



# 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.<sup>456</sup> 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.”<sup>457</sup>

- 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.<sup>458</sup> This is particularly true when the protests are about the actions of police.<sup>459</sup>
- 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.<sup>460</sup>

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<sup>456</sup> 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”].

<sup>457</sup> 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”].

<sup>458</sup> See PERF, *Police Response*, *supra* note 456, at 3.

<sup>459</sup> PERF, *Police Response*, *supra* note 456, at iii, 29.

<sup>460</sup> PERF, *Police Response*, *supra* note 456, 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.<sup>461</sup> 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.<sup>462</sup>

- Where possible, train in conjunction with other agencies that have mutual aid agreements for responding to demonstrations.<sup>463</sup>
- Consider inviting stakeholders and community groups to participate in training to foster mutual understanding between the agency and the community.<sup>464</sup>

## **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.<sup>465</sup> 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;<sup>466</sup>
- Measures to avoid officer fatigue and stress, including providing for officers' basic needs like food, water, protection from weather, and breaks;<sup>467</sup>
- Availability of specialized equipment, resources, or units;<sup>468</sup>

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<sup>461</sup> 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/Policing%20Protests.pdf> [hereinafter “HFG Report”].

<sup>462</sup> See PERF, *Police Response*, *supra* note 456, at 29–30.

<sup>463</sup> PERF, *Police Response*, *supra* note 456, at 29, 34.

<sup>464</sup> 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 457, at 74.

<sup>465</sup> See Fed. Emergency Mgmt. Agency, *Incident Command System Resources*, <https://www.fema.gov/incident-command-system-resources>.

<sup>466</sup> PERF, *Police Response*, *supra* note 456, at 21–25.

<sup>467</sup> 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](https://www.theiacp.org/sites/default/files/2019-04/Crowd%20Management%20Paper%20-%202019_1.pdf).

<sup>468</sup> 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),<sup>469</sup> and/or
- Plans to divert traffic if it is expected that streets may be blocked.<sup>470</sup>

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.<sup>471</sup>

- Limitations on surveillance as an information-gathering technique should be developed in collaboration with community members.<sup>472</sup>

### 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.<sup>473</sup>

- 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.<sup>474</sup>
- Consider including mutual aid partners in pre- and post-deployment briefings.<sup>475</sup>
- Critical decisions, like when to use force, hard gear, disperse a gathering, or conduct mass arrests should generally be made by the lead agency.<sup>476</sup>

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<sup>469</sup> See *id.*; PERF, *Police Response*, *supra* note 456, at 38.

<sup>470</sup> 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”].

<sup>471</sup> 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 461, at 67.

<sup>472</sup> LCCHR Toolkit, *supra* note 457, at 59.

<sup>473</sup> For these and additional elements such agreements should include, see PERF, *Police Response*, *supra* note 456, at 39–40.

<sup>474</sup> *Id.* at 43, 46–48.

<sup>475</sup> *Id.* at 47–48.

<sup>476</sup> *Id.* at 48.

## D. Operational Considerations

During a demonstration, police action should generally focus on crowd management or facilitation rather than crowd control.<sup>477</sup> Generally, arrests, detentions, and force should not be used in response to peaceful participation in a public demonstration.<sup>478</sup>

- 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.<sup>479</sup> Minor violations of the law should not be used as a basis to disperse an entire assembly.<sup>480</sup>
- 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.<sup>481</sup> 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.<sup>482</sup>
- However, agencies may consider physically separating opposing groups, potentially using barriers or designated zones, provided there is an accessible exit.<sup>483</sup>

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.<sup>484</sup>

- 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.<sup>485</sup>
- Many agencies have had positive experiences with officers on bicycles during demonstrations due to, among other benefits, their mobility and non-threatening appearance.<sup>486</sup>
- 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.

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<sup>477</sup> 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), [http://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General%20FBPD%20Response%20to%20Civil%20Unrest.pdf](http://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General%20FBPD%20Response%20to%20Civil%20Unrest.pdf) [hereinafter “Berkeley Report”].

<sup>478</sup> Amnesty Guide, *supra* note 456, at 1.

<sup>479</sup> FEMA Guide, *supra* note 470, at 8; HFG Report, *supra* note 461, at 13.

<sup>480</sup> Amnesty Guide, *supra* note 456, at 1.

<sup>481</sup> PERF, *Police Response*, *supra* note 456, at 16.

<sup>482</sup> HFG Report, *supra* note 461, at 76; PERF, *Police Response*, *supra* note 456, at 16–19.

<sup>483</sup> FEMA Guide, *supra* note 470, at 10; HFG Report, *supra* note 461, at 77; PERF, *Police Response*, *supra* note 458, at 27.

<sup>484</sup> PERF, *Police Response*, *supra* note 456, at 71.

<sup>485</sup> HFG Report, *supra* note 461, at 78-79; DOJ Report, *supra* note 471, at 42; PERF, *Police Response*, *supra* note 456, at 71.

<sup>486</sup> Berkeley Report, *supra* note 477, at 49; PERF, *Police Response*, *supra* note 456, at 26, 71; *Crowd Management*, *supra* note 467, at 7.

Ensure that all law enforcement officers are clearly identified by displaying the insignia of their units and their names.<sup>487</sup>

- Individual officers who are stressed or hostile should be removed from the line. Implementing this may require command or supervisor presence or peer intervention.<sup>488</sup>

### **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.<sup>489</sup> Establishing positive relationships with community leaders, event organizers, and protest groups through ongoing outreach can help to prevent escalation during a demonstration.<sup>490</sup>

- Because demonstrations may be spontaneous and groups may not have identified leaders, social media may be beneficial too for outreach and communication.<sup>491</sup>

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<sup>487</sup> See, e.g., Amnesty Guide, *supra* note 456, at 2.

<sup>488</sup> PERF, *Police Response*, *supra* note 456, at 26.

<sup>489</sup> Amnesty Guide, *supra* note 456, at 1.

<sup>490</sup> HFG Report, *supra* note 461, at 68–70.

<sup>491</sup> Berkeley Report, *supra* note 477, at 46; PERF, *Police Response*, *supra* note 456, at 62; HFG Report, *supra* note 461, at 73–74.