

If the inevitable happens: You are detained or arrested for Trespassing in Florida

By now you have found my white paper on the abuse of Florida's trespassing laws very helpful and informative. After all, we take a lot of things we do in Florida for granted, whether it may be a trip to the supermarket, dropping off or picking up your child at school or even going to one of Florida's theme parks. Unfortunately, persons in authority such as store managers, private security staff and school principals exercise their authority to determine who is allowed on their respective properties with unfettered power – in other words, ban anyone from their premises for life with no reason, akin to a life sentence in Florida State Prison in Raiford for misdemeanor trespassing or misdemeanor trespassing after warning with no parole. Unfortunately, with the way Florida's trespassing laws – codified in Section 810.09 of the Florida Statutes – are written the potential for abuse of this law is greater than ever.

VERY IMPORTANT: Before I go on any further, I must add this disclaimer. While I have an Associate in Science degree in Legal Assisting, ***none of what is in this document is considered to be, nor should it be construed as legal advice.*** You should always seek the advice of an attorney, preferably an attorney licensed by the Florida Bar and who is experienced in criminal law, if you have any questions. *This is very important, especially if you are under any criminal charges for violations of Chapter 810 of the Florida Statutes pertaining to trespassing offenses or any other criminal offense, regardless if it's a misdemeanor or a felony.*

Much of this information is from the American Civil Liberties Union's pamphlet on what to do if you are stopped by law enforcement. Practically the same information applies if a person in authority and/or a law enforcement officer detains you in any way.

Examples of scenarios that can lead to a possible encounter with a person in authority while you are on public or private property

For the purposes of this document, a person in authority means a store manager, a store assistant manager, a security officer, a loss prevention officer, a school official or even a store associate. Moreover, custodial and maintenance personnel have been known to be a person in authority to a degree.

1. You patronize a retail establishment frequently and often, as more than likely its location is closest to your home. A sales clerk mistreats you and you attempt to speak to the manager regarding the clerk's conduct. Instead of listening to your concerns, the manager detains you like if you had stolen merchandise from the store.
2. You pick up your child at school and you momentarily step out of your vehicle before the school dismissal bell rings. An assistant principal takes you to the side and questions you, usually along with a law enforcement official who works as the school's resource officer.
3. You are enjoying a fine day at one of Florida's theme parks. All of a sudden, you get a tap on your shoulder from someone in authority and that person turns out to be a

uniformed theme park security officer. The officer directs you to follow him to a office for questioning. *This can occur without warning.*

4. You are a frequent customer of a retail establishment, and the staff has been friendly with you. (After all, repeat business means better business!) All of a sudden, one day staff decides to make you unwelcome, apparently due to your repeat business. This can happen if there is a change of management at a particular retail establishment.

5. A store employee (usually a store associate who is also one of the store's assistant managers, general managers can also do this as well) pulls you aside and tells you, "I need to speak with you", implying that you have stole something from the store or something different when in fact you are there at the store for a legitimate purpose.

6. A store manager (or assistant store manager) accuses you of something that you did not do. This can happen to you, especially if you are a frequent customer of a retail establishment. Unfortunately, store managers can have personal vendettas against customers, especially repeat customers, to a degree: An honest dispute between the customer and the manager over goods ordered and/or service received can escalate into a false accusation made against the customer by a store manager and it escalates into criminal trespass.

7. You are a fare paying passenger on board a public transit conveyance, such as Tri-Rail or MetroRail in South Florida. You have your proof of fare payment, such as your ticket, with you. An on board security officer directs you to disembark at the next station and, once disembarked, you are directed to a secure office area for questioning.

There are more scenarios out there that are technically beyond the scope of this topic. However, scenarios as described above are very typical of what happens when a decision is made to either ban someone from a property or have someone arrested for trespassing.

I was pulled aside by a person in authority – not a law enforcement officer. I am being questioned. What are my rights?

The first thing you ask: *Am I free to go?*

What you say to a person in authority is very important. Anything you say can be used against you, as what the person in authority is trying to do is to build a case against you to have you banned from the property, usually for life. You do not have to answer any questions nor give the person in authority your name.

Again: *Am I free to go?* Either the person in authority will stop his or her inquisition of you, or law enforcement will be notified.

The person in authority has detained me, and I was told that I was no longer welcome on the premises. Law enforcement has not been called nor a police officer showed up. What happens?

