the arrest process.⁵²² The chart describes the steps and potential choices an activist may encounter from arrest to trial. The Midnight Special Law Collective, The National Lawyers Guild (NLG), and the American Civil Liberties Union (ACLU) have free resources available regarding the rights of activists engaged in protest activity.⁵²³ In addition, the ACLU state chapters include state-specific resources.⁵²⁴ As someone engaged in protest activity, the goals of the protest should be clear. For instance, some activists may envision arrest as an acceptable end-goal, others may not. Some activists may consider criminal charges as acceptable. However, most activists do not intend to be arrested and prosecuted. Regardless, it is important to consider how the risks and consequences of arrest may disproportionately affect different groups of people.⁵²⁵

I. ARRESTS

At a protest, there may be several different arresting agencies present, such as a sheriff's department, a police bureau, highway patrol, or federal agencies such as the U.S. Marshals Service, U.S. Customs and Border Protection, or the Federal Protective Service. If attending a protest that may result in arrest, activists should inform friends or family that they'll be attending the protest, and make arrangements for the care of animals, children or others in their care in the event of arrest. Activists may also consider carrying a small amount any required medication on their person (in a prescription bottle with the activist's legal name on it) to prepare for the risk of being detained overnight. Activists should be cognizant that law enforcement may confiscate the medication as "evidence" and not allow activists access to it, thus it is also helpful to inform friends or family about any required medication (including the name of the medicine, the dosage, and the prescribing doctor's name) so friends and family can coordinate with a legal hotline or jail staff to ensure an arrested activist has access to medicine while in jail.

As mentioned above, trans and nonbinary activists face unique challenges upon arrest. The National Center for Transgender Equality provides a useful [Guide for Transgender People](#) which includes resources and information that can assist trans and nonbinary activists in better planning for arrest.⁵²⁶ This information is also beneficial for cisgender activists and allies of trans and nonbinary activists.

⁵²² *Legal Steps and Choices*, MIDNIGHT SPECIAL L. COLLECTIVE, <https://perma.cc/5873-MBS4>.

⁵²³ See *supra* [Definitions](#).

⁵²⁴ *Affiliates*, ACLU, <https://perma.cc/4JVD-649J>.

⁵²⁵ See [Section 1.VI](#).

⁵²⁶ NATIONAL CENTER FOR TRANSGENDER EQUALITY, PARTICIPATING IN DIRECT ACTIONS: A GUIDE FOR TRANSGENDER PEOPLE (2011), <https://perma.cc/CU78-8QUG>.

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Activists can also call their local legal support and jail support hotlines before an action to gauge likelihood of arrest and get arrest planning tips.

An *arrest* occurs when law enforcement agencies restrain the movement of an individual to the extent that the individual cannot exercise their freedom of movement.⁵²⁷ The test for whether an arrest has occurred is objective; whether a reasonable person, under the circumstances, would believe that they were free to leave or not.⁵²⁸ A person can also ask if they are free to leave.

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures without a warrant.⁵²⁹ An arrest constitutes a “seizure” and can only occur lawfully if the police have probable cause to make the arrest.⁵³⁰ In *Terry v. Ohio*, a seminal Supreme Court opinion about the Fourth Amendment, the Court held that “only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.”⁵³¹ In *Beck v. Ohio*, a Supreme Court opinion concerning evidence in an unlawful arrest, the Court noted that the government has probable cause to make an arrest when “the facts and circumstances within their knowledge and of which they had reasonably trustworthy information” would lead a prudent person to believe that the arrested person had committed or was committing a crime.⁵³² Many arrests require a warrant to be issued by the court. However, an arrest for a felony may occur without a warrant if the activity giving rise to the arrest is conducted in a public place.

Activists who are engaged in protest activity should be aware that their rights are limited in public forums and they may be subject to an arrest without a warrant.⁵³³ Police only require probable cause in these situations.⁵³⁴ A police officer may use force to stop and arrest an activist if the officer reasonably believes that criminal activity may be underway.⁵³⁵ A police officer may also use force to stop and arrest an activist if the officer reasonably believes there may be weapons on the activist’s person.⁵³⁶ It is important to note that the officer can be wrong, but still reasonably believe something to be true. The officer may briefly search the activists’ outer

⁵²⁷ *Arrest*, CORNELL L. SCH., <https://perma.cc/VC5D-3LM7>.

⁵²⁸ *U.S. v. Robinson*, 625 F.2d 1211, 1216 (5th Cir. 1980).

⁵²⁹ U.S. Const. amend. IV.

⁵³⁰ *Arrest*, CORNELL L. SCH., <https://perma.cc/VC5D-3LM7>.

⁵³¹ *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968).

⁵³² *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

⁵³³ *See supra* [Sections 2.II.C, 3.I](#).

⁵³⁴ *Arrest*, CORNELL L. SCH., <https://perma.cc/VC5D-3LM7>.

⁵³⁵ *See* Paul Bergman, *How Much Force Officers Can Use During Arrest*, NOLO, <https://perma.cc/Y3FE-GAFY> (explaining that reasonable force is generally allowed depending on the circumstances, which include analysis of issues such as the severity of the crime, whether the suspect poses a threat, or whether the suspect is attempting to flee or otherwise resisting arrest); *See also* Terry Stop vs Arrest, DAIGE LAW GROUP, <https://perma.cc/57AP-XGU5> (explaining different levels of force that may be used and different levels of proof. For a Terry Stop, the officer must have reasonable suspicion that crime is afoot. For an arrest, the officer must have probable cause).

⁵³⁶ *Id.*; *see also*, *Police Use of Force*, NAT’L INST. OF JUSTICE, <https://perma.cc/T87A-ZMEU> (adding, specifically, self-defense or the defense of others as a reasonable determination for officer use of force against a suspect).

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clothing to ensure the safety of the officer and people within the area; this is commonly referred to as a “Terry Frisk.”⁵³⁷ A Terry Frisk may lead to probable cause for arrest if items of a criminal nature are found on the activist.⁵³⁸ This may lead to a full arrest and a complete search of the activist’s body.⁵³⁹ Once arrested, the police follow booking process. The booking process is where authorities obtain the fingerprints and current photo(s) of the arrested person.⁵⁴⁰ After this step, the police will have a permanent record of the arrested person’s details. There are many situations, however, in which prosecutors decide not to file charges, thus many activists are released without going to court.⁵⁴¹

A. *The Miranda Warning*

Once the activist is in police custody (under arrest), any questions or interrogation(s) are subject to Miranda warnings.⁵⁴² That being said, many times activists are removed from the streets but not ever fully under police custody or interrogated and Miranda Warnings do not apply.⁵⁴³ The Miranda warning, or Miranda rights, are named after the Supreme Court case, *Miranda v. Arizona*.⁵⁴⁴ In *Miranda*, the Court held that admission of an elicited incriminating statement by a suspect not informed of their rights against self-incrimination and their right to counsel violates the Fifth Amendment and the Sixth Amendment, through the incorporation of these rights into state law.⁵⁴⁵

⁵³⁷ *Terry*, 392 U.S. at 34 (“We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.”).

⁵³⁸ *Id.* at 7–8.

⁵³⁹ Paul Bergman, *Police Searches After an Arrest: Scope and Intensity*, NOLO, <https://perma.cc/42P6-BUQC>.

⁵⁴⁰ Sara J. Berman, *What Happens During Booking?*, NOLO, <https://perma.cc/4SKM-Y7S2>.

⁵⁴¹ *Arrests That Don’t Result in Criminal Charges*, NOLO, <https://perma.cc/V6RJ-W4KE>.

⁵⁴² *Miranda Warnings and Police Questioning*, FINDLAW, <https://perma.cc/G8U5-M5TL> (explaining that Miranda Warnings apply when a suspect is in police custody and when a suspect is under interrogation by police officers).

⁵⁴³ RITGERS & RITGERS, *The Police Officer Did Not Read Me My Miranda Rights. Will My Case Be Dismissed?*, <https://perma.cc/KC3R-R2CC> (Explaining that *Miranda* protection only applies to individuals who are in interrogated. The Court defined “interrogations” as “express questioning or its functional equivalent,” meaning law enforcement words or actions which the agents should know are reasonably likely to elicit an incriminating response. If an “interrogation” does not occur, then the law enforcement agents are not obligated to offer *Miranda* warnings.)

⁵⁴⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵⁴⁵ *Id.* (“To summarize, we hold that, when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously

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Because of this decision, police officers must give the arrested person warnings to ensure that any statement(s) made by them are made with full knowledge of their rights.⁵⁴⁶ The arrested person has the right to:

- *Remain silent* – anything the arrested person says can and may be used against them in a court of law.
- *Counsel* – the arrested person has the right to a lawyer present before and during questioning; and if they cannot afford the services of a lawyer, they have the right to have one appointed, at public expense, to represent them before and during the questioning.⁵⁴⁷

B. Types of Offenses

Offenses are generally categorized as either infractions, misdemeanors, or felonies. They can be summarized as:

- *Infraction(s)* – often referred to as a petty offense, is the violation of an administrative, state or county regulation, or ordinance. Infractions—for example, traffic or parking tickets—are often not considered a criminal offense and thus are not punishable by incarceration.⁵⁴⁸
- *Misdemeanor(s)* – considered less serious than felony charges, but more serious than infractions.⁵⁴⁹ A criminal misdemeanor offense includes crimes include: public drunkenness, vandalism, possession of certain types and quantities of drugs, shoplifting, trespassing and petty theft.
- *Felonies* – these are serious crimes that are deemed a danger the public and attract higher penalties.⁵⁵⁰ Felony crimes include: arson, murder, homicide, vehicular manslaughter, felony DUIs, fraud, assault/battery, grand theft auto, terrorist threats, and sexual assault.

honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that, if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.”).

⁵⁴⁶ *Miranda Warnings and Police Questioning*, FINDLAW, <https://perma.cc/G8U5-M5TL> (showing how most Americans don’t know exactly what their rights are upon arrest).

⁵⁴⁷ *Id.*

⁵⁴⁸ *Infractions*, FINDLAW, <https://perma.cc/4ZRU-HX3N>.

⁵⁴⁹ *Misdemeanor Charges 101: Flexible Treatment, Federal Treatment and Consequences*, FINDLAW, <https://perma.cc/E93J-BBBE>.

⁵⁵⁰ *Felonies*, FINDLAW, <https://perma.cc/49YL-TKU5>.

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C. Potential Charges and Offenses

The potential charges⁵⁵¹ vary from state to state, and various types of demonstrations will involve different types of offenses but may include (non-exhaustive):

- Resisting arrest or delaying a peace officer;
- Disrupting a public meeting;
- Riot and unlawful assembly;
- Failure to disperse;
- Disturbing the peace;
- Trespassing;
- Refusing to obey a peace officer;
- Attempting to free a person who has just been arrested; and
- Using force, a threat of force, or physical obstruction to interfere with a person’s right to reproductive health services or to attend a place of religious worship.⁵⁵²

D. Jail

After being arrested, an activist may be brought to jail and booked. Some activists are only arrested and cited, without ever being brought to jail. If an activist is brought to jail, they will generally undergo some version of the following processes.

Upon arrival, the arrestee will undergo the booking process, which can be time consuming if the activist has never been booked at that jail before. During booking, officers will compile the arrestee’s relevant information (legal name, contact information, and alleged crime), check for outstanding warrants, conduct a full body search on the arrestee, confiscate and catalogue the arrestee’s personal effects, photograph the arrestee for their mugshot, and take an impression of the arrestee’s fingerprints.⁵⁵³

After booking, the arrestee will be taken to a holding cell where they will wait to undergo a “recognizance interview.” A recognizance interview, sometimes called a pre-trial release interview, is a voluntary interview meant to assess “the defendant’s risk of flight or of threat to the safety of the community or any person, or to the integrity of the judicial process.” While the

⁵⁵¹ A *charge* is a “formal accusation of criminal activity” that the prosecuting attorney determines “after reviewing police reports, witness statements, and any other evidence of wrongdoing.” If a person is arrested, “formal charges are announced at [the] arrested person’s arraignment.” *Charge*, CORNELL L. SCH.: LEGAL INFO. INST., <https://perma.cc/7WUL-6YP2>.

⁵⁵² ACLU, KNOW YOUR RIGHTS: FREE SPEECH, PROTESTS & DEMONSTRATIONS IN CALIFORNIA 15 (Jan. 2010), <https://perma.cc/6WBY-85HV>.

⁵⁵³ *Police Booking Procedure*, FINDLAW, <https://perma.cc/8YXW-R6L7>.

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specific questions of the interview vary by jurisdiction, interviews generally investigate “the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings.”⁵⁵⁴ If a defendant’s interview suggests they do not pose a flight risk or danger to the community, they will be released on their “own recognizance,” meaning the defendant is not required to pay bail and is “merely released after promising, in writing, to appear in court for all upcoming proceedings.”⁵⁵⁵

If an arrestee needs to pay bail, they can call a friend or family member to ask them to do so, or can call a jail support hotline or bail fund to arrange for their bail to be paid. See [Section 1.III.A.1](#) for more information on jail support hotlines and [Section 1.III.C](#) for more information on bail funds. An arrestee may not be bailable if they have an outstanding charge or have violated probation or parole. In those cases, an arrestee often needs to remain in jail until a judge rules whether they can be released. If an arrestee is unable to be released on their own recognizance or bailed out, they may be transferred from a holding cell into long-term jail housing.

II. RESPONSE TO POLICE ACTION

Below is a list of key suggestions that activists engaged in protest activity should keep in mind when responding to police action:

- *Be courteous but firm* – activists should not argue with the police or make any attempts to run away when stopped.
- *Do not consent to anything* – activists should not give consent to searches, agree to pleas, or provide additional information without consulting a lawyer. The only phrase(s) that should be spoken should be: “no comment,” “no consent,” and “not guilty.” This may be difficult for juveniles and other vulnerable people who may be promised leniency for cooperation.
- *Comply with police orders physically* – activists should not use their bodies to protest police orders. If an activist is ordered to get on the ground, or to place her hands on the wall, the person should comply, or she may put themselves in further risk. No sudden movements or reaching into pockets should be attempted.
- *Obtain police information* – activists should ensure that the details of the police officer(s) they interact with are recorded; such details include badge numbers, names, and reason

⁵⁵⁴ *Pretrial Release*, AM. BAR. ASS’N, <https://perma.cc/8LBX-HP6X>.

⁵⁵⁵ *‘Own Recognizance’ Release*, FINDLAW (Jan. 24, 2019), <https://perma.cc/AQ42-KU4W>.

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for stop, frisk, or arrest. If this information cannot be obtained and there is a witness or legal observer involved, the activist can get their information instead.

III. OBTAINING A LAWYER

After arrest, an activist can invoke their right to counsel. If an activist invokes their right to counsel all interrogations must cease until the activist has consulted their lawyer and any subsequent interrogations require the lawyer's presence. Regardless of invocation, arrested people may make phone calls to contact their lawyer or inform someone of their arrest.⁵⁵⁶ The trial court is under an obligation to ensure that the accused is well represented to ensure compliance with the Sixth Amendment's right to counsel clause and the Fourteenth Amendment's due process clause.

In *Alabama v. Powell*, the Supreme Court held that "we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process."⁵⁵⁷ The Court stated, "we are of [the] opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment."⁵⁵⁸ The case is significant because it explained that the right to retain and be represented by a lawyer was fundamental to a fair trial. Moreover, it underscored that at least in some circumstances, the trial judge must inform a defendant of this right.⁵⁵⁹ Additionally, if the defendant cannot afford a lawyer, the court must appoint counsel sufficiently far in advance to provide the defendant with "sufficient time to advise with counsel and prepare his defense."⁵⁶⁰

A. Public Defenders

Among other issues, the Sixth Amendment provides accused a right to counsel if she cannot afford one.⁵⁶¹ Once in court, the judge will ask if the accused can afford a lawyer. If she cannot,

⁵⁵⁶ See Ave Mince-Didier, *What to Do and Not Do When Arrested*, NOLO: CRIMINAL DEFENSE LAWYER, <https://perma.cc/Z4HR-Z45L> (explaining that this 'right' varies from zero to perhaps many calls, and an incarcerated person should assume calls made to anyone aside from a lawyer will be recorded).

⁵⁵⁷ *Powell v. State of Ala.*, 287 U.S. 45, 65 (1932).

⁵⁵⁸ *Id.* at 71.

⁵⁵⁹ *See id.* at 57 (demonstrating that the Supreme Court demonstrated, by reversing the previous court's ruling where counsel had not been appointed to the defendant and the judge, in an appearance immediately preceding the court trial merely stated that all members of the bar had been assigned (under anticipation that the defendant would be counselled), a judge must advise a defendant of their right to specific counsel).

