

July 12, 2021

CAC - Use of Force - Ad Hoc

Draft Recommendations to Sonoma County Sheriff's Office

Topic: MASS DEMONSTRATIONS, CROWD MANAGEMENT AND USE OF TEAR GAS

Introductory Statement: Core Values¹

The Sonoma County Sheriff's Office recognizes, values and prioritizes the protection of First Amendment rights while understanding the need to implement best practices for law enforcement to identify, monitor and strategically detain individuals suspected of inciting violence and destruction during protests and demonstrations. The role of police officers in protests and demonstrations is to keep the peace and facilitate the ability of protesters to demonstrate peacefully without infringing on their First Amendment rights. The following policies are intended to support and enforce these goals.²

432.5.1 WORKING WITH THE PUBLIC, INFORMATION GATHERING AND ASSESSMENT

In order to properly assess the potential impact of a planned public assembly or demonstration on public safety and order and to assist and protect community members interested in lawfully demonstrating their First Amendment right to assemble and protest, relevant information should be collected and vetted.³ The Sheriff's Office shall post a toll-free phone number and email address on its website for all planned public assembly or demonstration leaders and/or participants to contact and communicate information related to the event. Community members who wish to plan a protest or demonstration in the jurisdiction of the Sheriff's Office with the assistance and protection of the Sheriff's Office should contact the Sheriff's Office for more information.

432.5.4 TIERED RESPONSES AND OPERATIONAL PLANS

Operational plans should account for and respond to a mass demonstration in gear and with equipment that are proportional to the mood of the crowd.⁴ Officer safety is critical and should be considered at all times.⁵ The Sheriff's Office understands that the designation of uniforms may unintentionally increase the tension in a mass demonstration.⁶ Operational plans should

¹ Recommendations on protests and demonstrations from Governor Newsom's Office: <https://www.gov.ca.gov/2020/10/13/governor-newsoms-policing-advisors-announce-recommendations-to-improve-police-response-to-protests-and-demonstrations/>

² Id.

³ Current Sonoma County Sheriff's Office ("SCSO") Policy 432.5.1, added "planned."

⁴ The Police Response to Mass Demonstrations, Promising Practices and Lessons Learned, Police Executive Research Forum ("PERF"), 2018, pg. 25.

⁵ Id.

⁶ Id.

avoid an unnecessarily militarized presence or aggressive response.⁷ In selecting the designated uniform, the operational planning team should consider whether deputies seen wearing standard issue uniforms will serve as a de-escalation technique so that their presence on the scene will not incite or elicit a heightened emotional response and/or violence from an otherwise lawful assembly.⁸

When objectively reasonable under the circumstances, operational response plans should start with deputies wearing standard uniforms engaging, assisting and protecting the crowd while avoiding formations like lines or wedges.⁹ The Incident Commander shall ensure that deputies have ready access to helmets if needed to protect themselves for head injury from projectiles.¹⁰ Deputies should only be deployed in full riot gear as a last resort, and only when necessary to protect the public or officers from violence or serious injury.¹¹

Operational response plans should also require¹²:

- a.) BWC's are worn and activated.
- b.) Journalists and legal observers are also protected
- c.) The attempted identification of and preparation for the role of hate groups including white supremacists who wish to disrupt protests and instigate violence.
- d.) Enforcement that targets those who are causing harm in order to avoid disrupting the First Amendment rights of other participants. Enforcement of low-level offenses or imposing unnecessary constraints on movement can spark avoidable conflict.
- e.) The use of weaponry as a last resort to protect life and repel assaults when other means have been exhausted. Deploying weapons, including kinetic impact projectiles, armored vehicles and chemical irritants, can, in addition to causing injuries and even death, rapidly escalate conflict.
- f.) The coordination of officer resources before they are needed and, when possible, stage away from demonstrators.
- g.) Limitations on amount of time officers can be on the line and establish ability to tap out or be pulled out based upon risk factors observed by the officer, other officers, or a supervisor. Risk factors should include signs such as fatigue, unmanageable stress, or other factors which may impact an officer's ability to safely and appropriately perform their assignment.
- h.) Whenever possible, conduct daily briefings and after-action reports with mutual aid agencies to reinforce policies, priorities, and command structure.

⁷ Id.

⁸ Professor Napoleon Reyes, PhD comments during CAC Meeting on 12/7/2020; "Policing the Police: Implicit Racial Bias & The Necessity of Limiting Police Discretion to Use Militarized Gear Against Civilian Protesters" ["Policing the Police"], Liku T. Madoshi, 2016, Southern University Law Review, pg. 141.

⁹ Policing Protests to Protect Constitutional Rights and Public Safety: Best Practices, NYU School of Law Policing Project, #5, pg. 1.

