

KNOW YOUR RIGHTS: PROTESTING AND HB 1117

Riot boosting? Incitement to Riot? What you need to know if you're planning to protest.

The right to join with fellow citizens in protest or peaceful assembly is critical to a functioning democracy and at the core of the First Amendment. Unfortunately, our elected officials sometimes attempt to violate this right through means intended to thwart free public expression. Sparked by a desire to suppress protests around the construction of the Keystone XL pipeline, South Dakota legislators passed new laws in 2020 that attempt to discourage peaceful protest.

Here's what you need to know.

Riot is now defined as any intentional use of force or violence by three or more people acting together to cause any injury to any person or any damage to property.

A violation of this section is a Class 4 felony, which, if convicted, could mean a 20-year imprisonment in the state penitentiary and a fine up to \$20,000. Civil liabilities are also possible, with financial penalties imposed on a case-by-case basis. Legislators also eliminated the term "riot boosting" from the state's laws and replaced it with language that defines "incitement to riot."

Any person who, with the intent to cause a riot, engages in conduct that urges three or more people to use force or violence to cause injury to another person or damage to property, incites riot. Urging includes instigating, inciting, or directing, but doesn't include oral or written advocacy of ideas or expression of belief.

A violation of this section is a Class 5 felony, which, if convicted, could mean a five-year imprisonment in the state penitentiary and a fine of up to \$10,000. Civil liabilities are also possible, with financial penalties imposed on a case-by-case basis. Plaintiffs may also recover both special and general damages, reasonable attorney's fees, disbursements, other reasonable expenses incurred from prosecuting the action, and punitive damages.

While these penalties are steep, it is important to note that these laws should not apply to you unless you are explicitly urging others to immediately commit acts of force or violence. They should not discourage you from engaging in peaceful protests, advocating for others to engage in peaceful protests, or supporting other protesters with donations.

However, as with any law, there is always a chance that state officials may attempt to use these laws against you and ultimately force you to defend your actions in court. For that reason, we suggest you follow these tips when protesting:

Download and save to your phone the ACLU of South Dakota's Know Your Rights When Protesting information on our Facebook page so you can have easy access to your First Amendment rights anytime, anywhere.

- Do not engage in any use of force or violence or destruction of property.
- Do not urge others to use force or violence or to destroy property.
- If violence occurs or there is destruction of property, disperse immediately.