

## Your Rights and Remedies When Stopped or Confronted for Photography

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### About this Guide

Confrontations that impair the constitutional right to make images are becoming more common. To fight the abuse of your right to free expression, you need to know your rights to take photographs and the remedies available if your rights are infringed.

### The General Rule

The general rule in the United States is that anyone may take photographs of whatever they want when they are in a public place or places where they have permission to take photographs. Absent a specific legal prohibition such as a statute or ordinance, you are legally entitled to take photographs. Examples of places that are traditionally considered public are streets, sidewalks, and public parks.

Property owners may legally prohibit photography on their premises but have no right to prohibit others from photographing their property from other locations. Whether you need permission from property own-

ers to take photographs while on their premises depends on the circumstances. In most places, you may reasonably assume that taking photographs is allowed and that you do not need explicit permission. However, this is a judgment call and you should request permission when the circumstances suggest that the owner is likely to object. In any case, when a property owner tells you not to take photographs while on the premises, you are legally obligated to honor the request.

### Some Exceptions to the Rule

There are some exceptions to the general rule. A significant one is that commanders of military installations can prohibit photographs of specific areas when they deem it necessary to protect national security. The U.S. Department of Energy can also prohibit photography of designated nuclear facilities although the publicly visible areas of nuclear facilities are usually not designated as such.

Members of the public have a very limited scope of privacy rights when they are in public places. Basically, anyone can be photographed without their consent except when they have secluded themselves in places where they have a reasonable expectation of privacy such as dressing rooms, restrooms, medical facilities, and inside their homes.

### Permissible Subjects

Despite misconceptions to the contrary, the following subjects can almost always be photographed lawfully from public places:

- accident and fire scenes
- children
- celebrities
- bridges and other infrastructure
- residential and commercial buildings
- industrial facilities and public utilities
- transportation facilities (e.g., airports)
- Superfund sites
- criminal activities
- law enforcement officers

### Who Is Likely to Violate Your Rights

Most confrontations are started by security guards and employees of organizations who fear photography. The most common reason given is security but often such persons have no articulated reason. Security is rarely a legitimate reason for restricting photography. Taking a photograph is not a terrorist act nor can a business legitimately assert that taking a photograph of a subject in public view infringes on its trade secrets.

On occasion, law enforcement officers may object to photography but most understand that people have the right to take photographs and do not interfere with photographers. They do have the right to keep you away from areas where you may impede their activities or endanger safety. However, they do not have the legal right to prohibit you from taking photographs from other locations.

### They Have Limited Rights to Bother, Question, or Detain You

Although anyone has the right to approach a person in a public place and ask questions, persistent and unwanted conduct done without a legitimate purpose is a crime in many states if it causes serious annoyance. You are under no obligation to explain the purpose of your photography nor do you have to disclose your identity except in states that require it upon request by a law enforcement officer.

If the conduct goes beyond mere questioning, all states have laws that make coercion and harassment criminal offenses. The specific elements vary among the states but in general it is unlawful for anyone to instill a fear that they may injure you, damage or take your property, or falsely accuse you of a crime just because you are taking photographs.

Private parties have very limited rights to detain you against your will and may be subject to criminal and civil charges should they attempt to do so. Although the laws in most

states authorize citizen's arrests, such authority is very narrow. In general, citizen's arrests can be made only for felonies or crimes committed in the person's presence. Failure to abide by these requirements usually means that the person is liable for a tort such as false imprisonment.

### They Have No Right to Confiscate Your Film

Sometimes agents acting for entities such as owners of industrial plants and shopping malls may ask you to hand over your film. Absent a court order, private parties have no right to confiscate your film. Taking your film directly or indirectly by threatening to use force or call a law enforcement agency can constitute criminal offenses such as theft and coercion. It can likewise constitute a civil tort such as conversion. Law enforcement officers may have the authority to seize film when making an arrest but otherwise must obtain a court order.

### Your Legal Remedies If Harassed

If someone has threatened, intimidated, or detained you because you were taking photographs, they may be liable for crimes such as kidnapping, coercion, and theft. In such cases, you should report them to the police.

You may also have civil remedies against such persons and their employers. The torts for which you may be entitled to compensation include assault, conversion, false imprisonment, and violation of your constitutional rights.

### Other Remedies If Harassed

If you are disinclined to take legal action, there are still things you can do that contribute to protecting the right to take photographs.

- (1) Call the local newspaper and see if they are interested in running a story. Many newspapers feel that civil liberties are worthy of serious coverage.
- (2) Write to or call the supervisor of the person involved, or the legal or

public relations department of the entity, and complain about the event.

- (3) Make the event publicly known on an Internet forum that deals with photography or civil rights issues.

### How to Handle Confrontations

Most confrontations can be defused by being courteous and respectful. If the party becomes pushy, combative, or unreasonably hostile, consider calling the police. Above all, use good judgment and don't allow an event to escalate into violence.

In the event you are threatened with detention or asked to surrender your film, asking the following questions can help ensure that you will have the evidence to enforce your legal rights:

1. What is the person's name?
2. Who is their employer?
3. Are you free to leave? If not, how do they intend to stop you if you decide to leave? What legal basis do they assert for the detention?
4. Likewise, if they demand your film, what legal basis do they assert for the confiscation?

### Disclaimer

This is a general education guide about the right to take photographs and is necessarily limited in scope. For more information about the laws that affect photography, I refer you to the second edition of my book, *Legal Handbook for Photographers* (Amherst Media, 2006).

This guide is not intended to be legal advice nor does it create an attorney client relationship. Readers should seek the advice of a competent attorney when they need legal advice regarding a specific situation.

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