⁵⁶⁰ *Id.* at 59–60 ("[A] defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense").

⁵⁶¹ U.S. Const. amend VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted

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the judge will ensure that one is appointed. Most of the lawyers appointed will be from the public defender's office or from a panel of private lawyers. The accused has the right to ask the judge to replace her public defender if she is not satisfied with the lawyer who was appointed.⁵⁶²

B. Private Lawyers

The accused may want to hire their own lawyer, or a non-court appointed lawyer with experience in protest lawyering. The private lawyer is more likely to focus solely on the accused's case with the aim of getting the charges dropped or reduced. When risking arrest, it is important that the activist has the contact details of a private lawyer at hand (for instance, written on her arm with a permanent marker) and ensure that the lawyer is on standby during the protest in case her services are required.

Other options for seeking counsel include:

- *Pro bono counsel* – when a lawyer takes on a case free of charge.⁵⁶³
- *Low bono counsel* – when a lawyer takes on a case at a reduced rate.⁵⁶⁴
- *Organizational representation* – when an organization, often a non-profit, takes on a case under the rules of their organization; sometimes organizations use cases that come out of protests as test-cases or to impact other litigation or legislation.
- *Private counsel* – when a lawyer takes on a case as a solo practitioner or through their firm for a fee.

C. Communicating with Lawyers

Once arrested, the activist should only communicate through her lawyer. Before an activist who is in police custody can be questioned, the activist must be given their *Miranda Warnings* under

with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. *Sixth Amendment*, CORNELL L. SCH.: LEGAL INFO. INST., <https://perma.cc/7ACU-9WMJ>.

⁵⁶² See *Strickland v. Washington*, 466 US 668, 687 (1984) (ruling that the Sixth Amendment guarantees the right to “reasonably effective” counsel); see also, Thomas Seigel, *Before You Fire Your Court-Appointed Lawyer*, LAWYERS.COM, <https://perma.cc/X9SN-D2GF> (explaining that court-appointed lawyers are not inherently worse than private counsel and also that asking for a new court-appointed lawyer is both legally acceptable, but every attempt should be made by the accused to make arrangements work, if possible).

⁵⁶³ *What Is Pro Bono?*, GEO. LAW, <https://perma.cc/Z2YT-WAEF>.

⁵⁶⁴ *The Changing Contours of “Low Bono,”* NWSIDEBAR (Mar. 28, 2016), <https://perma.cc/BR46-SXYC>.

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the Fifth Amendment, including the right to seek legal counsel before answering questions.⁵⁶⁵ In this circumstance, an activist may request an attorney immediately, even before they are charged with any crime or offense.⁵⁶⁶ The Sixth Amendment right to counsel attaches when the state decides to charge the accused with a specific offense.⁵⁶⁷ Once charged, any further communication with the accused should only be done through or in the presence of defense counsel. Courts have been willing to discard incriminating evidence that the police or someone on the behest of the police obtained in violation of the Sixth Amendment right to counsel when the evidence relates to a matter for which the accused has already been arraigned.⁵⁶⁸ However, for matters which are not in court and are not related to the primary offense, the Supreme Court has held that the Sixth Amendment protections do not apply.⁵⁶⁹ Once hired or appointed, the communication between a lawyer and client becomes privileged communication.⁵⁷⁰ This means that any communication between the client and her lawyer cannot be used as evidence in court nor can the lawyer be forced to disclose any such communication to the police.

D. Dispute Resolution

In the context of dispute resolution, the activist may wish to consider alternatives instead of immediately seeking the services of a lawyer. The Consumer Reports Books published, *You Don't Always Need a Lawyer: How to Resolve Your Legal Disputes Without Costly Litigation*,⁵⁷¹ which may be useful to activists who are unsure whether litigation may be the best strategy for them. The text discusses alternatives to litigation such as arbitration and mediation; while also explaining alternative avenues like small claims courts, joint actions, and neighborhood panels. The first part of the text discusses these alternatives to litigation and broader questions about when one should hire a lawyer and how to choose a lawyer. The final parts of the text offer advice on how to prevent disputes. The text also includes useful resources on agencies and industry groups that provide alternative dispute resolution. In considering these options it is important to distinguish criminal settings from civil ones.

⁵⁶⁵ Laura Sesana, *The Difference Between the Fifth and Sixth Amendment Right to Counsel*, ARBITER NEWS, <https://perma.cc/JWK4-E293>.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Brewer v. Williams*, 430 U.S. 387, 405–06 (1977) (holding that incriminating statements made by the defendant were inadmissible because the accused did not waive his right to counsel).

⁵⁶⁹ *Texas v. Cobb*, 532 U.S. 162, 168, 173 (2001) (holding that there is no Sixth Amendment right to counsel for uncharged crimes that are “factually related” to a charged offense unless the uncharged crimes would be considered the same offense under the *Blockburger* test).

⁵⁷⁰ Micah Schwartzbach, *The Attorney-Client Privilege: Most, but Not All, of What You Tell Your Lawyer Is Privileged*, NOLO, <https://perma.cc/P3TH-LHQ3>.

⁵⁷¹ CRAIG KUBEY, *YOU DON'T ALWAYS NEED A LAWYER: HOW TO RESOLVE YOUR LEGAL DISPUTES WITHOUT COSTLY LITIGATION* (Consumer Reports Books ed., May 1, 1991).

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1. Public Communication

In most cases, the accused should not give any information or discuss an ongoing case with the public. The accused should seek advice from a lawyer on how much information about the case should or can be provided to the public.

2. Social Media

Social media and other electronic platforms have become primary forms of communication. These mediums often facilitate commerce, education, relationships, health awareness, political activism, and protest movements; and they are a source of social change around the world.⁵⁷² Activists who have a case against sometimes want to keep their social media followers updated on the case. However, postings should not jeopardize the case in court, and they should not target court officials or seek to threaten or intimidate any persons involved in the court process, including witnesses. Activists should familiarize themselves with attorney-client privilege, and ensure they understand whether a post would waive this privilege.

Although the rules on admissibility of electronically stored information vary from state to state, law enforcement agencies can keep track of a person simply by following their social media pages. Anything posted can be used by the prosecution in court if they are able to lay a proper foundation for its admissibility and relevance.

A court is willing to accept information extracted from social media pages if the prosecutor can link the accused to the ownership and management of the account at the time in question.⁵⁷³ In *Tienda v. State*, the court held that there was sufficient evidence produced by the prosecutor to allow the admissibility of posts on the accused's Myspace account that implicated him in a criminal activity.⁵⁷⁴

3. Media

An activist may want to give television interviews to explain her role in a protest and/or subsequent arrest. This should only be done after consulting with a lawyer, as any information given during the interview may be used by the prosecution against her. Additionally, an activist should consider whether they are the right person to speak to the media. Activists should ensure that adequate space and opportunity is provided for those who are directly impacted by the content of the protest to speak with the media (e.g., if protesting the treatment of the LGBTQIA+

⁵⁷² Kim Garst, *Social Media as a Catalyst for Social Change*, HUFFPOST (last updated Dec 6, 2017), <https://perma.cc/KZ79-WGM9>.

⁵⁷³ *People v. Valdez*, 201 Cal. App. 4th 1429, 1434–37 (Cal. App. 4th Dist. 2011).

⁵⁷⁴ *Tienda v. State*, 358 S.W.3d 633, 647 (2012).

community, activists should ensure that members of that community are given priority in speaking with the media).

The legal issues related to filming or live streaming include but are not limited to:

- Engaging in activity on public vs. private property
- Consent
- Intellectual property concerns (branding rights)
- Reputational issues
- Safety issues (e.g., being tracked on social media, or posts being collected as evidence)
- Making media users targets for law enforcements
- Spies/infiltrators

IV. COURT PROCESS

Below is a brief overview of key points of the court process:

- Once arrested and a decision is made to prosecute, the police can give a citation and tell the activist when to come to court to face charges.
- The police may keep a person in jail, but she may have a right to bail immediately. If she receives bail within 48 hours, a judge will review the police reports to see whether the report shows any criminal act.⁵⁷⁵
- In any event, an arrested person must be seen in court within two business days to be informed as to whether any charges have been made.⁵⁷⁶

A. Arraignment

The first appearance in court of the accused is called arraignment. In court, the charges will be read by the court clerk. The magistrate or judge will listen to the charges and the activist (now the accused) will be asked how they would like to plead.⁵⁷⁷ Their options are:

- Not guilty: The accused disagrees that she has committed the offense or agrees that she has committed the offense but believes she has a valid defense. The case will go to trial.
- Guilty: The accused admits to committing the offense. Often, this is because of a deal between the accused and the prosecution wherein the accused agrees to plead guilty in exchange for a lesser sentence.

⁵⁷⁵ *Chronology: The Arrest Process*, FINDLAW, <https://perma.cc/7FPN-EEJH>.

⁵⁷⁶ *Id.* This court appearance is known as arraignment. *What Is the Process for an Arraignment Hearing?*, FINDLAW, <https://perma.cc/8YHB-6NB2>.

⁵⁷⁷ *Legal Terms Glossary*, OFFS. U.S. ATT'YS, <https://perma.cc/95R2-TUBJ>.

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- No contest: Only allowed in certain jurisdictions, the accused does not dispute or admit the charges, but the immediate consequences are much the same as a guilty plea.
- Alford Plea: The accused does not admit to the act but admits that the prosecution is likely able to prove the charge. Essentially, the defendant is pronounced guilty without admitting guilt.⁵⁷⁸

The accused should request to speak to a lawyer to receive appropriate advice on her options. If, for some reason, she has not had access to a lawyer before being present before a judge, it is better to plead not guilty, because it might not leave a guilty plea off the table at a later date—under advisement of counsel—whereas a guilty plea will necessarily end any possibility of getting a better outcome.

B. Bail Bond

Bail becomes an issue once the accused pleads not guilty and the court sets a hearing date. The court will give the accused bail terms, usually by setting an amount that must be paid to the court as a guarantee of availability at future court hearings. This amount can either be paid in full to the court or an arrangement may be made with a bail agent. Bail is a critical issue, as bail amounts may be set above the ability of what an arrested activist can afford. Judges often, but not always, have discretion over setting the bail amount.⁵⁷⁹

Activists engaged in protest activity should make arrangements to facilitate the payment of bail as soon as possible. Some considerations that are relevant to this are; Does the accused have dependents or the money to pay bail, what debt could the accused take on to get the money to pay bail? Is the money retrievable? Would staying in jail rather than posting bail be productive for the cause and worth it for the accused personally? Activists engaged in protest activity may be students who cannot miss class, workers who cannot miss work, or caretakers who must care for their loved ones. Depending on the level of violence at a protest, those arrested for violent acts and damage to property may have their bail set at a high amount or bail might not be granted, requiring the protester to remain behind bars.⁵⁸⁰

1. Courtroom Etiquette

⁵⁷⁸ North Carolina v. Alford, 400 U.S. 25, 37 (U.S. 1970) (“An individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime . . . when . . . a defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt.”).

⁵⁷⁹ Lindsey Carlson, *Bail Schedules: A Violation of Judicial Discretion?*, PRETRIAL JUSTICE INST. (Dec. 6, 2010), <https://perma.cc/ZN98-6DTL>.

⁵⁸⁰ Brent Weisberg, *Accused Vandal Held on \$250k Bail for Protest Damage*, KOIN6 (Nov. 16, 2016, 8:53 AM), <https://perma.cc/7P4Q-QP8U>.

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Activists and their supporters should remember that once in court, certain standards of conduct are expected; regardless of whether they agree with them or not. In a Chicago court, the judge had the mother and sister of an activist detained after in disagreement with the high bail amount, they chanted “Black lives don’t matter.” The judge stated that she would not tolerate any disrespect in her courtroom.⁵⁸¹ Amidst the COVID-19 pandemic, courtroom appearances, including hearings and trial, were conducted virtually. Activists and supporters were and are still expected to follow courtroom etiquette, even when appearing remotely, and there may be additional protocols relevant to such situations.

C. Trial

If an activist ends up standing trial, it may be useful for her to ask her lawyer to provide basic information about what to expect, including what this experience may look like procedurally and advising how to navigate the process; it may help mitigate the stressful and sometimes alien nature of standing trial. Basic explanations of misconceptions around what it means to stand trial might be useful in this context (for example, explaining that standing trial does not mean that an accused will necessarily be convicted of any crime) as well as advice about the type of conduct that may or may not be well-received in court, the length of proceedings, the types of questions to expect, the matter in which to answer such questions, and other preparation could also be useful.

1. Necessity Defense

While individual strategies of defense lawyers will differ, the “Valve Turners” discussed above attempted to use necessity as a defense in their trial. The necessity defense is traditionally, and rarely to any effect, used in very specific situations where crimes were committed to avoid greater harm.⁵⁸² Five activists were charged with criminal trespass, among other things, and argued that their actions were necessary because they had “exhausted all legal means to reduce or eliminate a clear and present danger, namely the threat of climate change.”⁵⁸³ Originally, three of the five valve turners were convicted of felonies and misdemeanors. But in 2019, Ken Ward’s conviction was reversed, subsequently setting a Washington State precedent reorganizing the necessity defense for direct action for the sake of preventing catastrophic climate change.⁵⁸⁴ In Minnesota, however, two of the valve turners were acquitted of all charges before the necessity

⁵⁸¹ Steve Schmadeke & Peter Nickeas, *Shouts of ‘Black Lives Don’t Matter’ as High Bail Set for Protestor*, CHI. TRIBUNE (July 12, 2016, 5:30 AM), <https://perma.cc/PW9F-Y4ZC>.

⁵⁸² *Valve Turners*, CIV. LIBERTIES DEF. CTR., <https://perma.cc/N43R-6HTU>.

⁵⁸³ Michelle Nijhuis, *I’m Just More Afraid of Climate Change Than I Am of Prison*, N.Y. TIMES (Feb. 13, 2018), <https://perma.cc/JTY2-KBTA>.

⁵⁸⁴ *Valve Turners*, CIV. LIBERTIES DEF. CTR., <https://perma.cc/N43R-6HTU>; *Washington v. Ward*, No. 77044-6-1, slip op. (Wash. Ct. App. Apr. 8, 2019).

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defense was used. The judge found that the defendants had caused no damages, and therefore the prosecution could not meet the burden of proof that they committed a crime.⁵⁸⁵

D. Jails and Prison

If an activist ends up in jail or prison, it would be useful for them to get information from a lawyer about what to expect. Jails are typically run by local law enforcement agencies and are used to hold individuals awaiting trial or serving sentences for misdemeanor offenses.⁵⁸⁶ Prisons are operated by state agencies or the Federal Bureau of Prisons and are reserved for more serious crimes, such as felonies.⁵⁸⁷ A discussion with a lawyer about conduct in prison would likely be helpful in ensuring that activists are aware of the potential consequences of their behavior in this environment. It may also be useful to briefly explain what rights prisoners are entitled to while in prison.⁵⁸⁸

1. Prison Strikes

The prevalence of prison strikes as a means of protest, or at least the prevalence of reports of prison strikes, has increased significantly. From late August to early September 2018, prisoners nation-wide participated in labor strikes, hunger strikes and sit-ins to protest the treatment of inmates.⁵⁸⁹ The organization of a large-scale prison strike may require a targeted media strategy to maximize effectiveness of spreading a message. Title 28, section 541.3 of the Code of Federal Regulations includes “Engaging in or encouraging a group demonstration” and “Encouraging others to refuse to work, or to participate in work stoppage” both as “high severity level prohibited acts.”⁵⁹⁰ The code also lists possible available sanctions for these acts.

V. OTHER CONSIDERATIONS

A. Civil Suits and Temporary Restraining Orders

⁵⁸⁵ Erin Grady, *Victory for Valve Turners in Minnesota*, CIV. LIBERTIES DEF. CTR. (Oct. 9, 2018), <https://perma.cc/BZ2Q-WQEU>.

⁵⁸⁶ HG.ORG, *What is the Difference Between Jail and Prison*, <https://perma.cc/NWP5-ZFNV>.

⁵⁸⁷ *Id.*

⁵⁸⁸ *See e.g. Prisoners’ Rights*, CORNELL L. SCH. WEX, <https://perma.cc/P32R-76V5>.

⁵⁸⁹ Laignee Barron, *Here’s Why Inmates in the U.S. Prison System Have Launched a Nationwide Strike*, TIME (August 22, 2018), <https://perma.cc/KRC8-STT5>.

