

# PROMOTING FAIR AND FREE ELECTIONS

*Elected Prosecutor Guide to  
Voter Protection Planning*

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October 2020

# Introduction

This is part of a series of FJP resources providing guidance for elected prosecutors navigating the 2020 election and its aftermath. Another resource in the series, *“Promoting Fair and Free Elections – Recommendations for Elected Prosecutor Engagement in Protecting the Right to Vote,”* outlines steps prosecutors can take to protect voting rights and guard against interference at the polls, ensure that the public is adequately informed of voting procedures and key information, and proactively dispel any misinformation or myths. This planning guide complements and builds on those recommendations by addressing: operational and tactical considerations, key principles to guide work with law enforcement partners, and threshold questions to consider in guarding against disruptions and interference with voting at the polls.

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## Key Principles for Working with Law Enforcement Partners to Address Disruption and Problems at the Polls

**Anticipate** and **plan** for concerns at the polls, both during any early voting and on Election Day. Work with law enforcement partners to ensure that they – and you – are:

- Being as **non-threatening** as possible and using the **least intrusive means** to address any problems at the polls.
- **Using arrests sparingly** and only when absolutely needed to promote the goal of facilitating safe and fair voting.
- **Protecting peaceful protest** that doesn't interfere with the right to vote.
- **Monitoring voting sites unobtrusively** and from a distance, assuming a presence at the polls is needed.
- **Isolating and removing any disturbances quickly and efficiently**, keeping engagement as limited as possible, and then disengaging.





# Threshold Questions to Consider

The Election Day plan for any given jurisdiction will be largely dependent on applicable local and state laws. Whatever the legal landscape may be, however, some *general foundational questions* can help identify the key issues that prosecutors should be thinking about as they build out and operationalize their own local plans, while working in partnership with local law enforcement.

## 1 HOW SHOULD PROSECUTORS AND LAW ENFORCEMENT PREPARE FOR REPORTS OF VOTER INTIMIDATION?

### *Key Issues to Consider:*

- How will the police, election officials, and prosecutors coordinate?
- Should law enforcement be stationed outside the polls in case of disruption, or should they instead be on call and only respond to reports of ongoing problems?

### *Recommendations:*

- Leverage news media, social media, and community groups to make clear that **voter intimidation will not be tolerated**, outline criminal penalties for intimidators, and assure voters that they will be able to safely vote. See the Voter Protection Project's [messaging guidance](#) and [social media graphics](#).
- Issue a public advisory, outlining relevant laws on voter intimidation and reaffirming your office's commitment to prosecuting those who interfere with others' right to vote. See the Voter Protection Project's [advisory template](#) for sample language.
- Create an **inter-agency team** with representatives from your office, police department, and election officials; develop a joint plan on how and when to respond to voting problems.
- Establish a clear **chain of information** from poll workers, precinct captains, municipal election officials, prosecutors, and law enforcement. Ensure any disturbances are logged and promptly reported.
- Create an open line of communication with your county's **top election official** on Election Day and be sure you're receiving regular reports from poll workers and precinct captains.
- Have a team of prosecutors, municipal attorneys, and/or election officials trained and ready to respond to any non-violent conflicts that do not demand a police response. Consider creating a **designated hotline** to field these and other day-of-voting questions.
- If your [state requires](#) that **election observers or poll watchers** be accredited, work with election officials to provide poll workers, law enforcement, and prosecutors with a list of official observers and do not allow anyone not on the list to be stationed inside the polls.

- Ensure all responders are **trained in voter rights** and ready to step in if an unauthorized party [questions a voter's eligibility or makes unwarranted demands](#) (e.g., demanding that voters show ID, questioning voters' citizenship, providing false information on how to cast a ballot, saying that voters must pay to vote, saying voters must pass a test to vote, or posing as election officials).
- If your office or local election officials have not already created one, make a **pertinent law summary sheet or "guidebook"** for all officials who may respond to disputes — including law enforcement, line prosecutors, election officials, and poll workers — outlining your state's:
  - [Policies on armed voter intimidation](#). Also include the [federal law](#) prohibiting voter intimidation in every state.
  - [Open carry and gun laws](#). Also include regulations that limit the right to carry weapons in buildings that host polling places, like [schools](#), [college campuses](#), [government-owned buildings](#), and other [locations](#).
  - [Policies on militia or paramilitary groups](#). No states allow armed paramilitary groups to rally in public and the Constitution does not protect the right of private militias to harass citizens.
  - [Policies on election observers](#) and the [qualifications required of poll watchers](#).
  - [Policy on provisional ballots](#) (a voter whose name is not on the voter roll can likely fill out a provisional ballot that will only be counted if the voter is later determined to be eligible).
  - [Policies on electioneering near polling places](#).
  - [Voter identification requirements](#).

