

KNOW YOUR RIGHTS, KNOW THE LAW

Dispelling myths and misunderstandings about what actions are legal and illegal in connection with the election

Issues Including:

- Voter and protester intimidation
- Private militia activity
- Respecting First and Second Amendment Rights
- Links to other resources

Why this knowledge matters

Regardless of the outcome of this election, there likely will be people taking to the streets in protest. And, there may be a repeat of the violence we saw in the summer of 2020, including property destruction and personal injuries. The FBI has recently warned of a “violent extremist threat” posed by private militia, and identified the post-election period as a “potential flashpoint.” For the safety of yourself and others, it is important for every person — regardless of your view of these issues — to understand your rights and the rights of others as we face almost certain unrest.

The First and Second Amendments both apply, and neither is absolute

Washington does not prohibit the open carrying of a firearm. However, it is commonly misunderstood that so-called “open carry” means that there are no restrictions or that other constitutional provisions do not apply in Second Amendment matters. Gun owners must obey the reasonable restrictions on this right and respect other persons exercising their own rights to free speech, to assemble, and to petition for a redress of grievances.

- **Gathering and marching peacefully is protected by the Constitution; using guns or violence to harm, threaten, or intimidate people is not.**
- **Gun possession is protected by the Constitution, but using a gun to intimidate or alarm voters or peaceful demonstrators is not.**
- **RCW 9.41.270 makes it illegal to carry, display, exhibit, or draw a firearm in a manner that intimidates or causes alarm. There are exceptions if you are defending yourself or others from a present threat of unlawful force, you are inside your own home, or you are inside your own place of business.**
- **Only a legal permanent resident with a valid license may carry a firearm. Otherwise, most non-citizens may not.**
- **Only persons over the age of 21 may openly carry a firearm.**
- **It is not up to gun users to decide whether their behavior alarms others.**
- **It is also not up to gun owners to enforce the law.**
- **If you or others feel intimidated or alarmed by someone with a gun, report it to a trusted authority.**
- **You can also report the incident to <https://stopthehate.community>.**

“Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases,...the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”

- Justice Antonin Scalia writing in D.C. v. Heller

Protestor's rights and responsibilities

DO — Exercise your First Amendment rights where they are most protected: public property. Your rights are strongest in public spaces, such as on sidewalks and in parks. You likely also have the right to speak out on other public property, like plazas in front of government buildings, as long as you are not blocking access to the government building or interfering with the other purposes for which the property was designed. When you are lawfully present in any public space, you have the right to photograph anything in plain view, including federal buildings and the police.

DON'T — Violate or threaten private property owners' rights. Private property owners can set rules for speech on their property. The government may not restrict your speech if it is taking place on your own property or with the consent of the property owner. On private property, the owner may also set rules related to photography or video.

DO — Show respect to counter-protesters. They also have free speech rights. Police must treat protesters and counter-protesters equally. Police are permitted to keep antagonistic groups separated but should allow them to be within sight and sound of one another.

DON'T — Block others. If you don't have a permit, police officers can ask you to move to the side of a street or sidewalk to let others pass or for safety reasons.

For more, see <https://www.aclu.org/know-your-rights/protesters-rights/#im-attending-a-protest>

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Illegal militia activity

Both the presence and actions of private militia groups – often under the guise of “defending communities” or “protecting property” or when they claim to function as law enforcement – violate state laws. Yet the groups go largely unchecked because law enforcement often does not enforce anti-militia laws due to a number of overlapping reasons, most based in misunderstanding. Law enforcement is sometimes simply unaware of state statutes that define and prohibit private militias and paramilitary activity.

One problem with this lack of enforcement of militia laws is that armed groups claiming to defend themselves or others can easily create confrontations that end in violence. That is what happened in both Kenosha, Wisconsin and Portland, Oregon during Black Lives Matter protests there. One alleged shooter claimed to be protecting protestors; the other claimed to be a militia member protecting property owners *from* protestors. Unfortunately, many are hailing the self-styled militia member as a hero. Now, with the election season upon us, some extremist militia groups are talking about the post-election fallout as a “civil war.”

Washington’s Constitution forbids private militia activity

Article 1, Section 18 of the Washington Constitution prohibits private military units from operating outside state authority. And, RCW 38.40.120 makes it illegal for organized groups to associate themselves together as a military unit or parade in public with firearms. And, Article 1, Section 24, which is Washington’s version of the Second Amendment, cautions that “nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.”

In addition to the restriction in RCW 9.41.270 on openly carrying a firearm in a manner that intimidates or causes alarm, people may only carry concealed handguns with a license, and must present that license to any law enforcement officer “or to any other person when and if required by law to do so.”

“I had a person call me and say, why don't you deputize citizens who have guns to come out and patrol the city of Kenosha? And I'm like, oh, hell no. ”

- David Beth, Sheriff, Kenosha, Wisconsin

What individuals and law enforcement can do

DO — Recognize the limits of the law: property owners inside their own homes or places of business who feel threatened may use a gun in self defense; they may not invite armed groups or individuals to patrol the streets to enforce the law or protect property.

DON'T — Directly confront armed extremist militia members. Go to a trusted authority, which may include law enforcement, and demand that the Constitution and gun intimidation laws be enforced. Extremist militia activity is illegal, as is gun activity that manifests an intent to intimidate or that causes alarm for people’s safety.

DO — As safely as possible, document the illegal activity. When you are lawfully present in any public space, you have the right to photograph anything in plain view, including federal buildings and the police. (On private property, the owner may set rules about photography or video.)

DON'T — Allow evidence to be destroyed. Police officers may not confiscate or demand to view your photographs or video without a warrant, nor may they delete data under any circumstances. If you are videotaping, be aware that there is an important legal distinction between a visual photographic record (fully protected) and the audio portion of a videotape, which some states have tried to regulate under state wiretapping laws.

DO — Show respect to law enforcement while protecting your rights and dignity. If you are detained, ask the officer what crime you are suspected of committing. Always remain calm and never physically resist a police officer. Ask the officer if you are free to leave. If you are free to leave, calmly walk away. If you are not free to leave, tell the officer you are not answering questions and you are invoking your right to remain silent and are requesting a lawyer.

In King County, an on-call public defender can be reached at 206-296-7662 (during normal business hours) or 206-477-8899 (after normal business hours).