



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.⁴⁵⁶ 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.”⁴⁵⁷

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

⁴⁵⁶ 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”].

⁴⁵⁷ 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”].

⁴⁵⁸ See PERF, *Police Response*, *supra* note 456, at 3.

⁴⁵⁹ PERF, *Police Response*, *supra* note 456, at iii, 29.

⁴⁶⁰ 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.⁴⁶¹ 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.⁴⁶²

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

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

⁴⁶¹ 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”].

⁴⁶² See PERF, *Police Response*, *supra* note 456, at 29–30.

⁴⁶³ PERF, *Police Response*, *supra* note 456, at 29, 34.

⁴⁶⁴ 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.

⁴⁶⁵ See Fed. Emergency Mgmt. Agency, *Incident Command System Resources*, <https://training.fema.gov/emiweb/is/icsresource/>.

⁴⁶⁶ PERF, *Police Response*, *supra* note 456, at 21–25.

⁴⁶⁷ 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.

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

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.⁴⁷¹

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

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.⁴⁷³

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

⁴⁶⁹ See *id.*; PERF, *Police Response*, *supra* note 456, at 38.

⁴⁷⁰ 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”].

⁴⁷¹ 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.

⁴⁷² LCCHR Toolkit, *supra* note 457, at 59.

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

⁴⁷⁴ *Id.* at 43, 46–48.

⁴⁷⁵ *Id.* at 47–48.

⁴⁷⁶ *Id.* at 48.

D. Operational Considerations

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

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

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.⁴⁸⁴

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

⁴⁷⁷ 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%2FBPD%20Response%20to%20Civil%20Unrest.pdf [hereinafter “Berkeley Report”].

⁴⁷⁸ Amnesty Guide, *supra* note 456, at 1.

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

⁴⁸⁰ Amnesty Guide, *supra* note 456, at 1.

⁴⁸¹ PERF, *Police Response*, *supra* note 456, at 16.

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

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

⁴⁸⁴ PERF, *Police Response*, *supra* note 456, at 71.

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

⁴⁸⁶ 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.⁴⁸⁷

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

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

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

⁴⁸⁷ See, e.g., Amnesty Guide, *supra* note 456, at 2.

⁴⁸⁸ PERF, *Police Response*, *supra* note 456, at 26.

⁴⁸⁹ Amnesty Guide, *supra* note 456, at 1.

⁴⁹⁰ HFG Report, *supra* note 461, at 68–70.

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