

Criminal Law and Protests

Author : Jeff Welty

Categories : [Crimes and Elements](#), [Uncategorized](#)

Tagged as : [demonstrations](#), [disorderly conduct](#), [first amendment](#), [permits](#), [protests](#)

Date : January 30, 2017

Protests are breaking out all over. This weekend, protesters gathered at RDU to oppose President Trump's travel ban. Last weekend, participants in Women's Marches took to the streets of Washington and Raleigh. This post considers the criminal law issues that most often arise during protests.

Generally, protests are lawful. The [First Amendment](#) protects the right to free speech, "the right of the people peaceably to assemble," and the right "to petition the Government for a redress of grievances." As discussed below, those rights aren't unlimited: the government may impose reasonable limits on the time, place, and manner of protests and may sometimes require that protesters obtain permits. But as a starting point, the right to demonstrate is protected by the Constitution, regardless of the viewpoint expressed by the demonstrators.

Some acts done while protesting are unlawful. While protests generally are lawful, the fact that an act is done during a protest does not make it lawful if it would otherwise be unlawful. To take an easy example, if a protester smashes a store window, that's injury to real property, a Class 1 misdemeanor under [G.S. 14-127](#). But even nonviolent protesters may run afoul of the criminal law. Some of the most common issues are addressed briefly here.

- **Obstructing traffic.** [G.S. 20-171.4](#) makes it a Class 2 misdemeanor willfully to "stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic." This provision may be used against protesters who intentionally block traffic, but certainly would not apply to protesters on streets that have been closed under a demonstration permit.
- **Disorderly conduct.** [G.S. 14-288.4](#) makes it a Class 2 misdemeanor to engage in "conduct creating the threat of imminent . . . violence" or to "use[] any . . . abusive language which is intended and plainly likely to provoke violent retaliation." It is important to remember that protesters may use strong language to condemn people and policies that they oppose. The threshold for "fighting words" and promoting violence is high. But there is a line, and protesters who cross it may be charged with disorderly conduct. Other statutes, concerning inciting riots, might also apply in those circumstances.
- **Trespass.** North Carolina law contains various provisions regarding trespass. For example, [G.S. 14-159.13](#), entitled "second degree trespass," makes it a Class 3 misdemeanor for a person to "enter[] or remain[] on [the] premises of another . . . [a]fter he has been notified not to enter or remain there" by a person in authority. This might apply to protesters who are on private property after being told to depart. See, e.g., *State v. Marcoplos*, 154 N.C.App. 581 (2002) (affirming the trespass convictions of nuclear power protesters who remained in the lobby of an office building after being told to leave). Under some circumstances it could also apply to protesters who are on public property. Although sidewalks and similar spaces are generally open to the public, not all public property is open at all times to all people. See, e.g., *Gilles v. Blanchard*, 477 F.3d 466 (7th Cir. 2007) ("Public property is property, and the law of trespass protects public property, as it protects private property, from uninvited guests."). In light of the activity at airports this weekend, a colleague called my attention to [G.S. 63-26.1](#), which makes it a Class 2 misdemeanor to "trespass upon airport property."
- **Permit violations.** Under some circumstances, "in order to regulate competing uses of public forums, [local governments] may impose a permit requirement on those wishing to hold a march, parade, or rally." *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123 (1992). Generally, smaller demonstrations do not require permits, while larger ones may because they carry greater potential to disrupt other activities and to require law

enforcement resources to control crowds and traffic. Local rules regarding permits vary considerably. Protesting without a permit may be a misdemeanor.

- **Resist/delay/obstruct and failure to disperse.** G.S. [14-223](#) makes it a Class 2 misdemeanor to “unlawfully resist, delay or obstruct a public officer in discharging . . . a duty of his office,” and [G.S. 14-288.5](#) makes it a Class 2 misdemeanor to fail to disperse when so ordered by an officer who reasonably believes that a riot or disorderly conduct is occurring. These provisions might apply to protesters who disobey officers’ orders enforcing limitations imposed under a permit, or who disobey officers’ orders that are designed to protect the health and safety of protesters and others.
- **Other considerations.** A person without a concealed carry permit generally can’t carry a gun to a protest. See [G.S. 14-277.2](#). Wearing a mask may also be prohibited under one of North Carolina’s Klan-inspired statutes regarding using masks to conceal one’s identity. See [G.S. 14-12.7](#) (generally, no masks in public); [G.S. 14-12.10](#) (generally, no masks during demonstrations on private property).

Further reading. The ACLU has [a guide for protesters](#) that offers an overview of the law and suggestions for interacting with law enforcement. Although the vast majority of protesters want to avoid conflict with law enforcement, some want to be arrested as part of a show of nonviolent civil disobedience. Readings pertinent to those individuals are [here](#) and [here](#). Sometimes authorities respond to demonstrations with curfews, and [this prior post](#) addresses the law of curfews.