Consider offering **training** for law enforcement personnel on these issues.

- Consider creating a **"know your rights" fact-sheet for voters** and distributing through social media, community groups, non-partisan non-profits, and election officials.
  - Be sure to outline: laws prohibiting voter intimidation, options for reporting intimidation, voter ID requirements, protections for voters with disabilities or voters with difficulty speaking English, and processes for requesting provisional ballots. Make clear that voters have the right to request help filling out their ballot and that anyone still in line when the polls close has the right to vote.
  - Draw on resources from [Vote.org](#) and the [American Civil Liberties Union](#).
  - Check to see if your state's ACLU [affiliate](#), or another local voting rights group, has already assembled voter rights information for your state.
- Reach out to your secretary of state for further information. Find out whether the COVID-19 pandemic spurred a temporary change in any policies (e.g., some jurisdictions halted open carry at the start of the pandemic).

## 2 HOW CAN VOTERS REPORT PROBLEMS OR CONCERNS AS VOTING STARTS UP?

### *Key Issues to Consider:*

- Who will receive calls from concerned voters?
- How should dispatch respond?
- How will dispatch record and document concerns?
- How can the prosecutors' office ensure voters know where to call if they experience problems?

### *Recommendations:*

- Create an **“on call” voter protection team** with prosecutors trained on the key principles and laws and available to answer questions throughout early voting and Election Day. Give police, poll workers, and county officials a direct line to these “on call” resources.
- Create a **hotline** available to the public, staffed by election officials, prosecutors, or well-trained volunteer attorneys. Provide guidance on basic questions, but channel intimidation reports to the voter protection team. Alternatively, or additionally, point voters to the election protection hotline at [866-OUR-VOTE](https://www.ourvote.org).
- Work with local media, community groups, election officials, candidates, local non-profits, elected leaders, and others to **spread the message** about reporting protocols.
- Designate a supervisor who must authorize **referrals to law enforcement** or further action in response to any reports of intimidation.
- If law enforcement puts an **Election Day command center** into operation, ensure that a high level supervisor from the prosecutor's office is at that facility to follow events as they unfold and field key questions.



# 3 HOW SHOULD PROSECUTORS AND LAW ENFORCEMENT RESPOND TO REPORTS OF VOTER INTIMIDATION?

## *Key Issues to Consider:*

- Who is [allowed to observe voting](#) in your state?
- What [limits are placed on legal poll watchers](#) in your state?
- What constitutes illegal voter [intimidation or harassment](#)?
- Which members of law enforcement should respond to problems at the polls?
- Should law enforcement be in uniform or plainclothes?

## *Recommendations:*

- Do not allow **unauthorized observers** to be stationed at the polls and ensure officials know that even legal poll workers [may not](#) engage in voter intimidation or harassment.
- Consider offering “**poll escorts**” to guide intimidated voters to the ballot box.
- Where possible, try to ensure that prosecutors or county officials are involved to resolve disputes. In general, a police presence is more likely to intimidate voters than civilian officials, and a police presence at the polls can be particularly disturbing to minority communities.
- Work with law enforcement leaders to ensure that any personnel stationed at, or responding to, polling locations are experienced officers trained in de-escalation and community policing practices.
- While law enforcement in uniform may be perceived by some as more intimidating, even greater concerns may be implicated by law enforcement at the polls in plainclothes where there is no ability for voters to know who they are or be able to identify their name and affiliation.





