



# Minnesota Board of Peace Officer Standards and Training

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[www.post.state.mn.us](http://www.post.state.mn.us)

## BOARD MEETING AGENDA

**Location: Board of Cosmetologist Examiners**

**1000 University Ave W #100,  
St Paul, MN 55104**

**Main Entrance and Free Parking are located at the back of the building.**

**July 22, 2021  
10:00 a.m.**

1. Call to Order
2. Forum\* Those interested in participating in the forum must sign up in advance. Please email [abby.e.brown@state.mn.us](mailto:abby.e.brown@state.mn.us) no later than 4:00 pm on Wednesday, July 21<sup>st</sup>. Time will be allocated depending on number of requests.
3. Approval of the Agenda **ACTION**
4. Approval of the April 22, 2021 Board Meeting Minutes (Attachment) **ACTION**
5. Review of new legislation passed involving POST
6. Board authority to address violations of mandated model policies **Discussion**
7. Updated Model Policy for Allegations of Misconduct (Attachment) **ACTION**
8. Draft Model Policy on Public Assembly and First Amendment Activities (Attachment) **ACTION**
9. Rules Advisory Committee update.
10. Complaint Process Special Committee update.
11. Executive Director's Report
  - A. Introduction of new staff
  - B. Update on budget matters – HR – finance
12. Licensure Matters (closed to the public) **Attachment(s) sent separately**
13. Adjournment

\*Individuals may address the Board about any item not contained on the regular agenda. A maximum of 15 minutes is allotted for the Forum. The Board will take no official action on items discussed at the Forum, with the exception of referral to the Executive Director or Staff for a future report.

**MINNESOTA BOARD OF  
PEACE OFFICER STANDARDS AND TRAINING**

**BOARD MEETING  
POST Board Office  
Electronic Meeting VIA Microsoft Teams  
April 22, 2021**

**Members Present**

Kelly McCarthy, Chair  
Jason Bennett  
Jay DeCoux  
Andrew Evans  
Jennifer Foster  
Tanya Gladney  
Luke Hennen  
Justin Page  
Nigel Perrote  
Sara Rice  
Liz Richards  
Shelly Schaefer  
Pilar Stier  
Rebecca Swanson  
Justin Terrell  
Troy Wolbersen  
Jim Yang (via phone)

**Staff Present**

Erik Misselt  
Jeff Winger  
Mark Bloom  
Abby Brown  
Rebecca Gaspard  
Angie Rohow

**Others Present**

Angela Rose Myers  
Rep. Carlos Mariani  
Brian Fullman  
Theo Rose

Invitation to listen to the live meeting was listed on the website.

**Counsel Present:**

Noah Cashman, A.G. Office  
Christopher Kaisershot, A.G  
Office

**Call to Order:** Chair McCarthy called the meeting to order at 10:00am.

**Forum:** Per instructions on the posted agenda, there were four individuals that requested to speak during the forum.

Angela Rose Myers from the Minneapolis NAACP testified in support of the request for a state model policy for peaceful protests as attached amendment to the Agenda Item 5. She has collected a petition signed by over 1,200 statewide citizens in support of this recommendation as well.

Representative Chair Carlos Mariani addressed the Board in favor of the request before the board stating that it is refreshing and he encouraged the board to objectively review the proposal attached.

Brian Fullman, spoke on behalf of ISAIAH and the BBBC which are community organizations of faith leaders and black barbers (respectively) in Minnesota who seek to advance a more just Minnesota for their communities.

**Approval of the Agenda:** Chair McCarthy looked for a motion to approve the agenda.

- **MOTION:** Mr. Terrell moved to approve the agenda, the motion was seconded by Mr. DeCoux. The agenda was approved through a hand raise/voice vote.

**Approval of the January 28, 2021 Board Meeting Minutes:** Chair McCarthy looked for a motion to approve the minutes.

- **MOTION:** Mr. Bennett moved to approve the minutes, the motion was seconded by Ms. Swanson. The minutes were approved through an affirmative consent vote.

**Ensuring Police Excellence and Improving Community Relations Advisory**

**Council:** Chair McCarthy summarized the recommendations submitted by this council, which were included in the agenda packet. The two recommendations overview include:

1. Seeking a model policy regarding how police should conduct themselves when responding to first amendment assemblies
2. Seeking a mechanism for accountability to ensure that officers are following those policies

Theo Rose, Council for Minnesotans of African Heritage, stated that law enforcement and their communities need clear and simple guidelines that allow separation of good cops from bad cops and protestors separate from rioters.

Chair McCarthy recommended creating a working group (made up of members of POST Board staff, the Ensuring Police Excellence and Improving Community Relations Advisory Council and the Board's Rules Advisory Committee) to develop model policy on public assembly and 1st amendment rights.

