

Police Mutual Aid Agreements under the Patriot's Act

The events of September 11th have increased federal installations' need to develop mutual aid agreements with police forces in the surrounding communities. The uniqueness of the terrorist threat has required installations to share information and resources with the surrounding police communities to an extent not previously anticipated.

Historically, installations have had mutual aid agreements with surrounding fire departments but have been self-reliant on federal resources for security and police support. 42 USC 1856a authorizes reciprocal fire protection agreements, allows for compensation of costs for outside fire departments rendering aid to the installation, and, significantly, creates a statutory waiver of personal injury or other claims against the government. 42 USC 1856b authorizes the installation fire department personnel to provide assistance off post. 15 USC 2210 establishes a system for reimbursement for costs of firefighting on Federal property. No statutory or regulatory authority similar to that existing for reciprocal fire protection agreements exists for police or security protection. Prior to September 11th, it was presumed that federal resources were adequate to meet installation security needs, and *posse comitatus* concerns caused installations to generally keep to themselves in terms of security and police protection.

However, post-September 11, federal resources have been stretched too thin to meet installation needs for security, and there is recognition that the installations are part of a larger community that has to work together make homeland security possible. To this end, the Patriot's Act of 2001 has provided some relief. Section 1010 of P.L. 107-56 provides that notwithstanding the prohibition of 10 USC 2465 on using appropriated funds for contracts to perform security-guard functions at military installations,

“funds appropriated to the Department of Defense may be obligated and expended for the purpose of entering into contracts or **other agreements** for the performance of security functions at any military installation or facility in the United States with a proximately located local or State government, or combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation.”

This is a temporary authority and there have been no implementing regulations to date. It would be preferable that the fire protection statutes, cited above, be amended to include security and police protection at the installation. However, in the absence of such legislation, the Patriot's Act would appear to provide a limited authority to enter into mutual aid agreements with outside police departments if the statutory and regulatory limitations and concerns that remain are acknowledged and addressed in the agreements. These limitations and concerns are summarized as follows:

For Services the Outside Officers Perform at the Installation

- No authority for open agreement to reimburse town for costs incurred. Firemen have statute and regulatory authority for this.

- Possible personal liability to anyone (Commander?) who invites outside officer's here to perform services for us. There is a general prohibition under the Anti-Deficiency Act (31 U.S.C. 1342) against accepting voluntary services for the government or employing personal services exceeding that authorized by law except for emergency situations involving the safety of human life or the protection of property.
- No authority to defend or pay suits against their officers.
- No statutory protection to federal government against claims by their officers to Federal Worker's Compensation. Firemen have a specific statute saying that their firemen are not covered.

For Services Installation Officers Provide Off Base

- No authority to provide service off-post beyond AR 500-50 and AR 500-51. If our officers go beyond their authority, and are
 - Sued (for say, false arrest) - might not get Govt. representation, immunity, or indemnity;
 - Hurt - might not be covered by Worker's Comp.
- AR 500-50 and AR 500-51 require that Govt. be reimbursed for its costs in providing services.

Notwithstanding these concerns, there is still a need try to resolve these issues with the surrounding municipalities before an emergency arises that requires that aid be requested or given. Attempting to negotiate mutual aid agreements at least alerts the municipalities to our limitations and gives the installation an idea what kind of aid the municipalities might be able to provide and at what cost. Attached is a suggested form of agreement that attempts to address the government's concerns, and tries to take full advantage of the Patriot's Act authority.

Jerry Williams

Suggested Mutual Aid Agreement

DEPARTMENT OF THE ARMY, AMC, TACOM-ARDEC MUTUAL LAW ENFORCEMENT ASSISTANCE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, between (Local Governmental Entity) _____, and the Commander, US Army Tank-automotive and Armaments Command, Armament Research, Development and Engineering Center, (TACOM-ARDEC), located at Picatinny Arsenal, New Jersey according to the authority of Public Law (P.L. 107-56, Section 1010 (Patriot's Act of 2001).

