

Practical Implications of Posse Comitatus Act on Military Integration into Local Health Department Disaster Planning and Response



Local planners should have a basic understanding of the scope and roles that are legally permissible, logistically feasible, and realistic to create a balanced plan for appropriate military action in disasters.

Introduction

All disaster planning and response begins at the local level, yet the impact of disasters can sometimes exceed local resource capabilities and may require support from state and federal partners. Effectively incorporating military assets into large-scale responses is important, especially given modern resource constraints and the increasing threat of catastrophic events. Local planners should have a basic understanding of the scope and roles that are legally permissible, logistically feasible, and realistic to create a balanced plan for appropriate military action in disasters.

A 2006 Senate report identified key areas after Hurricane Katrina that needed improvement when integrating military assets into disaster responses.¹ Those improvement areas included deficiencies in coordinating state and local resources, lack of advance coordination of state and Department of Defense (DoD) assets, and lack of unified command and control structure for deployed assets. One important finding from that report, still relevant today, is as follows: “[T]he dual military-command structure in Katrina exposed a fundamental tension—inherent in our system of government—between the principles of unity of command and federalism.”¹

This issue brief provides a cursory overview of the Posse Comitatus Act of 1878 (PCA), one of many doctrines that inform military integration into emergency planning and response. The National Association of County and City Health Officials (NACCHO) has developed this issue brief, among other resources and tools, to offer practical guidance to local health departments (LHDs) on how to integrate military assets into local emergency planning and response efforts.²

Posse Comitatus Act

The Posse Comitatus Act of 1878 provides the following:

Whoever, except in cases and circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.³

Given the U.S. federalist government system, state and local authorities hold primary responsibility for emergency response in most situations. As such, the role of the federal government in a disaster response is to support states and localities when their resources have been overwhelmed. While the federal government and its assets cannot “step in and fix everything,”⁴ it can supplement existing responses by leveraging additional resources. One of those resources is military forces, generally deployed as a “resource of last resort.”⁵

Military roles in domestic response are limited by the PCA and current DoD interpretations of its meaning. Posse comitatus translates to “force of the country,” and the PCA aims to clarify the domestic use of federal forces and assets. In particular, the PCA attempts to balance the police powers inherently reserved for the states with the need for possible use of armed federal forces against U.S. citizens.⁶

In essence, PCA restricts the functions that military forces can perform domestically. Specifically, PCA limits the ability of military forces to perform law enforcement activities. The modern interpretation of the PCA acknowledges the differences between combat and domestic law enforcement activity and is often referred to as the “direct, active use” standard.⁷ Under this standard, “direct, active use,” such as the direct involvement of military personnel in law enforcement activities, is prohibited. Direct, active use includes actions such as searching a person or property off-base, seizing evidence, pursuing escaped civilian prisoners, or investigating crimes. In contrast, supporting law enforcement is permitted. Supporting law enforcement includes activities such as providing aerial reconnaissance or surveillance, transporting defendants, and providing resources, such as vehicles or technical assistance.⁷

PCA Applicability to National Guard and Federal Forces

Due to the nuanced differences under which PCA is applicable, understanding the restrictions placed on National Guard forces and federalized forces is crucial for the public health preparedness community. These nuanced differences are explored below:

National Guard forces are the modern manifestation of the original state militias and generally operate under the control of the governor of each state. National Guard assets can be activated into one of three roles: state active duty, full active duty (Title 32 status), or federalized (Title 10 status).^{6,8}

A governor may activate National Guard forces to “state active duty” consistent with state policy. During state active duty, troops remain under the command and control of the governor, and state funds are used to pay personnel. Typically, National Guard forces are activated to state active duty in response to a disaster.

Full-time National Guard duty status, also referred to as Title 32 status,⁹ provides for combined federal and state funding of personnel. Under Title 32 status, troops remain under gubernatorial command.¹⁰ Placing troops in Title 32 status requires the request of a governor and the approval of the President or the Secretary of Defense. Troops may be placed into Title 32 status to perform homeland defense activities.

The PCA does not apply to National Guard troops under the command of a governor. Thus, in both state active duty and full active duty status (Title 32 status), the PCA does not apply. Therefore, these troops can provide a full-range of activities, including law enforcement functions, such as securing and guarding a medical cache or the Strategic National Stockpile.

PCA Applicability to National Guard Forces:

- **State Active Duty: PCA does not apply**
- **Full-Time National Guard Duty (Title 32): PCA does not apply**
- **Federalized Forces (Title 10): PCA does apply**

By contrast, National Guard forces can be federalized under Title 10,¹¹ which provides for federal pay and federal command through the DoD.^{6,8} In most cases, federalization requires a request from and assent by the governor.⁶ National Guard troops serving in Title 10 status are under the command and control of the DoD and, thus, the purview of PCA.

Considerations for Local Health Departments

The Robert T. Stafford Act is the cornerstone of modern federal policy relating to support of state and local disaster response efforts.¹² However, there are no exceptions within the Stafford Act to the PCA that allow individuals acting under federal authority to participate directly in law enforcement activities.⁶ In fact, DoD Instruction 3025.1, Military Support for Civil Authorities, expressly prohibits military engagement in civil law enforcement activities.^{6,13} These PCA limitations create barriers to using military personnel for specific disaster and health-related activities, including enforcing quarantine orders, providing security at vaccine distribution sites and medical treatment sites, and assisting in mandatory vaccination efforts.⁶

Specific provisions, however, allow for federal agencies to lend resources and provide services such as debris clearing, search and rescue, medical care, road clearance, community services, technical advising, and sheltering to save lives and protect property.¹⁴

The use of DoD resources under the Stafford Act requires a governor to request presidential direction to the Secretary of Defense that emergency work be performed, and then only when “essential for the preservation of life and property. . . for a period not to exceed 10 days.”¹² Emergency managers should consider that, when needed, a specific request by the governor to the President is required to trigger DoD asset deployment.

Conclusion

Although mechanisms exist to engage federal military resources in domestic disaster response, the PCA has been perceived as an obstacle to meeting public health needs with federal assets in modern disaster scenarios.¹ Specific public health functions that may be impacted by the PCA include mandatory evacuation, curfew enforcement, quarantine enforcement, security activities, and protection of countermeasures or stockpiles.⁶

Understanding legal issues related to the use of both state and federal military resources will enable public health emergency planners to allocate local and state resources in a way that not only maximizes the capabilities of responders but also provides clear command and control strategies. Clear understanding of appropriate expectations for both state and federal military resources will allow for better informed requests for federal augmentation of state and local responses to public health emergencies.

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Visit NACCHO.org to find other resources to help LHDs integrate military assets into local emergency planning and response efforts, including the following publications: *Local Health Department Guide to Collaboration with Department of Defense and Strengthening Local Public Health Preparedness through Partnerships with Military Colleagues.*



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The mission of the National Association of County and City Health Officials (NACCHO) is to be a leader, partner, catalyst, and voice for local health departments.

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