- **MOTION:** Mr. DeCoux moved to authorize an ad hoc committee to explore MN POST Board's current capacity and legal responsibility around rule making and officer's violations of department policy and to develop better alternatives. This group would be made up of members of POST Board staff, the Ensuring Police Excellence and Improving Community Relations Advisory Council and the Board's Rules Advisory Committee. The motion was seconded by Ms. Gladney. The motion was approved through a roll call vote.

**Standing Committees delegations:** The Bylaws committee (an ad hoc committee) was determined by the Chair of the Committee as well as Chair McCarthy to no longer be needed, therefore will be dissolved. Chair McCarthy updated the board on committee assignments.

**Rules Advisory Committee Update:** Ms. Gaspard reviewed the rules making process for new Board members and where MN POST Board is in this process.

- **MOTION:** Mr. Terrell moved to begin the rulemaking process that adopts language from House File 593 in order to adopt a standard that prohibits law enforcement officers from associating with any White Supremacy organizations. The motion was seconded by Mr. DeCoux. The motion was approved through a roll call vote.

**Executive Director's Report:** Director Misselt gave an update on many items relating to the POST Board. The updates included hiring decisions for the Assistant Executive Director, Continuing Education Coordinators and Standards Coordinator positions.

Director Misselt discussed the Compliant Database development which is set to go live in the beginning of July.

- **MOTION:** Ms. Swanson moved to close the open portion of the meeting for private licensure matters, the motion was seconded. The vote was approved through a roll call vote.

The closed session ended and Mr. Hennen moved to adjourn the open board meeting, Mr. Terrell seconded the motion. The meeting was adjourned at 1:20 pm.

The foregoing minutes were approved by the Board of Peace Officer Standards and Training when it met on July 22, 2021.

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Kelly McCarthy  
Board Chair

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Erik Misselt  
Executive Director

## ALLEGATIONS OF MISCONDUCT MODEL POLICY

MN RULES 6700.2200 through 6700.2600

- I.** The purpose of this policy is to inform all employees and the public of procedures for reporting, receiving, investigating and disposition of complaints regarding the conduct of licensed peace officers of the \_\_\_\_\_ (law enforcement agency). The provisions of this policy are applicable only to the investigation and the disposition of allegations of administrative misconduct. This policy does not apply to a criminal investigation.

### **II. POLICY**

It is the policy of the \_\_\_\_\_ (law enforcement agency) that any person who believes that an employee of this agency has acted improperly may bring a complaint to the chief law enforcement officer's attention pursuant to the following procedure to accept and to fairly and impartially investigate all complaints of misconduct to determine the validity of allegations; and to impose any corrective actions that may be justified in a timely and consistent manner.

### **III. DEFINITIONS**

For the purpose of this policy the terms set forth below are defined as follows:

- A. *Administrative Investigation:*** An internal investigation conducted in response to a complaint with the goal of determining whether an employee engaged in misconduct.
  - B. *Chief Law Enforcement Officer*** means the chief of police, sheriff, state law enforcement director or a designee. Within this model policy, the chief law enforcement officer will be referred to as CLEO.
  - C. *Law Enforcement Officer*** means an individual who holds a peace officer license in the State of Minnesota. Within this model policy, a law enforcement officer will be referred to as LEO.
  - D. *Complainant*** means a person who submits a complaint to the Agency or CLEO alleging misconduct by an agency member.
  - E. *Complaint*** means a written statement made to or by a CLEO alleging misconduct—a statement alleging behavior that constitutes misconduct.
  - F. *Member*** means all voluntary and compensated personnel of the agency.
  - G. *Discipline*** means:
    - 1.Oral Reprimand,
    - 2.Written Reprimand,
    - 3.Suspension,
    - 4.Demotion, or
    - 5.Discharge.
  - H. *Unfounded*** means there is no factual basis for the allegation. The act or acts alleged did not occur.
- Formal Statement** means the questioning of an agency member in the course of obtaining a

~~recorded, stenographic or signed statement to be used as evidence in a disciplinary proceeding against the agency member.~~

