



## EMPOWERING DEMOCRACY: WHAT POLICE NEED TO KNOW AT THE POLLS

Local law enforcement plays a critical role in ensuring that every eligible voter can exercise their right to vote. In the upcoming election, police leaders and their personnel must know the rules, understand the appropriate responses, and promote safe participation in the democratic process.

### PREPARING FOR ELECTION DAY

#### In advance of election day, law enforcement leaders and agencies should:

- **Be familiar with election laws**, including laws on voter intimidation, voter challenging, and no-electioneering zones.
- **Provide clear directives and advance briefing** to rank-and-file officers about the law and appropriate responses.
- **Work with local officials** to establish operations centers or hotlines staffed by law enforcement, election officials, and lawyers working collaboratively to provide guidance to those in the field when necessary.
- **Engage community leaders and stakeholders throughout the voting period, and beyond.**

### WHAT ARE THE RULES?

Voter intimidation is a crime under federal law and state law. Examples of voter intimidation may include:

- Verbal threats of violence
- Confronting voters while wearing military-style or official-looking uniforms
- Brandishing or intimidating display of firearms
- Disrupting voting lines or blocking entrances
- Spreading false information about voter fraud, requirements to vote, or penalties
- Aggressively approaching voters' cars or writing down license plate numbers
- Following voters to, from, or within polling places
- Directly and aggressively challenging voters' qualifications
- Appearing to patrol or police the voting line while armed

#### Officers and election officials are empowered to maintain order and enforce election laws.

- **Most states prohibit electioneering** in the immediate vicinity of the polling place. This includes encouraging voters to vote a certain way, passing out leaflets, etc.
- **State law defines who may act as a "poll watcher" or "election observer"** and who may challenge a voter's qualifications to vote at the polls.
- **Law enforcement officers must be familiar with state and local laws related to carrying firearms** in or around polling places.

### WHAT CAN POLICE DO?

Across all situations, police officers at or near polling places should use strategies, tactics, and communications approaches grounded in de-escalation.

Law enforcement should not be highly visible at the polls unless required. Police should avoid being highly visible at polling places unless they are responding to a specific, concrete issue. Law enforcement at the polls could

be perceived as intimidating, depending on how officers present and behave. The history of police being misused to promote, rather than prevent, voter intimidation remains an ongoing concern.

**If armed individuals or groups are near polling places:**

- Law enforcement can approach an armed individual or group at or near a polling place and ask: **“Why are you here?”**

If the answer/explanation is...	Then police may...
<p><b>To patrol the line of voters, protect against voter fraud, enforce the law, or a similar response.</b></p>	<p><b>Ask the individual or group to stop the activity.</b>  <i>Reason:</i> Armed private militias are not authorized under state law, not protected by the Second Amendment, and have no authority to engage in the functions of law enforcement.</p> <p><b>Conduct a Terry stop if the individual/group is actively engaging in intimidation.</b>  <i>Reason:</i> If the armed individual or group appears to be patrolling the line of voters, engaging in conduct that appears to be for the purpose of intimidating voters, or is violating any state criminal law or local ordinance (including ordinances prohibiting public disturbances and loitering), police may conduct a Terry stop to inquire further, even where First and Second Amendment rights are implicated.</p>
<p><b>To challenge voters’ qualifications.</b></p>	<p><b>Ask the individual or group to stop the activity.</b>  <i>Reason:</i> Openly armed individuals and groups do not have the authority to make direct challenges to voters’ qualifications outside a polling place. This is voter intimidation.</p>
<p><b>To exercise their First Amendment or Second Amendment rights.</b></p>	<p><b>Ask the individual or group to put away their firearms or move away from the line.</b>  <i>Reason:</i> Voter intimidation is a crime under federal and state law. Even where the conduct may not rise to the level of criminal voter intimidation, police may take action to prevent voter intimidation by requesting that the individual or group put away its weapons and move further from voters.</p>

**Special considerations regarding firearms:**

- Individuals must comply with weapons permit restrictions and other generally-applicable laws at or near polling places, such as any state laws that prohibit brandishing firearms or using firearms to intimidate.
- In open-carry states, the mere carrying of a holstered handgun in public, without other indications of an intent to intimidate voters, would not warrant a Terry stop, but it could be the basis for asking the person what they are doing, as discussed above.
- If there is probable cause to believe that individuals or groups are violating any state criminal law or local ordinance, you may direct them to cease, and if they refuse, you may arrest them.

**If there is other voter intimidation present at or near polling places:**

The law says that police may impose reasonable time, place, and manner restrictions that are narrowly tailored to serve the government's compelling interest in protecting against voter intimidation. **So long as they are not applied in a manner that discriminates based on viewpoint, police may:**

- Move individuals or groups who are shouting, chanting, or waving large banners further from voters, but still within earshot.
- Direct openly armed groups of individuals to put away their weapons or move further away from voters.
- Separate opposing groups and set up buffer zones between them.

**If assembled individuals appear to be, or represent that they are, part of a "militia," know that:**

- An unauthorized, private militia is a group of armed individuals that engages in paramilitary law enforcement functions without being called forth by a state governor or federal government.
- **A private militia that attempts to activate itself for duty, outside of the authority of the state or federal government, is illegal.**
- All 50 states prohibit private, unauthorized militias from engaging in law enforcement activities.
- The Second Amendment does not protect private militias, as the Supreme Court determined in 1886 and reiterated in 2008.

*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.*

