

June 8, 2020

Re: Protest and Police Violence Response

Dear Public Official,

We write to call for immediate action to safeguard the health and safety of protesters and protect their constitutional rights to free expression and assembly.

In the past week and a half, many Wisconsinites have engaged in the American tradition of protest and dissent. Most have done so through peaceful means fully protected by the First Amendment. Residents have come together to express their pain and outrage and to advocate for racial justice and police reform in the wake of the killing of George Floyd, Joel Acevedo, and Breonna Taylor by police. The protests are happening against the backdrop of centuries of racism and unequal justice in our society. The vast majority of protesters have peacefully demanded justice and meaningful action by their elected and appointed officials. Many protesters have tried to defuse encounters between others and police and have worked hard to restore order.

While some local leaders and law enforcement officers have respected these peaceful protesters' First Amendment rights, there have been incidents of excessive use of force, broad arrests of large groups of protestors, and use of crowd control weapons and tactics typically used by the military. In Milwaukee, a police officer knelt on a protester's neck;¹ in Green Bay, police arrested protesters solely for violating curfew;² and in Madison, police tear gassed retreating protesters.³ These practices directly undermine the fundamental rights of peaceful assembly and freedom of expression, threaten the health and safety of protesters and communities, and further compound the harms of police violence that protesters are asking government officials to urgently address.

Principles to Protect Safety and Constitutional Rights

In this moment, we are counting on you to keep people safe and uphold our constitutional rights. We call for leadership at the local level and for cities, counties, and police departments to adopt

¹ Ashley Sears, 'Get off his neck!' Controversial arrest caught on camera as MPD clashed with protesters, FOX6 NEWS (June 4, 2020), <https://fox6now.com/2020/06/03/get-off-his-neck-controversial-arrest-caught-on-camera-as-mpd-clashed-with-protesters-near-6th-and-vliet/> ; Milwaukee Independent, *June 2 Police Knee Incident*, YOUTUBE (June 5, 2020), https://www.youtube.com/watch?v=-YQvtYnGB_k&feature=emb_logo .

² Ben Krumholz, *Wisconsin National Guard helps Green Bay police enforce overnight curfew*, FOX 11 NEWS (June 1, 2020), <https://fox11online.com/news/local/green-bay/wisconsin-national-guard-helps-green-bay-police-enforce-overnight-curfew> .

³ Henry Redman, *Protests against police violence end with clashes between cops, protesters*, WISCONSIN EXAMINER (June 1, 2020), <https://wisconsinexaminer.com/brief/protests-against-police-violence-end-with-clashes-between-cops-protesters/> .

the following principles to address some of the most pressing issues impacting the safety of Wisconsin communities and the rights of protestors:

1. **Safeguard constitutional rights** by promoting freedom of assembly and expression in your public statements, how you support organizers of protests and marches, the way you protect the vital role of media in covering breaking news, and the public posture of police leadership and forces during protests.
2. **Protect public health** by modeling good pandemic hygiene practices and encouraging social distancing at marches and protests.
3. **De-escalate conflict** at protests by engaging in negotiations and open dialogue with protestors.
4. **Don't use rubber bullets, bean bag rounds, stun grenades, tear gas, and other weapons aimed at crowds.** Madison police fired tear gas at protestors even after they retreated.⁴ Two USA TODAY reporters for the Milwaukee Journal Sentinel were among those tear-gassed and pepper-sprayed numerous times in Madison.⁵ In Milwaukee, police have fired tear gas and rubber bullets into a crowd of peaceful protestors,⁶ pointed riot guns at point blank range at protestors,⁷ shoved protestors,⁸ and corralled and tear gassed protestors.⁹ Force should be used only as a last resort, such as if there is an imminent and real threat to human life.
5. **Refrain from using dangerous physical force.** Video shows a Milwaukee police officer put his knee on the neck of a protester for almost a full minute, employing the same type of force that resulted in the killing of George Floyd.¹⁰
6. **Don't implement curfews** that give license for broad arrests of civilians participating in peaceful protests or conducting routine activities in their communities. Any limited curfews must allow the media to operate freely. Over the course of two nights,

⁴ *Id.*

⁵ Lorenzo Reyes, *Journalists blinded, injured, arrested covering George Floyd protests nationwide*, USA TODAY (May 31, 2020), <https://www.wisconsinrapidtribune.com/story/news/nation/2020/05/31/journalists-blinded-injured-arrested-covering-george-floyd-protests/5299374002/>.