¹⁰ Id.

¹¹ Id.

¹² <https://www.gov.ca.gov/2020/10/13/governor-newsoms-policing-advisors-announce-recommendations-to-improve-police-response-to-protests-and-demonstrations/>

i.) Whenever possible, involve prosecutors' offices in front-end discussions regarding the possibility of curfews or other enforcement strategies and priorities and to provide training on relevant laws (e.g., distinguishing burglary from looting charges.)

432.6 UNLAWFUL ASSEMBLY DISPERSAL ORDERS

If a public gathering or demonstration remains peaceful and nonviolent, and there is no reasonably imminent threat to persons or property, the Incident Commander should generally authorize continued assistance and protection of the protesters and monitoring of the event.¹³

An unlawful assembly occurs whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner.¹⁴ Initial attempts should be made to address the unlawful acts of a small group of individuals directly rather than with attempts to disperse an entire protest or demonstration based on the unlawful acts of outliers.

Use dispersal orders strategically (as they may have an escalating effect); when given, ensure dispersal orders are clear, loud, in multiple languages where appropriate, and that individuals are given sufficient time to disperse with clear, visible, and ample means of egress.¹⁵

432.7.1 RESTRICTIONS ON USE OF TEAR GAS IN RESPONSE TO UNLAWFUL ASSEMBLY

Deputies shall not use tear gas to disperse a crowd unless it is used as a last resort and other means of de-escalation have been attempted but unsuccessful or are deemed unavailable. Deputies may not use tear gas in response to a protest or demonstration to disperse a crowd unless:

- a. The Watch Commander, Incident Commander, or Special Operations Unit Commander has determined that the protest or demonstration constitutes an unlawful assembly and that the use of force is necessary to disperse the crowd; and
- b. The commanding officer at the scene or their designee has issued an order to disperse, in a sufficient manner to ensure that the order is heard, followed by sufficient time and space to allow compliance with the order with clear, visible ample means of egress for the crowd.¹⁶ The dispersal order requirements are listed in SCSO Policy 432.6 and further described below.¹⁷

¹³ SCSO Policy 432.6.

¹⁴ Cal. Penal Code section 407.

¹⁵ <https://www.gov.ca.gov/wp-content/uploads/2020/10/Policing-and-Protests-Recommendations.pdf>

¹⁶ Model Use of Force Statute, NYU School of Law Policing Project, pg. 9.

¹⁷ See SCSO Policy 432.6 Unlawful Assembly Dispersal Order.

Prior to the deployment of tear gas, the following steps should be taken, when objectively reasonable under the totality of circumstances:

1. De-escalation techniques or other alternatives to force;
2. Repeated audible announcements are made announcing the use of chemical agents and the type to be used;
3. Announcements shall be made in various locations, using a PA system, if necessary, and delivered in multiple languages, if appropriate.
4. Participants should be given an objectively reasonable amount of time and opportunity to disperse and leave the scene following a dispersal order and should be provided with clear, visible and ample means of egress.
5. An objectively reasonable effort has been made to distinguish between persons engaged in violent acts and those who are not, and efforts have been made to address the actions of individuals causing harm. Only if attempts to control the actions of the group engaging in unlawful activity are unsuccessful or unrealistic, can tear gas be targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of participants.
6. Tear gas should only be used with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
7. An objectively reasonable effort has been made to extract individuals in distress.
8. Medical assistance is promptly procured or provided for injured persons.¹⁸
9. When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.¹⁹

Tear gas should not be used solely due to any of the following:

- a. A violation of an imposed curfew;
- b. A verbal threat;
- c. Passive resistance or noncompliance with a law enforcement directive.²⁰
- d. To address the unlawful conduct of a small group of individuals whose actions are not consistent with the tenor of the overall lawful protest or demonstration

432.7 USE OF FORCE [*ADDITIONAL LANGUAGE TO ADD TO END OF THIS SECTION*]

To the extent it is possible, Sheriff's Office Supervisors and/or Incident Commanders should be utilized in traditional command and control functions and leave actual force deployments to line level deputies.²¹

¹⁸ California Legislature Assembly Bill 48, 2021-2022 Regular Session, Amended and Revised, 3/24/2021 ("AB 48").

¹⁹ SCSO Policy 303.6.

²⁰ AB 48.

²¹ City of Santa Rosa INDEPENDENT REPORT ON THE SANTA ROSA POLICE DEPARTMENT'S INTERNAL INVESTIGATIONS RE PROTEST ACTIVITY, MAY/JUNE 2020, April 27, 2021, OIR Group, pg. 10.

The force review process shall maintain appropriate objectivity by avoiding the involvement of actual participants in the underlying deployments in the review process.²²

²² Id. at pg. 11.