⁵⁹⁰ 28 C.F.R. §541.3 (2018).

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Some activists who have experienced violence at the hands of police undertake civil lawsuits against the police department or the city.⁵⁹¹ Some activists find closure through bringing a lawsuit while others find the process emotionally draining and retraumatizing. Activists should speak with organizations or attorneys in their jurisdictions who specialize in bringing police brutality lawsuits to see if a civil suit is a good fit for their circumstances.

Activists have also sought temporary restraining orders (TROs) against cities and police departments amidst ongoing protests to restrain police from using specific tactics.⁵⁹² TROs have proven to be a successful tool in not only restraining harmful police tactics during ongoing demonstrations, but in holding police departments and cities accountable for violence during protests. For example, in Portland, Oregon, a federal judge issued sanctions against the city of Portland after finding that police officers had violated his previously issued TRO related to the use of less-lethal weapons during protests.⁵⁹³ One city restrained with a similar TRO, Detroit, responded with a countersuit accusing demonstrators involved in the 2020 Black Lives Matter protests as being part of a “civil conspiracy . . . to disturb the peace, engage in disorderly conduct, incite riots, [and] destroy public property,” among other things.⁵⁹⁴

B. Record Expungement

Activists who have been arrested can consider record expungement, a process in which the legal record of an arrest or conviction is sealed or erased. Depending on what state an activist was arrested in, and other relevant factors such as the crime committed, activists may be eligible to expunge or seal their criminal charges. Activists should check their county and state laws for policies regarding their eligibility for such as process and also for what information is included on a background check.

C. Grand Juries and Grand Jury Resistance

In some circumstances, an activist or organizer may be subpoenaed to testify at a grand jury to obtain an indictment for another activist or organizer. A grand jury hears evidence presented by a prosecutor and decides whether someone should be charged (or “indicted”) with a crime. Grand juries have been used as a state and federal repression tactic to gather information on political movements and to create fear and mistrust within a community. Some activists choose

⁵⁹¹ See, e.g., Conrad Wilson, *Injured Portland Protesters File Lawsuits Against Police Brutality*, OPB (June 8, 2020), <https://perma.cc/H263-AYPX>.

⁵⁹² See, e.g., Meerah Powell & Kimberley Freda, *Judge Issues Temporary Restraining Order Against Portland, Police Bureau for Protester Surveillance*, OPB (July 30, 2020), <https://perma.cc/5XJJ-VEGB>.

⁵⁹³ Steve Benham, *Judge Orders Sanctions Against Portland Police in Protest Lawsuit*, KATU2 (Mar. 16, 2021), <https://perma.cc/3QJV-XQVQ>.

⁵⁹⁴ Chris Gelardi, *Detroit is Suing Black Lives Matter Protesters for “Civil Conspiracy”*, INTERCEPT (Dec. 21, 2020), <https://perma.cc/EH9R-F5FB>.

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to “resist” grand juries by refusing to testify. The Grand Jury Resistance Project has created an [informative brochure](#) with information on grand jury resistance.⁵⁹⁵

VI. BURNOUT

As discussed in [Section 1.VIII](#), the work of an activist can be both mentally and physically challenging, and can lead to burnout due to direct and vicarious trauma. Activists often put themselves in harm’s way, witness harm to others, or provide physical and emotional support for others who have been harmed. The best way for activists and organizers to prevent burnout and the burnout of their fellow activists, along with engaging in consistent and proactive self-care, is to recognize the signs and symptoms of traumatic stress reactions, and to seek regular emotional support or therapy.⁵⁹⁶ Activist Trauma Support has created an informative zine for identifying, addressing, and recovering from activist trauma, which can be accessed through the link contained in the footnote below.⁵⁹⁷ Below are a few examples of possible signs and symptoms of traumatic stress:

- **Emotional:** Emotional signs of traumatic stress may include sadness, feelings of helplessness, feeling overwhelmed, irritability, or anger with self or others.⁵⁹⁸
- **Cognitive:** Cognitive signs of traumatic stress may include poor attention, poor problem-solving, poor decision making, issues with memory, panic attacks, flashbacks and intrusive images, or nightmares.⁵⁹⁹
- **Behavioral:** Behavioral signs of traumatic stress may include withdrawal, inability to feel settled, loss or increase in appetite, altered sleep patterns, self-medicating with drugs or alcohol, avoidance of people or places, reluctance to discuss an event or wanting to talk about an event all the time, or anti-social behavior.⁶⁰⁰
- **Physical:** Physical signs of traumatic stress may include fatigue, nausea, difficulty breathing, teeth-grinding, muscle tremors, menstrual changes, upset stomach, or headaches, neckaches, and backaches.⁶⁰¹

There are many different treatments and techniques to address traumatic stress. A detailed discussion of these treatments and techniques can be found in the zine mentioned above. Below are a few examples of treatments or techniques:

⁵⁹⁵ GRAND JURY RESISTANCE PROJECT, GRAND JURIES ARE AN ABUSE OF POWER, <https://perma.cc/7VJ7-XH5Y>.

⁵⁹⁶ *Stay Healthy So You Can Stay on the Streets*, BOSTONCOOP.NET, <https://perma.cc/ZU7Y-GQJH>.

⁵⁹⁷ *Activist Trauma & Recovery*, ACTIVIST TRAUMA SUPPORT, <https://perma.cc/49TE-7YRV>.

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

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- **Therapy:** Activists experiencing traumatic stress may be able to treat or curb symptoms by finding a therapist, especially one who specializes in traumatic stress.
 - Activists may want to seek a therapist who shares similar ethics, ideology, or identity as to avoid the need to ‘educate’ their therapist on the issues in order to receive appropriate care. Inclusive Therapists provides a helpful search tool in which activists can search therapists by focus (e.g., Animal/Environmental Justice, Racial Justice/Decolonization, Immigrant Rights/Immigrant Justice), cultural knowledge (e.g., African American/Canadian or Black Cultures, Latinx/Latin American Cultures, Indigenous Cultures), spiritual knowledge (e.g., Islam, Judaism, or Nonreligious/Secular/Agnostic/Atheist), and therapist identity (e.g., Person of Color, Transgender, Latinx).⁶⁰²
- **Exercise:** Activists experiencing traumatic stress may be able to reduce symptoms of traumatic stress by engaging in regular exercise such as cycling, swimming walking, running.
- **Medication:** While no drug can cure trauma or traumatic stress, there are some medications that may help reduce symptoms. Medication is not appropriate for everyone, thus activists should default to the expertise of their doctor or therapist regarding whether medication is a good fit.

While strategies for preventing burnout have been placed toward the end of this Guide, preventing burnout is a continuous process, thus wellness and self-care techniques discussed in [Section 1.VIII](#) and burnout strategies discussed in this Section should be utilized cohesively before, during, and after a demonstration.⁶⁰³

VI. CONCLUSION

Protest and activism are core activities for a healthy democracy. Protecting the right to engage in protest and activism is likewise fundamental. When protesters and lawyers work together to engage in and protect and further these rights, everyone in society benefits. The purpose of this Guide is to assist in that work, help each actor make meaningful and conscious choices, and support a transparent and effective government and legal system.

⁶⁰² *Therapists Near You*, INCLUSIVE THERAPISTS, <https://perma.cc/LVC9-7MYR>.

⁶⁰³ *Stay Healthy So You Can Stay on the Streets*, BOSTONCOOP.NET, <https://perma.cc/ZU7Y-GQJH>.

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APPENDIX I – PROTEST PLANNING CHECKLIST

Below we have summarized some important issues to be considered in the planning phase of a protest.

This is not intended to be a complete list of issues but is meant to serve as a guide. It is meant to be read in conjunction with the remainder of the Guide and resources set out above. Depending on the circumstances specific to the protest (including for example the type of protest selected) there may be a number of other considerations that apply.

We have included a “Comment” column as part of this Checklist to be used as a tool for the organizer either to “check the box” that a certain action has been taken/a certain issue has been considered or to include additional considerations.

NO.	ISSUE	COMMENT
CONSIDER THE GOALS OF THE PROTEST		
1.	Media attention	
2.	Community education and public outreach	
3.	“In the face” of government	
4.	Show of support/opposition	
5.	Get in the way of something (impeding)	
6.	Inspire positive action (e.g. legislative change)	
7.	Other	
CONSIDER OPTIONS: TYPES OF PROTESTS/ PROTEST TACTICS⁶⁰⁴		
8.	Consider and Select Protest Type or types:	
a.	Demonstrations	
b.	Marches	
c.	Occupation	
d.	Peace Camps	
e.	Petitions	
f.	Strikes	
g.	Vigils	
h.	Online speech	
i.	Boycotts	
j.	Civil Disobedience	
k.	Direct Action ⁶⁰⁵	

⁶⁰⁴ There are a number of different types of protests and tactics that may be used to achieve one’s goals. It is important to link the objectives with the appropriate form of protest and tactics used.

⁶⁰⁵ This can include sit-ins, strikes, workplace occupations, blockades, hacktivism, or other styles of action.

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NO.	ISSUE	COMMENT
l.	Culture jamming techniques ⁶⁰⁶	
m.	Meetings	
n.	Media events	
o.	Street theaters	
p.	Tabling (hanging banners and signs or handing out flyers)	
q.	Mail campaigns	
r.	“Wheat pasting” ⁶⁰⁷	
s.	Editorials	
t.	Physical interference	
u.	Solidarity Event	
v.	“Get-out-the-vote” initiatives	
w.	Letter writing campaigns	
x.	Legislative efforts	
y.	Protest fasts and hunger strikes	
z.	Kayaktivist Action ⁶⁰⁸	
aa.	Concerts/parties	
bb.	Canvassing ⁶⁰⁹	
cc.	Flag burning or desecration	
dd.	Blockades	
ee.	Hacktivism	
ff.	Releasing of captive animals	
gg.	Flash Mobs	
hh.	Graffiti and unauthorized signage	
EVALUATE OPTIONS		
9.	Evaluate options against the following questions:	
a.	How will each option work?	
b.	Is it feasible?	
c.	What impact will each have? Is this the desired impact?	

⁶⁰⁶ Culture jamming (sometimes guerrilla communication) is a tactic used by many anti-consumerist social movements to disrupt or subvert media culture and its mainstream cultural institutions, including corporate advertising. It attempts to "expose the methods of domination" of a mass society to foster progressive change. *Culture Jamming*, U. WASH.: CTR. FOR COMMUN & CIVIC ENGAGEMENT, <https://perma.cc/VCT2-XQ2A>.

⁶⁰⁷ This describes the process of adhering paper posters and notices to walls, lamp posts, or other public property.

⁶⁰⁸ This tactic uses canoes, kayaks, or other boat-like objects to protest in a water body.

⁶⁰⁹ This describes the tactic of asking many people in an area for their opinions, or encouraging them to vote for or support someone or something.

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NO.	ISSUE	COMMENT
d.	Which option will have the most impact? Or reach the most amount of people who need to hear the particular message?	
e.	What time and other resources are required (consider the possible ranges)?	
f.	Should more than one action consecutively or at the same time?	
g.	Which ones more effectively reach goals and align with the purpose?	
h.	Which one will have more media coverage?	
i.	What are the potential negative consequences?	
FACILITATE DECISION-MAKING		
10.	Allow interested/participating parties to weigh in to the extent possible:	
a.	Consensus	
b.	Majority vote	
c.	Focus group	
d.	Leader focused	
e.	Survey/Poll ⁶¹⁰	
CONSIDER STAKEHOLDERS		
11.	Consider relevant stakeholders:	
a.	Protest organizer	
b.	Activists	
c.	Protest organizer's group (in whole or part)	
d.	Movement more broadly	
e.	Affiliations	
f.	Legal Observers	
g.	Lawyers	
h.	Other similar groups/organizations	
i.	Coalition building or collective action	
j.	Potential anti-groups (opposition)	
k.	General public	
l.	Celebrities	
m.	Politicians	
n.	Media	
o.	People who agree but employ different protest types/tactics	
p.	Government	

⁶¹⁰ Note that some social media sites have this as an option.

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NO.	ISSUE	COMMENT
q.	Police	
ORGANIZING ACTIVISTS		
12.	Briefing:	
a.	Briefing email with various details of protest	
b.	Legal briefing for people considering action ⁶¹¹	
13.	Training:	
c.	Know-your-rights trainings	
d.	Nonviolence training (if applicable)	
e.	Other trainings/advice (interactions with public, media, etc.)	
14.	Signing of disclaimers	
CONSIDER ISSUES THAT IMPACT PARTICULAR GROUPS⁶¹² AND MINIMIZING THESE ISSUES		
15.	Consider vulnerable or particular groups:	
a.	Immigrants, migrants, foreigners	
b.	BIPOC	
c.	Religious minorities	
d.	Young people	
e.	Women	
f.	LGBTQIA+ community	
g.	People with Disabilities	
h.	Elderly people	
i.	Students	
j.	Minors/youth	
k.	Political Activist Groups	
l.	Other minorities or vulnerable populations	
CONSIDER LOCATION		
16.	Permits:	
a.	Are permits required?	
b.	Process to obtain permits	
c.	Limitations/conditions of permits	
d.	What to do if you are denied a permit	
e.	Costs of permits	
17.	General restrictions in respect of the venue/s for protest:	

⁶¹¹ Bill Quigley, *Legal Briefing for People Considering Non-Violent Civil Disobedience*, CTR. FOR CONST. RTS., <https://perma.cc/TLB9-GLN6>.

⁶¹² In this regard, please see [Section 1.VI](#) of this Guide which deals in further detail with issues which may be faced by specific groups which a protest organizer should be sensitive to.

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NO.	ISSUE	COMMENT
a.	Is the location a public property for protest purposes?	
b.	Limitations of public meetings	
c.	Make certain outside place is appropriate - Public Property	
d.	Restrictions/risks of private or quasi-private property	
18.	Multiple locations	
a.	Moving protest (e.g. Marches)	
b.	Consecutive action (e.g. leafletting in multiple locations, demonstrations in multiple cities)	
19.	Government/Public Sites:	
a.	Officials' Offices	
b.	Government Buildings	
c.	Monuments	
d.	Federal/State Land	
e.	Additional security and potentially other restrictions which may be applicable	
20.	Busy street	
21.	Accessibility:	
a.	Ramps/wheelchair accessible	
b.	Public transportation routes	
c.	Distance from homes or work	
22.	Facilities available:	
a.	Bathrooms, water, etc.	
23.	Transportation:	
a.	Public transportation	
b.	Carpool	
c.	Vehicle rental	
d.	Parking safety and security issues (i.e., does someone need to stay with the cars?)	
e.	Liability and Insurance	
24.	Costs	
CONSIDER PRE-PROTEST COSTS		
25.	Permits	
26.	Props	
27.	Food and Water	
28.	Tents	
29.	Signs and banners (Tabling)	

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NO.	ISSUE	COMMENT
30.	T-shirts and/or other merchandise for activist or for sale	
31.	Literature	
32.	Tables	
33.	Security	
34.	Microphones/sound systems	
35.	Transportation	
36.	Fund-raising considerations:	
a.	Activists pays	
b.	Organization pays	
c.	Third Parties:	
(i)	Crowdfunding online (e.g. organization's website/Facebook page or through other third-party websites, including: Kickstarter ⁶¹³ or GoFundMe ⁶¹⁴ or other similar platforms)	
(ii)	Donors	
d.	Organizations that provide grants or funding	
e.	Events	
f.	Pass the hat at the event	
g.	Seek contributions from other groups or businesses	
CONSIDER OTHER POST-PROTEST POTENTIAL COSTS		
37.	Clean up	
38.	Damages to property/person	
39.	Potential legal action	
a.	Bail money	
b.	Lawyer	
c.	Other legal fees	
CONSIDER TIMING OF PROTEST		
40.	Morning/Afternoon/Evening	
41.	Weekday/Weekend	
42.	Ability to participate	
a.	Protest organizer's group	
b.	Protest organizer's target audience (who needs to hear the message?)	
c.	Others	
d.	Work, family and/or other responsibilities	

⁶¹³ KICKSTARTER, <https://perma.cc/9Q9D-4GAC>.

⁶¹⁴ GOFUNDME, <https://perma.cc/4X9A-SY3T><https://www.gofundme.com/>.

