



VII

Policing At Protests: Best Practices

VII. POLICING AT PROTESTS: BEST PRACTICES

The form of protests, demonstrations, rallies, and other types of mass gatherings has evolved over recent years. With the rise of social media, gatherings may increasingly be decentralized and spontaneous, making traditional methods employed by law enforcement agencies impracticable. As a result, best practices for law enforcement response to these gatherings are changing rapidly. Additionally, the capacities of law enforcement agencies may differ greatly depending on the size of the agency and the equipment and training provided to its officers. There are many reports, recommendations, model policies, and training materials available that provide guidance for police departments and officers responding to mass demonstrations and protests. The best practices listed here do not purport to provide comprehensive guidance for law enforcement response. Rather, these best practices will identify some important factors that responding agencies should consider when planning for, and responding to, mass gatherings and public demonstrations, as well as provide links to additional guidance materials.

A. General Considerations

Individuals have a right to peaceably protest, and departments and officers should start with the understanding that their principal role is to facilitate individuals' First Amendment right to express themselves while protecting protesters and public safety.⁴⁷⁸ Clear guidance regarding protection of constitutional rights during demonstrations benefits both members of the public and law enforcement. To the extent possible, “police officers should engage in cooperative and strategic advance planning with community members to ensure public safety before, during, and after demonstrations.”⁴⁷⁹

- It is important that any law enforcement response to a mass gathering is measured and proportionate, and takes steps to avoid—even inadvertently—heightening tensions and making the situation worse.⁴⁸⁰ This is particularly true when the protests are about the actions of police.⁴⁸¹
- The agency should use the principle of proportionality to tailor a response to the actions and mood of the crowd, and should avoid increasing tensions by using more gear and equipment than necessary.⁴⁸²

⁴⁷⁸ See Police Exec. Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned* 69 (2018), <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf> [hereinafter “PERF, *Police Response*”]; Amnesty Int’l USA, *Good Practice for Law Enforcement Officials Policing Demonstrations* 1, <https://www.amnestyusa.org/pdfs/GoodPracticesForLawEnforcementForPolicingDemonstrations.pdf> [hereinafter “Amnesty Guide”].

⁴⁷⁹ The Leadership Conference on Civil and Human Rights, *New Era of Public Safety: An Advocacy Toolkit for Fair, Safe, and Effective Community Policing* 59 (2019), <https://civilrights.org/wp-content/uploads/Toolkit.pdf> [hereinafter “LCCHR Toolkit”].

⁴⁸⁰ See PERF, *Police Response*, *supra* note 478, at 3.

⁴⁸¹ *Id.* at iii, 29.

⁴⁸² *Id.* at 71.

- The actions and demeanor of law enforcement agencies and individual officers affects how they are perceived by the people who are demonstrating; institutional legitimacy depends on officers being perceived as fair, respectful, and restrained in their interactions and responses to crowd activity.⁴⁸³ People are more likely to cooperate when they view law enforcement as legitimate.

Training officers to prepare them to respond to mass demonstrations is critical, including on laws, regulations, and policies pertaining to free expression and demonstrations; specific skills, like de-escalation and peer intervention; and considerations related to the use of certain equipment.⁴⁸⁴

- Where possible, train in conjunction with other agencies that have mutual aid agreements for responding to demonstrations.⁴⁸⁵
- Consider inviting stakeholders and community groups to participate in training to foster mutual understanding between the agency and the community.⁴⁸⁶

B. Prior Planning

It is important to strategically plan in advance of an expected protest or demonstration. This may include establishing a clear command structure, for example, implementing the Incident Command System created by FEMA's National Incident Management System.⁴⁸⁷ Among other things, the plan may also include:

- Expectations for officers, including that they are expected to respect the sanctity of life and protesters' First Amendment rights, tactical considerations for the use of weaponry and less-lethal munitions, and under what circumstances they should make arrests;⁴⁸⁸
- Measures to avoid officer fatigue and stress, including providing for officers' basic needs like food, water, protection from weather, and breaks;⁴⁸⁹
- Availability of specialized equipment, resources, or units;⁴⁹⁰

⁴⁸³ Edward R. Maguire & Megan Oakley, Harry Frank Guggenheim Found., *Policing Protests: Lessons from the Occupy Movement, Ferguson & Beyond: A Guide for Police* 9–10 (2020), <https://www.hfg.org/wp-content/uploads/2021/06/PolicingProtests.pdf> [hereinafter “HFG Report”].

