

# Know Your Rights: No Trespass Orders on Public Property

No Trespass Orders (NTOs) are sometimes given to people whom government officials claim have misbehaved in some way on public property. These orders tell people that if they return to the property in question, they may be arrested.

But members of the public have a right to enter government property that is generally open to the public, such as public parks or certain public areas of municipal buildings during business hours. Parents and guardians also have a right to attend meetings or events at their child’s school, especially for the purpose of furthering their child’s education.

As a result, the government’s power to issue NTOs is subject to certain restrictions. As discussed in more detail below, these restrictions require (a) “due process,” (b) a good reason for the NTO and its scope, and (c) that the NTO be issued by someone with authority over the property.

Below, we answer some common questions about when an NTO is lawful. It is important to remember that this information and the legal principles discussed relate to public property *that is generally open to the public*, which may include public parks or, during business hours, public schools, municipal buildings, or government-owned sports arenas — as opposed, for instance, to government offices where only employees and invited guests have access.<sup>1</sup> Also, please note that private parties have the right to prevent uninvited individuals from entering or using their property, which is not affected by this analysis.

## 1. Can the government order me to stay away from public property that is generally open to the public?

- Massachusetts state law gives certain government actors the power to issue orders preventing a person from returning to public property for a period of time.<sup>2</sup> These orders generally say that if the person returns while the order is in effect, they can be arrested for trespassing. These are often referred to as No Trespass Orders (NTOs).

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<sup>1</sup> See, e.g., *Adderley v. Florida*, 385 U.S. 39, 47 (1966) (curtilage of a jailhouse not generally open to the public can be subject to trespass).

<sup>2</sup> See G.L. c. 266, §§ [120](#), [123](#) (§ 123 applies to property owned by the state, public colleges or universities, state or county correctional facilities, and state hospitals); see also *Hurley v. Hinkley*, 304 F. Supp. 704, 709 (D. Mass. 1969) (§ 120 applies to public property).

## 2. What limits are there on the government’s ability to issue an NTO for public property that is generally open to the public?

- Members of the public have a right to freely enter public property that is generally open to the public.<sup>3</sup> To take away your ability to use such property, the government must afford you “due process.”
  - o Due process means that the subject of an NTO has the right to be (1) told about the specific reasons for the NTO and (2) given an opportunity to be heard and explain their side of the story or give reasons why the NTO is not fair or necessary.
  - o Generally, the right to be heard should occur before the NTO takes effect, although in situations where there is a serious and immediate public safety risk,<sup>4</sup> courts have said the NTO can take effect and the person can be given the right to be heard soon afterwards.<sup>5</sup>
- You also have a right not to be subject to an NTO that is issued in retaliation for protected speech (as opposed to one issued for conduct or threats of violence, for instance).<sup>6</sup>

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<sup>3</sup> *Kennedy v. City of Cincinnati*, 595 F.3d 327, 336-38 (6th Cir. 2010); see also *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (citing *Chicago v. Morales*, 527 U.S. 41 (1999)) (“Plaintiffs have a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that are open to the public generally.”); *Matter of B.J.M.*, 98 N.E.3d 867, 869, 873 (Ohio Ct. App. 2017) (“It is generally recognized that a person has a privilege to enter and be upon the public areas of public property,” and “due process requires that such persons have a meaningful opportunity to be heard and to contest the decision.”); *Anthony v. State*, 209 S.W.3d 296, 307 (Tex. Ct. App. 2006) (“where a decision to exclude a person from [a public forum] is made before the person has a chance to present any evidence in his or her favor and without any evidence being presented against him or her, due process is violated.”).

<sup>4</sup> See, e.g., *Zinermon v. Burch*, 494 U.S. 113, 132 (1990) (post-deprivation hearing may be sufficient if state is “truly unable to anticipate and prevent a random deprivation” or pre-deprivation hearing would be unduly burdensome); *Zar v. S. Dakota Bd. of Examiners of Psychologists*, 976 F.2d 459, 465 (8th Cir. 1992) (citations omitted) (“state provided post-deprivation remedy is sufficient when the deprivation was unpredictable, when a pre-deprivation process was impossible, and where the conduct of the state actors was unauthorized”).

<sup>5</sup> See *Suboh v. Dist. Attorney's Off. of Suffolk Dist.*, 298 F.3d 81, 94 (1st Cir. 2002) (“Even when there are . . . exigent circumstances, there must be an adequate post-deprivation hearing within a reasonable time”); *B & B Target Ctr., Inc. v. Figueroa-Sancha*, 871 F. Supp. 2d 71, 79 (D.P.R. 2012) (focus must be on the “ready availability of [a] prompt post-deprivation review” and “six months between the revocation of the plaintiffs’ license and the Administrative Hearing is much longer than other durations previously upheld as constitutional”) (citing *Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1, 14 (1st Cir. 2011) (two weeks); *Spinelli v. City of New York*, 579 F.3d 160, 174 (2d Cir. 2009) (fifty-eight days “exceeded the bounds of due process”); *Gamble v. Webb*, 806 F.2d 1258, 1261 (5th Cir. 1986) (eight days)).