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NO.	ISSUE	COMMENT
e.	Single or re-occurring event	
f.	Duration of actual protest	
CONSIDER FOOD AND WATER		
43.	Members of organizer's group	
44.	Members of other groups	
45.	Others	
46.	Potential bans (e.g. against feeding homeless)	
47.	Potential liability issues	
48.	Selling or buying	
49.	Quantity	
50.	Diet friendly options	
51.	Costs	
52.	Clean-up	
53.	Water/milk (and dry cloths) for pepper gas	
54.	Reusable utensils	
55.	Recyclables (e.g., not Styrofoam, etc.)	
CONSIDER NUMBER OF PEOPLE		
56.	Estimation of numbers	
57.	Planning venue with numbers in mind	
58.	Permits (e.g., generally don't need one if under twenty-five people)	
59.	Manageability: ability to keep the situation under control	
60.	Enough to make worthwhile - get message across	
61.	Plan for more/less people than expected	
62.	How related is the number of people to the message or method?	
63.	Plan for uninvited participation (both for and against protest organizer's position)	
CONSIDER INTERACTION WITH OFFICIALS		
64.	Police:	
a.	Getting permits	
b.	Arranging logistics	
c.	Designated contacts	
d.	Working with them enough in advance to leave time to work out problems	
e.	Ongoing relationship throughout event	
f.	Follow up if arrests occur	

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NO.	ISSUE	COMMENT
65.	Elected or public officials	
CONSIDER INTERACTION WITH PUBLIC		
66.	Education:	
g.	How to discuss the message with people	
h.	Tone and word selection	
i.	Avoid escalation of potentially negative situation	
j.	Plan for escalation of situation	
CONSIDER MESSAGE		
67.	Clarity, purpose, single/multiple goal	
68.	Consider a strategy to manage participants who go off message	
69.	Literature to pass out:	
a.	How much?	
b.	What kind?	
c.	Whose (protest organizer's or others')?	
d.	How to distribute?	
e.	Appropriate places to distribute or display and corresponding restrictions?	
f.	Who is responsible for distribution? Everyone, certain designees	
g.	Share with officials or not	
h.	Costs	
i.	Sources and Attribution	
70.	Other methods or ways to educate an audience:	
a.	Use of laptops/iPads/etc.	
b.	Potential safety concerns	
71.	Intellectual Property Infringement	
ROLES⁶¹⁵		
72.	Organizer	
73.	Activists	
74.	Designated decision-makers:	
a.	Decide in advance	

⁶¹⁵ It is important that everyone clearly understands their roles and who is responsible for what. In addition, if training needs to be done, this must be done prior to the event.

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NO.	ISSUE	COMMENT
b.	Back-up	
c.	Methods to communicate with group about changes	
75.	Legal observers ⁶¹⁶	
a.	Gathering and protecting evidence	
b.	Possibility of having to testify	
76.	Peacekeepers:	
a.	Not as active in the protest	
b.	Observe crowd and police/officials	
c.	Usually identified with white armband	
d.	Responsible for tone of event	
e.	If things escalate:	
f.	Make suggestions to organizers	
g.	Have strategies for different situations	
h.	Talk to those creating tension - isolate them from group & remind them of ground-rules Focus others away from disturbances	
i.	Alert authorities of attempts to handle situation	
j.	Should have peacekeeping and nonviolence training	
77.	Vibes watcher/monitor	
a.	Someone from protest organizer's group	
b.	Sensitive to tone of protest	
c.	Watches for changes	
d.	Alerts organizers	
e.	Can be somewhat detached in order to observe	
f.	Training	
78.	Lawyers	
79.	Media contact:	
a.	Press release in advance of event	

⁶¹⁶ Should you or your organization intend on attending or organizing numerous protests, you should consider having a legal observer present at protests. You may also consider sending a representative for formal training. The NLG has Legal Observer® trainings held several times a year in various locations around the country. At the training, you'll be guided through the Legal Observer® Manual by an experienced Guild member before being given your official green hat.

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NO.	ISSUE	COMMENT
b.	Social media	
c.	Preparation of press packets available at the event	
d.	Answering questions/providing message to press	
e.	Invitations to press to event	
f.	Addressing ongoing events	
g.	Following up after event	
h.	Interviews	
80.	Other roles as necessary:	
a.	Child minder	
b.	Base person	
c.	Backups in place	
81.	Other Groups:	
a.	Common grounds	
b.	Uncommon ground (and how to address/not address these)	
c.	Co-ordination	
d.	Division of responsibility	
82.	Speakers	
CONSIDER HEALTH AND SAFETY		
83.	Activists	
84.	Bystanders/members of the public	
85.	Law enforcement	
86.	Security	
87.	Appropriate gear and supplies (considering safety, comfort, weather, duration) ⁶¹⁷	
a.	Gas mask or respirator	
b.	Goggles	
c.	Helmet	
d.	Shield	
e.	Umbrella	

⁶¹⁷ While some items—such as a gas mask or a shield—may seem extreme, in the wake of the continued Black Lives Matter protests following the police killings of George Floyd and Breonna Taylor, such items have become staples to ensuring activist safety against police use of ‘less lethal weapons.’ See Section [] for a discussion of the documented dangers of less lethal weapons, including death.

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NO.	ISSUE	COMMENT
f.	Layers of clothing, including long sleeve shirt and pants	
g.	Comfortable shoes	
h.	Water and snacks	
i.	Ear plugs	
j.	First aid kit	
88.	Possible violations	
CONSIDER ACCESSORIES		
89.	Banners	
90.	Signs	
91.	Uniforms	
92.	Other	
CONSIDER MEDIA – BEFORE THE PROTEST		
93.	Invite media outlets?	
94.	Form:	
a.	Television	
b.	Radio	
c.	Video	
d.	Print	
e.	Alternative	
f.	Online news houses	
g.	Local, regional, national	
h.	Specialty – (e.g.) animal, environmental, campus	
95.	Which organizations?	
96.	Dissemination:	
a.	Broad/narrow	
b.	Target audience	
c.	General message	
d.	Timing	
e.	On-going or once off	
97.	Recording of event:	
a.	If necessary/useful	
b.	One person/few people	

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NO.	ISSUE	COMMENT
c.	Record openly/in secret	
98.	Rationale:	
a.	Record purposes	
b.	Posterity	
c.	Future planning	
d.	Legal proceedings	
99.	Equipment:	
a.	Cameras	
b.	Video recorders	
c.	Smart phones	
d.	Go-pro cameras or concealed cameras	
e.	Risks of damage to or seizure of property	
100.	Storage:	
a.	Data	
b.	Equipment	
c.	Issue if used as legal evidence	
101.	Intellectual Property issues	
102.	Form:	
a.	Electronic	
b.	Written	
103.	Potential privacy rights issues:	
a.	Minors	
b.	Venue	
104.	Time frame:	
a.	How far in advance to contact media	
b.	Shifts	
c.	When should the media arrive and leave?	
d.	When should the message be delivered?	
e.	When should the speakers start and finish?	
f.	Next steps	
	Following up	
	Responding (if necessary)	
CONSIDER RISKING ARREST		

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NO.	ISSUE	COMMENT
105.	Should be a conscious choice planned in advance	
106.	Prepare for the unexpected	
107.	Support for those risking arrest	
108.	Bail money	
109.	Change of clothes	
110.	Food and Water	
111.	Lawyers' contact details:	
a.	Name & number	
b.	Prior agreement to assist	
c.	Another person at the firm if unavailable	
112.	Phones, names and phone numbers of people to notify:	
a.	Family members	
b.	Lawyers	
c.	Allies	
113.	Follow to police station	
114.	Transportation to and from police stations	
115.	Medical aid/insurance details	
116.	Hold their IDs	
a.	How to make the choice not to risk arrest clear and how the activist should convey this message (vocally, behaviorally)	
CONSIDER PLANNING FOR CHANGES		
117.	Possible changes:	
a.	Weather (rain dates)	
b.	Meeting times	
c.	Political figure's schedule	
d.	Change in the focus of protest (e.g. pardon in a death penalty protest)	
e.	Presence of opposition groups	
f.	Lower or higher turnout than expected	
g.	Performer/speaker cancellation	
h.	Police/authority restrictions	
i.	Permit not granted	

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NO.	ISSUE	COMMENT
j.	No media or unexpected media	
k.	Other unforeseen consequences	
118.	How to react to changes:	
a.	Verify safety and feasibility	
b.	Go with the flow	
c.	Cancel/delay protest	
d.	Regroup to decide	
e.	Modify goals	
119.	How to implement change:	
a.	Have structure (know who to look to for decisions)	
b.	Method of communicating to everyone involved	
c.	Phone trees to spread word quickly	
d.	Groups: Facebook/ WhatsApp/ Messenger	
e.	Backups in place	

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APPENDIX II – ANIMAL SPECIFIC ISSUES IN PROTESTS

For purposes of this Appendix II, we have set out some issues that may arise in relation to protests in the animal protection movement specifically.⁶¹⁸ We have also briefly touched on issues that may be relevant to animals at a protest, particularly if such animals are the subject matter of a protest, or if they are brought to a protest.

In the contexts of protests themselves, there are several issues that are unique to the animal protection movement, including but not limited to, the types of protest being undertaken, (such as those referred to as “open rescues”); and sometimes the laws that may apply to such protests, (such as “Ag Gag” laws) etc. There may also be specific consequences if an animal activist is convicted of a crime (where, for example, one may follow a vegan lifestyle in the prison system and what rights one may (or may not have) to be provided with vegan food and/or products in this context).

This Appendix attempts to cover some of the main issues, legal and otherwise, which may arise in this context. In addition, it also includes some additional sources that may be generally useful to an activist in the animal protection movement.

I. INTRODUCTION

In addition to the forms of protest covered in the [Guide](#), below are some types of protests that are unique to the animal protection movement. Some of these protests are gaining popularity and are increasingly being used as a tool by animal activists. Many of them are bold in their approaches, which often causes these protests to involve actions punishable by the law. Though some of these protests occur on an anonymous basis, there are certain organizations and people who are purposely revealing their identities by openly showing their faces while committing illegal activity. And this, in itself, is a specific form of activism.

The rise in this open form of activism has also led to increasing attention from the authorities. A good example includes the “manhunt” conducted by the Federal Bureau of Investigation (FBI) for two baby piglets that were removed from the Circle Four Farm in Utah by activists.⁶¹⁹ The activists had entered the farm (owned by Smithfield) to document activities within the farm, and the FBI dedicated substantial resources to try to locate these animals and the people who took them.

⁶¹⁸ Please note that for purposes of this Appendix we have referred to the term animal protection movement, we intend this term to be broadly encompassing rather than restrictive. We have accordingly not distinguished between the animal welfare and animal rights movements nor any other ideas in this context and for our purposes we have tried to be inclusive of all of these, however we acknowledge that there are differences between the various factions involved in this movement.

⁶¹⁹ Justin Moyer, *FBI Raids Animal Shelters, Searching for Piglets Rescued from Factory Farm, Activists Say*, WASH. POST (Sept. 14, 2017), <https://perma.cc/W9WE-EJ6Q>.

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II. UNIQUE FORMS OF ANIMAL PROTESTS

A. Open Release and Open Rescue

This is a type of direct action where activists release animals who are confined in a facility or vehicle and experiencing pain and suffering. In most cases, this is done during the day, and does not involve the theft of animals. In some cases, animals are taken to veterinarians for medical assistance, and conditions causing the harm to the animals may be documented and publicly exposed. If animals have been taken by protesters, this would be considered theft, though some protesters suggest this is an inaccurate description of their activities and are raising necessity defenses. Animals taken to a veterinarian, and/or a sanctuary after being rescued, are typically considered to be taken, as in theft, by law enforcement. Contexts in which this may occur include:

- Fur farms
- Factory farms
- Laboratories

B. Vigils

Vigils describe what is usually a peaceful and quiet group of people gathered where animal suffering is known to occur or has previously occurred. Though this type of protest is not unique, the locations sometimes are. Contexts in which this may occur:

- Factory farms
- Slaughterhouses
- Along animal transportation routes

C. Bearing Witness

Protesters who bear witness are typically a group of people who gather in a place where animals will be harmed. They observe the activity they deem harmful and share information about it with others.

D. Providing Water and Other Care to Animals Being Transported

In some locations where people are bearing witness, they may have the opportunity to provide assistance to animals, however this is dependent on the cooperation of truck drivers and the local police department. Activists do not have the right to interfere without permission. Protesters who provide this care to animals without permission have been arrested for trespass or

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interference with private property. Some have even been accused of harming the animals they seek to help.

E. Interfering With Hunting

Interfering with hunting can include different methods of thwarting a person from being able to lawfully hunt, including by means such as scaring animals away; using scent to deter animals from approaching; using their bodies as a shield between an animal and a hunter; making loud noises to scare the animal being hunted away; using the scent of predator animals to scare hunted animals away from the area; and physically saving animals from hunters or their dogs by placing their body or other objects in the way.

F. Damaging Property

In order to draw attention or make a statement regarding animal abuse that is visible to the public some protesters have chosen to violate the law by damaging property in different ways, including: throwing blood/paint on fur coats, or adhering stickers with pictures or words against the eating of animals on packages of meat at a store.

G. Public Protests Mimicking Animals' Conditions

Activists have positioned themselves similarly to animals in harmful situations and may also include the use of fake blood and other props to simulate the conditions of confinement, experimentation, mutilation, injury, or slaughter. Some examples may include:

- Demonstrations with people in cages
- Demonstrations or disseminating imagery portraying people being experimented on in public
- Demonstrations with people lying in containers that look like grocery store meat containers, covered in fake blood

H. Protests Involving Technology

Many mediums have been developed to share actual or simulated imagery with the public of harms that have happened to animals. Some examples may include:

- Using drones to film factory farms
- Displaying undercover footage in public places using technology, particularly laptops and iPads such as those done by Anonymous for the Voiceless⁶²⁰

⁶²⁰ ANONYMOUS FOR THE VOICELESS, <https://perma.cc/BS3W-Z39Q>.

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- Displaying images on buildings, billboards, and other moving media (such as Racing Extinction’s display of images of endangered animals.⁶²¹)
- Virtual reality of factory farms and other animal use, such as virtual reality headsets used by Animal Equality

*I. Protests Involving Nudity*⁶²²

These types of protests usually highlight what happens to female cows in the dairy industry, fur protests or even the use of animal bodies for food or other purposes. Having nude people involved in such protests can be attention-grabbing, as well as controversial, and potentially illegal.

Consent is of course a key factor in such protests as well as ensuring that participants are protected from sexual and other types of abuse or attention. The laws applicable to nudity in the particular jurisdiction and context must be reviewed prior to undertaking such protests.

J. Animal Related Marches

Unlike still protests, these are moving marches from one location to another and may include stopping in front of specific businesses or places. They may include entering certain businesses, such as grocery stores or restaurants to stand in front of animal products with signs. Examples of contexts in which this may occur include:

- In support/protest of specific action or inaction (such as passing of legislation, court cases, or otherwise)
- Working to bring attention to specific groups/species of animals
- Specific days (such as World Wildlife Day, World Rhino Day, or others)
- Commenting on regulatory action
- Call for action – sending emails to representatives, etc.

K. Protests Outside Animal Events

⁶²¹ RACING EXTINCTION, <https://perma.cc/8XEX-7MHH>.

⁶²² These raise legal, ethical and other issues and are potentially subject to criticisms regarding the use—or non-use—of women as objects in protests and exploitation arguments from feminists or body positive activists (among others). In addition, there may be issues regarding nudity in public from a legal standpoint as well as children being exposed to the nudity and potential feedback from conservative groups.

Protests inside or outside various animal events can be wide-ranging. Some examples may include:

- Rodeos/bull riding/bull fighting exhibitions
- Seafood/cheese/meat festivals
- Circuses/zoos and petting zoos/live traveling animal shows
- Sea aquariums

The nature of protests is ever-changing. Protestors and others are constantly coming up with new and innovative ways to have their voices heard. Within these forms of protests, there may be a number of actions that are considered unlawful, including, but not limited to, misrepresentation; trespassing; damage to property; and more. Some of these are discussed more in depth in this Section and some have been introduced in Section II above. The legal implications of such actions have become increasingly important.

III. DURING A PROTEST

A. *Animal Issues*

In addition to the unique types of protests within the animal protection movement, there can also be implications for *animals* during protests. Some examples may include protests where animals are used, for example:

- Horses (whether by activists or police)
- Dogs (whether present as companion animals, as part of the protest, or used by police)
- Pigs or other animals (alive or dead)—for example, their bodies or body parts to mock police
- Use of animals in general to make larger points
- Service animals/emotional support animals, and companion animals in attendance

As a protest organizer, it may be worthwhile to consider if any of the above issues could become relevant during a planned protest and, if so, how one intends to deal with these issues. Some examples may include:

- Organizing a “pet sitter” for those intending to bring their companion animals
- Organizing water bowls, food, shade, protection from the weather and other necessary considerations for those animals (particularly factoring in the amount of time and locality of such a protest)
- Checking whether animals are in fact allowed in the area(s) of the protest
- Ensuring if people do bring animals, they are in control of such animals, such as ensuring that dogs are on a leash and people are cleaning up after their animals

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- Protecting such animals from harm and stimulation which may aggregate and/or stress them

B. Message Consistency

Another factor that may become relevant as an activist or protest organizer is message consistency. For example, if activists are protesting a certain animal issue while wearing animal products (such as fur/leather/wool) or even eating animal products, this can potentially affect the optics of the protest and create opportunity for distraction from the purpose.