⁴⁸⁴ See PERF, *Police Response*, *supra* note 478, at 29–30.

⁴⁸⁵ *Id.* at 29, 34.

⁴⁸⁶ See Hunton & Williams LLP, *Final Report: Independent Review of the 2017 Protest Events in Charlottesville, Virginia* 168 (2017), <https://www.huntonak.com/en/news/final-report-independent-review-of-the-2017-protest-events-in-charlottesville-virginia.html>; LCCHR Toolkit, *supra* note 479, at 74.

⁴⁸⁷ See Fed. Emergency Mgmt. Agency, *Incident Command System Resources* <https://training.fema.gov/emiweb/is/icsresource/>.

⁴⁸⁸ PERF, *Police Response*, *supra* note 478, at 21–25.

⁴⁸⁹ See Int'l Ass'n of Chiefs of Police, *Crowd Management* 3 (2019), https://www.theiacp.org/sites/default/files/2019-04/Crowd%20Management%20Paper%20-%202019_1.pdf.

⁴⁹⁰ See *id.* at 4.

- Coordination with other agencies, like EMS, the fire department, and emergency dispatch, as well as any other law enforcement agencies that may provide aid (see below);⁴⁹¹ and/or
- Plans to divert traffic if it is expected that streets may be blocked.⁴⁹²

Strategic planning may include information gathering, including learning about expected participants and potential adversary groups, speaking with advocates, and communicating with trusted departments that have previously dealt with similar gatherings.⁴⁹³

- Limitations on surveillance as an information-gathering technique should be developed in collaboration with community members.⁴⁹⁴

C. Coordinating with Other Agencies

Many departments have mutual-aid agreements or memoranda of understanding with other agencies. If an agency believes it may be necessary to rely on the assistance of other agencies and first responders, it is important to have a written agreement that sets forth critical issues with specificity, including mission, supervision, communications, and policies on use of force and arrests.⁴⁹⁵

- Poor coordination with other agencies can create confusion among officers and demonstrators, and may undermine the strategic goals of the lead agency. It should be clear which agency is in charge and that all responding agencies operate under the same policies and protocols for important functions, including the use of force.⁴⁹⁶
- Consider including mutual aid partners in pre- and post-deployment briefings.⁴⁹⁷
- Critical decisions, like when to use force, hard gear, disperse a gathering, or conduct mass arrests should generally be made by the lead agency.⁴⁹⁸

⁴⁹¹ See *id.*; PERF, *Police Response*, *supra* note 478, at 38.

⁴⁹² See Fed. Emergency Mgmt. Agency, Ctr. for Domestic Preparedness, *Field Force Operations Student Guide* 10, available at <https://www.unicornriot.ninja/wp-content/uploads/2016/11/9-14-16-email-attachment-Crowd-Control.pdf> (last visited July 1, 2020) [hereinafter “FEMA Guide”].

⁴⁹³ See Tony Narr, et al., Police Exec. Research Forum, *Police Management of Mass Demonstrations: Identifying Issues and Successful Approaches* 8 (2006); Bureau of Justice Assistance, U.S. Dep’t of Justice, *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies* 41 (May 2013), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/LSSE-planning-Primer.pdf> [hereinafter “DOJ Report”]; HFG Report, *supra* note 483, at 67.

⁴⁹⁴ LCCHR Toolkit, *supra* note 479, at 59.

⁴⁹⁵ For these and additional elements such agreements should include, see PERF, *Police Response*, *supra* note 478, at 39–40.

⁴⁹⁶ *Id.* at 43, 46–48.

⁴⁹⁷ *Id.* at 47–48.

⁴⁹⁸ *Id.* at 48.

