



THE US NATIONAL GUARD AND PUBLIC ORDER MANAGEMENT

JUNE 2020

I. OVERVIEW¹

In the past two weeks, governors in as many as [23 US states and Washington, DC](#) have mobilized state National Guard units to support local law enforcement in the response to protests against racism and police brutality.² These units have been involved in at least one lethal use of force incident: [according to state officials](#), a Kentucky National Guard member was responsible for the [fatal shooting](#) of David McAtee during protests in Louisville, Kentucky on June 1. Other Guard members as well as the Louisville Metro Police were also involved in the incident.

As a matter of principle, Center for Civilians in Conflict (CIVIC) generally [warns against](#) the deployment of military or military-like units to manage public order, including protests and curfews, given the risk of escalation of violence and the misalignment between the military mission and domestic law enforcement functions. While the National Guard can serve an important role in protecting civilians from violence under [exceptional circumstances](#), military units are generally ill-suited to manage demonstrations and other law enforcement roles. Indeed, National Guard members themselves have [reported](#) discomfort with recent activations, describing concerns around escalating violence and witnessing civil rights abuses by police. Assessing the appropriateness of any given National Guard

activation is not the purpose or purview of this brief. Regardless of the mission, any deployment of the National Guard in support of domestic law enforcement raises critical issues for consideration by State and National Guard leadership.

National Guard personnel deployed to provide direct or indirect support to law enforcement during protests could become involved in situations involving the use of force or physical confrontations with protestors. Guard members may also be placed in circumstances in which they witness or become complicit in misconduct by local police units. In the last week, CIVIC staff contacted a number of National Guard units and found that very few have provided clear or explicit directions for Guard members to deal with these situations, or guidance to the public on how best to report any concerns they may have with National Guard personnel.

Given the potential for sustained or recurring protests across the country, as well as public unrest around pandemic-related restrictions and election events, state governments, state National Guard authorities, and the federal National Guard Bureau should take the opportunity to assess the sufficiency of training and preparation around de-escalation and use of force continuum, protocols for reporting and managing reports of misconduct by Guard personnel or local law enforcement, and the adequacy and responsiveness of channels

1. This brief was authored by Annie Shiel and Dan Mahanty of CIVIC, along with CIVIC - Georgetown Law Fellows Emilia Pierce (J.D. 2021) and Elizabeth Fray (J.D. 2022)
2. The potential deployment of US (federal) military forces within the United States is not addressed in this brief.

by which Guard units communicate with the public. Notably, these recommendations reflect the principles that CIVIC applies to the requests we make of the U.S. military during its overseas operations.

This policy brief provides a summary of the role and authority of the National Guard in the United States, to include the rules governing the use of force; describes the processes by which incidents and allegations of human rights abuse or civilian harm are received and managed; and proposes recommendations for consideration by State and National Guard authorities and the federal government's National Guard Bureau. This brief is partly informed by information gleaned from direct outreach conducted by the authors to representatives of each of the 23 state National Guard units that have been mobilized in response to public protests. The brief also provides a list of National Guard contacts for each state and territory.

II. Source of Authority for the State National Guard in Public

The National Guard is composed of 54 separate state and territorial militias. A state or territory's National Guard can be mobilized under three sources of legal authority:³

STATE LAW

State or territorial governors can mobilize National Guard units for active duty for any number of purposes, including disaster response, support of civilian law enforcement during public disturbance, or to respond to a request for support from another state. For example, National Guard units were activated under state law to respond to the [California wildfires in 2018 and 2019](#). In these cases, the governor serves as the commander in chief of the Guard forces. When mobilized by the authority of a state's government, National Guard

units are subject to that state's law, including criminal statutes and any state-specific code of military justice. Conduct that would constitute an offense under the Uniform Code of Military Justice (UCMJ), but committed while serving under the command of the state government (i.e., under Title 32 or while on state active duty) must be addressed under state law.

TITLE 32

Under Title 32 of the US Code, the federal government pays for the mobilization of the National Guard while leaving the control and direction of Guard activities to the discretion of the governor of that state or territory. For example, units authorized for "full-time National Guard duty" under Title 32 authority provided [medical and logistical support](#) during the height of the COVID-19 pandemic, as well as in response to [Hurricane Sandy](#) in 2012.

