

PARTICIPATING IN DIRECT ACTIONS: A GUIDE FOR TRANSGENDER PEOPLE

November 2011

Direct actions, protests, and acts of civil disobedience are powerful tools for change. Participating in these actions may also put you at risk of arrest and/or mistreatment by police and in jail. When participating in direct actions, transgender people should understand their rights and take necessary precautions before accepting the risk of arrest. If you are planning on attending a protest and you are not transgender, consider what you can do to prevent mistreatment of transgender people and other vulnerable participants. From identity documents to detainment procedures, this resource offers an overview of the considerations transgender people should think about when preparing or participating in a direct action.

KNOW THE RISKS: ARREST IS ALWAYS A POSSIBILITY

If you are thinking about joining a protest, make sure you know your own risk factors, boundaries and limits. The conditions on the street can change very quickly, and you may have to make quick decisions. Use this guide to help you decide whether and how to participate. Transgender people are particularly at risk for being profiled and mistreated by police and in jail. This could range from verbal abuse, isolation and denial of medication to humiliating strip searches and physical abuse. These risks can be reduced through preparation and solidarity tactics, but never eliminated. The risks are especially acute for transgender people of color, transgender people who are immigrants, low income transgender people, and transgender people with disabilities. Here are some other important things to keep in mind:

If you are an immigrant:

Any arrests may affect your immigration status. If you are undocumented, an arrest could put you on the radar, and cause removal proceedings to be initiated against you. Immigration officials at Immigration and Customs Enforcement (ICE), often collaborate with local law enforcement and correctional agencies. If you are currently required to report to immigration officials, you may not be able to do so if you are arrested or detained. If your only identification is from another country and you do not have a visa, you may be reported to ICE even if you are a naturalized U.S. citizen. Weigh the risks of bringing ID with the possibility of being profiled and having ID confiscated. If arrested, you do not have to answer questions about your immigration status or history.

If you have past arrests:

You may be more vulnerable to being held by police or denied bail after arrest. Even if you only have violations or non-felon convictions, the police can access your arrest history and will use it against you if they can.

If you are staying in a shelter or supportive housing program:

If you are staying in a shelter and you have a curfew or have to report to your program regularly, make sure you plan ahead so you don't miss important check-ins or lose your bed. If you live in public housing, an arrest may also affect your eligibility for your housing program or the eligibility of anyone who you live with.

If you have critical medical or disability-related needs:

Make sure you have canes and braces and any critical medical supplies, medications or prescriptions with you at all times. If you have people or animals that you use for support and are arrested, make sure the police are aware. However, the police cannot always be trusted to support your needs and it is important to develop a safety plan in case of arrest.

GET SUPPORT FROM FELLOW ACTIVISTS

Make a plan with other participants about how you will work together to address these risks. You may want to identify those at lower risk of arrest or abuse (white, US citizen, non-LGBT) to take more visible or high-risk roles, and to surround those who may be at higher risk to form a buffer and prevent them from being arrested or separated from the group during the action. Having designated marshals to direct and keep the group together can also help. Here are some other considerations:

- Think about the health effects of detention, especially if you have a disability or any other serious medical condition. In jail you may not have access to your medications, assistance devices or medical care even if you have a life-threatening emergency.
- Give an outside support person (someone who will not be arrested) a list of your emergency contacts, medications and medical conditions. You should also provide them with a list of phone calls that should be made if you are arrested, and anything else that needs to be taken care of.
- Know the weather and dress accordingly. To lessen problems from chemical weapons, have most skin covered and bring a bandanna (ideally soaked in apple cider vinegar and sealed in a bag) and goggles. Don't wear fleece or contact lenses. Do not use oil based soaps or lotions on your skin.
- If you are able to, consider carrying enough cash or a credit card to pay the standard fine/bail bondsperson fee for a misdemeanor in your area. A legal support person (someone trained in legal assistance for activists) should be able to tell you the usual fee.

