

MIAMI ACTIVIST DEFENSE

Street Guide for the Free Trade Area of the Americas (FTAA) Protests - November 2003

Miami Activist Defense (MAD) is made up of: members of the National Lawyers Guild (NLG), Midnight Special Law Collective, Up Against the Law Collective and R2K Legal. You can find additional MAD information and resources at: <http://www.stopftaa.org/legal>

Based on past experiences with mass defense in other cities, we want to provide some basic information on what you might expect from law enforcement during the Free Trade Area of the Americas (FTAA) protests in Miami. Some actions taken by the police may be unlawful and you may have defenses if arrested. By providing this information, we are not suggesting that these arrest practices are lawful.

The NLG and MAD do not have resources to represent everyone arrested. It is necessary for you to arrange your own legal representation. MAD is working with the Miami Public Defender's Office to share information about any arrests and incidents witnessed by NLG Legal Observers. MAD has limited resources to try to visit people in jail to facilitate communication and information sharing with the Public Defenders. You should assert your views and wishes about your legal defense into that process.

This document contains general legal information, including the proposed change to Miami's "Streets and Sidewalks" ordinance (posted in its entirety on our website). **We will not know whether there are more changes to the ordinance or if it will be enacted until November 13, 2003. Check our website for updates.**

MAD will have a phone number for people to call in from jail when arrested; for reports from the street; and for information from friends and loved ones about people arrested. Anyone arrested, however, should be prepared to have no or limited access to a phone while in jail prior to your first appearance and arraignment. Once this number is available, it will be posted on our website.

IMPORTANT DISCLAIMER: *This overview is not meant to be exhaustive and is not, in anyway, an attempt to give or offer legal advice. For specific legal advice, you must consult an attorney.*

ARRESTS:

It is impossible to know what charges police will use when making arrests. Likewise, it is impossible to predict what release procedures the police will use. In some circumstances, individuals are arrested, taken to a police facility or jail, booked and release on a written promise to appear. Other times, people are arrested, booked and only released prior to their first court appearance by posting bail. In Miami, we have heard that people charged with protest related misdemeanors and felonies will be held in separate jail facilities (see the list of jails posted separately on the website). We have also heard that arraignments for persons accused of misdemeanors may be conducted via video from the jail and arraignments for persons charged with felonies will occur in court. As more information becomes available about arrest procedures, we will post it to our website.

Based on a review of state and Miami local ordinances, law enforcement may attempt to use the following laws to prosecute protesters. **This list is not exhaustive, nor is the information provided about each possible offense comprehensive.**

Traffic Laws: Law enforcement may aggressively enforce traffic and pedestrian laws against protesters. If you want to avoid citations, obey all traffic laws. **OBEY ALL TRAFFIC LAWS - DON'T GIVE THE POLICE AN EXCUSE TO STOP YOU, RUN YOUR NAME FOR WARRANTS, SEARCH YOUR PROPERTY, OR ISSUE YOU AN EXPENSIVE CITATION.** Don't stand in the street while waiting to cross intersections. Don't jaywalk. Ride your bike in a bike lane or walk it on the sidewalk when in heavy traffic areas.

Unlawful Assembly: Listen carefully to any police order to disperse from an area. Even if you are engaged in lawful activity, you may be subject to arrest if you do not leave the area defined by the police in their order to disperse. You need to listen to all subsequent dispersal orders since the area defined by the police as the unlawful assembly area is often expanded.

Resisting Officer (Resisting Arrest): Non-cooperation with the arrest process may result in this charge. Generally, physical, rather than verbal, acts are considered resisting an officer. For example, struggling with police or if you “go limp.” Refusing to answer questions, in most cases, is not resisting. Refusal to obey lawful orders of law enforcement can also result in arrest for this offense. If police believe you have used force or threat of force to resist arrest, you could be charged with a felony (Resisting An Officer with Violence).

Assault or Battery of a Law Enforcement Officer: This charge can be converted to a felony if you have a weapon or threaten a police officer, touch him/her or his/her things(cars, batons, bikes, horses, etc.).

Disorderly Conduct: If the “disorder” involves damage to people or property(especially involving police officers or their possessions) the charges may be enhanced from a misdemeanor vandalism, etc. to a felony. Also, length of sentence and/or fines may be increased in the “disorder” is alleged to involve damage to people or property.

Destruction of Fences: Fences may be erected alongside many of the public parks,roads and other protest areas. It is “criminal mischief” under Florida law to break or damage fences. This may be charged as misdemeanor or felony vandalism depending upon the alleged value of the fence. (\$1,000 and above is a felony under Florida law.)

Sidewalk Obstruction: In general, you have the right to be on the sidewalk so long as you are not blocking the free flow of traffic on it. **A PUBLIC SIDEWALK CAN BE WITHIN THE AREA DEFINED AS AN UNLAWFUL ASSEMBLY AND PERSONS ON THE SIDEWALK MAY BE ORDERED TO DISPERSE.** If the police tell you to disperse from a sidewalk or area and you do not, you may be subject to arrest. If the proposed Miami sidewalk and streets ordinance passes, you may also be subject to citation or arrest if you are carrying any of the banned materials.