- I. **Exonerated** means a fair preponderance of the evidence established either that that either:
    - 1.the agency member named in the complaint was not involved in the alleged misconduct; or
    - 2.the act(s) that provided the basis for the complaint occurred; however, the investigation reveals that such act(s) were justified, lawful or proper.
  - J. **Not Sustained** means the investigation failed to disclose sufficient evidence to prove or disprove the allegations made in the complaint.
  - K. **Sustained** means a fair preponderance of the evidence obtained in the investigation established that the accused person's LEO's actions constituted misconduct.
  - L. **Policy Failure** means that the complaint revealed a policy failure. The allegation is factual and the LEO(s) followed proper agency procedure, however, that procedure has proven to be deficient.
  - M. Respondent means any agency member, whether full-time, part-time, temporary or voluntary, against whom a complaint has been filed ~~an individual who is the subject of a complaint investigation.~~
  - N. **Misconduct** means:
    - 1.a violation of any agency policy and procedure governing conduct of agency members;
    - 2.conduct by a peace officer that would be a violation of POST Standards of Conduct per Minn. Rules 6700.1600
    - 3.the use of unnecessary or excessive force;
    - 4.the conviction of any criminal offense;
    - 5.abuse of authority;
    - 6.conduct which violates a person's civil rights;
    - 7.abusive or insulting language or conduct which is derogatory of a person's race, religion, sex, national origin or sexual preference;
    - 8.sexual harassment as that term is defined under Minnesota law;
    - 9.intimidation or retribution toward a complainant or witness involved in any complaint proceeding.
  - O. **Policies and Procedures** mean the administrative rules adopted by the agency regulating the conduct of agency members.
- Shall / Will** means, as used herein, that the action is mandatory.
- May** means that the action is permissible.
- P. **Receiving authority** means the entity person who receives and is required to investigate the complaint when the subject of the complaint is a CLEO.

## **IV. PROCEDURE**

### **A. INITIATING COMPLAINT ACCEPTANCE AND FILING OF COMPLAINTS**

~~Anyone who has personal knowledge of facts or reliable hearsay information may file a complaint. Any agency member who has personal knowledge of misconduct shall file a complaint according to the procedures stated herein.~~

~~Any agency member shall self-report to the CLEO and to the Peace Officer Standards and Training Board any action, inaction, or condition of that agency member which the agency member reasonably believes would constitute grounds for disciplinary action under any of the Peace Officer Standards and Training Board's regulatory provisions.~~

~~Upon receiving a complaint against a member within the agency, the CLEO receiving the complaint shall immediately have the complainant complete a Citizens Complaint Form (CCF) and assign an administrative case number. The complaint will not be considered filed until the complainant signs the CCF.~~

~~If the person making a complaint sets forth specific believable facts supporting an allegation of misconduct but wishes to remain anonymous, the CLEO receiving the complaint may, with sole discretion, permit the complainant to remain anonymous. In this instance the CLEO shall sign the complaint as the complainant. If the CLEO has reason to believe the complaint is unfounded, the CLEO shall have the authority to require an anonymous complainant to identify himself/herself. If that complainant refuses to do so, the CLEO may refuse to accept a complaint and shall advise the anonymous person of that fact.~~

~~After a CCF is filed, the CLEO shall sign the document keeping a copy for the agency and providing a copy to the complainant. The CLEO will forward a copy of the document to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.~~

- 1. Complaint forms must be made available through agency personnel, at designated public facilities, and online.**
- 2. Complaints may be received either in person, over the telephone, in writing, or via the internet. A complainant may remain anonymous. The complainant should be advised that remaining anonymous may affect the investigation of the complaint.**
- 3. A complainant may be accompanied by an attorney or other representative at the time a complaint is filed or at any other stage of the process.**
- 4. Employees must provide assistance to individuals who express the desire to lodge complaints against any employee of this agency.**
- 5. The complainant must be advised of the procedures for submitting the complaint and provided with a copy of their submitted complaint.**
- 6. The complainant should be asked to verify by signature if the complaint is a complete and accurate account. If the complainant elects not to sign, this fact must be documented and the complaint processed in the same manner as if it were signed.**

7. The CLEO will forward a copy of the written complaint to the respondent only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.
8. A CLEO or Receiving Authority may delegate the duties and responsibilities required of a CLEO by this policy to an appropriate designee(s).
9. Any complaint made against a chief of police shall ~~must~~ initially be made to the city administrator, manager or mayor. Any complaint made against a sheriff shall initially be made to the county attorney, ~~the county administrator~~ or the board of county commissioners. Upon receiving a complaint the receiving authority shall immediately have the complainant complete a ~~Citizens Complaint Form (CCF)~~ and assign an administrative case number. The complaint will not be considered until the complainant signs the ~~CCF~~.
10. The city administrator, manager, mayor, county attorney, ~~county administrator~~ or board of county commissioners should refer investigations of alleged misconduct against a CLEO to an outside law enforcement agency or criminal justice agency that has no discernible conflict of interest.