Under state and Title 32 authority, the National Guard may provide direct assistance to civilian law enforcement. Direct activities include search, seizure, arrest, apprehension, stop and frisk, surveillance, pursuit, interrogation, investigation, evidence collection, security functions, traffic or crowd control, and similar activities.⁴

TITLE 10

Under Title 10 of the US Code, the President may "federalize" National Guard units by ordering them to active duty. In this situation, the federal government pays for the mobilization, and activated Guard units are placed under the control of the Secretary of Defense and the president, with an active-duty military officer in the chain of command. Title 10 has been used to activate National Guard members in support of military operations in Iraq and Afghanistan, as well as in response to Hurricane Katrina in 2005. National Guard forces federalized under Title 10 are subject

3. Department of the Army, *Defense Support of Civil Authorities (ADP 3-28)*, July 2012, p.3; Available for download at https://usacac.army.mil/sites/default/files/misc/doctrine/CDG/cdg_resources/manuals/adp/ADP_3-28.pdf

4. Chairman of the Joint Chiefs of Staff, *Defense Support of Civil Authorities (JP 3-28)*, October 2018, p. 59; Available for download at https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp3_28.pdf

to the UCMJ. Under the UCMJ, federal military personnel, including National Guard personnel operating under federal authority, are immune from personal liability if they cause death, injury, or property damage as a result of negligent acts (but not intentional misconduct). A soldier or civilian employee under federal activation could, however, face personal liability, criminal prosecution, or both for “negligent acts causing the death, injury, or property damage that results from actions outside the scope of their duty or employment.”⁵ The National Guard is not permitted to directly assist or participate in civilian law enforcement activities under Title 10 unless activated under the Insurrection Act, described below. In contrast, permissible support functions include training, expert advice, equipment loan and maintenance, and border security.⁶

INSURRECTION ACT

Included in Title 10 is the authority to federalize National Guard units in accordance with the [Insurrection Act](#), which gives the president the power to deploy active duty military forces domestically to maintain or restore peace. US law narrowly limits these circumstances to three scenarios: 1) in the case of insurrection against a state government; 2) to enforce federal authority in the face of unlawful obstructions, assemblages, or rebellion; and 3) to quell insurrection or domestic violence where that violence both prevents the adequate implementation of state or federal law to the extent that any group or class of people is denied protection of their Constitutional rights and the state is unwilling or unable to restore protection of those rights. This authority was most recently used by President George H.W. Bush [in response](#) to the 1992 Los Angeles riots following the acquittal of four police officers in the beating of Rodney King. In accordance with the broader Title 10 authority, Guard units activated in this capacity are subject to the UCMJ.

III. Rules on the Use of Force

When federalized under Title 10 authority, the National Guard adheres to the [Standing Rules for Use of Force](#) (SRUF), the federal standard for law enforcement type missions, unless alternative mission-specific rules have been approved by the Secretary of Defense. The SRUF emphasizes the inherent right of forces to self-defense; requires forces to avoid confrontation with individuals who pose no threat to Guard units or others in the vicinity; and encourages de-escalation and requires forces to exhaust all non-lethal options before using lethal force. The SRUF allows for the temporary detention and search of “threatening personnel” who refuse to depart an unauthorized area or otherwise threaten the safety of DoD forces, property secured by DoD forces, or non-DoD persons in the area if their defense is directly related to the assigned mission.

National Guard units operating under the authority of the governor can elect to apply either the SRUF or adopt rules governing the use of force based on state law. Arrest powers are determined by state law, though these powers are not automatic; where permitted, the Governor must “turn on” this function for activated forces. If one state agrees to send its National Guard forces to another state, their forces take on the laws and regulations governing the National Guard of the receiving state.

5. *Manual for Courts-Martial, United States* (2019 ed.) [MCM], pt. IV, ¶ 18c.(1)(d)

6. *Defense Support of Civil Authorities (ADP 3-28)*, October 2018, p. 60.



Soldiers with the Mississippi Army National Guard's 1st Battalion, 155th Infantry Regiment watch from the Lincoln Memorial as demonstrators peacefully gather in front of the memorial during protests in Washington, D.C., Saturday, June 6, 2020, in the wake of the death of George Floyd.

