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ATTORNEY GENERAL GUIDANCE

TO: All Law Enforcement Chief Executives
All Members of the Press

FROM: Gurbir S. Grewal, Attorney General

DATE: April 20, 2021

SUBJECT: **Guidance on Interactions Between Law Enforcement and Press at Public Protests**

The attached Guidance reflects input from a working group convened by the Attorney General's Office. The group consisted of law enforcement officers, journalists, civil rights groups, and prosecutors, including representatives from the following organizations:

- American Civil Liberties Union of New Jersey
- County Prosecutors' Association of New Jersey
- New Jersey Broadcasters Association
- New Jersey Press Association
- New Jersey Society of Professional Journalists
- New Jersey State Association of Chiefs of Police
- New Jersey State Police
- New Jersey State Policemen's Benevolent Association

Based on collaborative input from the various working group members, this Guidance is designed to recognize the rights, responsibilities, and roles of press and police at protests, and suggest best practices to ensure safe press coverage of First Amendment activity.



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Guidance on Interactions Between Law Enforcement and Press at Public Protests

Rights and Responsibilities of Press at Protests

1. **General right to cover protests.** Just as the First Amendment protects the right of members of the public to peaceably assemble, it also protects the right of journalists to cover and report on those protests without interference from law enforcement. Under no circumstances may police arrest a member of the press—or take any other action—in retaliation for press coverage, or to prevent lawful reporting on a public protest.
2. **Members of the press remain subject to general laws.** Prohibitions on unlawful conduct that apply to the public generally also apply to the press, with some exceptions. Journalists are not permitted to engage in otherwise illegal conduct just because they are reporting on a protest, but oftentimes members of the press are specifically exempted from certain legal restrictions. For instance, curfew orders put in place by municipalities during times of unrest often contain an exemption for journalists. Law enforcement should be aware of any such exemptions. Moreover, given the importance of protecting First Amendment activity, police officers should exercise discretion in enforcing minor violations of the law in this context (see below).
3. **Right to record.** Federal and state courts have held that the First Amendment protects the right of the press and of the public to film or otherwise record police performing their official duties in public. This right may be subject to generally applicable time, place, and manner restrictions that, for example, protect officer safety and prevent interference with law enforcement activity. Any such restrictions cannot be motivated by the desire to avoid having police activity filmed.

Role of Law Enforcement at Protests

1. **Enabling the safe exercise of First Amendment rights.** In general, the goal of law enforcement presence at public protests is to facilitate First Amendment protected conduct, while maintaining public safety. Therefore, if members of the public, including journalists, violate lawful time, place or manner restrictions or other laws, such as trespassing laws or orders to disperse, then police may enforce those laws if necessary to maintain public safety.
2. **Law enforcement should use restraint at protests.** It is critical that law enforcement officers use restraint in the enforcement of generally applicable laws whenever First Amendment protected conduct is implicated. In some instances, the conduct of protesters or journalists may technically violate a law or restriction, without being disruptive, dangerous, or violent; for example, by obstructing a sidewalk. In such cases, officers should generally refrain from enforcing every possible violation, unless action is necessary to maintain public or officer safety, or protect property from destruction, and there are no alternative means to accomplish those

goals. Unnecessary or excessive enforcement action may undermine public safety, rather than preserving it.

3. **Law enforcement must be content neutral.** During a protest, law enforcement must not take any action that is motivated by disagreement with the content of the protest, a protected characteristic of a protester or journalist such as race or religion, or otherwise act with the intention of targeting any person for their exercise of First Amendment or other constitutional rights. For instance, an officer cannot question or take action against a journalist because the officer believes that the journalist sympathizes with or against the cause that is the subject of the protest.
4. **The seizure of cameras, cell phones, or notes from journalists is generally prohibited.** Law enforcement should never seize a press member's camera, cell phone, notes, or other journalistic work product or documentary material, except in the exceedingly rare case where it is necessary for public safety or the result of a search incident to a lawful arrest. In addition, officers must never delete such material, and should search these items only after obtaining approval from the County Prosecutor or the Attorney General.

Best Practices for Law Enforcement and Press at Protests

In order to facilitate safe press coverage of First Amendment activity, law enforcement and members of the press should consider adopting the following best practices:

1. **Pre-event coordination.** Law enforcement and press should maintain open lines of communication prior to a protest to ensure that all parties are aware of any plans for law enforcement presence and have the opportunity to discuss the logistics of press access.
2. **Liaison for the press.** Law enforcement agencies should designate a lead agency liaison that the press may contact with all inquiries and issues before and during the event. Members of the press should, when practical, identify themselves to the liaison in advance.
3. **Visible press identification.** Members of the press should wear clearly visible identification—such as large, brightly colored and reflective, double-sided press identification cards to be worn around the neck, including, but not limited to, those issued by the New Jersey Press Association (NJPA) and New Jersey Society of Professional Journalists (NJ-SPJ)—or clothing—such as neon-colored or reflective vests—that identify individuals as press. Such identifiers help facilitate press access to events, and allow officers to distinguish press from other members of the public.
4. **Refresher training for police.** Prior to a protest event, law enforcement agencies should ensure that officers who will be on duty to maintain public safety are reminded of the rights of the press, and the role of law enforcement in facilitating press coverage of the protest.¹

¹ Nothing in this Guidance shall be construed in any way to create any substantive right that may be enforced by any third party. Any questions concerning this Guidance should be addressed to the Attorney General, or designee.