<sup>6</sup> See *Pollack v. Reg'l Sch. Unit 75*, 12 F. Supp. 3d 173, 188 (D. Me. 2014) (quoting *González-Droz v. González-Colón*, 660 F.3d 1, 16 (1st Cir.2011)) (“State actors, including both school districts and

- An NTO that is issued in response to something you said may be illegal (1) if your speech was not threatening or otherwise unprotected by the Constitution and (2) if the government cannot show the NTO is justified by a compelling interest.
- But an NTO that is based *both* on your conduct and your speech is not necessarily rendered illegal by also citing something you said.<sup>7</sup> For example, a government actor could likely take action against you if you punch a school teacher while saying “I want you to treat my child better.”
- Where an NTO restricts someone’s right to enter public property, the government must have a sufficiently good reason for issuing it and for its scope.<sup>8</sup> Regardless of the alleged behavior at issue, you have the right to due process when the NTO applies to public property.<sup>9</sup>

### 3. Who can order me to stay away from such public property?

- Only the landowner or the government agency in control of the property — or persons they have specifically authorized to act on their behalf — may issue the NTO.<sup>10</sup>
- Police have the authority to deliver an NTO expressly authorized by the government agency in control of the property — but police may not issue an NTO at their own discretion.<sup>11</sup>
  - As a result of litigation brought by the ACLU of Massachusetts, the Massachusetts State Police (MSP) issued a [new policy](#) in August 2022 reminding its officers that they do not have the power to issue NTOs on state park land or on any property not directly managed by MSP. When it issued this policy, MSP stated that it would review each prior NTO issued by MSP personnel to determine whether it should be revoked. Thus, if before August 2022 MSP personnel issued you an NTO and the NTO is still in effect, you

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individual school officials, ‘offend the First Amendment when they retaliate against an individual for constitutionally protected speech”).

<sup>7</sup> See *Doe v. City of Lafayette*, 377 F.3d 757 (7th Cir. 2004).

<sup>8</sup> See, e.g., *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 285 (S.D.N.Y. 2019) (quoting *In re Gault*, 387 U.S. 1, 33 (1967) (“Notice, to comply with due process requirements, . . . must set forth the alleged misconduct with particularity”).

<sup>9</sup> *Gonzalez–Droz v. Gonzalez–Colon*, 660 F.3d 1, 13 (1st Cir. 2011) (“Whether the deprivation was, in fact, justified is not an element of the procedural due process inquiry”).

<sup>10</sup> G.L. c. 266, § 120 (order must be issued “by the person who has lawful control of said premises . . .”).

<sup>11</sup> *Kennedy v. City of Cincinnati*, 595 F.3d 327, 338 (6th Cir. 2010) (“a police officer . . . should have realized that he cannot deprive a person . . . of access to public grounds without due process of law”); *Anthony v. State*, 209 S.W.3d at 307 (finding that where the City’s unwritten policy gave no guidelines and complete discretion to police in exercising their authority to ban a person from a public park, the policy was unconstitutional).

may wish to check whether it has been or should have been revoked under the August 2022 policy.<sup>12</sup>

**4. Are there special issues raised by NTOs barring parents from going to schools?**

- Yes. Parents and legal guardians have a right to attend school meetings and functions related to the education of their children.<sup>13</sup> Thus, NTOs that prohibit parents from attending parent-teacher conferences, dropping off and picking up their children at school, and attending school events, may encroach on that right. In addition, if a school is a place to vote or attend government meetings, NTOs generally should not interfere with those activities.
  - o For example, if an NTO can be justified because a parent got angry at a referee and disrupted a basketball game, it likely should be limited in scope, restricting only the parent’s attendance at future games. This should minimize any interference with either the parent’s rights or their child’s education. Of course, whether any NTO is warranted in the first place is a separate question.<sup>14</sup>

**5. Can a government actor bar me from public property because of my race, gender, religion, sexual orientation, gender identity, disability, or other protected characteristic?**

- No. Discrimination on the basis of protected characteristics is unlawful and unconstitutional.<sup>15</sup> Of course, to prove discrimination, you would need to prove that your race, gender, or other characteristic was a reason for the NTO being issued, as opposed to your conduct or other behavior.

**6. What steps can I take when I learn that the government is considering issuing or has issued an NTO against me?**

- See if the person who issued the NTO is offering you an opportunity to tell your side of the story about why the order is not needed.

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<sup>12</sup> The policy explains that while “MSP personnel may ‘serve’ no trespass orders that are drafted by other state agencies . . . authorities . . . or municipalities[,] [t]he drafting, retention, and administration of these no trespass orders issued by state agencies, authorities, or municipalities is the sole responsibility of those entities.”

<sup>13</sup> *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925); *Opinion of the Justices to the Senate*, 427 Mass. 1201, 1203 (1998),

<sup>14</sup> “Although the State has authority to restrict school access to ensure a safe and productive environment, it may not so significantly prohibit an individual parent from normal school access without affording the parent a fundamentally fair opportunity to contest the State’s asserted reasons for doing so.” *Johnson v. Perry*, 140 F.Supp.3d 222, 229 (D. Conn. 2015), *rev’d on other grounds*, 859 F.3d 156 (2d Cir. 2017).

<sup>15</sup> Article 1 of the Massachusetts Declaration of Rights, as amended by Amend. Article 114.

If yes:

- Consider consulting with an attorney before you talk to those issuing the NTO. If you do not know of a qualified attorney, you can contact the [MA Bar Association Lawyers Referral Service](#) to try to find one.
- You can ask the person who issued it for more details about why it was issued.
- You can explain why the NTO should not have been issued; for instance, that it was based on a misunderstanding about the events leading to the NTO.
- You can explain why the NTO is too broad; for instance, if it covers an excessive amount of property or will last for an unreasonable period of time.
- You can try to explain why an NTO is not necessary, including because you commit to not repeating past behavior that is the basis for the NTO. You could consider providing references in support.

If no:

- Consider consulting with an attorney before you talk to the person who issued the order.
- Give the issuer a copy of this guide and ask for a clear statement of the reasons why the NTO was issued and an opportunity to be heard.
- See above if you are given an opportunity to be heard.
- If you are not given an opportunity to be heard, consider seeking an attorney.

*February 2024*

Link

- [MSP Policy](#)