Technically, once you are told to leave, do so. However, a person in authority verbally telling you to leave the premises in itself does not hold up. Non-law enforcement agency incident reports (such as those kept by private businesses as part of their risk management practices) and store surveillance videotapes – despite the security measures in place to keep the surveillance equipment secured – are somehow doctored, usually as a tool of intimidation against a person.

The only time you would be ordered to leave the premises is by order of a law enforcement officer who issues documentation such as a trespass warning (which we'll get to next) and copies are given to the person in authority as well as the person warned and the law enforcement officer for the record. A law enforcement officer's orders are to be complied with or you can risk arrest for failure to obey a lawful command of a law enforcement officer (which is another criminal offense).

After all, in a criminal trespass case, a law enforcement order plus an official law enforcement report of the incident would have more weight in a court of law plus the officer's testimony in court. As mentioned previously, non-police incident reports (such as those by retail businesses) can be fabricated.

You could technically come back to the premises, *but be very careful*. If a person in authority telling you to leave the premises threatens you with physical force in any way whatsoever (such as if you were to return), leave the premises immediately and call police from a safe location. A person in authority has every reasonable right to determine who is and who is not allowed on the premises, but using physical force or the threat of physical force in enforcing their private property rights is illegal which can mean criminal charges against whoever is responsible.

If you find yourself in this predicament, seek the advice of a criminal law attorney.

The person in authority has detained me, called for police assistance and a law enforcement officer is now on the scene. What are my rights then?

Be very careful when speaking to the law enforcement officer, and respectfully address the officer as "officer". As with a person in authority, what you say to a law enforcement officer is very important. Anything you say can be used against you, as the officer is more than likely interviewing the person in authority in order to build a case against you.

The officer will end up asking you for identification, such as a driver's license, state issued identification card or passport. It is very important that you comply with the officer's request, as you can be arrested in Florida for failure to obey the lawful command of a law enforcement officer which is a different criminal charge. The officer will take your identification and call it in to see if you have any warrants out for your arrest among other things.

Depending on what the person in authority says to the officer, and depending on the results of the identity check that was called in, the officer will more than likely do one of three things:

1. Issuance of warning documentation

Based on what the person in authority told the officer, it was decided that you should be excluded from the premises either for a set length of time or for life. The officer will fill out a form called a Trespass Warning.

The Trespass Warning will include your personal identifying information plus a case number. It will also include whether you are banned for a set length of time or permanently from the involved premises.

You will be asked to sign the Trespass Warning to prove that you received the document. **Don't do it!** A Trespass Warning is NOT a Florida Uniform Traffic Citation, where if you do not sign a traffic ticket you risk physical arrest and transport to the county jail. The officer will do anything in his or her disposal to coerce you into signing the Trespass Warning document including the threat of arrest. **Again, don't sign that Trespass Warning!**

Copies of the issued Trespass Warning are given not only to you but to the person in authority for their records. The officer will also have a copy so that it can be entered into the law enforcement agency's database. As a final step, the officer – using his or her agency issued digital camera – will take a photo of you for inclusion into the database, much akin to being booked into the county jail.

The reason the Trespass Warning information is entered into the computer is very simple. If you are found on the property while the Trespass Warning is in effect, the officer will arrest you on a Trespassing After Warning charge.

After the Trespass Warning is issued more than likely you will be escorted off of the premises by the officer. Imagine for a moment your child at school – getting ready to come home for the day after a long day at school – sees you being escorted by a police officer for no apparent reason. To your child, it is very scary.

2. Notice to Appear in Court on Trespassing charges

Based on what the person in authority told the officer, or if the officer found during the identity check that there is an active Trespass Warning against you (and you do not have any other warrants out for your arrest), the officer can decide to issue a document called a Notice to Appear in lieu of a physical arrest. Unlike a physical arrest (which we'll discuss later) a Notice to Appear is a paper document commanding you to appear in court on a specified date and time at a specified place. You sign the Notice to Appear and the officer sends you on your way.

When the officer asks you questions, only give your name and address. You have the right to remain silent; do not speak to the officer anything else about what happened. What the officer is doing is more than likely building a case against you; the only time you speak to someone to about what has happened is your attorney.

Be sure to sign the Notice to Appear without complaint. Your signature just signifies that you are receiving the document and no other purpose. Failure to do so may result in physical arrest.

Trespassing is a misdemeanor crime, unless you were charged with a violation of certain parts of Florida Statute 810.09 that constitutes a felony. Even a misdemeanor crime – if it leads into conviction – can have serious ramifications for you as far as your future activities are concerned, such as planning a trip to Canada. As such, you need to see a criminal defense attorney *immediately*.

