



PREPARING FOR ELECTION DAY AND POST-ELECTION DEMONSTRATIONS

This document provides guidance to law enforcement about how to protect First Amendment rights while preserving public safety during the public demonstrations that may follow the election. Officers should exercise sound judgment based upon the facts of a particular situation. Whenever possible, law enforcement should consult with legal counsel and coordinate with local officials, community groups, and cooperating agencies.

WHAT LAW ENFORCEMENT SHOULD DO IN ADVANCE

Engage community stakeholders in ongoing dialogue around demonstration management.

- Establish lines of communication with demonstration organizers and community stakeholders to better understand goals and identify specific points of contact.
- Issue clear public statements affirming de-escalation as a core value of the department.
- Determine the history and risk of groups who may foreseeably assemble, including any conflicts between groups.
- Use social media as a tool for real-time outreach, updates, and communication.
- Clearly announce that officers will protect constitutional rights during demonstrations.
- Issue clear messaging that armed militia groups have no authority to engage in law enforcement activities.

Ensure that officers are trained to respond to mass demonstrations. Training should include:

- Understanding how law enforcement presence (uniforms, gear, and equipment) may influence crowd dynamics, and the importance of maintaining as minimal and non-militarized a presence as possible without compromising officers' safety.
- Relevant laws and policies, including policies for use and reporting of force.
- De-escalation and peer intervention.
- Use of specialized gear and equipment as necessary and understanding of when and how to deploy, with an emphasis on limiting the use of tear gas and other chemical agents whenever possible.

Establish an incident command structure and set clear expectations and direction for officers, emphasizing the sanctity of life and the First Amendment rights of demonstrators. Tactical considerations include:

- Maintain a dedicated radio channel for logistics and needs.
- Consider weather factors in positioning and equipping officers.
- Strategic positioning/deployment of officers in harder gear (only deploy when necessary).
- Equipment and less-lethal tools.
- Measures to mitigate officer stress and fatigue, including ensuring adequate rest periods, food, water, protection from the weather, and breaks.

Coordinate with other agencies and departments, including:

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- Mutual aid from public safety partners, with written agreements around mission, command, communications, and policies on use of force and arrests.
- Transportation departments and agencies, to identify traffic impacts and alternative routes, and mitigate disruption in transit services.
- Emergency services, to address contingencies and identify critical routes that must be kept open.

Identify appropriate restrictions including what reasonable time, place and manner restrictions should be enacted in advance or implemented during demonstration management. Considerations include:

- Creating specific buffer zones between opposing groups.
- Banning items that can be used as weapons.
- Barring private paramilitary activity or public display of weapons.
- Declaring a curfew, if lesser restrictions have proven ineffective and curfew becomes necessary to restore public order.

WHAT ARE THE RULES?

The First Amendment guarantees the right of the people to peaceably assemble and protest, regardless of political content or affiliation.

- Any restrictions imposed must be reasonable as to time, place, and manner, and must not discriminate based on viewpoint.
- Loud, boisterous protest activity does not by itself create an unlawful assembly, nor does the commission of isolated criminal acts by individuals in an otherwise peaceful crowd.

The First Amendment does not protect violence, unlawful conduct, threats of violence, or destruction of property.

- Law enforcement may declare an unlawful assembly and order demonstrators to disperse when a group has become violent or poses a clear danger of imminent violence.
- Crowd dispersal should **not** be used as a response to individual acts of violence or as a preventative measure.

Media and legal observers should not be subject to orders to disperse.

- Law enforcement agencies should identify appropriate areas for media and legal observers to gather if a dispersal order is issued to the protesters.

The Second Amendment does not protect private militias.

- Every state prohibits unauthorized groups from engaging in law enforcement activities. Law enforcement agencies should not coordinate with, encourage, or facilitate the participation or presence of armed militia groups.

Demonstrators have the right to record police action.

- Individuals who hinder or obstruct officers from performing their duties should be asked to move. They should not be asked to stop recording.

WHAT SHOULD POLICE DO DURING DEMONSTRATIONS?

Ensure that law enforcement's response to mass demonstrations reflects a commitment to facilitating peaceful speech and assembly.

- Officers should continually monitor and assess crowd behavior.
- Officers should maintain contact with event organizers and leaders throughout the demonstration to seek voluntary cooperation; warn organizers in advance of executing arrests, if feasible; and communicate where any arrested demonstrators will be detained.
- Officers should intervene to deescalate verbal conflicts between demonstrators and individual officers before the situation can escalate.
- Officers should avoid even inadvertently escalating tensions, which may turn the focus of the crowd towards law enforcement.
- Where individual officers appear overly stressed or are escalating tension through their words or actions, officers should be given a short break or removed from the assignment.

Ensure that all officers are clearly identified by displaying the insignia of their departments and their names.

When individuals in an otherwise peaceful crowd are engaged in serious unlawful conduct, isolate, arrest, and remove law violators as quickly and discreetly as possible.

- Officers should balance the seriousness of the unlawful conduct with the feasibility of arrest and the potential for escalating tensions.
- Mass arrests are rarely feasible, are likely to inflame the crowd, and should be avoided.

Where there is no reasonably effective alternative to force in order to effect a law enforcement purpose, officers must ensure they use only force proportional to the circumstances.

- Officers should continually assess and modulate their response according to the behavior of the crowd, de-escalating wherever feasible.
- Always consider and evaluate the risk of incidental exposure, and avoid directing chemical agents, blast balls/flash bangs, and kinetic impact projectiles towards individuals who are not posing an immediate threat of serious harm.

Where dispersal orders are necessary, use amplified sound to communicate intent, and identify and communicate dispersal routes.

Comply with department rules or local or state regulations concerning pandemic response.

- Ensure that social distancing and mask requirements are implemented during the transport and detention of persons arrested.

