



## Law Enforcement Guidance For Policing Public Demonstrations

The upcoming verdict in the trial of Derek Chauvin for the death of George Floyd is likely to lead to widespread mass demonstrations. This document provides guidance to law enforcement about how to protect First Amendment rights while preserving public safety during these and other public demonstrations. Officers should exercise sound judgment based upon the facts of a particular situation. Whenever possible, law enforcement should consult before and during events with legal counsel and coordinate with local officials, community groups, and cooperating agencies.

### Ensure that the Role of Law Enforcement is Clear

The First Amendment guarantees people the right to peaceably assemble and protest, regardless of viewpoint.

- The First Amendment does not protect violence or unlawful conduct or incitement to imminent violence or unlawful conduct.
- Law enforcement may impose reasonable time, place, and manner restrictions that are narrowly tailored to serve the government's compelling interest in protecting public safety. Any restrictions must not be applied in a manner that discriminates based on viewpoint. Such restrictions may include:
  - Separating opposing groups and setting up buffer zones;
  - Banning items that can be used as weapons (if permitted by state and local law); and
  - Barring private militia or paramilitary activity.

Law enforcement's principal role is to facilitate individuals' First Amendment rights to assemble and express themselves while protecting protesters and public safety.

- Law enforcement leaders should make clear public statements that officers will protect constitutional rights during demonstrations. Commanders on the street should communicate regularly and clearly to law enforcement personnel and to the crowd to set clear expectations.
- Law enforcement should meet in advance with community leaders, including Black Lives Matter and other social- and economic-justice organizers, to share plans and expectations.
- Law enforcement responses to mass gatherings should be measured and proportionate, and officers should take steps to avoid—even inadvertently—heightening tensions and making the situation worse. This is especially important where demonstrations occur in response to perceived police misconduct.
  - Law enforcement should tailor their responses to the actions and mood of the gathering, and should avoid using more force, gear, or equipment than necessary. Law enforcement leaders should consider employing a “tiered approach,” in which officers employing heavier gear and equipment are held in reserve to be deployed only if necessary.
  - Law enforcement officers' actions and demeanor affect how they are perceived by demonstrators. Cooperation with law enforcement depends on officers being perceived as fair, respectful, and restrained in their interactions and responses to crowd activity. Individual officers who are stressed or hostile should be removed from interacting with protesters.
  - When forming a barrier line or perimeter, officers should consider alternating the directions that the officers face so they are not perceived as favoring one “side” and not the other.
- All officers should be clearly identified by displaying the insignia of their units and names.

- Officers should be trained to respond to mass demonstrations. Training should include relevant laws and policies; skills like de-escalation and peer intervention; and the use of any specialized equipment in order to avoid unnecessary injuries to other officers or protestors.

### **Ensure that Any Law Enforcement Response to Mass Demonstrations is Proportionate**

Most demonstrations are peaceful, and, even when unlawful activity occurs, law enforcement should be aware that protestors are not homogenous: crowds are often a combination of individuals engaging in lawful and unlawful activities. Police officers should avoid taking mass enforcement actions and instead limit stops, detentions, and arrests to individuals or subgroups engaged in unlawful behavior.

- Law enforcement should be patient with a crowd that is not violent or disruptive.
- Press coverage of demonstrations serves an important function of informing the public of newsworthy events. The First Amendment generally protects recording of government officials, including police officers, engaged in their official duties in public places, so long as journalists comply with general laws that apply to everyone. Law enforcement officers should not arrest journalists to prevent reporting on a demonstration or in retaliation for unfavorable coverage.
- Officers should provide clear and repeated directions for crowd movements, communicate clear thresholds for arrest, give audible warnings and fair notice to demonstrators when they are in violation of the law and subject to arrest, and provide avenues for individuals to leave the area. Arrests may be made only where there is probable cause that a crime has been committed.
- 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. Loud, boisterous protest activity is not enough to create an unlawful assembly, nor is the commission of crimes by individuals. Even after the issuance of a lawful dispersal order, journalists who identify themselves may have a First Amendment right to stay in the area to report on or document the actions if their presence is not impeding law enforcement or presenting a threat to public safety.
- Law enforcement should refrain from using chemical irritants or less-lethal munitions to disperse non-violent crowds. Use of chemical irritants and less-lethal munitions should be directed only at those persons who are engaged in violent or aggressive conduct that presents a threat to public safety, and after law enforcement has given non-violent members of the crowd audible and repeated warnings and an opportunity to leave the area.
- Rules of engagement and use of force policies consistent with the above should be clearly communicated to all law enforcement personnel through written and oral instructions, including at roll call and shift changes.

