
Policy Number: 107:073
Title: Public Assembly and First Amendment
Effective Date: 9/16/24

PURPOSE: The Minnesota Department of Corrections (MN DOC) supports all people’s fundamental right to peaceably assemble and their right to freedom of speech and expression. Although First Amendment Activities are to be addressed primarily by local law enforcement, the MN DOC Fugitive Apprehension Unit (FAU) may respond to a law enforcement agency’s request for assistance in addressing First Amendment Activities that cannot be sufficiently controlled through local efforts. FAU involvement may only occur if the local agency has requested assistance and must comply with this and other FAU policies.

APPLICABILITY: MN DOC Office of Special Investigations (OSI) FAU in response to requests by local law enforcement.

DEFINITIONS:

Chemical agent munitions – munitions designed to deliver chemical agents from a launcher or to be hand thrown.

Control holds – soft empty hand control techniques that do not involve striking.

Crowd control – techniques used to address unlawful public assemblies.

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 past event critiques.

Deadly force – force used by a fugitive apprehension unit member (FAUM) that the FAUM knows, or reasonably should know, creates a substantial risk of causing death or great bodily harm.

Direct-fired munitions – less lethal impact munitions that are designed to be fired at a specific target.

First amendment activities – activities which 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. 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 government interest, and that they leave open ample alternative channels for communication of the information.

Fugitive apprehension unit (FAU) – licensed peace officers appointed by the commissioner of the Minnesota Department of Corrections (MN DOC) to investigate the whereabouts of and attempt to apprehend MN DOC-warranted fugitives, those on supervised release with the MN DOC who have violated the terms of their release, or those on escape or walk-away status.

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.

Legal observers – individuals, usually representatives of civilian human rights agencies, who attend public demonstrations, protests, and other activities. The following may indicate a legal observer: wearing a green National Lawyers' Guild (NLG) issued or authorized legal observer hat and/or vest (a green NLG hat and/or black vest with green labels) or wearing a blue American Civil Liberties Union (ACLU) issued or authorized legal observer vest.

Less-lethal impact munitions – 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.

Media – 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.

PROCEDURES:

A. FAU involvement

First amendment activities are to be addressed primarily by local law enforcement. Fugitive apprehension unit (FAU) involvement may only occur if the local agency has requested its assistance or when local efforts are insufficient to control the situation.

B. Uniform

1. All fugitive apprehension unit members (FAUMs) responding to public assemblies at the request of a law enforcement agency 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.
2. The chief law enforcement officer (CLEO) of the FAU, the director of the office of special investigations (OSI), must maintain a record of any FAUM at the scene who is not in compliance with this requirement due to exigent circumstances.

B. FAUM Conduct

1. FAUMs must avoid negative verbal engagement with members of the crowd.
2. Verbal abuse against FAUMs does not constitute a reason for an arrest or for any use of force against such individuals.
3. FAUMs must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members.
4. FAUMs must not take action or fail to take action based on the opinions being expressed.
5. FAUMs must not interfere with the rights of members of the public to observe and document law enforcement conduct via video, photographs, or other methods unless doing so interferes with ongoing law enforcement activity.
6. FAUMs must not use a weapon or munition unless the officer has been trained in the use and qualified in deployment of the weapon/munition.

7. This policy does not preclude FAUMs 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.

C. Responses to Crowd Situations

1. Lawful assembly

- a) 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.

2. Unlawful assembly

- a) The definition of an unlawful assembly has been set forth in Minnesota Statute § 609.705, which states "When three or more persons assemble, each participant is guilty of unlawful assembly, which is a misdemeanor, if the assembly is:
 - (1) with intent to commit any unlawful act by force; or
 - (2) with intent to carry out any purpose in such manner as will disturb or threaten the public peace; or
 - (3) without unlawful purpose, but the participants so conduct themselves in a disorderly manner as to disturb or threaten the public peace."
- b) 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.
- c) 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.
- d) 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 law enforcement are threatened with dangerous circumstances.
- e) Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques must not be initiated until after attempts have been made through contacts with the law enforcement 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.

3. Declaration of unlawful assembly

- a) If the on-scene supervisor/incident commander has declared an unlawful assembly, the reasons for the declaration and the names of the decision makers must be recorded. The declaration and dispersal order must be announced to the assembly. The names of the law enforcement officers announcing the declaration should be recorded, with the time and date documented.
- b) The dispersal order must include:
 - (1) Name, rank of person, and agency giving the order;
 - (2) Declaration of unlawful assembly and reasons for the declaration;

