
ARREST, JAIL, COURT: MAKING CHOICES

THE WARNING: Police may or may not order you to leave before they begin making arrests. This may be the last opportunity to choose to be arrested or not. In a situation of mass arrests it is sometimes difficult to exercise this option.

THE ARREST: When police take or attempt to take a person into custody, there are options which are up to the individual, but affinity group members should know who plans to do what.

- ▶ **walking with the officer (may continue singing or chanting)**
- ▶ **going "limp" or non-cooperating in another manner; police sometimes consider going limp as "resisting arrest" and may add this offense to the charges.**

Police are not required to read you the Miranda rights unless they are questioning you. Details, details, details. Try to remember (and write down) the details of your arrest, including names of any witnesses and the names and badge numbers of your arresting officers. You are a witness. As soon as you have access to pen and paper, write down everything you can about the incident (what the police said, exact wording of 'warnings', description of officers— especially if they are harassing someone). What you remember may be valuable to you or someone else in court later. You are entitled to confer with a lawyer at any time before you say anything or agree to anything.

PROCESSING & BOOKING: Police transport arrested people to the nearest station for processing. At the station, police pat people down and take personal belongings including belts and shoe laces. Usually men and women are separated at this point as are youth and adults. The police then begin to fill out arrest reports seeking information from those arrested such as name, address, date of birth, and possibly social security number or place of employment. You can decide:

- ▶ **whether to give the police any information**
- ▶ **how much information to give them**
- ▶ **how to give them information (will you give an ID or just give information verbally?)**
- ▶ **whether to give them accurate information**

Refusing to give your name or using an obviously false name (e.g. Martin Luther King, Gandhi, etc.) slows down the process considerably, possibly for the whole group. Non-cooperation in this way makes police more likely to fingerprint people.

You can also refuse to be fingerprinted. Police are supposed to hold such people until court and seek a court order requiring a person to submit to fingerprinting, though sometimes they take fingerprints by force. Police generally detain people until some identification is obtained or until fingerprints clear, which, even with your cooperation, usually takes from 1-12 hours. However, you can legally be held up to 72 hours before they must release you.

After you are booked (i.e., finger-printed and background info taken), you have a right to a phone call and the right to see an attorney. Be sure to write a contact phone number on your hand and take enough change for the pay phone. Someone in the group should use their phone call to contact local media. If you call a number and the person is not home, you have a right to another phone call (until you can reach someone). Having the right to make a phone call does not mean the officers will allow you to make it. Note the time and who denied you the phone call. Be persistent – continue to ask to make a call!

Prior, during, or after the booking procedure, police may try to obtain information from you about what you or other people were doing during the incident. It is your right to remain silent. Just tell the officer that you do not want to answer any questions until your attorney is present. Remember, anything you say can be used against you in court. Even if you think you're saying something "safe" or the truth, it can be used against you. Do not be intimidated – it is your constitutional right to remain silent.

HOLDING: Once you have been processed, you will be put in a small jail cell either by yourself or with others. If by yourself, it can get quite lonely. The cell is bare; it contains only a toilet, water fountain, and steel or concrete plank (not sheets) for sleeping. You may be offered one boloney sandwich (two pieces of white wonder bread and one piece of boloney), but many times you are not offered any food. The jail cell blocks in Chicago are quite cold – wear warm clothes. If you bring a coat or sweatshirt that has strings, note that those strings will be cut off if you take that item into the jail cell (they cut the strings so you can't commit suicide).