### **Law Enforcement Agencies Should Not Endorse or Facilitate Private Militia Activity**

Armed private militia and paramilitary groups have engaged in both offensive demonstrations in opposition to government policies and deployments purporting to protect persons and property. Private militias and paramilitary organizations are unlawful and have no authority to engage in the armed projection of force over others. Their presence inhibits free expression and heightens the risk of serious injury and death.

- There is no federal or state authority for individuals to form private militias, and all 50 states prohibit private, unauthorized groups from engaging in paramilitary and law enforcement activities.
- The Second Amendment does not protect private militias. The Supreme Court decided in 1886—and repeated in 2008—that the Second Amendment does not provide the right to organize as a private militia or paramilitary organization. “Well regulated” in the Second Amendment has always meant regulated by the government.

- Law enforcement should not coordinate with, encourage, or facilitate the participation or presence of any unlawful armed militia groups. Law enforcement should also make clear to these groups and to the public that unauthorized militias have no authority to engage in law enforcement activities.

### What You Can Do Now: Begin Strategic Planning and Communication

- Law enforcement should engage in cooperative and strategic advance communication and planning with community stakeholders in order to promote public safety and build mutual trust. Communications should engage members of law enforcement, mutual aid partners, community groups, protest leaders, and event organizers. Law enforcement should:
  - Establish positive relationships with community leaders, event organizers, and protest groups through ongoing outreach to help prevent escalation during a demonstration.
  - Work with the community to learn about expected participants and potential adversarial groups while being sensitive to concerns about surveillance and information gathering.
  - Use social media as a tool for real-time outreach and communication.
- Law enforcement should establish a clear command structure and set clear expectations for officers, including that they should respect the sanctity of life and protesters' First Amendment rights. Plans should include, among other issues:
  - Tactical considerations for the use of weaponry and less-lethal munitions, and under what circumstances officers should make arrests;
  - Measures to avoid officer fatigue and stress, like providing officers with food, water, protection from weather, and breaks; and
  - Plans to divert traffic if streets may be blocked.
- Law enforcement should coordinate with other agencies, including emergency services, the fire department, and other law enforcement agencies who may provide mutual aid. Have a written agreement that clarifies mission, supervision, communications, and policies on use of force and arrests. Critical decisions, like when to use force, deploy hard gear, disperse a gathering, or conduct mass arrests should be made by the lead agency.

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This resource has been prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center, in conjunction with the [Crime and Justice Institute](#) and [21CP Solutions](#). ICAP's mission is to use the power of the courts to defend American constitutional rights and values. Visit us at <https://www.law.georgetown.edu/icap/>. Contact us at [reachICAP@georgetown.edu](mailto:reachICAP@georgetown.edu). For more information on legal principles relevant to public demonstrations, including First and Second Amendment limitations, visit ICAP's *Protests and Public Safety: A Guide for Cities and Citizens*, <https://constitutionalprotestguide.org/>. Find more information about your state's anti-paramilitary laws at <http://bit.ly/50factsheets>.

This guidance also draws on the following resources. Please consult these resources for more detailed information about policing public demonstrations:

- Amnesty International USA, [Good Practice for Law Enforcement Officials Policing Demonstrations](#)
- Berkeley Police Department, [Response to Civil Unrest: A Review of the Berkeley Police Department's Actions and Events of December 6 and 7, 2014](#) (2015)
- Bureau of Justice Assistance, U.S. Department of Justice, [Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies](#) (May 2013)
- Federal Emergency Management Agency, Center for Domestic Preparedness, *Field Force Operations Student Guide*
- The Leadership Conference on Civil and Human Rights, [New Era of Public Safety: An Advocacy Toolkit for Fair, Safe, and Effective Community Policing](#) (2019)
- Edward R. Maguire & Megan Oakley, Harry Frank Guggenheim Foundation, [Policing Protests: Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police](#) (2020)
- Tony Narr et al., Police Executive Research Forum, [Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches](#) (2006)
- Police Executive Research Forum, [The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned](#) (2018)
- Reporters Committee for Freedom of the Press, [Police, Protesters, and the Press](#) (June 2020)