U.S. Army / Sgt. 1st Class Jon Soucy

IV. Unlawful Orders

Like other military service members, National Guard members have sworn an oath to support and defend the US Constitution, including the freedom of assembly and the right to due process of the law. National Guard members deployed in domestic environments have the responsibility to protect the Constitutional rights of civilians, including the right to peacefully protest. In the course of a domestic deployment, Guard members may be given orders they believe to be unlawful. In legal terms, an order is “manifestly unlawful” if a person of “ordinary sense and understanding” would know it is wrong -- for example, an order

to use lethal force against a crowd. If confronted with such an order, a servicemember can request clarification of an order they believe to be unlawful, elevate the request to a more senior authority, and request the order in writing. If time permits, they can and should seek legal review from Judge Advocate General (JAG) officers or outside resources. In the moment, a servicemember should not carry out an order they believe to be manifestly unlawful. Should a member execute an unlawful order, they will be held accountable under the appropriate jurisdiction, regardless of whether they were operating under orders.

V. Complaints, Allegations, and Investigations

Public Reporting of Guard Misconduct and Other Incidents

Public reporting processes for alleged National Guard misconduct or other incidents involving National Guard personnel vary state-by-state. State National Guards may receive complaints through an online portal, the Public Affairs Office (PAO), the JAG, the Inspector General (IG), or a mix of these. Contact information for filing complaints or reports are listed by state at the bottom of this brief.

Internal Reporting of Guard Misconduct

Incidents of misconduct that arise while supporting civil authorities, such as violations of the rules on the use of force or unlawful arrest or detention, could constitute a violation of federal law, a state's criminal statutes or, if applicable, the state's military code of justice. National Guard personnel operating under a federal authority, or those units that base their state-specific rules on the use of force on the federal model, are mandated to report witnessed or suspected violations of the rules for the use of force to their "chain-of-command, Inspector General, Judge Advocate, Chaplain, or any commissioned officer with information concerning who, what, when, where, and why" (SRUF Rule 12). National Guard or military personnel operating under state authority that witness or suspect any other violations of regulation or law by other Guard members can make reports through their chain of command, directly to their state's National Guard Inspector General, or to relevant law enforcement.

Personnel subject to the UCMJ and the applicable service regulation (i.e., Army or Air Force regulations) when under a federal mandate are expected to report any incident that could qualify as a "reportable incident" through their chain of command.

Investigations of Guard Misconduct or Other incidents

Any reported incident may be subject to further investigation. The procedure for investigation and the investigating body will depend on the nature of the incident (e.g., violations of law vs. safety-related incidents) and the source of authority and jurisdiction (state or federal). Incidents involving alleged violations of state law, including the state's code of military justice, may be referred to local or state law enforcement authorities, investigated by the Inspector General, or both. Incidents that occur while under federal mobilization or on US military property fall under the jurisdiction of the UCMJ and applicable service regulations, and may be subject to an administrative investigation, a criminal investigation, or both.

Guard Reporting of Police or Other Partner Conduct

National Guard personnel are under no specific statutory obligation to report incidents of misconduct that are attributable to local civil authorities, such as law enforcement officers. Based on CIVIC's outreach to state National Guard authorities, no clear or uniform guidance has been provided to National Guard personnel for reporting incidents of misconduct or abuse by law enforcement personnel. Members of the National Guard who witness or suspect wrongdoing by police may report it through their chain of command, where it will likely be referred back to state or local law enforcement authorities, or may refer an allegation or incident to law enforcement authorities directly.

VI. Recommendations for State Government and National Guard Authorities

1. Avoid militarizing domestic responses to demonstrations and other unrest. Military forces, including the National Guard, are not always best-suited to manage demonstrations or to serve most law enforcement functions. Military involvement in domestic unrest should be avoided except in exceptional circumstances where necessary to protect human life.

2. Provide clear commander's intent and guidance. The State Adjutant General (TAG) should ensure that written guidance is provided and reinforced through both formal and informal means that emphasizes the importance of protecting civil and human rights and safeguarding human life, reinforces the rules of the use of force, clarifies arming orders, and emphasizes the importance of clear and consistent communication with the public. TAGs and other National Guard leadership should direct Guard personnel to avoid using terms of war, such as "battlespace" and "rules of engagement".