Furthermore, if food is provided to those participating in an animal protection march, consideration should be made whether or not it should include animal products.

C. Non-Physical Danger

Activists should be aware that there may be harmful non-physical dangers related to the protest, for example, psychological effects. Engaging in activities such as visiting factory farms, obtaining undercover footage, or bearing witness can cause trauma to those involved. Someone who is particularly sensitive to violence, or has mental health issues, may not be best suited to participate in such events. Attendees should be made aware of these possibilities and the upsetting and disturbing nature of certain things they may witness or experience. By warning of these issues, some negative consequences may be avoided. Additionally, after-the-fact steps can be taken, such as counseling, de-briefing, and protestor support groups if necessary.

IV. EVIDENCE GATHERING

A. Documenting Animal Conditions and Cruelty

Documenting conditions of cruelty for animals is a way to provide evidence of harmful treatment to animals, and can be done through a variety of ways, including but not limited to:

- Obtaining “undercover” footage (anonymously or openly)
- Through trespassing if activists are willing to take that risk
- Through being employed or contracted at facilities and gathering evidence, though this still carries the risk of being charged with illegal conduct in some states

V. POST-CONVICTION

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General post-conviction issues have been dealt with in [Section 3.IV.D](#), however, there may be unique issues faced by activists in the animal protection movement. Some of these may include the following:

A. Vegan Meals and Products During Incarceration

According to news reports, on October 2, 2016, federal prisons began serving vegan entrees to prisoners.⁶²³ However, it is unclear if this is the current practice, and does not speak to non-federal prisons. Accordingly, this is an issue that needs to be carefully considered by an activist who may follow a vegan lifestyle and is risking a jail or prison sentence. A vegan activist who was imprisoned wrote an article describing how he maintained his veganism in prison.⁶²⁴

In the United Kingdom there is an organization dedicated to this issue, the “Vegan Prisoner Support Group.”⁶²⁵ A number of jurisdictions have promulgated regulations that require vegan food to be served at institutions such as prisons, and this is increasing.⁶²⁶ In addition to food products, because vegans abstain from animal products altogether, one consequence of incarceration is that such persons may not have access to vegan products and may need to use non-vegan products.

B. Branding as a “Terrorist”

Depending on the charges one is convicted with, there could be additional repercussions in addition to the simple criminal charge. This may include being branded as a “terrorist” (see notes below regarding the use of these terms, such as with AETA). Such terms come with unique considerations in addition to those that result from general criminal convictions. A terrorist designation may lead to an activist being imprisoned in a special prison and can have far-reaching consequences for an individual, long after such individual is released from prison.

C. Monitoring

An activist in the animal protection movement may be given stricter monitoring once imprisoned, including the limiting their outside communications. This may be an issue not faced

⁶²³ Richard Bowie, *US Prisons to Start Offering Vegan Meals* VEGNEWS (Sept. 24, 2016), <https://perma.cc/2U6C-HYVV>; Mark Hawthorne, *U.S. Prisons to Begin Offering Vegan Entrees in October 2016*, STRIKING AT THE ROOTS (Sept. 22, 2016), <https://perma.cc/7XDY-E8C9>.

⁶²⁴ Peter Young, *The Strict Vegan Prisoner Playbook*, VICE (Sept. 26, 2013), <https://perma.cc/88CH-PWD7>.

⁶²⁵ VEGAN PRISONERS SUPPORT GROUP, <https://perma.cc/4XLR-ZT4A>.

⁶²⁶ Jane McElligott, *Legal Rights of Inmates to Practice Veganism*, <https://perma.cc/2KUN-C39M>.

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by other prisoners. Additionally, monitoring of communications could jeopardize the people with whom the activist communicates and their work.

D. Other

Green is the New Red sets out some additional useful information and issues that may be faced by animal activists.⁶²⁷

E. Surveillance

As discussed above, law enforcement members may be monitoring activists' online activity. This may be particularly relevant to activists in the animal protection movement and may not be limited to online monitoring. For example, these could include:

- Infiltration of vegan/animal rights spaces (e.g., when SeaWorld was accused of sending an employee to protests to gain information about PETA activists);⁶²⁸
- Members of the agricultural/farming/hunting industries or other pro-animal use industries attending animal protection conferences secretly or undercover. This could be to obtain information about future animal protection strategies, attendees, or organizations, or even to infiltrate the animal protection communities; and
- Monitoring activists and their activities on social media and other online platforms.

Activists should be aware of these risks and take appropriate precautions when posting material online and on social media sites. Care in accepting friend/follow requests and sharing information, particularly when the information is sensitive or relates to strategic objectives that may not be public knowledge or in the public domain, and checking privacy and public settings on one's social media accounts should also be considered.

As mentioned above, there are increasingly new ways for law enforcement officials to surveil persons of interest, including using drones. Conversely, drones have also become a tool for activists and are increasingly being used for aerial surveillance, and to monitor environmental or animal welfare compliance in circumstances where it would otherwise be challenging to obtain information. It is important to remember that several jurisdictions are beginning to regulate drone usage and to check regulation, compliance and enforcement information.⁶²⁹

⁶²⁷ About, GREEN IS THE NEW RED, <https://perma.cc/5X63-X5AX>.

⁶²⁸ Rupert Neate, *SeaWorld Accused of Sending Employee to Infiltrate Animal Rights Protests*, GUARDIAN (July 14, 2015), <https://perma.cc/B2RN-GFB5>; Will Potter, *Sea World Employee Busted Infiltrating PETA*, GREEN IS THE NEW RED (July 14, 2015), <https://perma.cc/ZZD2-CLLC>.

⁶²⁹ Texas passed law in 2017 that designated CAFO's as "critical infrastructure" over which Unmanned Aerial Vehicles were not allowed to fly. TEX. GOV'T CODE ANN. § 423.0045 (West 2017).

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F. Legal Consequences

In response to some of these unique forms of protest, unique laws and regulation have been passed in a number of jurisdictions. We have set out below some examples of specific laws that may apply:

1. Ag-Gag Laws

As noted by the Animal Legal Defense Fund: “‘Ag-Gag’ laws seek to ‘gag’ would-be whistleblowers and undercover activists by punishing them for recording and disseminating footage of what goes on in animal agriculture. They were originally designed to prevent the public from learning about animal cruelty.”⁶³⁰ It should be noted that these laws change frequently, as states try to pass new statutes, and they are challenged in the courts. Some laws are not Ag-Gag *per se* but are similar enough in design and effect to be listed here. The laws listed below were reported by the ASPCA in 2022, and represent the most recent legal information available, but should not be considered exhaustive or final. It is important that you research state and local laws before conducting activities that could fall within these types of laws.

Below is Ag-Gag law information in different states, captured in one source by the ASPCA, footnoted at the end of the Section (not a complete list):

- **Alabama:** Passed an ag-gag law in 2002. It makes it illegal to obtain access to property by “false pretenses” and to possess records obtained by deception.
- **Arkansas:** Passed an ag-gag law in 2017 that created a civil cause of action allowing businesses to sue whistleblowers who expose abuses happening on their farms/businesses.
- **Colorado:** Introduced S. 42 in 2015 to require reporting of cruelty within 48 hours. This “quick-reporting” bill would prevent the collection of adequate evidence to show patterns of abuse, neglect or abandonment, potentially hindering prosecution of abusers. Bill tabled in February by its sponsor.
- **Iowa:** Passed a new ag-gag law in March 2019 that criminalizes using deception to gain access to an agricultural production facility with the intent to cause harm to the business. In 2020, the US District Court for the Southern District of Iowa issued a preliminary injunction, blocking the law’s enforcement. Later that year, Iowa passed another ag-gag

⁶³⁰ *Ag Gag Laws*, ANIMAL LEGAL DEF. FUND, <https://perma.cc/XWK9-P5L2>.

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law that criminalizes trespassing on a “food operation” without consent. Iowa then passed another ag-gag law in 2021 that criminalizes the use of cameras or surveillance devices on farms, as well as taking unauthorized samples.

- **Kansas:** Passed a law in 1990 that criminalizes “enter(ing) an animal facility to take pictures by photograph, video camera or by any other means” with the intent of causing harm to the enterprise. In 2020, the U.S. District Court for the District of Kansas struck down nearly the entire law as unconstitutional. In 2021, the 10th U.S. Circuit Court of Appeals upheld the lower court’s finding of unconstitutionality.
- **Missouri:** Passed an ag-gag law in July 2012. Mandates that evidence of animal abuse must be turned over to law enforcement within 24 hours, preventing the collection of adequate evidence to show patterns of abuse, neglect or abandonment, and potentially hindering prosecution of abusers.
- **Montana:** Passed an ag-gag law in 1991. It criminalizes “entering an animal facility with the intent to commit a prohibited act, entering an animal facility to take pictures by photograph, video camera, or other means with the intent to commit criminal defamation, and entering an animal facility if the person knows entry is forbidden.” In addition, a quick-reporting bill was introduced in 2015 providing that “a person who knowingly fails to report evidence of cruelty to animals at an animal facility within 24 hours commits the offense of cruelty to animals.” The ASPCA opposes quick-reporting bills. The bill ultimately died.
- **North Carolina:** In 2015, ag-gag bill H.B. 405 passed and was vetoed by Governor McCrory, but the NC House and Senate overturned the veto. H.B. 405 went into effect on January 1, 2016. The law prohibits anyone from gaining access to the non-public area of their employer's property for the purpose of making secret recordings or removing data or other material. The law creates a civil cause of action, allowing a business to sue for damages. In February 2016, the ASPCA joined a lawsuit challenging the constitutionality of H.B. 405. In June 2020, the Middle District Court of North Carolina struck down the law as unconstitutional.
- **North Dakota:** Passed the Animal Research Facility Damage Act, which makes it a class B misdemeanor to “[enter] an animal facility and using or attempting to use a camera, video recorder, or any other video or audio recording equipment.”
- **Texas:** Passed H.B. 1643 in June 2017, which makes it illegal to use a drone to take photos over a concentrated animal feeding operation (CAFO). Introduced legislation in 2021, which was later amended to remove the ag-gag provisions.

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- **Washington:** Introduced legislation in 2015 to create the crime of “interference with agriculture production” and classifies it as a gross misdemeanor with maximum penalties of one year in jail, a \$5,000 fine, or both. The legislation failed.
- **West Virginia:** Introduced legislation in 2019 to prohibit access to “nonpublic areas” for reasons other than intent to perform authorized work, including capturing photographs and videos or removing other data or documents. The bill would create a civil cause of action, allowing businesses to sue for damages.⁶³¹

2. AETA

The Animal Enterprise Terrorism Act,⁶³² or “AETA,” is a federal law that prohibits people from engaging in certain conduct “for the purpose of damaging or interfering with the operations of an animal enterprise.” The statute covers any act that either “damages or causes the loss of any real or personal property” or “places a person in reasonable fear of injury.”⁶³³ The statute largely favors industry and classifies certain activists as “terrorists.” Although there have been many cases relating to this statute, the Court has not struck it down.⁶³⁴

One Ag-Gag case is often referred to as the SHAC 7 case.⁶³⁵ SHAC (Stop Huntingdon Animal Cruelty) conducted a campaign attempting to close Europe’s largest contract testing lab at Huntingdon Life Sciences (HLS). Undercover investigations into the labs revealed a number of cruel experiments on animals and included several violations of the U.S. Animal Welfare Act. The activists were alleged to have operated a website that reported on and expressed ideological support for protest activity against Huntingdon and its business affiliates and to incite attacks on those who did business with HLS. The website contained information of names and addresses of persons involved with Huntingdon, including investors and business partners, and contained other information relating to protest activities. It was alleged, due to the information being available on the website, that a number of illegal activities were perpetrated against persons associated with HLS and the business of Huntingdon was negatively affected resulting in economic harm. Seven individuals and the organization were charged with conspiracy to violate the law (at the time named the Animal Enterprises Protection Act). Additional charges were also laid against the individuals including interstate stalking via the internet. The defendants were not accused of having personally engaged in alleged terrorist or threatening acts. Rather, the prosecution focused on the fact that the organizers of campaigns are responsible for acts that others may engage in if they further the same ideas as the organization. The court found the defendants guilty. Additional constitutional challenges to the law have failed.

⁶³¹ *What is Ag-Gag Legislation?*, ASPCA, <https://perma.cc/69A2-3VU8>.

⁶³² Animal Enterprise Terrorism Act, Pub. L. 109–374 120 Stat. 2652 (codified as 18 U.S.C. § 43).

⁶³³ *Id.*

⁶³⁴ *United States v. Johnson*, 875 F.3d 360 (7th Cir. 2017).

⁶³⁵ *U.S. v. SHAC 7*, CTR. FOR CONST. RTS. (Aug. 3, 2016), <https://perma.cc/347S-RH6W>.

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For additional information see resources from the following organizations: Green is the New Red,⁶³⁶ Civil Liberties Defense Center,⁶³⁷ Equal Justice Alliance,⁶³⁸ and NLG.⁶³⁹

3. Hunter Harassment Laws

Hunter harassment laws protect hunters from persons who may interfere with their lawful hunting activities. The wording of these statutes can be extremely broad and include activities like filming hunters and walking in the woods (if the intent is to interfere with hunting). Currently, all fifty states have Hunter Harassment Laws. Examples of these laws can be found at the Animal Law Info site.⁶⁴⁰ Additionally, activists should be aware the right to hunt and/or fish and/or trap is enshrined in the Constitutions of some states, and therefore this type of protest may have additional legal implications.

4. SLAPP Suits

SLAPP stands for “Strategic Lawsuit Against Public Participation.” These are lawsuits that are “intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition . . . Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech.”⁶⁴¹ One of the most famous SLAPP cases involved Oprah Winfrey, who was sued in 1996 by Texas cattle ranchers when one of her shows, entitled “Dangerous Food,” featured experts on mad cow disease and included a statement by Oprah that she would never eat another hamburger.⁶⁴² Oprah and her co-defendants were exonerated.

These suits have been used against animal activists and other protestors as a means to silence them by threatening them with significant costs in defending the cases. Twenty-eight states have enacted anti-SLAPP legislation, including Oregon.

⁶³⁶ Will Potter, *Analysis of the Animal Enterprise Terrorism Act (AETA)*, GREEN IS THE NEW RED, <https://perma.cc/6W5J-3TMV>.

⁶³⁷ *Animal Enterprise Terrorism Act (AETA)*, C.L. DEF. CTR. (Apr. 24, 2014), <https://perma.cc/ST66-A37X>.

⁶³⁸ *About AETA*, EQUAL JUSTICE ALLIANCE, <https://perma.cc/LP4T-SMN3>.

⁶³⁹ ANDY PARKER, NAT’L LAWS. GUILD, BEYOND AETA: HOW CORPORATE-CRAFTED LEGISLATION BRANDS ACTIVISTS AS TERRORISTS (2012), <https://perma.cc/3CMH-R2YK>.

⁶⁴⁰ *Hunter Harassment*, ANIMAL L. CTR., <https://perma.cc/H5YN-4KPN>.

⁶⁴¹ *What is SLAPP?*, PUB. PARTICIPATION PROJECT, <https://perma.cc/U9UA-QEY8>.

⁶⁴² *Oprah SLAPPed by Texas Cattle Ranchers*, PUB. PARTICIPATION PROJECT (Jan.1, 2009), <https://perma.cc/5T7U-GVZY>.

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Some useful resources about SLAPP suits, include the following: Civil Liberties Defense Center;⁶⁴³ Public Participation Project,⁶⁴⁴ and Reporters Committee for Freedom of the Press.⁶⁴⁵

5. Racketeer Influenced Corrupt Organizations Act

Racketeer Influenced and Corrupt Organizations Act,⁶⁴⁶ or RICO, is a federal law that was designed for use in mob prosecutions⁶⁴⁷ which are notoriously difficult. It allows for prosecution of all individuals involved in a corrupt activity and imputes liability of one to all. RICO lawsuits can be civil or criminal.