WHEREAS, each of the parties hereto maintains equipment and personnel for the enforcement of laws within its own jurisdiction and areas, and;
 WHEREAS, the parties hereto desire to augment the law enforcement available in their jurisdictions in the event of mass casualty, weapons of mass destruction (WMD), terrorist incidents, or other emergency, and;

WHEREAS, it is the policy of the U.S. Army (TACOM-ARDEC) and of the municipal or county governing bodies to conclude such agreements whenever practicable, and; WHEREAS, it is mutually deemed sound, desirable, practicable and beneficial for the parties of this agreement to render assistance to one another in accordance with the terms and applicable federal laws and regulations (Department of Defense Regulations 5525.5. and U.S. Army Regulations 500-50 (Civil Disturbances) and 500-51, (Support to Civilian Law Enforcement Authorities).

THEREFORE BE IT AGREED THAT:

1. Whenever an authorized law enforcement agency Chief, or designee, decides to activate this agreement, the following agreed upon conditions will be complied with:
 - a. Determine the exact nature of the assistance requested and determine if it is within the scope of this agreement.
 - b. Immediately determine what resources can be released from the current staffing.
 - c. The senior officer shall dictate department resources and dispatch in a timely fashion with complete instructions as to their mission.
2. The rendering of assistance under the terms of this agreement shall not be mandatory. The parties recognize that resources may not always be available for mutual aid, and that TACOM-ARDEC can only provide assistance to the extent permitted and authorized by AR 500-50 and AR 500-51.
3. The Agency receiving the request for assistance will inform the requesting Agency as soon as possible if assistance cannot be provided or potential for delay.
4. Parties to this agreement will not be used to assist in law enforcement functions directly relating to: Arrests, Warrants, or Deadly Force when the responding agency does not have incident jurisdiction. The Agency may be requested to assist with, but limited to: Crowd Control, Crime Scene Control, Perimeter Access Control, Traffic Control, Search and Rescue, Emergency Operations Center Assistance, First Responder Medical Assistance, Administrative Support, Transportation of Equipment.
5. Under exigent or unforeseen circumstances where imminent harm to life is encountered, the Officer may exercise appropriate measures to cease the encounter by utilizing use of force measures of their Agency. The situation will immediately be turned over to the hosting law enforcement agency for action and investigation.
6. Each party to this agreement waives all claims against the other party for compensation for any loss, damages, injury, or death occurring as a consequence to the performance of this Agreement. The performance of any services by (local Govt.) personnel shall not constitute such individuals as officers or employees of

the United States for any purposes, including, but not limited to the Federal Employees Compensation Act. (*Local Govt*) shall so advise all personnel that may be dispatched to TACOM-ARDEC pursuant to this Agreement. (*From the Government's view, it would be preferable to try to have the town obtain gratuitous service agreements from the individuals it intends to send. However, this may be unreasonably difficult to obtain or administer.*)

7. Should a civil or criminal complaint be filed against either party or against individual employees of that party for acts performed pursuant to this Agreement, each party will be responsible for providing legal representation for itself and its own employees only. Neither party shall be responsible for the legal defense or liability of the other party or its employees.
8. All services rendered by TACOM-ARDEC shall be reimbursed in accordance with AR 500-50 and AR 500-51. (*To change, you need to obtain a class waiver from ASD(MRA&L.)*)
9. Each party agrees the incident command responsibilities are coordinated solely by the requesting agency. Under certain circumstances incident command may change in accordance with applicable state or federal laws.
10. Both parties are encouraged, on a reciprocal basis, to conduct joint familiarization and training as is consistent with local security requirements and feasibility.
11. The Agencies will attach any detailed plans and procedures as Annexes to this agreement.
12. This agreement will become effective upon signature of the parties.
13. This agreement will remain in force until written notice to cancel or change by any one party, given ten (10) days notice of said cancellation or change.

IN WITNESS WHEREOF, the parties hereto have executed this agreement at the U.S. Army Armament Research, Development and Engineering Center, Picatinny Arsenal, New Jersey on the date above written.

Commander ARDEC Signature Block

Municipal Agency Signature Block