

The Posse Comitatus Act

Sept. 23, 2019

Section 1385 of Title 18, United States Code (USC), states:

“Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or 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.”

The Posse Comitatus Act (PCA) does not apply to the U.S. Coast Guard, or to the National Guard in Title 32 or State Active Duty status. Although the PCA prohibits only the Army and Air Force as from performing domestic law enforcement activities, another statute, 10 USC Section 275, requires the Secretary of Defense to prescribe regulations to prohibit members of the Army, Navy, Air Force, or Marine Corps from direct participation in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law. Department of Defense Instruction 3025.21 implements the prohibitions required under the PCA and 10 USC Section 275.

These laws and regulations generally prohibit U.S. military personnel from direct participation in law enforcement activities. Some of those law enforcement activities would include interdicting vehicles, vessels, and aircraft; conducting surveillance, searches, pursuit and seizures; or making arrests on behalf of civilian law enforcement authorities. Prohibiting direct military involvement in law enforcement is in keeping with long-standing U.S. law and policy limiting the military's role in domestic affairs.

The United States Congress has enacted a number of exceptions to these general prohibitions that allow the military, in certain situations, to assist civilian law enforcement agencies in enforcing the laws of the U.S. The most common examples are the support activities authorized under Chapter 15 of Title 10 (10 USC Sections 271-284), such as the provision of information collected during military operations, the use of military equipment and facilities, and the maintenance and operation of equipment. Other examples include:

- Counterdrug and counter-transnational organized crime assistance (10 USC Section 284). This statute authorizes the Department of Defense to provide certain expanded, non-reimbursable support to the counterdrug or counter-transnational organized crime activities of law enforcement agencies.
- The Insurrection Act, Chapter 13 of Title 10 (10 USC Sections 251-255). This act allows the President to use U.S. military personnel at the request of a state legislature or governor to suppress insurrections. It also allows the president to use federal troops to enforce federal laws when rebellion against the authority of the U.S. makes it impracticable to enforce the laws of the U.S. by the ordinary course of judicial proceedings.
- Assistance in the case of crimes involving nuclear materials (18 USC Section 831). This statute permits Department of Defense personnel to assist the Justice Department in enforcing prohibitions regarding nuclear materials, when the Attorney General and the Secretary of Defense jointly determine that an “emergency situation” exists that poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies.
- Emergency situations involving weapons of mass destruction (10 USC Section 282). When the Attorney General and the Secretary of Defense jointly determine that an “emergency situation” exists that poses a serious threat to U.S. interests and is beyond the capability of civilian law enforcement agencies, Department of Defense personnel may assist the Justice Department in enforcing prohibitions regarding weapons of mass destruction.

Military support to civilian law enforcement is carried out in strict compliance with the Constitution and U.S. laws and under the direction of the President and Secretary of Defense.

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