You can also use solidarity tactics if you are arrested to try to ensure that transgender and other vulnerable people are not mistreated. Solidarity tactics can include refusing to cooperate with police during arrest (a high-risk tactic); refusing to provide your name or identification; refusing to cooperate during booking, such as by remaining silent or going limp; refusing to promise to appear for court; and creating nonviolent disruptions in jail, such as by chanting or singing. These tactics can be used to:

- Challenge separation and additional searches of transgender people.
- Advocate for placement of transgender people with other people who share their gender identity.
- Advocate for quick processing or early release of transgender people.
- Get prompt water, medical attention or legal access for anyone or everyone.

Solidarity tactics can also be used in court to demand that all participants get the same charges and treatment. Those participating in solidarity actions should be mindful that jail solidarity actions may prolong detention for everyone, and participating in them can pose particular dangers or hardships to transgender people and others who are vulnerable in police custody.

These tactics work best when you have an advance plan and coordinate with legal support. You may also wish to prepare arguments in favor of release for your arraignment (addressing factors such as each individual's ties to the community, likelihood to appear for court, and previous record) to prevent people from being held in on bail. Consider sharing this document and your own concerns and support needs in advance with fellow participants and legal observers.

WHAT TO BRING TO A DIRECT ACTION

What you bring to a direct action may vary by the type of direct action in which you are participating. Always bring a supply of prescription medications and any emergency medical devices. If you plan on staying for more than a day, it's a good idea to bring any other medical devices you may need. Documentation of your legal rights may be helpful, however it is always best to trust your instincts and weigh the risks of asserting your rights with officers who may be aggressive and/or indifferent to your rights. Additionally, always keep in mind that any items you bring may be confiscated by the police.

WHAT TO BRING TO A DIRECT ACTION (CONTINUED)

Legal

- Phone numbers for the legal support organization for your action. This is often the National Lawyers Guild. Contact your local chapter ahead of time and write the number on your arm with a marker.
- Phone numbers for other support people willing to advocate for you at the jail.
- Copy (not original) of proof of name change (if current name is not on ID).
- Identification (e.g. driver's license, passport), if possible one with your current name and correct gender).
- Letter from a doctor or therapist regarding your transition (if correct gender is not on ID).
- Documentation of local laws or policies concerning police or jail treatment of transgender people.

Medical

- Prescriptions or a letter from your doctor describing your medication and doses.
- Medications in the original prescription bottle.
- Syringes, alcohol swabs.
- Vaginal stints/dilators.
- Other medical devices/supplies you may urgently need, such as inhalers.

WHEN STOPPED BY POLICE

If you are asked to show identification:

Unless you are choosing to resist cooperation, it's best to show ID when asked, even if it doesn't match your name or gender. Refusing to show your identification to the police when asked may lead to your arrest even if there are no explicit laws that require the carrying of identification.

If police try to search your bags and belongings:

If police try to search you, you can say "I do not consent to a search" if you feel safe doing so, but you should be prepared for them to do it anyway. Physically stopping or attempting to intervene in the search could lead to injury, arrest and potentially serious charges. However, evidence police may find in your possession could potentially be kept out of criminal proceedings if you make clear that police were not given your consent to the search.

Searches on the street:

Police can give you a pat down if they believe you may be armed. You may ask for a police officer of your gender to conduct the pat down, although you do not have a legal right to this. You may be subject to a strip search only if officers are looking for weapons or contraband and you have been charged with a felony. Most protest charges are misdemeanors or violations, which means in most cases, you should not be strip searched. Like pat downs, if you are going to be strip searched, you may ask for an officer of your gender to conduct the search. You have the right not to be strip searched in front of other detainees absent an emergency.

If you are mistreated by a police officer:

While police officers may conduct searches of your belongings and pat downs, they should do so while respecting you and honoring your privacy. If you believe you are facing disrespect or discrimination from a police officer because of your transgender status, try to take note of the officer's name and badge number to file a formal complaint later. Non-undercover officers are generally supposed to have their shield visible. If it is not visible and you feel safe doing so, you may ask for their name and badge number.