3. Clarify mission areas and ensure missions in support of local law enforcement are approved at suitably high level of command. National Guard units should not attempt to assume tasks or missions for which they are not trained, prepared, or otherwise appropriately suited. At the outset and throughout the mobilization of the National Guard, TAG's should be clear with state government officials and law enforcement authorities about what types of law enforcement missions the National Guard can and will support, and which they will not. All missions and any proposed changes to missions should be tasked and validated only by suitably senior officers, and cases where a mission strays from agreed-upon terms should be elevated to the TAG.

4. Clarify the duty to report. State and National Guard authorities should make clear the duty of Guard members to report incidents of misconduct and/or violations of applicable state code of military justice and state or federal law. Reporting guidance should address both witnessed or suspected misconduct by fellow National Guard personnel as well as how to report witnessed or suspected misconduct by the forces they support and operate alongside, such as state and local law enforcement. The TAG should ensure that there is a clear line to local and state officials and law enforcement authorities for referring incidents of concern.

5. Facilitate the receipt of reports of misconduct from the public. State and National Guard authorities should disseminate public guidance for civilians who wish to directly report witnessed or suspected misconduct or violations by activated National Guard personnel. Guidance should include what types of information to report, where to report it, how information will be used, and what follow-up actions will be taken. National Guard leaders in each state should also engage representatives from local civil society organizations.

6. Ensure clear and visible insignia and badges. Visible badges and insignia enable the public to identify the name, unit affiliation, and agency of security personnel involved in public order management and are critical to accountability and positive civilian-military relations. National Guard authorities should emphasize that personnel may never intentionally conceal visible insignia or badges. National Guard leadership should provide clear public relations guidance for responding to public inquiries about the role and affiliation of units.



A CH-47 "Chinook" helicopter from Detachment 1, Bravo Co. 3-328th Aviation Regiment, Michigan Army National Guard, lands at Alpena Combat Readiness Training Center, Michigan, Jan. 23, 2020

U.S. Air National Guard / Master Sgt. Scott Thompson

VII. Public Reporting Channels by State

The resources available to the public for reporting incidents of misconduct by any law enforcement authorities vary by state or territory. A number of local and national legal aid organizations are well-placed to offer advice to ensure that public complaints or claims of abuse can be made safely, effectively, and with suitable concern for the rights and best interests of claimants.

Members of the public who witness or suspect misconduct, abuse, or any violation of the law by activated National Guard members in their state who wish to provide information directly about any related matter may do so through the following channels.⁷

Alabama

PAO: 334-271-7244

JAG: 334-271-7471

Alaska

PAO: 907-428-6031

Arizona

PAO: 602-267-2550

JAG: 602-267-2588

[Arizona Ombudsman Citizen's Aide Form](#)⁸

Arkansas

PAO: 501-212-5098

JAG: 501-212-5040

California

PAO: 916-854-3304

JAG: 916-855-3505

7. In the course of CIVIC's outreach, we asked state National Guard authorities about their processes for public reporting of incidents. This list includes Public Affairs Office and/or Judge Advocate General contact information, as well as additional reporting information for some states or territories.

8. Arizona State Legislature, "Arizona Ombudsman Citizen's Aide," Ombudsman-Citizens' Aide <https://www.azoca.gov/complaint-procedure/complaint-form>