## B. THE INVESTIGATION OF A COMPLAINT

1. Upon receipt of the ~~complaint Citizen Complaint Form (CCF)~~, the CLEO shall make an initial determination as to whether the facts alleged require ~~a formal~~ ~~an~~ ~~administrative~~ investigation. If the CLEO decides that an investigation is not required, ~~the disposition of the investigation is not required. The disposition of the complaint shall be either "not sustained" or "exonerated"~~ ~~the disposition of the complaint must be cleared as "unfounded", "not sustained", or "exonerated."~~ The complainant and the respondent will be notified of this decision and the basis for determination. If the complainant supplies additional information within thirty (30) days of that initial determination, the CLEO may reverse this decision and order ~~a formal~~ ~~an~~ ~~administrative~~ investigation.
2. If the CLEO determines ~~a formal~~ ~~an~~ ~~administrative~~ investigation is required an appropriate person will be assigned to investigate the complaint. When the CLEO believes an external investigation is appropriate and when the CLEO is the subject of the complaint, the investigation will be assigned to an external agency ~~that has no discernible conflict of interest.~~

~~The CLEO may suspend a respondent with pay at any time during the investigation of a complaint.~~

3. ~~As soon as possible after being assigned the investigation the investigator shall inform the complainant of his or her name, business phone number and the status of the complaint. The investigator must inform the complainant of his or her name, business phone number and the status of the complaint as soon as possible after being assigned the investigation.~~

4. The investigator shall **must** thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation reveals potential misconduct by another agency member the investigator shall report that fact to the CLEO or, in the case of a complaint against a CLEO, the appropriate city administrator, manager, mayor, county attorney, **county administrator** or the board of county commissioners.
5. All agency members shall cooperate with the investigation. When the respondent is a licensed peace officer the investigation shall comply with the requirements of MN STAT 626.89 and acts amendatory thereto.
6. The investigator shall prepare a report which will contain all relevant information organized into the following three (3) sections.
  - a) *Allegations:* an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those rules, procedures, orders, statutes, or constitutional provisions that would be violated if the allegations are taken as true.
  - b) *Investigation:* a chronological summary of the investigation including all pertinent facts obtained through interviews with the complainant, accused agency member and all available witnesses. Written statements, descriptions and analysis of any physical evidence, and all other relevant information shall be included.
  - c) *Conclusions:* the investigator's findings, conclusions as to whether any misconduct occurred and the underlying reasons for the finds and conclusions.
7. The investigation shall be completed within thirty (30) days of the filing of the complaint unless the CLEO or **receiving authority** determines there is good cause to grant an extension to the investigation time. The complainant and respondent shall be informed of any extension.

~~A complaint received through the Minnesota Board of Peace Officer Standards and Training will be handled pursuant to this policy; the Board will be advised of the status of the complaint within 30 days.~~

## C. ADDITIONAL INVESTIGATION, REVIEW AND DISPOSITION

1. Upon completion of the investigation the investigator shall submit the report, case file and all investigative notes to the CLEO or **Receiving Authority**. The CLEO or **Receiving Authority** may require additional investigation or make one of the following decisions: "**exonerated**," "**not sustained**," or "**sustained**."
  - **Unfounded**
  - **Exonerated**
  - **Not Sustained**
  - **Sustained**
  - **Policy Failure**
2. The CLEO or **Receiving Authority** may postpone making a decision until any related criminal charges are resolved. The complainant and respondent shall be informed of this decision.
3. If the decision is "**unfounded**," "**exonerated**," "**not sustained**" or "**policy failure**" the CLEO or **Receiving Authority** shall immediately notify the complainant and the

respondent of the decision.

4. If the complaint is "sustained" the CLEO or Receiving Authority will:
  - a) Issue findings of fact including a summary of the acts constituting misconduct and the specific statutes, policies, regulations and procedures violated; and
  - b) Take appropriate remedial and/or disciplinary action.
  - c) Advise the complainant of any public information regarding the disposition.
5. Prior to the implementation of remedial and/or disciplinary action the respondent will be provided with a copy of the findings of fact. The CLEO , Receiving Authority and/or appropriate person designee shall must review the findings of fact with the respondent and explain the reasons for the remedial and/or disciplinary action.
6. The investigation may be re-opened by the CLEO or Receiving Authority at any time if substantial new evidence is discovered concerning the complaint.
7. When a "sustained" disposition is final the respondent may appeal the disposition pursuant to the rules and law governing the accused member's employment.

#### **D. MAINTENANCE AND DISCLOSURE OF DATA**

1. Disclosure to the public, complainant and respondent of data collected, created or received by the agency in connection with this policy and procedure shall be governed by the provisions of the MN Government Data Practices Act. Retention of data collected or maintained in connection with this policy shall be retained in accordance with the agency's "Record Retention Schedule."
2. All data collected, created or received by the agency in connection with this policy and procedure shall be maintained in accordance with the agency's "Record Retention Schedule."
3. The placement of the disposition report or other data in an employee's personnel file shall be governed by the agency's personnel policy.
4. Access to data collected, created, or received in connection with this policy and procedure may only be authorized by the CLEO or the agency's Data Practices "Responsible Authority," and as provided by Chapter 13, the "Minnesota GovernmentData Practices Act," or valid court order.