According to the Civil Liberties Defense Center,⁶⁴⁸ in 1997, People for the Ethical Treatment of Animals (PETA) became the first advocacy group that was not an anti-abortion group to be sued under RICO. Huntingdon Life Sciences, a business that engages in controversial animal testing practices such as live dissection, filed a civil RICO lawsuit against PETA after PETA publicly exposed the company's practices that they deemed extraordinarily cruel. The Civil Liberties Defense Center also details further information about RICO and how it has been used against animal activists and animal protection organizations.

6. Other Potential Criminal Laws

Another issue that should be considered in this context is “Anti-Protest Legislation.” In general, there are an increasing amount of “anti-protest” laws either proposed or that have already been passed. In particular, following the January 6, 2021, insurrection at the Capitol,⁶⁴⁹ state legislatures made an unprecedented push for anti-protest bills, using the insurrection to justify legislation that chills free speech.⁶⁵⁰ A good source for tracking these can be found on the International Center for Non-Profit Law (ICNL) website.⁶⁵¹

⁶⁴³ *SLAPP Suits*, C.L. DEF. CTR. (April 24, 2014), <https://perma.cc/8E2V-FK8L>.

⁶⁴⁴ *SLAPPs Against Consumer Speech*, PUB. PARTICIPATION PROJECT, <https://perma.cc/3Z2K-MP86>.

⁶⁴⁵ *Understanding Anti-SLAPP Laws*, REPORTERS COMM. FOR FREEDOM OF THE PRESS, <https://perma.cc/49DS-Z83H>.

⁶⁴⁶ 18 U.S.C. §1961 (2018).

⁶⁴⁷ *Racketeer Influenced and Corrupt Organizations (RICO) Law*, JUSTIA, <https://perma.cc/TZ9T-P7CL>.

⁶⁴⁸ *RICO*, C.L. DEF. CTR. (Apr. 24, 2014), <https://perma.cc/8MMY-REH8>.

⁶⁴⁹ As the events of January 6, 2021 constitute an insurrection, rather than a protest, they fall outside the scope of the Guide, and accordingly will not be addressed in detail.

⁶⁵⁰ Alleen Brown & Akela Lacy, *State Legislatures Make “Unprecedented” Push on Anti-Protest Bills*, INTERCEPT (Jan. 21, 2021), <https://perma.cc/X7UF-89TN>.

⁶⁵¹ *US Protest Law Tracker*, INT’L CTR. FOR NOT-FOR-PROFIT L., <https://perma.cc/YUE9-4PVS>.

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For those interested in seeing how international jurisdictions deal with this issue, a good source of anti-protest legislation for the United Kingdom can be found on the Animal Rights UK website.⁶⁵²

Because some animal protection protests involve nudity, it is important for those activists to consider legal restrictions on public nudity. Also, activists conducting a protest which involves mimicking cruel experiments on animals should consider the effects of exposing vulnerable persons to violence and ensure that this does not violate any local or state laws, among other relevant considerations.

7. Civil Consequences

In addition to criminal charges, activists and organizations may face civil liability for any alleged harms that result from the protest. An organization may want to protect itself against civil liability due to actions of its members or persons perceived to be part of the organization. Activists may want security or contractual assurances from an organization, on whose behalf they are acting, that the organization will cover any costs that they may be liable for, including the costs of legal representation.

Various additional civil concerns include:

- **Defamation, Slander, and Libel:**⁶⁵³ Veggie libel laws, also referred to as “food disparagement laws,” are essentially designed to make it easier for food manufacturers or producers to sue individuals for criticizing their products. There are currently thirteen states that have a version of a food disparagement law.⁶⁵⁴ It should be noted that there are several organizations trying to change this. One of the examples of veggie libel laws was when Oprah criticized the beef industry for its part in mad cow disease, mentioned above. The Civil Liberties Defense Center has some useful sources on this topic,⁶⁵⁵ as does The Encyclopedia Britannica.⁶⁵⁶
- **Drone Technology:** For those intending to undertake protests involving the use of drones, there may be specific legislation regulating the use of drones, whether this be an outright prohibition or regulations specifying their use.

⁶⁵² *Legal Advice*, ANIMAL RTS. UK, <https://perma.cc/S6V2-2LPA>.

⁶⁵³ This has been included here, however, this could potentially involve criminal charges as well as civil liability.

⁶⁵⁴ These include Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Louisiana, Mississippi, North Dakota, Ohio, Oklahoma, South Dakota, and Texas.

⁶⁵⁵ Jamil Jonna, *Veggie Libel Laws: Attempts at Silencing Animal Rights Advocates*, C.L. DEF. CTR. (Jan. 9, 2012), <https://perma.cc/CBJ4-HK35>.

⁶⁵⁶ Brian Duigan, *How Oprah Got Sued for Dissing a Burger*, ENCYCLOPEDIA BRITANNICA, <https://perma.cc/EKF8-AFBC>.

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- **Restraining Orders:** These may be used by a court to protect a person, business, company, establishment, or entity, and the public from protest activity. These orders should not violate one’s freedom of speech, but if they are upheld, they can impede the movement of protesters and activists.

VI. GENERAL LEGAL SOURCES

There are a number of sources that activists can consult that deal with issues generally or specifically. We have set out some of these sources below and more specific sources throughout the Guide.

- The Animal Legal Defense Fund also has some useful resources, including a legal guide that sets out some useful advice for activists.⁶⁵⁷ They also provide additional tools that can be used by an activist to bring about change, which may be useful to advocates considering less “active” action.⁶⁵⁸
- The NLG provides a guide specifically for environmental and animal rights activists, namely, “Operation Backfire: A guide for Environmental and Animal Rights Activists.”⁶⁵⁹ **Error! Hyperlink reference not valid.**
- Looking at the protest from a business or industry perspective may prove useful. Activists may be able to preempt steps taken by these institutions. In this regard, a useful source may be a guide by Country Folks’, *Understanding and Preparing for Animal Activism*.⁶⁶⁰

VII. TOOLS FOR EFFECTIVE ACTIVISM

Although there are several ways in which protest action can be an effective mechanism for activists, there are other types of activism as well. Some sources on this topic include the following:

- People for the Ethical Treatment of Animals offers a Guide on how to be an effective advocate for animals.⁶⁶¹
- “Striking at the Roots: A Practical Guide to Animal Activism”⁶⁶²

⁶⁵⁷ *Legal Guide for Activists*, ANIMAL LEGAL DEF. FUND, <https://perma.cc/7UPS-Q2G5>.

⁶⁵⁸ *Advocacy*, ANIMAL LEGAL DEF. FUND, <https://perma.cc/KS93-QKBT>.

⁶⁵⁹ NAT’L LAWS. GUILD, OPERATION BACKFIRE: A SURVIVAL GUIDE FOR ENVIRONMENTAL AND ANIMAL RTS. ACTIVISTS (2009), <https://perma.cc/5AGW-ZM8F>.

⁶⁶⁰ *Understanding and Preparing for Animal Activism*, COUNTRY FOLKS (March 22, 2013), <https://perma.cc/6SHK-2NF2>.

⁶⁶¹ PETA, EFFECTIVE ADVOCACY: PLANNING FOR SUCCESS, <https://perma.cc/PWR8-4WUM>.

⁶⁶² MARK HAWTHORNE, STRIKING AT THE ROOTS: A PRACTICAL GUIDE (2008).

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- Born Free USA⁶⁶³
- Animal Liberation Front⁶⁶⁴
- NLG⁶⁶⁵
- The Save Movement⁶⁶⁶
- Direct Action Everywhere⁶⁶⁷
- In Defense of Animals⁶⁶⁸

There are also some more Guides dealing with specific animal issues, such as that from the multitude of animal protection organizations.

VIII. CONCLUSION

There are many unique issues relating to protest and demonstration in the animal protection movement. This Section has attempted to cover a select few of these issues and the legal provisions and consequences that may apply. Increasingly daring or creative protests methods often result in new responses by legislatures and law enforcement. It is important to be prepared and aware of potential risks and consequences of protest actions for all involved.

⁶⁶³ *Organizing a Campaign to Help Captive Wildlife*, BORN FREE USA, <https://perma.cc/V8V8-GF4Z>..

⁶⁶⁴ ANIMAL LIBERATION FRONT, <https://perma.cc/H9K7-CU3M>.

⁶⁶⁵ TILTED SCALES COLLECTIVE, *A TILTED GUIDE TO BEING A DEFENDANT* (2017).

⁶⁶⁶ *Bearing Witness*, ANIMAL SAVE MOVEMENT, <https://perma.cc/4MHB-866Y>.

⁶⁶⁷ DIRECT ACTION EVERYWHERE, <https://perma.cc/43UT-HD8V>.

⁶⁶⁸ *Activist Resource List*, IN DEF. OF ANIMALS, <https://perma.cc/7U56-8JZK>.

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APPENDIX III – OREGON SPECIFIC CRIMINAL ASPECTS⁶⁶⁹

I. INTRODUCTION

When planning or attending a protest, it is important to note that different laws may apply to various protest activities in different jurisdictions. Each state has its own criminal laws, which may be unique or different to other states. This can affect the type of crime charged, how it is defined, the penalties for committing these crimes, or how they may be different in scope.

This Appendix provides relevant excerpts of and links to Oregon criminal law. Using the hyperlinks will take you to the relevant and current section of Oregon law. Due to the changing nature of the laws that may impact protesters, it is important that protesters review the laws relevant to their particular jurisdiction before planning or attending a protest. The information provided here is not intended to be exhaustive or authoritative for any given protest. This is an introduction to the types of crimes that could be charged for a variety of protest activities. Speaking with an attorney may be advisable to ensure protesters are taking all proper precautions. This Appendix may also prove helpful for lawyers who wish to survey the relevant criminal law landscape as it pertains to protest and activists.

II. EXTRACTS OF OREGON STATUTORY WORDING

The below Sections provide an overview of general principles of Oregon criminal law and includes definitions from the Oregon Code, along with additional information designed to give protesters a sense of the scope of relevant criminal law.

A. ORS Chapter 161: General Provisions

This Section provides an overview of general definitions, criminal liability, exclusion of defenses, exemptions to criminal liability, criminal liability of corporations, use of physical force, classes of offenses, and penalties,

1. Principles

§ 161.015 General definitions

⁶⁶⁹ Every state and all or most municipalities have their own criminal code. The following is offered as an example of the type of statutes which have been used in protest situations and which protesters should therefore be aware of (Oregon law as of 2022)

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- (1) “Dangerous weapon” means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.
- (2) “Deadly weapon” means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.
- (3) “Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.
- (4) “Peace officer” means:
 - (a) A member of the Oregon State Police;
 - (b) A sheriff, constable, marshal, municipal police officer or reserve officer as defined in ORS 133.005 (Definitions for ORS 133.005 to 133.400 and 133.410 to 133.450), or a police officer commissioned by a university under ORS 352.121 (University police departments and officers) or 353.125 (Creation of police department and commission of police officers);
 - (c) An investigator of the Criminal Justice Division of the Department of Justice or investigator of a district attorney’s office;
 - (d) A humane special agent as defined in ORS 181A.345 (Humane special agents to enforce animal welfare laws under direction of law enforcement agency);
 - (e) A regulatory specialist exercising authority described in ORS 471.775 (Service of subpoenas) (2);
 - (f) An authorized tribal police officer as defined in ORS 181A.680 (Definitions for ORS 181A.680 to 181A.692); and
 - (g) Any other person designated by law as a peace officer.
- (5) “Person” means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
- (6) “Physical force” includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.
- (7) “Physical injury” means impairment of physical condition or substantial pain.
- (8) “Serious physical injury” means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
- (9) “Possess” means to have physical possession or otherwise to exercise dominion or control over property.
- (10) “Public place” means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks,

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playgrounds and premises used in connection with public passenger transportation.

2. Criminal Liability

This section advises on how liability is determined for a person, or persons, who have allegedly violated the law, as well as the requirements to meet criminal liability.

§ 161.085 Definitions with respect to culpability

- (1) “Act” means a bodily movement.
- (2) “Voluntary act” means a bodily movement performed consciously and includes the conscious possession or control of property.
- (3) “Omission” means a failure to perform an act the performance of which is required by law.
- (4) “Conduct” means an act or omission and its accompanying mental state.
- (5) “To act” means either to perform an act or to omit to perform an act.
- (6) “Culpable mental state” means intentionally, knowingly, recklessly or with criminal negligence as these terms are defined in subsections (7), (8), (9) and (10) of this section.
- (7) “Intentionally” or “with intent,” when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.
- (8) “Knowingly” or “with knowledge,” when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.
- (9) “Recklessly,” when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- (10) “Criminal negligence” or “criminally negligent,” when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

§ 161.095 Requirements for criminal liability

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(1) The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which the person is capable of performing.

(2) Except as provided in ORS [161.105](#) (Culpability requirement inapplicable to certain violations and offenses), a person is not guilty of an offense unless the person acts with a culpable mental state with respect to each material element of the offense that necessarily requires a culpable mental state.

3. Parties to Crime

This section reviews how the law determines who was involved in a crime, as well as exemptions.

[§ 161.150 Criminal liability described](#)

[§ 161.155 Criminal liability for conduct of another](#)

[§ 161.160 Exclusion of defenses to criminal liability for conduct of another](#)

[§ 161.165 Exemptions to criminal liability for conduct of another](#)

[§ 161.170 Criminal liability of corporations](#)

[§ 161.175 Criminal liability of an individual for corporate conduct](#)

4. Justification

There are times when force is justified, and times when it is not. This section gives more information on that distinction.

[§ 161.249 Use of physical force by private person assisting an arrest](#)

[§ 161.255 Use of physical force by private person making citizen's arrest](#)

[§ 161.260 Use of physical force in resisting arrest prohibited](#)

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§ 161.265 Use of physical force to prevent escape

§ 161.267 Use of physical force by corrections officer or official employed by Department of Corrections

5. Responsibility

There are certain circumstances that may render a person not responsible for a crime, such as incapacity and mental disorders. Please refer to the Code for more specific information.

6. Inchoate Crimes

There are different inchoate crimes, such as attempt, criminal conspiracy, and solicitation. For more information about these crimes, please refer to the Code.

7. Classes of Offenses

§ 161.505 “Offense” described

An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state. An offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008.

§ 161.515 “Crime” described

- (1) A crime is an offense for which a sentence of imprisonment is authorized.
- (2) A crime is either a felony or a misdemeanor.

§ 161.525 “Felony” described

Except as provided in ORS 161.585 (Classification of certain crimes determined by punishment), 161.705 (Reduction of certain felonies to misdemeanors) and 161.710 (Reduction of certain felony driving offenses after completion of sentence), a crime is a felony if it is so designated in any statute of this state or if a person convicted under a statute of this state may be sentenced to a maximum term of imprisonment of more than one year.

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§ 161.545 “Misdemeanor” described

A crime is a misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year.

8. Disposition of Offenders

§ 161.605 Maximum terms of imprisonment for felonies

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

- (1) For a Class A felony, 20 years.
- (2) For a Class B felony, 10 years.
- (3) For a Class C felony, 5 years.
- (4) For an unclassified felony as provided in the statute defining the crime.

§ 161.610 Enhanced penalty for use of firearm during commission of felony

§ 161.615 Maximum terms of imprisonment for misdemeanors

Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

- (1) For a Class A misdemeanor, 364 days.
- (2) For a Class B misdemeanor, 6 months.
- (3) For a Class C misdemeanor, 30 days.
- (4) For an unclassified misdemeanor, as provided in the statute defining the crime.

§ 161.620 Sentences imposed upon waiver from juvenile court

§ 161.625 Fines for felonies

- (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:
 - (a) \$500,000 for murder or aggravated murder.
 - (b) \$375,000 for a Class A felony.
 - (c) \$250,000 for a Class B felony.
 - (d) \$125,000 for a Class C felony.
- (2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.
- (3)(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine

authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055 (Theft in the first degree), or a captive wild animal.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed.

"Value" shall be determined by the standards established in ORS 164.115 (Value of property).

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655 (Fines for corporations), this section does not apply to a corporation.

§ 161.635 Fines for misdemeanors

(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$6,250 for a Class A misdemeanor.

(b) \$2,500 for a Class B misdemeanor.

(c) \$1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (Fines for felonies) (4) and (5) apply.

(4) This section does not apply to corporations.

§ 161.655 Fines for corporations

A sentence to pay a fine when imposed on a corporation for an offense defined in the Oregon Criminal Code or for an offense defined outside this code for which no special corporate fine is specified, shall be a sentence to pay an amount, fixed by the court. The amount of the fine varies depending on type of felony or misdemeanor. For more information, please refer to the Code.