Colorado

[Compliments and Complaints Form](#)⁹

PAO: 720-250-1058

JAG: 720-250-1032

Connecticut

PAO: 860-524-4871

District of Columbia

PAO: 202-685-9862

Delaware

PAO: 302-326-7010

JAG: 302-326-7011

Florida

Inspector General: 904-823-0135 or
ng.fl.flarng.mbx.flng-ig@mail.mil

PAO: 904-823-0166

JAG: 904-823-0132

Georgia

PAO: 678 569-3626

JAG: 678 569-5640

Guam

1 671-344-1019

Hawaii

PAO: 808.733.4258

Idaho

Commander's Hotline: 208-801-4210

PAO: 208-801-4292

Illinois

PAO: 217-761-3569

Indiana

PAO: 317-247-3222

JAG: 317-247-3449

Iowa

PAO: 515-252-4582

JAG: 515-252-4893

Kansas

PAO: 785-646-0090

Kentucky

PAO: 502-607-1000 ext. 3

Louisiana

PAO: 225-803-6712

Maine

PAO: 207-430-5759

JAG: 207-430-5911

Maryland

PAO: 410-576-6179

JAG: 410-576-6085

Massachusetts

PAO: 339-202-3952

Michigan

PAO: 517-481-7731 / 7735

JAG: 517-481-8100

Minnesota

Inspector General: 651-281-3833 or
ng.mn.mnarng.list.ig@mail.mil

PAO: 651-282-4410

Mississippi

PAO: 601-313-6349

JAG: 601-313-6156

Missouri

PAO: 888-526-MONG or mo.ngpao@mail.mil

Montana

PAO: 406-324-3009

Nebraska

PAO: 402-309-8390

Nevada

PAO: (o) 775-887-7252; (c) 775-287-5592

9. Colorado National Guard, "Compliments and Complaints," <https://co.ng.mil/Contact-Us/Compliments-Complaints/>

New Hampshire

PAO: 603-225-1340 or 603-227-1468

New Jersey

PAO: 609-530-6939

New Mexico

HQ: 505-407-3300

New York

PAO: 518-786-4581

North Carolina

PAO: 984-664-6829

JAG: 984-664-6220

North Dakota

PAO: 701-333-2129

Ohio

PAO: 614-336-4499

JAG: 614-336-7022

Oklahoma

PAO: 405-228-5212

JAG: 405-228-5301

Oregon

PAO: 503-584-3917

JAG: 503-584-3571

Pennsylvania

PAO: 717-861-6894

JAG: 717-861-8891

Puerto Rico:

787-289-1400

Rhode Island

PAO: 401-275-4193

JAG: 401-275-4146

South Carolina

PAO: 803-299-5304

JAG: 803-299-4319

South Dakota

PAO: 605-737-6721

Tennessee

PAO: 615-313-0633

JAG: 615-313-3085

Texas

PAO: 512-782-6045

JAG: 512-782-6067

Utah

PAO: 801-432-4407

JAG: 801-432-4408

Vermont

PAO: 802-338-3000 ext. 3

Virginia

PAO: 804-236-7892

Virgin Islands

833-340-1973

Washington

PAO: 253-512-8989

JAG: 253-512-8262

West Virginia

PAO: 304-561-6689

JAG: 304-561-6619

Wisconsin

PAO: 608-242-3050

Wyoming

PAO: 307-772-5253

JAG: 307-772-5254

Cover Image:*Minnesota National Guard at the grounds of the
Minnesota state capitol on June 1, 2020***U.S. Army National Guard / Staff Sgt. Linsey Williams**

ABOUT CENTER FOR CIVILIANS IN CONFLICT (CIVIC)

Center for Civilians in Conflict (CIVIC) is an international organization dedicated to promoting the protection of civilians caught in conflict. CIVIC's mission is to work with armed actors and civilians in conflict to develop and implement solutions to prevent, mitigate, and respond to civilian harm. Our vision is a world where parties to armed conflict recognize the dignity and rights of civilians, prevent civilian harm, protect civilians caught in conflict, and amend harm.

CIVIC was established in 2003 by Marla Ruzicka, a young American activist and humanitarian who advocated on behalf of civilian war victims and their families in Iraq and Afghanistan. Building on her extraordinary legacy, CIVIC now operates in conflict zones throughout the Middle East, Africa, Europe, and South Asia to advance a higher standard of protection for civilians.

At CIVIC, we believe that parties to armed conflict have a responsibility to prevent and address civilian harm. To accomplish this, we assess the causes of civilian harm in particular conflicts, craft practical solutions to address that harm, and advocate for the adoption of new policies and practices that lead to the improved well-being of civilians caught in conflict. Recognizing the power of collaboration, we engage with civilians, governments, militaries, and international and regional institutions to identify and institutionalize strengthened protections for civilians in conflict.

RECOGNIZE. PREVENT. PROTECT. AMEND.

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