#### **E. POST BOARD REPORTING REQUIREMENTS**

1. Under Minn. Rule 6700.1610, a licensed peace officer must self-report to the POST Board any violations of the Standards of Conduct for peace officers listed in Minn. Rule 6700.1600.
2. Any person with knowledge of peace officer misconduct constituting grounds for action under Minn. Stat. chapter 214, or Minn. Rules 6700.1600, may report the violation to the Board.
3. Minnesota Stat. 626.8457 Subd. 3 requires CLEOs to submit individual peace officer public and private data related to allegations of misconduct to the POST Board in "real time" via the POST Board Misconduct Reporting System.
4. A chief law enforcement officer must update data within 30 days of final disposition of a complaint or investigation.

- 5.** Law enforcement agencies and political subdivisions are prohibited from entering into a confidentiality agreement that would prevent disclosure of the data identified in Minn. Stat. 626.8457 Subd. 3 paragraph (b) to the Board. Any such confidentiality agreement is void as to the requirements of this section.

## Background on Draft Model Policy on Public Assembly and First Amendment Activity

At the direction of the POST Board, an ad hoc working group was formed in May 2021 to develop a draft model policy on public assembly and first amendment activity. Of the 8 members of the group, 4 have law enforcement backgrounds, and 4 have community organization backgrounds. An equal number of members were recruited from the Advisory Council on Ensuring Police Excellence and Improving Community Relations and the POST Advisory Committee on the Rules Overhaul. Two additional individuals were enlisted to work with the group. The group met for more than 15 hours over a 5 week period, and proposes the attached draft model policy.

### Ad Hoc Working Group Members:

Sheriff Sean Deringer, Minnesota Sheriffs Association  
Michelle Gross, Communities United Against Police Brutality  
Angela Rose Meyers, NAACP  
Julio Zelaya, Minnesota Council on Latino Affairs, ACLU  
Commander Jack Serier, Director of Training, St. Paul PD  
Sgt Nick Steiger, Fridley PD  
Sherrise Truesdale, criminal justice professor Mankato State  
David Titus, Minnesota Police and Peace Officers Association

In preparation for the development of the policy, the group reviewed the following documents:

- *Policing Protests*, a 2020 report from the Guggenheim Foundation, funded by the Office of Community Oriented Policing Services of the U.S. Dept. of Justice.
- *Investigation into NYPD Response to the George Floyd Protests*, 2020 New York City Dept. of Investigation
- Lexipol based 1st Amendment Assemblies Policy - Mendota Heights PD
- 2021 Crowd Control and Management Policy – Fridley PD
- 2021 Draft Crowd Management, Intervention, and Crowd Dispersal Policy – Seattle PD
- First Amendment/Crowd Control Policy – St. Paul PD
- 2021 First Amendment Activity Facilitation and Management – San Diego PD
- Policing Protests Memorandum of Law– League of Minnesota Cities
- Residential Picketing and Protest Checklist - League of Minnesota Cities
- 2020 Preliminary Injunction –City of Portland and Portland PD-US District Court
- 2021 Temporary Restraining Order – MN DPS and State Defendants (following Brooklyn Center protests)-US District Court
- 2021 Preliminary Injunction – City of Columbus- US District Court
- 2019 Crowd Management – IACP
- Relevant Minnesota Statutes (609.705 Unlawful Assembly, 609.715 Presence at Unlawful Assembly, and 609.71 Riot.)

# **Draft Model Policy on Public Assembly and First Amendment Activity**

References:

[\*\*First Amendment US Constitution\*\*](#)

[\*\*Minnesota Constitution\*\*](#)

[\*\*609.705. Unlawful Assembly\*\*](#)

[\*\*609.71 Riot\*\*](#)

[\*\*609. 066 Authorized Use of Force by Peace Officers\*\*](#)

[\*\*609.06 Authorized Use of Force\*\*](#)

## **1) PURPOSE**

The First Amendment to the Constitution of the United States of America states, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

The Bill of Rights in Article 1 of the [\*\*Minnesota Constitution\*\*](#) addresses the rights of free speech and the liberty of the press. However, neither the state nor federal constitutions protect criminal activity or threats against citizens, businesses, or critical infrastructure.

The [\*\*\(law enforcement agency\)\*\*](#) supports all people's fundamental right to peaceably assemble and their right to freedom of speech and expression.