Signs, Banners and Sticks: Under the proposed Miami ordinance, signs or banners cannot be more than 1/4 inch thick and must be made of flexible or cardboard material or cloth. Wooden supports cannot be more than 1/4 inch by 2 inches (or 3/4 inch in diameter) and must have blunt ends. There is a very specific exception, with several limitations, for puppet supports and stilts. Plastic or metal tubes may be used to support signs or banners if they are no more than 3/4 inch at their thickest dimension, have blunt ends, no more than 1/8 inch wall thickness and are not filled with any substance. You should consult the FTAA legal website for more specifics on the ordinance and whether it passed for information about what materials are declared unlawful to possess.

Masks: Wearing a facial covering for the purpose of political expression expressing solidarity with a political group, such as the Zapatistas, is not illegal and is a form of political speech protected by the First Amendment. You have the right to protest anonymously; however, wearing a hood or mask to conceal your identity can be unlawful if you are wearing it to hide your identity with the intent to break the law.

Sleeping and Camping in Public: You may be cited or arrested, under Miami local laws, for sleeping on sidewalks, in parks, on public lands, including sleeping in a car parked in public or private parking lots (without the permission of the owner of the private property) or roads.

Photography: Miami local law prohibits photography for profit without a permit. However, there is an exception for photography for non-commercial and personal use. The First Amendment protects the right of any person - commercial or noncommercial -to take photographs of public events in a public place without first obtaining a permit from the government.

Under the proposed Miami streets and sidewalks ordinance, the following items would be banned:

- glass bottles, jars or containers (unless for medication)
- sticks (**see above**)
- balloons filled with anything but air
- bricks, stones, or “hard materials” that can be thrown
- spray paint cans
- water guns
- “Sleeping Dragon Devices” (sections of pipe, handcuffs, locking devices “used to lock a person or persons to another person or object with the intent to block the public mobility on roads, sidewalks or building entrances”)

SEARCHES AND STOPS:

Please refer to our “Dealing with the Police” and “Basic Legal Info” documents on the website for more detailed and comprehensive information related to searches.

You may be asked to have your bags searched or have them searched incident to an arrest. There may be police checkpoints set up around the protest areas to conduct searches. If a law enforcement officer demands to search your bag or person, ask first if you are suspected of criminal activity or under arrest and, if so, what is the crime/charge. If there is no suspected crime and no arrest, you may lawfully refuse to have your bags or person searched. Keep in mind, however, that the officer may still try to bar your entry into an area. This would not likely be lawful but, if you want to pass by the officer, you may have no choice but to give in to the unlawful demand. Be sure to state clearly **“I do not consent to this search.”** In general, avoid carrying:

- illegal drugs
- weapons (even pocket knives)
- personal items you don’t want the cops to see (datebooks, phone contacts)

If you are stopped by the police:

- You do not have to talk to them or provide identification (unless you are driving).
- Memorize this sentence: **I am going to remain silent. I want to see a lawyer.** You can invoke your rights even if the cops don’t tell you what they are.
- Ask if you are free to go. If you are not under arrest, you are and you can walk away.
- Remember that cops are allowed to lie to you and they will. Talk to a lawyer before you sign anything or tell the police anything.
- If you are a non-citizen or a minor, see the information below with important additional information.

NON-CITIZENS AND MINORS

SPECIAL CONSIDERATIONS FOR NON-CITIZENS:

Regardless of what type of status, or lack of status, you currently have to be present in the United States, **IF YOU ARE NOT A U.S. CITIZEN, PARTICIPATING IN PROTEST ACTIONS MAY RESULT IN YOUR ARREST AND REMOVAL (DEPORTATION) FROM THE U.S.**

The Supreme Court has held that the government **may** target non-citizens even because of their lawful First Amendment activities.

Even if you are a LPR (Lawful Permanent Resident/ possess a “green card”) OR have other lawful status to be present in the U.S. (work permit, Temporary Protected Status (TPS), etc.) **ANY detention or arrest** could impact your future ability to maintain that status, or to adjust to more protected status (especially to become a naturalized citizen.)

What this means if you’re going to protest:

Non-citizens should be extremely cautious if protesting, and avoid contact with law enforcement, if possible.

If detained or arrested, non-citizens should **remain silent, sign nothing and immediately request an attorney.**

If you do get an attorney (a public defender or privately retained counsel), you should **explain your immigration status to THAT PERSON ONLY:** the choices you make about plea bargains, trials, etc., could impact your immigration status, and your lawyer needs to know it.

Lawyers are always telling you to talk to a lawyer, but it is especially important here. **This short sheet can't possibly provide enough information on immigration law, which is extremely complex, and changes all the time. If you have questions, you should talk to a licensed immigration attorney.**

For immigration law related assistance call: Florida Immigrant Advocacy Center, (305) 576-6273

MINORS:

Minors involved in the FTAA protests and those providing legal support to them should operate under the assumption that, if arrested, they will be released only to a parent or legal guardian. If minors refuse to provide identification or give their name and age when arrested, they could be processed as an adult and detained in the adult holding facilities. Those who are obviously minors will most likely be separated from adults upon arrest.