IF YOU ARE ARRESTED

Anything you say can and will be used against you:

It is always best to remain silent once you have been arrested. You can repeatedly state “I am going to remain silent. I want to speak to a lawyer.” Any statements you make about your case can be used against you later, even if they seem helpful or explanatory. You may also want to refrain from talking to other detainees, friends and even family about the circumstances of your arrest before speaking to a lawyer. Keep in mind that most calls made from lock-up and jails are recorded by the police.

Searches following arrest:

Once you are arrested the police can conduct a more thorough search of your clothing and may ask you to empty your pockets and remove your outer clothing. You may ask for a police officer of your gender to conduct the pat down, although you do not have a legal right to this. Police are not allowed to squeeze your chest or groin area unless they have a reason to believe you might be hiding weapons or drugs. Police are never allowed to strip search you just to see your chest or genitals or assign you a gender. If this happens, calmly say that you do not consent and you don't believe they are allowed to do this. You have the right to be strip searched in private, away from other detainees absent an emergency.

You may be jailed with people of your birth gender regardless of your gender identity or your wishes:

Most jails either do not have a policy on housing transgender people, or will house you based on birth-assigned gender. Your identity documents or legal documentation of your transition may or may not make a difference. You can request to be placed in a unit for vulnerable individuals if the jail has one. If you plan on participating in a protest that might put you at risk of arrest, surround yourself with friends of both genders so you will have a friend wherever you are placed.

You may be isolated from other protesters:

Transgender detainees are frequently isolated from others. This can make it more difficult to exercise your rights and may be illegal if it is prolonged. If you are isolated, ask why. If you are told it is because you are “at risk” then ask to be processed more quickly for your own safety.

You have a right to your medications:

If you are currently taking prescription medications like hormones or HIV/AIDS medications, you have a right to keep taking them. If you do not bring prescriptions or a supply of medications with you, tell police medical personnel what medications you need and when. You may be taken to a hospital to get them. Contact legal support if you are held for more than a few days and do not have access to medications.

Filing lawsuits against the police or about something that happens to you in jail:

There may be a short deadline for filing a complaint or lawsuit regarding mistreatment by police or in jail. As soon as you are able, write down everything you remember about what happened. Take pictures of any injuries as soon as you are able to. Consult a lawyer as soon as possible to determine your next steps.

ALTERNATIVES TO STREET ACTION

Because participating in any street demonstration always involves some risk of arrest and because transgender people are especially vulnerable in these situations, you may wish to support a direct action in other ways. For prolonged actions you can help by arranging food deliveries for protestors or helping to raise bail money. You can also create signs, graphics, videos or other media that share a personal story or message or otherwise support the cause or action.

Other Resources

For accessible legal advice in the New York City area

Sylvia Rivera Law Project
866-930-3283
<http://www.srlp.org>

For right to protest resources and legal referrals

National Lawyers Guild
212-679-6018
<http://www.nlg.org/>

For legal advice for immigrants convicted of crimes

Immigrant Defense Project
212-725-6422
<http://immigrantdefenseproject.org/>

For guidance on reporting police abuse or misconduct

National Police Accountability Project
617-227-6015
<http://www.nlg-npap.org>

For additional assistance or to report discrimination by police officers

Lambda Legal's National Hotline
866-542-8336
<http://www.lambdalegal.org/>

Lambda Legal Regional Help Desks

Atlanta, GA: 404-897-1880
Chicago, IL: 312-663-4413
Dallas, TX: 214-219-8585
Los Angeles, CA: 213-382-7600

Lambda Legal can help with legal issues, provide information about local lesbian, gay, bisexual and transgender community centers that can help LGBT evacuees and provide information relating to hormones and other prescription drugs including HIV/AIDS medication.