The purpose of this policy is to provide guidelines to the [\*\*\(law enforcement agency\)\*\*](#) personnel regarding the application and operation of acceptable law enforcement actions addressing public assemblies and First Amendment Activity.

## **2) POLICY**

The [\*\*\(law enforcement agency\)\*\*](#) will uphold the constitutional rights of free speech and assembly while using the minimum use of physical force and authority required to address a crowd management or crowd control issue.

The policy of the [\*\*\(law enforcement agency\)\*\*](#) ("department") regarding crowd management and crowd control is to apply the appropriate level of direction and control to protect life, property, and vital facilities while maintaining public peace and order during a public assembly or First Amendment activity. Department personnel must not harass, intimidate, or discriminate against or unreasonably interfere with persons engaged in the lawful exercise of their rights.

This policy concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder applies to spontaneous demonstrations, crowd event situations, and planned demonstration or crowd events regardless of the permit status of the event.

This policy is to be reviewed annually.

### 3) DEFINITIONS

- A. Chemical Agent Munitions: Munitions designed to deliver chemical agents from a launcher or hand thrown.
- B. Control Holds: Control holds are soft empty hand control techniques as they do not involve striking.
- C. Crowd Management: Techniques used to manage lawful public assemblies before, during, and after an event. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and post event critiques.
- D. Crowd Control: Techniques used to address unlawful public assemblies.
- E. Deadly Force: Force used by an officer that the officer knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm.  
(Reference: (law enforcement agency's) Use of Force Policy, MN Statutes **609.06 and 609.066**)
- F. Direct Fired Munitions: Less-lethal impact munitions that are designed to be direct fired at a specific target.
- G. First Amendment Activities: First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression. Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, street theater, and other artistic forms of expression. All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution and the Minnesota State Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

- H. Great Bodily Harm: Bodily injury which creates a high probability of death, or which causes serious, permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm. (Reference: (law enforcement agency's) Use of Force Policy, MN Statutes **609.06 and 609.066**)
- I. Legal Observers – Individuals, usually representatives of civilian human rights agencies, who attend public demonstrations, protests and other activities. The following may be

- indicia of a legal observer: Wearing a green National Lawyers' Guild issued or authorized Legal Observer hat and/or vest (a green NLG hat and/or black vest with green labels) or wearing a blue ACLU issued or authorized legal observer vest.
- J. **Less-lethal Impact Munitions.** Impact munitions which can be fired, launched, or otherwise propelled for the purpose of encouraging compliance, overcoming resistance or preventing serious injury without posing significant potential of causing death.
  - K. **Media:** Media means any person who is an employee, agent, or independent contractor of any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution. For purposes of this policy, the following are indicia of being a member of the media: visual identification as a member of the press, such as by displaying a professional or authorized press pass or wearing a professional or authorized press badge or some distinctive clothing that identifies the wearer as a member of the press.

## 4) Law Enforcement Procedures

- A. **Uniform:** All officers responding to public assemblies must at all times, including when wearing protective gear, display their agency name and a unique personal identifier in compliance with this department's uniform policy. The chief law enforcement officer must maintain a record of any officer(s) at the scene who is not in compliance with this requirement due to exigent circumstances.
- B. **Officer conduct:**
  - (1) Officers shall avoid negative verbal engagement with members of the crowd. Verbal abuse against officers does not constitute a reason for an arrest or for any use of force against such individuals.
  - (2) Officers must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members.
  - (3) Officers must not take action or fail to take action based on the opinions being expressed.
  - (4) Officers must not interfere with the rights of members of the public to observe and document police conduct via video, photographs, or other methods unless doing so interferes with on-going police activity.
  - (5) Officers must not use a weapon or munition unless the officer has been trained in the use and qualified in deployment of the weapon/munition.
  - (6) This policy does not preclude officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

## 5. Responses to Crowd Situations

- A. **Lawful assembly.** Individuals or groups present on the public way, such as public facilities, streets or walkways, generally have the right to assemble, rally, demonstrate,

protest, or otherwise express their views and opinions through varying forms of communication including the distribution of printed matter. These rights may be limited by laws or ordinances regulating such matters as the obstruction of individual or vehicle access or egress, trespass, noise, picketing, distribution of handbills, leafleting and loitering.

**B. Unlawful assembly**

- 1) The definition of an unlawful assembly has been set forth in Minnesota Statute § [609.705](#).
- 2) The mere failure to obtain a permit, such as a parade permit or sound permit, is not a sufficient basis to declare an unlawful assembly.
- 3) The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
- 4) Whenever possible, the unlawful behavior of a few participants must not result in the majority of peaceful protestors being deprived of their First Amendment rights, unless other participants or officers are threatened with dangerous circumstances.
- 5) Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques must not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease, and the First Amendment activity can continue.