BOND, BAIL SOLIDARITY: While you are detained, police will decide what to charge you with. For state misdemeanors, bail is usually set between \$25 and \$100. Similar I-bonds or "recognizance" bonds (which require no cash) are set for city ordinance violations. No bond is required for misdemeanor federal citations. If police file felony charges, bond will be set by a judge either at night court or on the day following the arrest. If you decide to post bond, it must always be paid in cash. It can be posted at the police station, at the jail, or in court. People can choose:

- ▶ **whether to post bond**
- ▶ **whether to sign a recognizance bond (you will be released without bail but agree to show up for scheduled trial; if you don't show up, a warrant will be issued for your arrest in that state)**
- ▶ **whether to exercise jail or bail solidarity**

The goal of jail and bail solidarity is for everyone committing the same act to be treated equally and fairly in jail and sentencing. Persons offered low bonds or recognizance bonds can refuse to leave jail or to take food until everyone is given the same low or recognizance bond. Different treatment for certain individuals or groups is one divisive tactic used by the prison/legal system. Those people at risk for harsher treatment usually include non-cooperators, repeat offenders, known organizers, people of color, lesbians, and gay men. Discussions of solidarity should always address the issue of how to give these people the extra protection they need. For numerous reasons, jail solidarity may not always be an acceptable option for everyone in the group. Therefore, jail solidarity must never become coercive. Those who must leave jail are not betraying the group. There are many ways they can continue supporting those inside.

COURT: Jails and courts are intimidating places. The authorities expect that, out of fear, people will obey the rules and accept the conditions and injustices that exist there. To some extent, you have the power to choose what form your sentence will take. You have the right to refuse fines and probation; however, the only alternative may be jail. Decisions you will face as your court date approaches include:

- ▶ **how to plead (guilty, not guilty)**
- ▶ **bench trial (before a judge or magistrate) or jury trial**
- ▶ **non-cooperation in court (remain silent, refuse to stand when judge enters, approach the bench willingly or refuse to walk...)**
- ▶ **defend yourself pro se or use services of a lawyer**
- ▶ **refuse to pay fines or accept probation, etc.**

At the *state level*, there are usually at least two court dates involved if you plead not guilty. If you plead guilty at the first hearing, you are sentenced and the case is closed. If you plead not guilty and ask for a bench or jury trial, another court date is set for the trial. And at the second hearing, the state prosecutor can ask for the case to be continued. If this is the case, the judge will set another date for the trial.

At the *federal level*, the case is usually heard on the first trial date (if that is what you want), so you can plead not guilty and have the case heard that day. You also have the right to have the case moved to a different court and a different date. If for some reason you are out of the country and can not appear on the date given, another person can go to the court on the first trial date and request a continuance (basically you are requesting that the trial be continued until another date).

NON-US CITIZENS: You cannot be deported for just being arrested; you have to be convicted. The regulations governing non-immigrant stay in the U.S. say that a criminal conviction is a violation of your status only if it is a felony and a crime of violence (e.g. murder, arson, rape, robberies over certain amount of money) or any crime relating to possession or distribution of a controlled substance, or possession of a firearm.

Being convicted of a misdemeanor (e.g. trespassing, disturbance, reckless conduct, and resisting arrest) is not a violation of your non-immigrant status.

Some nonviolent civil disobedience actions may result in felony charges, e.g. property destruction – such as hammering on nuclear warheads (the willful or intentional injury, destruction, or contamination of U.S. property, or that of a government department or agency, in excess of \$1000), and sabotage (the willful or intentional injury, obstruction, or interference with, the national defense).

Certain convictions can also affect your chances of becoming a permanent resident in the future. Generally, if the conviction does not involve drugs or firearms, is a misdemeanor, and is your only misdemeanor, you should not have problems becoming a permanent resident. However, if you have any questions at all, you might want to have a private consultation with an immigration attorney before you plead guilty to any offense.

Finally, if you are in the U.S. illegally or you are out of status, you may be placed in deportation proceedings even if the criminal charges are dismissed. Unfortunately, there is usually no way to avoid this, even if the police acted unlawfully when they arrested you.

Adapted From: "Organizing for Resistance: Historical and Theological Reflections and Organizing" by the Chicago Religious Task Force on Central America, 1985; supplemented by consultation with Attorney Melinda Power, Chicago, IL.