# 4 HOW SHOULD PROSECUTORS PREPARE FOR FIREARMS OR ARMED MILITIA AT OR NEAR THE POLLS?

## *Key Issues to Consider:*

- How does your [state and local law](#) address possession of firearms, [open carry](#), and possession of firearms in [specific spaces](#) like [schools](#) and government buildings?
- What [prohibitions does your state law](#) place on paramilitary or militia activity?
- Are there concerns about [armed extremist groups](#) in your area?

## *Recommendations:*

- Provide all officials who will respond to Election Day problems with your state's [Institute for Constitutional Advocacy and Protection \(ICAP\) fact sheet](#), which outlines laws relating to **unauthorized private militia groups** and legal options if groups of armed individuals are near a polling place or voter registration drive.
- Work with law enforcement partners to identify unlawful militia activity in your area. Ensure that all key criminal justice leaders are briefed on likely threats.
- Should you learn of plans for unauthorized militias or armed groups to station themselves near polling places, or should such groups show up, contact ICAP at [reachICAP@georgetown.edu](mailto:reachICAP@georgetown.edu) or call the Election Protection hotline at 866-OUR-VOTE.
- If you must seek a court injunction against an unlawful militia, reach out to ICAP at [reachICAP@georgetown.edu](mailto:reachICAP@georgetown.edu) to see how their pro bono attorneys can support litigation.
- Make sure law enforcement, prosecutors, and election officials know that no state, regardless of gun or open carry laws, allows armed paramilitary groups to rally and intimidate residents. Refer to your state's [ICAP fact sheet](#) and [Supreme Court caselaw](#).



# 5 HOW WILL LAW ENFORCEMENT ADDRESS PROBLEMS WITHOUT ESCALATING CONFLICT OR INTERFERING WITH VOTERS' RIGHTS?

## *Key Issues to Consider:*

- How can disturbances be addressed in a way that avoids exacerbating disruption or compounding interferences with the voting process?
- What law enforcement personnel should be deployed when and if a response at the polls is needed?
- When and how should arrests be made?



## *Recommendations:*

- Make clear that the role of law enforcement at the polls is to **protect the right to vote** and not to engage in unnecessary arrests.
- Ensure officers know that elections are civilian-led processes and that they are not responsible for checking voters' IDs or examining the voter rolls.
- Advise officers to rely on [de-escalation techniques](#) and use the **least restrictive means** necessary to mitigate a disruption.
- Put together a **virtual training** for law enforcement, line prosecutors, and election officials on relevant criminal and election law, as well as techniques for de-escalating encounters with armed extremists. Offer training virtually and distribute recordings and materials afterwards.
- If your local police department has a team specifically trained in de-escalation and community relations, encourage law enforcement leaders to designate those officers to respond to conflicts at the polls.
- Coordinate with law enforcement so that they **do not enforce nonessential police activity** — warrants, minor offense arrests, etc. — that may have a chilling effect on voters at polling locations. Make clear to the community and to law enforcement your office's plans to not prosecute these offenses.
- Be ready to push back and speak out publicly against any **unlawful deployment of federal law enforcement** at the polls or efforts by local law enforcement to police the polls unnecessarily and/or in a manner that intimidates voters.



## Essential Steps Checklist

- ☐ Create an inter-agency team of prosecutors, police officers, and election officials charged with developing a plan to respond to voting problems.
- ☐ Ensure that there is a public hotline to answer basic questions or refer reports of intimidation to the appropriate authorities.
- ☐ Create a voter protection team staffed with specially trained prosecutors on call to answer legal questions from law enforcement, poll workers, and election officials whenever the polls are open.
- ☐ Create a summary sheet or “guidebook” with key local laws for law enforcement, election officials, and prosecutors on call fielding questions.
- ☐ Train law enforcement on local criminal and election law, how to handle expected and potential disturbances, and de-escalation techniques.
- ☐ Use news media, social media, and community groups to inform the community that voter intimidation will not be tolerated and to reassure voters that they will be able to vote safely and free of intimidation.
- ☐ Hold a press conference to publicize key policies and reassure the public that the prosecutor’s office is a resource committed to helping facilitate the right to vote.

**For more information, visit  
[FairandJustProsecution.org](https://FairandJustProsecution.org).**