**C. Declaration of Unlawful Assembly**

- 1) If the on-scene supervisor/incident commander has declared an unlawful assembly, the reasons for the declaration and the names of the decision maker(s) must be recorded. The declaration and dispersal order must be announced to the assembly. The name(s) of the officers announcing the declaration should be recorded, with the time(s) and date(s) documented.
- 2) The dispersal order must include:
  - a) Name, rank of person, and agency giving the order
  - b) Declaration of Unlawful Assembly and reason(s) for declaration
  - c) Egress or escape routes that may be used
  - d) Specific consequences of failure to comply with dispersal order
  - e) How long the group has to comply
- 3) Whenever possible, dispersal orders should also be given in other languages that are appropriate for the audience. Officers must recognize that not all crowd members may be fluent in the language(s) used in the dispersal order.
- 4) Dispersal announcements must be made in a manner that will ensure that they are audible over a sufficient area. Dispersal announcements-must be made from different locations when the demonstration is large and noisy. The dispersal announcements should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements must also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

**D. Crowd Dispersal**

- 1) Crowd dispersal techniques should not be initiated until officers have made

- repeated announcements to the crowd, or are aware that repeated announcements have been made, asking members of the crowd to voluntarily disperse, and informing them that, if they do not disperse, they will be subject to arrest.
- 2) Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with officer commands before action is taken.
  - 3) If negotiations and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the on-scene supervisor/incident commander. The use of these crowd dispersal tactics shall be consistent with the department policy of using the minimal officer intervention needed to address a crowd management or control issue.
  - 4) If, after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly, and a new declaration of unlawful assembly has been made.

## **6. Tactics and Weapons to Disperse or Control a Non-Compliant Crowd**

Nothing in this policy prohibits officers' abilities to use appropriate force options to defend themselves or others as defined in the (law enforcement agency's) Use of Force policy

### **Use of Batons**

- 1) Batons must not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
- 2) Batons may be visibly displayed and held in a ready position during squad or platoon formations.
- 3) When reasonably necessary for protection of the officers or to disperse individuals in the crowd pursuant to the procedures of this policy, batons may be used in a pushing, pulling, or jabbing motion. Baton jabs must not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest. Baton jabs should not be used in a crowd control situation against an individual who is attempting to comply but is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle.
- 4) Officers must not strike a person with any baton to the head, neck, throat, kidneys, spine, or groin, or jab with force to the armpit unless the person has created an imminent threat of great bodily harm to another.
- 5) Batons shall not be used against a person who is handcuffed except when permissible under this department's Use of Force policy and state law.

### **A. Restrictions on Crowd Control and Crowd Dispersal**

- 1) Canines. Canines must not be used for crowd control, crowd containment, or crowd dispersal.
- 2) Fire Hoses. Fire hoses must not be used for crowd control, crowd containment, or crowd dispersal.
- 3) Electronic Control Weapons (ECWs) must not be used for crowd control, crowd containment, or crowd dispersal.

- 4) Motorcycles and police vehicles must not be used for crowd dispersal, but may be used for purposes of observation, visible deterrence, traffic control, transportation, and area control during a crowd event.
- 5) Skip Fired Specialty Impact Less-Lethal Munitions (WoodenDowels and Stinger Grenades) may be used as a last resort if other crowd dispersal techniques have failed or have been deemed ineffective.
- 6) Direct Fired munitions may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.
  - a) Except for exigent circumstances, the on-scene supervisor/incident commander must authorize the deployment of Direct Fired munitions. Direct Fired munitions must be used only against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to them self, officers, or the general public; or is creating an imminent risk to the lives or safety of other persons through the substantial destruction of property.
  - b) Officers shall not discharge a Direct Fired munitions at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.
  - c) When circumstances permit, the on-scene supervisor/incident commander must make an attempt to accomplish the policing goal without the use of Direct Fired munitions as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
- 7) Aerosol Hand-held Chemical Agents must not be used in a demonstration or crowd situation or other civil disorders without the approval of the on-scene supervisor/incident commander.
  - a) Aerosol, hand-held, pressurized, containerized chemical agents that emit a stream shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Aerosol hand-held chemical agents may not be used indiscriminately against a crowd or group of persons, but only against specific individuals who are engaged in specific acts of serious unlawful conduct or who are actively resisting arrest.
  - b) Officers shall use the minimum amount of the chemical agent necessary to overcome the subject's resistance.
  - c) When possible, persons should be removed quickly from any area where hand held chemical agents have been used. Officers must monitor the subject and pay particular attention to the subject's ability to breathe following the application of a chemical agent.
  - d) A subject who has been sprayed with a hand-held chemical agent shall not be left lying on their stomach once handcuffed or restrained with any device.