D. Operational Considerations

During a demonstration, police action should generally focus on crowd management or facilitation rather than crowd control.⁴⁹⁹ Generally, arrests, detentions, and force should not be used in response to peaceful participation in a public demonstration.⁵⁰⁰

- Demonstrations are rarely all the same, and crowds are often a combination of individuals engaging in lawful and unlawful activities. Police officers should avoid taking enforcement actions against large groups, and instead restrict any enforcement activities to individuals or subgroups engaged in unlawful behavior.⁵⁰¹ Minor violations of the law should not be used as a basis to disperse an entire assembly.⁵⁰²
- Police agencies should clearly communicate the thresholds for arrest and give warnings to demonstrators when they are in violation of the law and subject to arrest.⁵⁰³ Arrests may only be made where there is probable cause that a crime has been committed.
- Mass arrests and force should be avoided if at all possible, as well as the use of overly restrictive barriers or crowd control methods (like “kettling”) that restrict movement.⁵⁰⁴
- However, agencies may consider physically separating opposing groups, potentially using barriers or designated zones, provided there is an accessible exit.⁵⁰⁵

The agency should use the principle of proportionality to tailor a response to the actions and mood of the crowd, and avoid increasing tensions by using more gear and equipment than necessary.⁵⁰⁶

- If specialized equipment, such as protective gear, may be necessary, it is often preferable to keep it in reserve and out of sight of the crowd to avoid escalation.⁵⁰⁷
- Many agencies have had positive experiences with officers on bicycles during demonstrations due to, among other benefits, their mobility and non-threatening appearance.⁵⁰⁸
- Where officers must form a barrier line or perimeter, consider alternating the directions that the officers face so they are not perceived as protecting one “side” and not the other.

⁴⁹⁹ Berkeley Police Dep’t, *Response to Civil Unrest: A Review of the Berkeley Police Department’s Actions and Events of December 6 and 7, 2014* at 49 (2015), available at <https://perma.cc/S4KN-439R> [hereinafter “Berkeley Report”].

⁵⁰⁰ Amnesty Guide, *supra* note 478, at 1.

⁵⁰¹ FEMA Guide, *supra* note 492, at 8; HFG Report, *supra* note 483, at 13.

⁵⁰² Amnesty Guide, *supra* note 478, at 1.

⁵⁰³ PERF, *Police Response*, *supra* note 478, at 16.

⁵⁰⁴ HFG Report, *supra* note 483, at 76; PERF, *Police Response*, *supra* note 478, at 16–19.

⁵⁰⁵ FEMA Guide, *supra* note 492, at 10; HFG Report, *supra* note 483, at 77; PERF, *Police Response*, *supra* note 478, at 27.

⁵⁰⁶ PERF, *Police Response*, *supra* note 478, at 71.

⁵⁰⁷ HFG Report, *supra* note 483, at 78-79; DOJ Report, *supra* note 493, at 42; PERF, *Police Response*, *supra* note 473, at 71.

⁵⁰⁸ Berkeley Report, *supra* note 499, at 49; PERF, *Police Response*, *supra* note 478, at 26, 71; *Crowd Management*, *supra* note 489, at 7.

Ensure that all law enforcement officers are clearly identified by displaying the insignia of their units and their names.⁵⁰⁹

- Individual officers who are stressed or hostile should be removed from the line. Implementing this may require command or supervisor presence or peer intervention.⁵¹⁰

E. Communications

To the greatest extent possible, clear communication should take place before, during, and after a mass demonstration with members of law enforcement, mutual aid partners, community groups, protest leaders, and event organizers.⁵¹¹ Establishing positive relationships with community leaders, event organizers, and protest groups through ongoing outreach can help to prevent escalation during a demonstration.⁵¹²

- Because demonstrations may be spontaneous and groups may not have identified leaders, social media may be beneficial too for outreach and communication.⁵¹³

⁵⁰⁹ See, e.g., Amnesty Guide, *supra* note 478, at 2.

⁵¹⁰ PERF, *Police Response*, *supra* note 478, at 26.

⁵¹¹ Amnesty Guide, *supra* note 478, at 1.

⁵¹² HFG Report, *supra* note 483, at 68–70.

⁵¹³ Berkeley Report, *supra* note 490, at 46; PERF, *Police Response*, *supra* note 478, at 62; HFG Report, *supra* note 483, at 73–74.