- (3) Egress or escape routes that may be used;
 - (4) Specific consequences of failure to comply with dispersal order; and
 - (5) How long the group has to comply.
 - c) Whenever possible, dispersal orders should also be given in other languages that are appropriate for the audience. FAUMs must recognize that not all crowd members may be fluent in the language used in the dispersal order.
 - d) 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 must be identified and announced.
- 4. Crowd dispersal
 - a) Crowd dispersal techniques should not be initiated until law enforcement in charge has made, or FAUMs have made at such agency's direction, 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.
 - b) 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.
 - c) If negotiations and verbal announcements to disperse do not result in voluntary movement of the crowd, FAUMs may employ additional crowd dispersal tactics, but only after orders from the on-scene supervisor/incident commander. Crowd dispersal tactics should use the minimal FAUM intervention needed to address a crowd management or control issue.
 - d) 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.
- D. Tactics and Weapons to Disperse or Control a Non-Compliant Crowd
 - 1. Nothing in this policy prohibits FAUM(s) abilities to use appropriate force options to defend themselves or others as defined in the FAU Use of Force policy.
 - 2. Use of Batons
 - a) Batons must not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
 - b) Batons may be visibly displayed and held in a ready position during squad or platoon formations.

- c) When reasonably necessary for protection of the FAUM(s) 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.
- d) FAUM(s) 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.
- e) Batons shall not be used against a person who is handcuffed except when permissible under the FAU's Use of Force policy and state law.

E. Restrictions on Crowd Control and Crowd Dispersal

1. MN DOC canines must not be used for crowd control, crowd containment, or crowd dispersal.
2. 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. MN DOC 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 (wooden dowels 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 are not items FAUMs are permitted to use.
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, handheld, pressurized, containerized chemical agents that emit a stream must 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) FAUMs must use the minimum amount of the chemical agent necessary to overcome the subject's resistance.
 - c) When possible, exposed persons should be removed quickly from any area where handheld chemical agents have been used. FAUMs 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 handheld chemical agent must not be left lying on their stomach once handcuffed or restrained with any device.
8. Chemical munitions use in a crowd situation is subject to the following:
- a) Chemical munitions may 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.
 - 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) Chloroacetophenone (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; and
 - (3) access to the safety data sheet (SDS) for chemical munition.
 - f) When chemical munitions are used, an emergency medical responder will be on standby at a safe distance near the target area when feasible.
 - g) Chemical munitions are subject to the same procedural requirements as outlined in Policy 107.022, "Office of Special Investigations – Use of Force – Fugitive Apprehension."

F. Arrests

1. If the crowd has failed to disperse after the required announcements and sufficient time to disperse, FAUM(s) may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests.
2. 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.
3. 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.
4. FAUMs must document any injuries reported by an arrestee and, as soon as practical, must obtain professional medical treatment for the arrestee.
5. Juveniles arrested in demonstrations must be handled consistent with department policy on arrest, transportation, and detention of juveniles.

6. FAUMs arresting a person with a disability affecting mobility or communication must follow the department policy on arrest, transportation, and detention of persons with disabilities.

G. Handcuffs

All persons subject to arrest during a demonstration or crowd event must be handcuffed in accordance with FAU policy.

H. Media

1. 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.
2. 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.
3. FAUMs must 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.
4. The media must not be targeted for dispersal or enforcement action because of their media status.
5. 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.

I. Legal Observers

1. 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 like any other person or citizen.
2. Legal observers and crowd monitors must not be targeted for dispersal or enforcement action because of their status.

J. Documentation of Public Assembly and First Amendment Activity

1. Any recording by FAU of a public assembly or first amendment activity must be done in accordance with Policy 107.019, "Office of Special Investigations – Fugitive Apprehension Unit – Body Worn Cameras."
2. Individuals should not be singled out for recording simply because they appear to be leaders, organizers, or speakers.
3. Recordings and photographs must be retained, shared, and/or destroyed in accordance with FAU and MN DOC policies and data retention guidelines, as well as state law, including the Minnesota Data Privacy Act (Minn. Stat. Ch. 13).

INTERNAL CONTROLS:

- A. All documentation is retained in the Augmented Criminal Investigations Support System (ACISS).

REFERENCES: Minn. Stat. §§ [241.025](#); [609.06](#); [609.066](#); [609.705](#); and [609.71](#)

[Minn. Stat. Ch. 13](#)

[Minn. Rules 6700.1615](#)

[First Amendment, U.S. Constitution](#)

[Minnesota Constitution](#)

[Policy 107.006, “Fugitive Apprehension Unit”](#)

[Policy 107.019, “Office of Special Investigations – Fugitive Apprehension Unit – Body Worn Cameras”](#)

[Policy 107.022, “Office of Special Investigations – Use of Force – Fugitive Apprehension”](#)

[Policy 107.050, “Offender Arrest and Transport – Office of Special Investigations”](#)

REPLACES: All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVALS:

Deputy Commissioner, Chief of Staff

Deputy Commissioner, Client Services and Supports

Assistant Commissioner, Agency Services and Supports

Assistant Commissioner, Facilities

Assistant Commissioner, Facilities

Assistant Commissioner, Community Services and Reentry

Assistant Commissioner, Health, Recovery, and Programming