9. Chemical munitions use in a crowd situation is subject to the following:

- a) Chemical munitions must be used only when:
  - 1) a threat of imminent harm or serious property damage is present, or other crowd dispersal techniques have failed or did not accomplish the policing goal as determined by the incident commander,

- 2) sufficient egress to safely allow the crowd to disperse exists, and
- 3) The use of chemical munitions is approved by the on-scene supervisor/incident commander, and
- b) When feasible, additional announcements should be made prior to the use of chemical munitions in a crowd situation warning of the imminent use of chemical munitions.
- c) Deployment of chemical munitions into a crowd must be avoided to prevent unnecessary injuries.
- d) CN chemical munitions are prohibited.
- e) The use of each chemical munition must be recorded (time, location), and the following information must be made available by the department on request :
  - 1) the name of each chemical munition used in an incident,
  - 2) the location and time of use for each munition deployment,
  - 3) access to the safety data sheet (SDS) for chemical munition
- f) Where extensive use of chemical munitions would reasonably be anticipated to impact nearby residents or businesses, agencies should consider proactively notifying impacted individuals of safety information related to the munitions use as soon as possible, even if after the event.
- g) When chemical munitions are used, an emergency responder will be on standby at a safe distance near the target area when feasible.
- h) Chemical munitions are subject to the same procedural requirements as outlined in the (law enforcement department)'s UOF policy.

## 7. Arrests

- A. If the crowd has failed to disperse after the required announcements and sufficient time to disperse, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests.
- B. Persons who make it clear (e.g., by non-violent civil disobedience) that they seek to be arrested may be arrested and must not be subjected to other dispersal techniques, such as the use of batons or chemical agents. Persons refusing to comply with arrest procedures may be subject to the reasonable use of force.
- C. Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of soft empty hand control holds.
- D. Officers must document any injuries reported by an arrestee, and as soon as practical, officers must obtain professional medical treatment for the arrestee.
- E. Juveniles arrested in demonstrations shall be handled consistent with department policy on arrest, transportation, and detention of juveniles.
- F. Officers arresting a person with a disability affecting mobility or communication must follow the department policy on arrest, transportation, and detention of persons with disabilities.

## **6. Handcuffs**

- A. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and training bulletins.
- B. Officers should be cognizant that flex-cuffs may tighten when arrestees hands swell or move, sometimes simply in response to pain from the cuffs themselves. When arrestees complain of pain from overly tight flex cuffs, officers must examine the cuffs and ensure proper fit.
- C. Arrestees in flex-cuffs must be monitored to prevent injury.
- D. Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available.

## **7. Media.**

- A. The media have a First Amendment right to cover public activity, including the right to record video or film, livestream, photograph, or use other mediums.
- B. The media must not be restricted to an identified area, and must be permitted to observe and must be permitted close enough access to view the crowd event and any arrests. An onsite supervisor/incident commander may identify an area where media may choose to assemble.
- C. Officers will not arrest members of the media unless they are physically obstructing lawful efforts to disperse the crowd, or efforts to arrest participants, or engaged in criminal activity.
- D. The media must not be targeted for dispersal or enforcement action because of their media status.
- E. Even after a dispersal order has been given, clearly identified media must be permitted to carry out their professional duties unless their presence would unduly interfere with the enforcement action.

## **8. Legal Observers**

- A. Legal observers, including unaffiliated self-identified legal observers and crowd monitors, do not have the same legal status as the media, and are subject to laws and orders similar to any other person or citizen.
- B. Legal observers and monitors must comply with all dispersal orders unless the on-site supervisor/incident commander chooses to allow such an individual legal observers and monitors to remain in an area after a dispersal order.
- C. Legal observers and crowd monitors must not be targeted for dispersal or enforcement action because of their status.

## **9. Documentation of Public Assembly and First Amendment Activity**

- A. The purpose of any visual documentation by (law enforcement agency) of a public assembly or first amendment activity must be related only to:
  - 1). Documentation of the event for the purposes of debriefing
  2. Documentation to establish a visual record for the purposes of responding to citizen complaints or legal challenges.
  3. Creating visual records for training purposes.

- B. If it is the policy of (law enforcement agency) to videotape and photograph, it must be done in a manner that minimizes interference with people lawfully participating in First Amendment activities. Videotaping and photographing of First Amendment activities must take place only when authorized by the on-site supervisor/incident commander.
  - C. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.
  - D. Unless evidence of criminal activity is provided, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.
  - E. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with department policies.
  - F. This directive shall not prohibit department members from using these videos or footage from such videos as part of training materials for officers in crowd control and crowd dispersal techniques and procedures.
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