If you have been charged with one of the trespassing offenses in Florida Statute 810.09 that is a felony, that can have extremely serious ramifications for you as far as your future is concerned. A felony conviction can keep you from holding certain jobs, holding certain licenses or certifications, even keep you from exercising your civil liberties such as the right to vote even after all fines have been paid and probation or jail time has been served. **A felony charge means see a criminal defense attorney right away without delay!**

Be sure to know when you are scheduled to appear in court and where you have to go. Failure to appear can result in the judge issuing a warrant for your arrest.

3. Physical arrest for trespassing

Based on what the person in authority told the officer, or if the officer found during the identity check that there is an active Trespass Warning (or an arrest warrant or a combination of the two) against you, you will be placed under physical arrest for trespassing. What follows here is a typical scenario when a person is placed under arrest and taken to the county jail; each situation is unique and may differ depending on the circumstances.

Physical arrest means that handcuffs are placed behind your back and your being placed in the rear seat of a police cruiser. The policies of most law enforcement agencies mandate that anyone arrested be handcuffed and placed in the back seat of the police cruiser; this is for your protection as well as that of the officer that arrested you.

Always follow the officer's instructions without complaint. If you resist arrest in any way, you can be charged with resisting arrest without violence (a misdemeanor, if no harm was done to the officer) or resisting arrest with violence (a felony) depending on the circumstances. These charges are in addition to the trespassing charges against you.

You have the right to remain silent once you are told that you are under arrest. You have the right to speak with an attorney prior to speaking with the police.

After the officer places you in his or her patrol car and completes the initial paperwork, you will be transported to the county jail where the incident took place. Once you arrive at the county jail, you will be taken through a secure receiving area (called a sally port) and into the jail's booking area.

Once inside the jail's booking area the handcuffs will be released from behind your back, unless the officers decide that you are a security risk. At this point your picture will be taken for a mug shot and the booking officer will ask you for your identifying information. *It is very important that you tell the booking officer nothing except your true name and address – that's it.¹ There are recording devices all throughout the jail complex, and the recording devices in the booking area pick up video as well as audio; DO NOT – REPEAT DO NOT – say anything other than your name and address to the booking officer while you are being booked. Anything you say to these booking officers – just like the law enforcement officer that arrested you – can and will be used against you in a court of law.*

After booking you will more than likely be ordered to surrender your personal property that you have on you, such as your wallet, keys, belt, and anything else. These items will be inventoried and held for you in a secure area called the property room. After that, you will more than likely be sent to the medical staff for a brief physical examination.

After the medical exam the detention officers will either have you take a seat in one of the chairs in the booking area, which is akin to a waiting room. Or, depending on your record and what you have been charged with, you will be led to a holding cell. If you happen to be led to a holding cell, you will be given an opportunity to make a phone call to either your

¹ Giving false information to a booking officer in a detention facility (such as a false name) can result in a separate criminal charge of Interfering with Booking Procedures, and this would be in addition to the Trespass charges.

attorney, a bail bondsman or a relative. If the call is to an attorney, the detention officers cannot listen in on your conversation.

At this point one of these events will happen while you are in jail:

Based on your record, the booking officer decides to release you on your own recognizance. This usually happens for the most minor of misdemeanor offenses such as trespassing, unless you got other charges against you or if there is a warrant for your arrest.

The booking officer will set a bond for your release. A publication put out by the Florida Department of Law Enforcement is used by booking officers as to the type of offense and how much bail is to be set. Certain offenses are called no bond offenses, which mean that you will remain in jail until trial.

If you do not make bail after the bail amount is set by the booking officer, you will be taken from the booking area to an area where you will exchange your street clothing for a jail issued uniform. Your street clothing will be kept securely in the property room. From there you will be led to an inmate housing unit based on what you have been charged with.

Within 24 hours of your arrest, you must be taken before a judge for a hearing. This hearing is what is called an advisory hearing. At this hearing the judge will let you know what you have been charged with and if you have an attorney representing you. If you cannot afford an attorney tell the judge and an attorney (usually the Public Defender) will be appointed to represent you.

At the advisory hearing the judge will review your record and determine if you are eligible for release on your own recognizance or the judge will lower your bond. *Always be sure to respectfully address the judge as "your honor" and obey any instructions you are given. DO NOT speak about what happened until you have seen your attorney.*

On a minor charge such as trespassing, more than likely you will be released either on your own recognizance or on a small bail amount. If the judge orders your release on your own recognizance or you post bond you will be directed by the detention officer to surrender your jail issued uniform for your street clothing (if that was done) and you will be given back your personal property that was taken from you at booking.