⁶ Bill Glauber & Rick Wood, *What we saw when police and protestors squared off at McKinley Avenue and 6th Street in Milwaukee Tuesday night*, MILWAUKEE JOURNAL SENTINEL (June 3, 2020), <https://www.jsonline.com/story/news/2020/06/03/protesters-and-police-squared-off-downtown-milwaukee-what-happened/3134797001/>.

⁷ @CopsMke, TWITTER (June 3, 2020, 5:28 PM), <https://twitter.com/CopsMke/status/1268308519335407616>.

⁸ Ryan Clancy, *Milwaukee County Sheriff's Office force curfew violations, brutalize bystander*, FACEBOOK (June 5, 2020, 1:03 PM), <https://www.facebook.com/watch/?v=2660469704231710>.

⁹ RollnByeBye, *Milwaukee Police Firing Tear Gas Into Peaceful Protesters – After Corraling Them From All Sides*, YOUTUBE (June 2, 2020), <https://www.youtube.com/watch?v=6dA61qN3368>.

¹⁰ Milwaukee Independent, *supra* note 1 (showing a knee pressed against the individual's neck from :04 to around 1:00, with intermittent camera shots).

Milwaukee police arrested 109 people for curfew violations.¹¹ In Green Bay and Madison, police made numerous arrests of protesters out after curfew.¹²

7. **Focus police resources** on protecting public safety, not arresting large groups of protestors. Reduce unnecessary arrests and incarceration by citing people and releasing them rather than arresting and jailing them in facilities where they are exposed to increased risk of COVID-19. Anyone who is arrested should be processed quickly, given access to an attorney, and be eligible for low- or no-money bail as soon as possible.
8. **Protect the vital role of the media in covering these events.** Media organizations have a First Amendment right to be present at protests. All measures should be taken to prevent police from targeting and arresting journalists and reporters.
9. **Avoid further militarization of protest events** by declining assistance from federal agencies not trained in community policing tactics and by discontinuing the use of military style equipment, such as the tactical armored vehicles present at protests in Milwaukee.¹³
10. **Hold officers accountable if they violate the law.**
11. **Commit your agency to long-term reforms** to ensure equitable, fair, and community-based policing.

Local leadership is essential for the safety of our communities and the vitality of our democracy. You can change the course of this moment and our history by breaking with harmful tactics of the past and demonstrating a new kind of leadership for the future. Meet with protesters and listen to their experience and calls for action. Commit yourself to the difficult but necessary work of dismantling the painful legacy of racism as we all rise to face this difficult moment.

Sincerely,

Larry Dupuis
Legal Director
ACLU of Wisconsin

Molly Collins
Advocacy Director
ACLU of Wisconsin

¹¹ Jason Calvi, 'I was just blindsided:' Milwaukee County supervisor among those arrested during nighttime protests, FOX6 NEWS (June 2, 2020), <https://fox6now.com/2020/06/01/i-was-just-blindsided-milwaukee-county-supervisor-among-those-arrested-during-nighttime-protests/> .

¹² Krumholz, *supra* note 2; Jaymes Langrehr, *Madison police report 38 arrests since start of protests, none Thursday night*, CHANNEL 3000 (June 5, 2020), <https://www.channel3000.com/madison-police-report-38-arrests-since-start-of-protests-none-thursday-night/> .

¹³ Glauber & Wood, *supra* note 6.