B. ORS Chapter 163: Offenses Against Persons

This Section provides an overview of different types of homicide, murder, manslaughter, assault, reckless endangerment, mistreatment, female genital mutilation, unlawful use of a weapon, and the varying degrees assigned to certain crimes.

1. Homicide

§ 163.149 Aggravated vehicular homicide

2. Assault and Related Offenses

§ 163.160 Assault in the fourth degree

- (1) A person commits the crime of assault in the fourth degree if the person:
 - (a) Intentionally, knowingly or recklessly causes physical injury to another;
 - (b) With criminal negligence causes physical injury to another by means of a deadly weapon; or
 - (c) With criminal negligence causes serious physical injury to another who is a vulnerable user of a public way, as defined in ORS 801.608 (“Vulnerable user of a public way”), by means of a motor vehicle.
- (2) Assault in the fourth degree is a Class A misdemeanor.
- (3) Notwithstanding subsection (2) of this section, assault in the fourth degree under subsection (1)(a) or (b) of this section is a Class C felony if the person commits the crime of assault in the fourth degree and:
 - (a) The assault is committed in the immediate presence of, or is witnessed by, the person’s or the victim’s minor child or stepchild or a minor child residing within the household of the person or victim;
 - (b) The person has been previously convicted of violating this section or ORS 163.165 (Assault in the third degree), 163.175 (Assault in the second degree), 163.185 (Assault in the first degree), 163.187 (Strangulation) or 163.190 (Menacing), or of committing an equivalent crime in another jurisdiction, and the victim in the previous conviction is the same person who is the victim of the current crime;
 - (c) The person has at least three previous convictions for violating this section or ORS 163.165 (Assault in the third degree), 163.175 (Assault in the second degree), 163.185 (Assault in the first

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- degree), 163.187 (Strangulation) or 163.190 (Menacing) or for committing an equivalent crime in another jurisdiction, in any combination; or
- (d) The person commits the assault knowing that the victim is pregnant.
- (4) For purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

§ 163.165 Assault in the third degree

- (1) A person commits the crime of assault in the third degree if the person:
- (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
 - (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
 - (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
 - (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, “public transit vehicle” has the meaning given that term in ORS 166.116 (Interfering with public transportation);
 - (e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
 - (f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;
 - (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical services provider, as defined in ORS 682.025 (Definitions), while the emergency medical services provider is performing official duties;
 - (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;
 - (i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi; or
 - (j) Intentionally, knowingly or recklessly causes physical injury to a flagger or a highway worker while the flagger or highway worker is performing official duties.
- (2)(a) Assault in the third degree is a Class C felony.
- (b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under subsection (1)(a) or (b) of this section is a Class B felony if:
- (A) The assault resulted from the operation of a motor vehicle; and

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(B) The defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants.

(3) As used in this section:

(a) “Flagger” has the meaning given that term in ORS 811.230 (Definitions).

(b) “Highway worker” has the meaning given that term in ORS 811.230 (Definitions).

(c) “Staff member” means:

(A) A corrections officer as defined in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670), a youth correction officer, a youth correction facility staff member, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates, youth or youth offenders; and

(B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates, youth or youth offenders.

(d) “Youth correction facility” has the meaning given that term in ORS 162.135 (Definitions for ORS 162.135 to 162.205).

§ 163.175 Assault in the second degree

(1) A person commits the crime of assault in the third degree if the person:

(a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;

(c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

(d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, “public transit vehicle” has the meaning given that term in ORS 166.116 (Interfering with public transportation);

(e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

(f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;

(g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical services provider, as defined in

- ORS 682.025 (Definitions), while the emergency medical services provider is performing official duties;
- (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;
 - (i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi; or
 - (j) Intentionally, knowingly or recklessly causes physical injury to a flagger or a highway worker while the flagger or highway worker is performing official duties.
- (2)(a) Assault in the third degree is a Class C felony.
- (b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under subsection (1)(a) or (b) of this section is a Class B felony if:
- (A) The assault resulted from the operation of a motor vehicle; and
 - (B) The defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants.
- (3) As used in this section:
- (a) “Flagger” has the meaning given that term in ORS 811.230 (Definitions).
 - (b) “Highway worker” has the meaning given that term in ORS 811.230 (Definitions).
 - (c) “Staff member” means:
 - (A) A corrections officer as defined in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670), a youth correction officer, a youth correction facility staff member, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates, youth or youth offenders; and
 - (B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, inmates, youth or youth offenders.
 - (d) “Youth correction facility” has the meaning given that term in ORS 162.135 (Definitions for ORS 162.135 to 162.205).

§ 163.185 Assault in the first degree

- (1) A person commits the crime of assault in the first degree if the person:
- (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;
 - (b) Intentionally or knowingly causes serious physical injury to a child under six years of age;
 - (c) Violates ORS 163.175 (Assault in the second degree) knowing that the victim is pregnant; or

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- (d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 (Driving under the influence of intoxicants) and:
 - (A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010 (Driving under the influence of intoxicants), or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or
 - (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and
 - (ii) The victim's death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.
- (2) The previous convictions to which subsection (1)(d)(B) of this section apply are:
 - (a) Manslaughter in the first degree under ORS 163.118 (Manslaughter in the first degree);
 - (b) Manslaughter in the second degree under ORS 163.125 (Manslaughter in the second degree);
 - (c) Criminally negligent homicide under ORS 163.145 (Criminally negligent homicide);
 - (d) Assault in the first degree under this section;
 - (e) Assault in the second degree under ORS 163.175 (Assault in the second degree); or
 - (f) Assault in the third degree under ORS 163.165 (Assault in the third degree).
- (3) Assault in the first degree is a Class A felony.
- (4) It is an affirmative defense to a prosecution under subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

3. Menacing

§ 163.190 Menacing

- (1) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.
- (2) Menacing is a Class A misdemeanor.

4. Recklessly Endangering Another Person

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§ 163.195 Recklessly endangering another person

(1) A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(2) Recklessly endangering another person is a Class A misdemeanor.

5. Criminal Mistreatment

§ 163.200 Criminal mistreatment in the second degree

§ 163.205 Criminal mistreatment in the first degree

§ 163.206 Exceptions to criminal mistreatment

6. Assaulting a Public Safety Officer

§ 163.208 Assaulting a public safety officer

7. Unlawful Use of an Electric Stun Gun, Tear Gas or Mace

§ 163.212 Unlawful use of an electrical stun gun, tear gas or mace in the second degree

§ 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree

C. ORS Chapter 164: Offenses Against Property

This Section provides an overview of different types of theft and defenses, burglary, criminal trespass, trespass while possessing a firearm, closure of premises, unlawful entry, authority of certain persons, arson, criminal mischief, use of explosives, graffiti, robbery, littering, institutions, facilities, public utilities, railroads, and telecommunications carriers. It also includes the varying degrees as applicable to certain crimes.

1. Definitions

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§ 164.005 Definitions

2. Theft and Related Offenses

§ 164.015 “Theft” described

§ 164.025 Consolidation of theft offenses

§ 164.035 Defenses

§ 164.043 Theft in the third degree

§ 164.045 Theft in the second degree

§ 164.055 Theft in the first degree

3. Burglary and Criminal Trespass

§ 164.205 Definitions for ORS 164.2015 to 164.270

§ 164.215 Burglary in the second degree

§ 164.225 Burglary in the first degree

§ 164.235 Possession of a burglary tool or theft device

§ 164.243 Criminal trespass in the second degree by a guest

§ 164.245 Criminal trespass in the second degree

- (1) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in a motor vehicle or in or upon premises.
- (2) Criminal trespass in the second degree is a Class C misdemeanor

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§ 164.255 Criminal Trespass in the first degree

(1) A person commits the crime of criminal trespass in the first degree if the person:

- (a) Enters or remains unlawfully in a dwelling;
- (b) Having been denied future entry to a building pursuant to a merchant's notice of trespass, reenters the building during hours when the building is open to the public with the intent to commit theft therein;
- (c) Enters or remains unlawfully upon railroad yards, tracks, bridges or rights of way; or
- (d) Enters or remains unlawfully in or upon premises that have been determined to be not fit for use under

ORS 453.855 (Purpose) to 453.912 (Governmental immunity from liability).

(2) Subsection (1)(d) of this section does not apply to the owner of record of the premises if:

- (a) The owner notifies the law enforcement agency having jurisdiction over the premises that the owner intends to enter the premises;
- (b) The owner enters or remains on the premises for the purpose of inspecting or decontaminating the premises or lawfully removing items from the premises; and
- (c) The owner has not been arrested for, charged with or convicted of a criminal offense that contributed to the determination that the premises are not fit for use.

(3) Criminal trespass in the first degree is a Class A misdemeanor.

§ 164.265 Criminal trespass while in possession of a firearm

§ 164.270 Closure of premises to motor-propelled vehicles

§ 164.272 Unlawful entry into a motor vehicle

§ 164.274 Definitions for ORS 164.276 and 164.278

§ 164.276 Authority of sports official to expel persons from sports event

§ 164.278 Criminal trespass at a sports event

4. ORS Arson, Criminal Mischief and Related Offenses

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§ 164.305 Definitions for ORS 164.305 to 164.377

§ 164.315 Arson in the second degree

§ 164.325 Arson in the first degree

§ 164.335 Reckless burning

§ 164.338 Arson incident to the manufacture of a controlled substance in the second degree

§ 164.342 Arson incident to the manufacture of a controlled substance in the first degree

§ 164.345 Criminal mischief in the third degree

(1) A person commits the crime of criminal mischief in the third degree if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another.

(2) Criminal mischief in the third degree is a Class C misdemeanor.

§ 164.354 Criminal mischief in the second degree

(1) A person commits the crime of criminal mischief in the second degree if:

(a) The person violates ORS 164.345 (Criminal mischief in the third degree), and as a result thereof, damages property in an amount exceeding \$500; or

(b) Having no right to do so nor reasonable ground to believe that the person has such right, the person intentionally damages property of another, or, the person recklessly damages property of another in an amount exceeding \$500.

(2) Criminal mischief in the second degree is a Class A misdemeanor.

§ 164.365 Criminal mischief in the first degree

(1) A person commits the crime of criminal mischief in the first degree who, with intent to damage property, and having no right to do so nor reasonable ground to believe that the person has such right:

(a) Damages or destroys property of another:

(A) In an amount exceeding \$1,000;

(B) By means of an explosive;

- (C) By starting a fire in an institution while the person is committed to and confined in the institution;
 - (D) Which is a livestock animal as defined in ORS 164.055 (Theft in the first degree);
 - (E) Which is the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public; or
 - (F) By intentionally interfering with, obstructing or adulterating in any manner the service of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility; or
 - (b) Intentionally uses, manipulates, arranges or rearranges the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public so as to interfere with its efficiency.
- (2) As used in subsection (1) of this section:
- (a) “Institution” includes state and local correctional facilities, mental health facilities, juvenile detention facilities and state training schools.
 - (b) “Medical facility” means a health care facility as defined in ORS 442.015 (Definitions), a licensed physician’s office or anywhere a licensed medical practitioner provides health care services.
 - (c) “Public utility” has the meaning provided for that term in ORS 757.005 (Definition of public utility) and includes any cooperative, people’s utility district or other municipal corporation providing an electric, gas, water or other utility service.
 - (d) “Railroad” has the meaning provided for that term in ORS 824.020 (Definitions for ORS 824.020 to 824.042).
 - (e) “Public transportation facility” means any property, structure or equipment used for or in connection with the transportation of persons for hire by rail, air or bus, including any railroad cars, buses or airplanes used to carry out such transportation.
 - (f) “Telecommunications carrier” has the meaning given that term in ORS 133.721 (Definitions for ORS 41.910 and 133.721 to 133.739).
- (3) Criminal mischief in the first degree is a Class C felony.

5. Computer Crime

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§ 164.377 Computer crime

(1) As used in this section:

(a) To “access” means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

(b) “Computer” means, but is not limited to, an electronic, magnetic, optical electrochemical or other high-speed data processing device that performs logical, arithmetic or memory functions by the manipulations of electronic, magnetic or optical signals or impulses, and includes the components of a computer and all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

(c) “Computer network” means, but is not limited to, the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.

(d) “Computer program” means, but is not limited to, a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from or usage of such computer system.

(e) “Computer software” means, but is not limited to, computer programs, procedures and associated documentation concerned with the operation of a computer system.

(f) “Computer system” means, but is not limited to, a set of related, connected or unconnected, computer equipment, devices and software. “Computer system” also includes any computer, device or software owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery.

(g) “Data” means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. “Data” may be in any form, in storage media, or as stored in the memory of the computer, or in transit, or presented on a display device. “Data” includes, but is not limited to, computer or human readable forms of numbers, text, stored voice, graphics and images.

(h) “Intimate image” means a photograph, film, video, recording, digital picture or other visual reproduction of a person whose intimate parts are visible or who is engaged in sexual conduct.

(i) “Intimate parts” means uncovered human genitals, pubic areas or female nipples.

(j) “Property” includes, but is not limited to, financial instruments, information, including electronically produced data, and computer software

and programs in either computer or human readable form, intellectual property and any other tangible or intangible item of value.

(k) “Proprietary information” includes any scientific, technical or commercial information including any design, process, procedure, list of customers, list of suppliers, customers’ records or business code or improvement thereof that is known only to limited individuals within an organization and is used in a business that the organization conducts. The information must have actual or potential commercial value and give the user of the information an opportunity to obtain a business advantage over competitors who do not know or use the information.

(l) “Services” includes, but is not limited to, computer time, data processing and storage functions.

(m) “Sexual conduct” means sexual intercourse or oral or anal sexual intercourse, as those terms are defined in ORS 163.305 (Definitions), or masturbation.

(2) Any person commits computer crime who knowingly accesses, attempts to access or uses, or attempts to use, any computer, computer system, computer network or any part thereof for the purpose of:

(a) Devising or executing any scheme or artifice to defraud;

(b) Obtaining money, property or services by means of false or fraudulent pretenses, representations or promises; or

(c) Committing theft, including, but not limited to, theft of proprietary information or theft of an intimate image.

(3) Any person who knowingly and without authorization alters, damages or destroys any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime.

(4) Any person who knowingly and without authorization uses, accesses or attempts to access any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime.

(5)(a) A violation of the provisions of subsection (2) or (3) of this section shall be a Class C felony. Except as provided in paragraph (b) of this subsection, a violation of the provisions of subsection (4) of this section shall be a Class A misdemeanor.

(b) Any violation of this section relating to a computer, computer network, computer program, computer software, computer system or data owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery Commission shall be a Class C felony.

6. Graffiti Related Offenses

§ 164.381 Definitions

§ 164.383 Unlawfully applying graffiti

§ 164.386 Unlawfully possessing a graffiti implement

§ 164.388 Preemption

7. Robbery

It may be the case that during a protest the authorities may perceive that a protester is attempting to commit a theft, has committed a theft, or is involved with the unauthorized use of a vehicle. Although this may seem to be a less likely event, it is helpful to know the sections and penalties for robbery in the Code.

§ 164.395 Robbery in the third degree

§ 164.405 Robbery in the second degree

§ 164.415 Robbery in the first degree

8. Littering

§ 164.775 Deposit of trash within 100 yards of waters or in waters

§ 164.785 Placing offensive substances in waters, on highways or other property

§ 164.805 Offensive littering

9. Miscellaneous

§ 164.865 Unlawful sound recording

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§ 164.866 Civil action for injuries caused by criminal acts

§ 164.868 Unlawful labeling of a sound recording

§ 164.869 Unlawful recording of a live performance

D. ORS Chapter 166: Offenses Against Public Order; Firearms and Other Weapons; Racketeering

This Section provides an overview of riots, disorderly conduct, harassment, aggravated harassment, abuse of venerated objects, abuse of a memorial to the dead, abuse of a corpse, telephonic harassment, misconduct with emergency telephone calls, interfering with public transportation, intimidation, possession and use of weapons, possession of weapon or destructive device in public building or court facility, sale or transfer of firearms, discharging weapons, possession of body armor, throwing an object off an overpass, unlawful paramilitary activity, casting artificial light from vehicle while possessing certain weapons, and racketeering. Also included are the varying degrees as applicable to certain crimes.

1. Riot, Disorderly Conduct, and Harassment

§ 166.015 Riot

- (1) A person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.
- (2) Riot is a Class C felony.