If you have been before the judge at your advisory hearing you will be given paperwork which outlines the conditions of your release. Most importantly, *do NOT return to the premises from where you were arrested – this can result in your being kept in jail until trial or an increased bond amount.* Besides, one of the conditions of your release is that you do not return to where you were arrested (this is called a stay away order).

On the other hand, if you still remain in jail due to other charges that are against you (especially serious felony charges in particular), there are some things that you need to know to avoid incriminating yourself:

1. Do not speak with your fellow inmates about your case. That friendly inmate you speak to either in the dayroom or your next cell neighbor could be a law enforcement informant.
2. At visitation, do not speak about your case. Both your conversation and that of your visitor is video and audio recorded and stuff like that can be used to build a case against you.

3. The only time you speak about your case is your attorney. When your attorney meets with you, it will be a face to face meeting and any conversation between you and your attorney is confidential.

If you are released from jail, especially on your own recognizance, it is very important to make a note of all court dates, especially the date of your arraignment. An arraignment is a hearing where the judge reads the formal charges against you and at that time you are asked how do you plea. ***Always seek the advice of your attorney before you enter a plea.***

Besides, if you fail to attend any hearing you are ordered to appear, the judge will issue a warrant for your arrest.

What really constitutes a warning that a person is no longer welcome on the premises?

Unfortunately, the way Sections 810.09 and 810.08 of the Florida Statutes are written, all that is needed is a verbal order to the person that he or she is no longer welcome on the premises. However, to enforce such an order something needs to be in writing and documented, as such proof is evidence in court, as was discussed earlier.

If you were given a verbal warning from a person in authority and you were not given something tangible in writing, discuss this with an attorney. After all, paper documentation is best in trespass warning cases.

The person in authority told me that I was no longer welcome on the premises. Further, the person in authority told me that if I was found on the premises in the future, he or she would use physical force against me. Isn't threatening anyone with physical force illegal?

A person in authority has every reasonable right to decide who is and who is not allowed on the premises. However, in doing so a person in authority has no right to use or threaten to use any form of physical force whatsoever. An incident in 2004 at a Sleep Inn hotel in Ellenton, Florida on Interstate 75 at US 301 proves the point: A busload of Special Olympics participants ranging from ages 8 to 22 pulls in to the hotel parking lot and the leader of the group proceeds inside to check in. Within seconds the manager of the hotel uses the threat of physical force in asking the group to leave the property by using a weapon against the group. Needless to say, the hotel manager was arrested and jailed on felony charges of aggravated assault and false imprisonment.²

Threatening to use any form of physical force – whether physical or verbal – is against the law. If you are confronted in a situation like this, leave the property immediately and call police from a safe location. Get a description of the person as well as the person's name if you see one on a name tag.

Moreover, you may want to consult an attorney to discuss your rights. Not only threatening physical force is a crime, it is also a civil tort.

² *Special Olympians Held at Gunpoint, Manager Arrested*, Bradenton Herald, 7 November 2004, Local & State Page 8C.

The person in authority banned me from the premises for life because I am a member of a protected class. What are my rights then?

The Civil Rights Act of 1964 prohibits discrimination in public places – whether it may be public or private – on the basis of race, color, religion or national origin. Being a federal law, the Civil Rights Act trumps state trespassing laws including Florida's.

If you end up in such a predicament you may want to consult an attorney to discuss your rights.

I am a foreign national visiting Walt Disney World with my family at the Magic Kingdom. All of a sudden, I was taken into custody by Disney Security and I was arrested by the Orange County Sheriff's Office on trespassing charges. Now that my family is frightened by the experience, what are my rights?

As a foreign national, you have the protections of your nation's consular officials when it comes to arrests on criminal charges.

When you are asked for identification, show the officer your passport together with your American I-94 and visitor visa or I-94W if you are from a visa waiver country. In addition to letting the officer know that you will exercise your right to remain silent and to seek an attorney, ask to be put in contact with the consular officials of your home nation immediately. It is your right pursuant to the Vienna Convention on Consular Relations in Article 36 to have your nation's embassy or consulate notified without undue delay of your arrest.

Most of the major foreign countries will have a consular office in one or more major Florida cities. If your country does not have a consular office in Florida, at least your country will be represented by its embassy in Washington, DC. Additionally, if you need an attorney you can ask your nation's embassy or consulate for a list and they can point you in the right direction.

