



Office of the Director of Police
The University of Texas System
TRAINING BULLETIN 026



POSSE COMITATUS ACT
April 2, 2020

I. Purpose

To provide guidance and understanding of the Posse Comitatus Act and how it relates to law enforcement missions during a state or national emergency.

II. Definitions

Posse Comitatus Act- is a United States federal law that generally prohibits the use of the United States military “for the purpose of executing the laws” unless authorized expressly by Congress. 18 U.S.C. § 1385. The act does not prevent the certain military units from performing domestic law enforcement functions when acting under the authority and instruction of the Texas Governor. These units include the Texas Military Department (the Texas Army National Guard, Texas Air National Guard, and the Texas State Guard), the United States National Guard, and naval units. The United States Coast Guard is exempt from restrictions imposed by the Act and has express authority to enforce federal law in Texas.

United States National Guard is a reserve component of the United States Armed Forces. It is composed of National Guard military units from each state and U.S. territories, It totals 54 organizational units. All members of the U.S. National Guard are members of the militia of the United States under 10 U.S.C. § 246. U.S. National Guard units share operational control by their state and the federal government.

Texas State Guard, along with the Texas Army National Guard and Texas Air National Guard, is one of the three military branches comprising the **Texas Military Department**. The Texas State Guard differs from the National Guard as it cannot be called up for Federal duty and is not a combat force. It typically provides support for in state missions, from emergency and disaster response to border security and community service.

Adjutant General of Texas commands the Texas Military Department and is responsible to the Texas Governor for providing trained and ready forces in support of state operations. The Adjutant General of Texas is also responsible to the President of the United States for providing forces in support of federal missions.

III. Discussion

The Posse Comitatus Act generally prohibits U.S. military personnel from direct participation in law enforcement activities. Examples of such prohibited law enforcement activities include: interdicting vehicles, vessels, and aircraft; conducting surveillance, searches, pursuits and seizures; and making arrests on behalf of civilian law enforcement authorities. Restricting the military's involvement in domestic law enforcement conforms to a long-standing U.S. policy of limiting the military's role in domestic affairs, including executing state or federal laws.

A recent violation of the Act occurred in 2009 when U.S. Military Police deployed from Fort Rucker to direct city traffic and help investigate in response to murders that occurred in Samson, Alabama. Neither the governor nor president authorized the deployment. Rather, regular military support for civilian law enforcement must be authorized and performed in strict compliance with the Constitution and U.S. laws and under the direction of the President and Secretary of Defense.

Accordingly, the United States Congress has enacted exceptions to the Posse Comitatus Act to allow and direct the military to support civilian law enforcement agencies on a limited basis. Common examples are activities authorized under Chapter 15 of Title 10 of United States Code. This chapter contemplates the military's sharing of information collected during military operations, providing certain military equipment and facilities in situations, and maintaining or operating certain equipment.

Other exceptional authorizations for the U.S. military to assist law enforcement include: counterdrug and counter-transnational organized crime assistance in the form of expanded and non-reimbursable support to law enforcement agencies engaged in these functions (Title 10 USC Section 284); The Insurrection Act, which permits the president to end unlawful insurrections against the government at the request of states (10 USC Sections 251-255); and, in the case of crimes involving nuclear materials and weapons of mass destruction determined by the U.S. Attorney General (10 USC Sections 282, 831).

Federal and state law also allow Texas's use and control of the U.S. National Guard and Texas Military Department. The U.S. National Guard ordered to "State Active Duty" under federal permission, by the Texas Governor, remain under the command of military authorities in accordance with the chain-of-command established by the Adjutant General of Texas. Upon direction of the Texas Governor, the Adjutant General of Texas designates a Task Force Commander to execute command-and-control of National Guard personnel and their resources. This is to support emergency response and recovery operations in Texas as designated in the State of Texas Emergency Management Plan.

National Guard support to our Institutions could include; air and ground transportation assets, medical professionals, communication support, medical infrastructure support such as hasty construction of field hospitals, and drive through medical testing points. Requests for these assets should follow standard emergency management protocols and first be sent to the local jurisdiction's Emergency Operation Center who with then will forward the request to the regional State Disaster District and the State Operations Center for approval.

IV. Resources

State of Texas Emergency Management Plan 2018:

https://www.preparingtexas.org/Resources/documents/State%20and%20Fed%20Plans/2015_02_17_Basic_Plan_with_Appendices_za.pdf

Northern Command Training Bulletin:

<https://www.northcom.mil/Coronavirus/>



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