§ 166.023 Disorderly conduct in the first degree

- (1) A person commits the crime of disorderly conduct in the first degree if, with intent to cause public inconvenience, annoyance or alarm, or knowingly creating a risk thereof, the person initiates or circulates a report, knowing it to be false:
 - (a) Concerning an alleged hazardous substance or an alleged or impending fire, explosion, catastrophe or other emergency; and
 - (b) Stating that the hazardous substance, fire, explosion, catastrophe or other emergency is located in or upon a court facility or a public building, as those terms are defined in ORS 166.360 (Definitions for ORS 166.360 to 166.380).
- (2)(a) Disorderly conduct in the first degree is a Class A misdemeanor.

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(b) Notwithstanding paragraph (a) of this subsection, disorderly conduct in the first degree is a Class C felony if the defendant has at least one prior conviction for violating subsection (1) of this section.

§ 166.025 Disorderly conduct in the second degree

(1) A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or in violent, tumultuous or threatening behavior;
- (b) Makes unreasonable noise;
- (c) Disturbs any lawful assembly of persons without lawful authority;
- (d) Obstructs vehicular or pedestrian traffic on a public way;
- (e) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
- (f) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(2)(a) Disorderly conduct in the second degree is a Class B misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, disorderly conduct in the second degree is a Class A misdemeanor if the crime is committed within 200 feet of the real property on which the person knows a funeral service is being conducted.

(3) As used in this section, “funeral service” means a burial or other memorial service for a deceased person.

§ 166.065 Harassment

(1) A person commits the crime of harassment if the person intentionally:

- (a) Harasses or annoys another person by:
 - (A) Subjecting such other person to offensive physical contact;
 - (B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response; or
 - (C) Distributing a visual recording, as defined in ORS 163.665 (Definitions), of the other person engaged in sexually explicit conduct, as defined in ORS 163.665 (Definitions), or in a state of nudity, as defined in ORS 163.700 (Invasion of personal privacy in the second degree), when the other person is under 18 years of age at the time of the recording;
- (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

- (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.
- (2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.
 - (b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.
- (3) Harassment is a Class B misdemeanor.
- (4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates:
 - (a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and:
 - (A) The offensive physical contact consists of touching the sexual or other intimate parts of the other person; or
 - (B)(i) The victim of the offense is a family or household member of the person; and
 - (ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim;
 - (b) Subsection (1)(a)(C) of this section; or
 - (c) Subsection (1)(c) of this section and:
 - (A) The person has a previous conviction under subsection (1)(c) of this section and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;
 - (B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in [ORS 24.190](#) (Foreign restraining orders) or any other court order prohibiting the person from contacting the victim;
 - (C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or
 - (D)(i) The person conveyed a threat to kill the other person or any member of the family of the other person;
 - (ii) The person expressed the intent to carry out the threat; and
 - (iii) A reasonable person would believe that the threat was likely to be followed by action.
- (5) It is not a defense to a charge under subsection (1)(a)(C) of this section that the defendant did not know the age of the victim.

(6) The Oregon Criminal Justice Commission shall classify harassment as described in subsection (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the commission.

(7)(a) As used in this section:

(A) “Electronic threat” means a threat conveyed by electronic mail, the Internet, a telephone text message or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means.

(B) “Family or household member” has the meaning given that term in ORS 135.230 (Definitions for ORS 135.230 to 135.290).

(b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen or directly perceived in any other manner by the minor child.

§ 166.070 Aggravated harassment

(1) A person commits the crime of aggravated harassment if the person, knowing that the other person is a:

(a) Staff member, knowingly propels saliva, blood, urine, semen, feces or other dangerous substance at the staff member while the staff member is acting in the course of official duty or as a result of the staff member’s official duties;

(b) Public safety officer, knowingly propels blood, urine, semen or feces at the public safety officer while the public safety officer is acting in the course of official duty or as a result of the public safety officer’s official duties; or

(c) Public safety officer, intentionally propels saliva at the public safety officer, and the saliva comes into physical contact with the public safety officer, while the public safety officer is acting in the course of official duty or as a result of the public safety officer’s official duties.

(2) Aggravated harassment is a Class C felony. When a person is convicted of violating subsection (1)(a) of this section, in addition to any other sentence it may impose, the court shall impose a term of incarceration in a state correctional facility.

(3) As used in this section:

(a) “Public safety officer” means an emergency medical services provider as defined in ORS 682.025 (Definitions), a regulatory specialist as defined in ORS 471.001 (Definitions for ORS chapters 471 and 473) or a fire service professional, a parole and probation officer or a police officer as those terms are defined in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).

(b) “Staff member” has the meaning given that term in ORS 163.165 (Assault in the third degree).

2. Abuse of Venerated Objects, Memorials to the Dead, and Corpses

§ 166.075 Abuse of venerated objects

(1) A person commits the crime of abuse of venerated objects if the person intentionally abuses a public monument or structure, a place of worship or the national or state flag.

(2) As used in this section and ORS 166.085 (Abuse of corpse in the second degree), “abuse” means to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage public sensibilities.

(3) Abuse of venerated objects is a Class C misdemeanor.

§ 166.076 Abuse of a memorial to the dead

3. Telephonic Harassment and Misconduct with Emergency Telephone Calls

§ 166.090 Telephonic harassment

§ 166.095 Misconduct with emergency telephone calls

4. Interfering with Public Transportation

§ 166.116 Interfering with public transportation

(1) A person commits the crime of interfering with public transportation if the person:

(a) Intentionally or knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station;

(b) Intentionally or knowingly interferes with the provision or use of public transportation services by, among other things, interfering with the movement of, or access to, public transit vehicles;

(c) While in or on a public transit vehicle or public transit station, engages in disorderly conduct in the second degree as defined in ORS 166.025 (Disorderly conduct in the second degree); or

(d) Subjects a public transportation passenger, employee, agent or security officer or transit police officer to offensive physical contact.

(2)(a)(A) Interfering with public transportation as provided in subsection (1)(a) of this section is a Class C misdemeanor.

(B) Notwithstanding subparagraph (A) of this paragraph, interfering with public transportation as provided in subsection (1)(a) of this section is a

Class A misdemeanor if the person has three or more prior convictions for interfering with public transportation as provided in subsection (1)(a) of this section.

(b) Interfering with public transportation as provided in subsection (1)(b) to (d) of this section is a Class A misdemeanor.

(3) As used in this section:

(a) “Enter or remain unlawfully” has the meaning given that term in ORS 164.205 (Definitions for ORS 164.205 to 164.270).

(b) “Public transit station” includes all facilities, structures, lands and rights of way that are owned, leased, held or used for the purposes of providing public transportation services.

(c) “Public transit vehicle” means a vehicle that is used for public transportation or operated by or under contract to any public body in order to provide public transportation.

(d) “Public transportation” means transportation provided by a city, county, special district or any other political subdivision or municipal or public corporation.

5. Intimidation or Bias Crime

§ 165.155 Bias crime in the second degree

(1) A person commits the crime of intimidation in the second degree if the person:

(a) Tamper or interferes with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another because of the person’s perception of the other’s race, color, religion, sexual orientation, disability or national origin;

(b) Intentionally subjects another to offensive physical contact because of the person’s perception of the other’s race, color, religion, sexual orientation, disability or national origin; or

(c) Intentionally, because of the person’s perception of race, color, religion, sexual orientation, disability or national origin of another or of a member of the other’s family, subjects the other person to alarm by threatening:

(A) To inflict serious physical injury upon or to commit a felony affecting the other person, or a member of the person’s family; or

(B) To cause substantial damage to the property of the other person or of a member of the other person’s family.

(2) Intimidation in the second degree is a Class A misdemeanor.

(3) For purposes of this section, “property” means any tangible personal property or real property.

§ 166.165 Bias crime in the first degree

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- (1) Two or more persons acting together commit the crime of intimidation in the first degree, if the persons:
 - (a)(A) Intentionally, knowingly or recklessly cause physical injury to another person because of the actors' perception of that person's race, color, religion, sexual orientation, disability or national origin; or
 - (B) With criminal negligence cause physical injury to another person by means of a deadly weapon because of the actors' perception of that person's race, color, religion, sexual orientation, disability or national origin;
 - (b) Intentionally, because of the actors' perception of another person's race, color, religion, sexual orientation, disability or national origin, place another person in fear of imminent serious physical injury; or
 - (c) Commit such acts as would constitute the crime of intimidation in the second degree, if undertaken by one person acting alone.
- (2) Intimidation in the first degree is a Class C felony.

6. Possession and Use of Weapons

§ 166.180 Negligently wounding another

§ 166.190 Pointing firearm at another

§ 166.210 Definitions

As used in ORS 166.250 (Unlawful possession of firearms) to 166.270 (Possession of weapons by certain felons), 166.291 (Issuance of concealed handgun license) to 166.295 (Renewal of license) and 166.410 (Manufacture, importation or sale of firearms) to 166.470 (Limitations and conditions for sales of firearms):

(1) "Antique firearm" means:

(a) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898; and

(b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:

(A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade.

(2) "Corrections officer" has the meaning given that term in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).

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- (3) “Firearm” means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder.
- (4) “Firearms silencer” means any device for silencing, muffling or diminishing the report of a firearm.
- (5) “Handgun” means any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.
- (6) “Machine gun” means a weapon of any description by whatever name known, loaded or unloaded, which is designed or modified to allow two or more shots to be fired by a single pressure on the trigger device.
- (7) “Minor” means a person under 18 years of age.
- (8) “Offense” has the meaning given that term in ORS 161.505 (“Offense” described).
- (9) “Parole and probation officer” has the meaning given that term in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).
- (10) “Peace officer” has the meaning given that term in ORS 133.005 (Definitions for ORS 133.005 to 133.400 and 133.410 to 133.450).
- (11) “Short-barreled rifle” means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.
- (12) “Short-barreled shotgun” means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if the weapon has an overall length of less than 26 inches...

§ 166.220 Unlawful use of weapon

§ 166.240 Carrying of concealed weapons

§ 166.250 Unlawful possession of firearms

7. Possession of Weapon or Destructive Device in Public Building or Court Facility

§ 166.360 Definitions for ORS 166.360 to 166.380

As used in ORS 166.30 (Definitions for ORS 166.360 to 166.380) to 166.380 (Examination of firearm by peace officer), unless the context requires otherwise:

....

- (10) “Weapon” means:
 - (a) A firearm;

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- (b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar instrument or a knife, other than an ordinary pocketknife with a blade less than four inches in length, the use of which could inflict injury upon a person or property;
- (c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211 (Definitions for ORS 163.211 to 163.213);
- (d) An electrical stun gun or any similar instrument;
- (e) A tear gas weapon as defined in ORS 163.211 (Definitions for ORS 163.211 to 163.213);
- (f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku, nightstick, truncheon or any similar instrument, the use of which could inflict injury upon a person or property; or
- (g) A dangerous or deadly weapon as those terms are defined in ORS 161.015 (General definitions).

§ 166.370 Possession of firearm or dangerous weapon in public building or court facility

§ 166.373 Possession of weapon in court facility by peace officer or federal officer

§ 166.375 Possession of handgun or ammunition by Department of Corrections authorized staff member

§ 166.382 Possession of destructive device prohibited

8. Possession of Body Armor

§ 166.642 Felon in possession of body armor

§ 166.643 Unlawful possession of body armor

9. Miscellaneous

§ 166.649 Throwing an object off an overpass in the second degree

§ 166.651 Throwing an object off an overpass in the first degree

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§ 166.660 Unlawful paramilitary activity

§ 166.663 Casting artificial light from vehicle while possessing certain weapons prohibited

10. Racketeering

§ 166.720 Racketeering activity unlawful

E. ORS Chapter 167: Offenses Against General Welfare and Animals

This Section provides an overview of research and animal interference, interference with law enforcement animal, assaulting a law enforcement animal, definitions for livestock and livestock production facility, and interference with livestock production.

1. Research and Animal Interference

§ 167.312 Research and animal interference

- (1) A person commits the crime of research and animal interference if the person:
 - (a) With the intent to interfere with research, releases, steals or otherwise causes the death, injury or loss of any animal at or from an animal research facility.
 - (b) With the intent to interfere with research, damages, vandalizes or steals any property in or on an animal research facility.
 - (c) With the intent to interfere with research, obtains access to an animal research facility to perform acts not authorized by that facility.
 - (d) Obtains or exerts unauthorized control over records, data, materials, equipment or animals of any animal research facility with the intent to interfere with research by concealing, abandoning or destroying such records, data, materials, equipment or animals.
 - (e) With the intent to interfere with research, possesses or uses equipment or animals that the person reasonably believes have been obtained by theft or deception from an animal research facility or without the authorization of an animal research facility.
- (2) For the purposes of this section, “animal research facility” means any facility engaging in legal scientific research or teaching involving the use of animals.

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- (3) Research and animal interference is a:
 - (a) Class C felony if damage to the animal research facility is \$2,500 or more; or
 - (b) Class A misdemeanor if there is no damage to the facility or if damage to the animal research facility is less than \$2,500.
- (4) Determination of damages to an animal research facility shall be made by the court. In making its determination, the court shall consider the reasonable costs of:
 - (a) Replacing lost, injured or destroyed animals;
 - (b) Restoring the animal research facility to the approximate condition of the facility before the damage occurred; and
 - (c) Replacing damaged or missing records, data, material or equipment.
- (5) In addition to any other penalty imposed for violation of this section, a person convicted of such violation is liable:
 - (a) To the owner of the animal for damages, including the costs of restoring the animal to confinement and to its health condition prior to commission of the acts constituting the violation;
 - (b) For damages to real and personal property caused by acts constituting the violation; and
 - (c) For the costs of repeating an experiment, including the replacement of the animals, labor and materials, if acts constituting the violation cause the failure of an experiment.

2. Interfering with Law Enforcement Animal and Assaulting Law Enforcement Animal

§ 167.337 Interfering with law enforcement animal

- (1) A person commits the crime of interfering with a law enforcement animal if the person intentionally or knowingly injures or attempts to injure an animal the person knows or reasonably should know is a law enforcement animal while the law enforcement animal is being used in the lawful discharge of its duty.
- (2) Interfering with a law enforcement animal is a Class A misdemeanor.

§ 167.339 Assaulting a law enforcement animal

- (1) A person commits the crime of assaulting a law enforcement animal if:
 - (a) The person knowingly causes serious physical injury to or the death of a law enforcement animal, knowing that the animal is a law enforcement animal; and
 - (b) The injury or death occurs while the law enforcement animal is being used in the lawful discharge of the animal's duties.
- (2) Assaulting a law enforcement animal is a Class C felony.

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3. Interference with Livestock Animals

§ 167.387 Definitions for ORS 167.387 and 167.388

- (1) “Livestock” has the meaning given in ORS §609.125 (Definition of “livestock”).
- (2) “Livestock production facility” means:
 - (a) Any facility or organization engaged in animal breeding, production or processing; or
 - (b) Any facility or institution whose primary purpose is to impound estray animals, as that term is defined in ORS 607.007 (“Adequate fence,” “estrays animal,” “taking up” defined).

§ 167.388 Interference with livestock production

- (1) A person commits the crime of interference with livestock production when the person, with the intent to interfere with livestock production:
 - (a) Takes, appropriates, obtains or withholds livestock from the owner thereof, or causes the loss, death or injury of any livestock maintained at a livestock production facility;
 - (b) Damages, vandalizes or steals any property located on a livestock production facility; or
 - (c) Obtains access to a livestock production facility to perform any act contained in this subsection or any other act not authorized by the livestock production facility.
- (2) The crime of interference with livestock production is:
 - (a) A Class C felony if damage to the livestock production facility is \$2,500 or more; or
 - (b) A Class A misdemeanor if there is no damage to the livestock production facility or if damage to the facility is less than \$2,500.
- (3) Determination of damages to a livestock production facility shall be made by the court. In making its determination, the court shall consider the reasonable costs of:
 - (a) Replacing lost, injured or destroyed livestock;
 - (b) Restoring the livestock production facility to the approximate condition of the facility before the damage occurred; and
 - (c) Replacing damaged or missing records, data, material, equipment or substances used in the breeding and production of livestock.
- (4) In addition to any criminal sanctions, if a defendant is convicted of the crime of interference with livestock production under subsection (1) of this section, the court shall order the defendant to pay restitution to the owner of the animal or the owner of the livestock production facility.

Please read the full [disclaimer with respect to this Guide](#). This Guide does not constitute legal advice and is not a substitute for legal advice. For any specific legal questions, one should contact a practicing and licensed lawyer in the relevant jurisdiction. The Guide is separated into different sections and subsections. It should be read in its totality, and with reference to its specific purpose. Please refer to the [Table of Contents](#) for the location of specific topics, concepts, and issues.