Moreover, you may want to let your nation's embassy or consulate know if you have not been arrested but given a trespass warning and you believe the trespass warning was issued because of your nationality or for any unjust reason. Just be sure to *not* sign the trespass warning and send a copy of the trespass warning you received to your nation's embassy or consulate.

How long are trespass warnings effective for?

This can be summed up in one word, especially when private property is concerned: ***Forever.***

This provision is what contributes to the ever growing abuse of Florida's trespassing laws, as the way Sections 810.09 and 810.08 of the Florida Statutes are worded gives a person in authority unfettered powers to determine who is allowed and who is not allowed on a given premises. In 2007 Disney World was involved in a series of incidents where minorities were banned for life for what was an extremely minor transgression on Disney property; after involvement by Orlando area news media and the threat of litigation from the parents of

one of the persons that were banned for life, Disney backed off and reduced the ban from permanent to one year.³

More and more law enforcement agencies are providing a mechanism to permit the person who has been issued a trespass warning to discuss what happened with the person in authority. Perhaps a misunderstanding occurred and the person in authority decides to go ahead and rescind the trespass warning issued against the person.

My attorney brokered a deal with the State Attorney for me to complete a pre-trial intervention program. What is this?

Pre-trial intervention is a program where you are ordered to abide by certain conditions that are set by the judge presiding over your case. Those conditions can be, but are not limited to, financial restitution and a writ ordering you to remain away from the premises from where the incident took place for a set period of time among other things.

Pre-trial intervention is similar to probation, but it has a lot of differences. Most importantly, if you successfully complete the terms and conditions of the pre-trial intervention program the trespassing charges are dropped against you, saving you from acquiring a criminal record that can come back to haunt you for the rest of your life.

Another good thing about pre-trial intervention is that if you were physically arrested and booked into the county jail, and the arrest is your only arrest, you can petition to have your arrest record expunged. Contrary to what is said out there, an arrest record and a criminal record are different, and in most cases you do not have to mention any arrest that did not lead into a conviction. The Florida Department of Law Enforcement [explains the process](#) of how you go about having your arrest record expunged at their web site.

In any case, discuss any offer of pre-trial intervention with your attorney before you commit to anything.

Remember...

If you are stopped by a person in authority (not a law enforcement officer), always ask: *Am I free to go?* If a person in authority tries to detain you for no reason (such as stopping you at the store exit or approaching you in the store parking lot for example) and prevents you from leaving, that is false imprisonment and a person in authority who does such behavior is liable to criminal charges.

If law enforcement is involved, exercise your right to remain silent. Only provide name and address and provide identification when requested.

A trespass warning carries more weight when it is in written and tangible form and given by a law enforcement officer. Verbal orders by a civilian person in authority generally do not carry any weight.

Discuss your rights with a criminal defense attorney.

If you are charged with Trespassing (either by Notice to Appear or physical arrest), *be sure to see a criminal defense attorney fast!*

³ *FSU Prospects Accuse Disney of Racial Profiling*, Central Florida News 13 article, 27 June 2007. Coverage of the Disney incident has also been covered by Bay News 9 and several Tampa area media outlets.

If a person in authority, in asking you to leave the premises, uses or threatens to use physical force against you, leave the premises and call law enforcement from a safe place. Threatening to use any force against you is assault which is a misdemeanor criminal offense unless a threat of physical harm or the display of a weapon is involved, which becomes a felony criminal offense.

Trespass warnings, once issued, are for all intents and purposes *permanent*.

If it has been several years since the Trespass Warning was issued against you and you desire to return to the premises, discuss this with your attorney. Either you or your attorney can draft a letter to the person in charge of the premises involved; first impressions count as a properly worded letter may be the ticket in getting the Trespass Warning against you lifted.

More Importantly...

The preceding information that I shared with you is ***not*** to be taken as nor construed as legal advice. If you find yourself in a predicament where a trespass warning has been issued against you or you have been physically arrested or given a notice to appear in court on trespassing charges, please see a criminal defense attorney immediately, preferably one who is not only licensed by the Florida Bar but certified in criminal law defense.

If finances are an issue and you need an attorney to represent you in court against any criminal charges filed against you, you may ask for the Public Defender to represent you. You may ask for one by informing the first appearance judge if you are taken into custody or by telephoning the Public Defender's office if you are given a notice to appear in court. There are specific eligibility criteria for use of the Public Defender, either the first appearance judge or the Public Defender's office can explain this to you.