



## WHAT POLICE NEED TO KNOW ABOUT PROTECTING THE COUNT

This document provides guidance to law enforcement about how to protect election staff and ballots during the vote counting period, while also protecting First Amendment rights during public demonstrations. It applies to both initial vote counts and recounts. 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 ARE THE RULES?

The principal role of law enforcement is to facilitate First Amendment rights while protecting protestors and public safety.

However, **the First Amendment does not protect activity that endangers those who are completing a vote count**, just as it does not protect violence, unlawful conduct, threats of violence, or destruction of property.

- Law enforcement may take measures to secure locations where the vote count is ongoing.
- Law enforcement may impose viewpoint-neutral, reasonable time, place, and manner restrictions on protestors in order to protect public safety (e.g., creating buffer zones, banning items that can be used as weapons etc.).
- 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.

**In addition, state laws prohibit disturbing, harassing, or otherwise interfering with public officials or public employees' discharge of their duties.** Law enforcement officials should consult local laws and prepare to enforce them as necessary.

**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 protestors.

**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 unauthorized 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.
- Before making any arrests, officers should clearly communicate the thresholds for arrest and give audible warnings to demonstrators and fair notice for them to conform their behavior.
- 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.
- When 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.

**When 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.

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

**Observe department rules and local and state regulations concerning pandemic response.** Ensure that social distancing and mask requirements are implemented during the transport and detention of persons arrested.

For further information, go to [constitutionalprotestguide.org](https://www.constitutionalprotestguide.org).

*These materials were prepared collaboratively by the Voter Protection Program, the Institute for Constitutional Advocacy and Protection at Georgetown Law, 21CP Solutions, and the Crime and Justice Institute.*

