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## Military Law

# *Officio Vocante Parati— Ready When Called*

**THE MARYLAND DEFENSE FORCE**

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An incoming hurricane on the Eastern Shore; a blackout and heat wave in Baltimore City; erection of a mobile field hospital in response to a potential mass-casualty event; legal advice to state leaders, National Guardsmen, and veterans. These are examples of the varied roles of the **Maryland Defense Force**, formerly known as the **Maryland State Guard**.





The Maryland Defense Force, first created in 1917, is a uniformed military agency authorized by federal and Maryland law, and forms one of the subordinate agencies of the **Maryland Military Department**. See 32 U.S.C. § 109; Md. Public Safety Code Ann. §§ 13-203, 501 et seq. Except when called to active duty for state emergency or other service by order of the Governor, Maryland Defense Force soldiers are uncompensated and serve as volunteers, providing highly technical and professional services to the State of Maryland, its citizens, and the **Maryland Army National Guard** and the **Maryland Air National Guard**. When called to active state service by the Governor, however, Maryland law provides for compensation of Defense Force personnel at the discretion of the Governor, and provides that they may receive the same pay and allowances as a person of like grade and length of service in the armed forces of the United States. See Md. Public Safety Code Ann. § 13-704.

Maryland Defense Force officers are commissioned by the Maryland Governor, and serve at the Governor's pleasure. See Md. Public Safety Code Ann. § 13-601. Many of the officers in the Maryland Defense Force are veterans, former officers, or graduates of the U.S. military academies. A number of Maryland Defense Force members are combat veterans of the wars in Vietnam, Iraq, and Afghanistan.

The Maryland Defense Force serves the Governor under the direction and supervision of the State Adjutant General, Major General James A. Adkins, who also commands the Maryland Army National Guard and Air National Guard, as

well as the **Maryland Emergency Management Agency**. The current Commanding General of the Maryland Defense Force (MDDF) is Brigadier General Brian R. Kelm, a 26-year veteran of the Civil Engineer Corps of the U.S. Navy.

Nearly every state has laws authorizing state defense forces. Today, 22 states and Puerto Rico have active state defense forces with different levels of activity, support, and strength. Most state defense forces, including Maryland's, are organized as army units, but air and naval units also exist. Individual states have tasked their defense forces with different missions.

In Maryland, the Defense Force mission is to provide competent supplemental professional and technical support to the Maryland Military Department, including the Army National Guard, Air National Guard, and Maryland Emergency Management Agency as required. Unlike Maryland National Guardsmen, Maryland Defense Force soldiers serve at the discretion of the Governor for state missions and may not be federalized and sent to an overseas war (although individual soldiers remain subject to federal draft requirements). On limited occasions, Maryland Defense Force soldiers may be sent out of state at the request of a neighboring governor requesting assistance. Recent examples of such assistance include the deployment of Maryland Defense Force soldiers to Louisiana after Hurricane Katrina in 2005, as well as components of the Defense Force being deployed to South Dakota Indian reservations in 2007 for a public health mission.

In Maryland, however, calls to state active duty are rare. When

not called to active duty, professional and technical support to the Maryland Military Department is the core of the Defense Force mission. Professional and technical services include:

#### **Legal Services – the Judge Advocate Corps**

Judge Advocates in the Maryland Defense Force ensure legal representation and coverage for every National Guard soldier and airman in the state. They also provide legal advice and support to the Defense Force command and the commands of the Army National Guard and Air National Guard. The forty-three Judge Advocates of the Defense Force are each admitted to practice law within Maryland, and many are admitted in other states as well. Many Judge Advocates are former U.S. military officers. Current Maryland Judge Advocates include, among others, the retired Chief Judge of the United States District Court for the District of Maryland; an Administrative Law Judge of the Maryland Office of Administrative Hearings; a former Commissioner of the Maryland Workers Compensation Commission; the former Assistant Inspector General for Investigations of a major federal agency; former Assistant States Attorneys; current federal civilian attorneys; a current attorney for a Maryland county agency; numerous partners and associates at Maryland and DC-area law firms; as well as many sole practitioners engaged in criminal, civil and family law. A number of Judge Advocates have served in combat overseas. At least once per year, Maryland Defense Force Judge Advocates join with their Army and Air National Guard

attorney counterparts in joint training to ensure that all elements of the Maryland Military Department are able to work together in a coordinated fashion, even during times of crisis.

Maryland Judge Advocates serve as staff legal support to the Defense Force command, as well as to individual Army and Air Guard units throughout the state. Such activities may include providing support to the state's military justice system (including the provision under state law for courts martial), as well as preventative legal training and lectures to soldiers and airmen. In addition, Judge Advocates provide local coverage and assistance to individual National Guard members in need, such as the preparation of wills and powers of attorney, family law and custody disputes, eviction or fore-

closure defense, employment law issues with civilian employers, and assisting returning service members with claims for benefits from the Veterans Administration. Legal entanglements have become especially acute as Maryland National Guardsmen have been called to service due to the conflicts overseas in numbers not seen since World War II. Judge Advocates, in turn, derive substantial rewards in being able to assist members of our military. In addition, service to the Defense Force and to individual guardsmen and their families may be reported as *pro bono* hours to the Maryland Court of Appeals.

#### **Chaplain Services**

A dedicated Chaplain Corps provides religious guidance and counseling to Maryland Guardsmen

and their families, as well as the community at large, during times of need or crises. Chaplains in the Defense Force are frequently embedded in specific units of the National Guard, and at times may be the only pastoral services a federalized Guardsman may see prior to deployment.

#### **Medical Services**

The Defense Force's 10<sup>th</sup> Medical Regiment (a unit designation linking it to its historic World War II state guard roots) is unique among state defense forces, including its capability to fully erect, supply, staff and run a mobile field hospital. The soldiers of the 10<sup>th</sup> Medical Regiment include surgeons, internists, pediatricians, psychiatrists, psychologists, social workers, pharmacists, registered



nurses and certified nurse practitioners, emergency medical technicians, as well as associated medical specialties. In recent memory, the Regiment's largest deployment was in Operation Lifeline Depot. The Maryland Defense Force-led task force, comprising more than 200 health professionals, eventually treated over 6,500 patients in five abandoned facilities in Jefferson Parish, Louisiana, in the immediate aftermath of Hurricane Katrina.

### Engineering Services

The Maryland Defense Force 121<sup>st</sup> Engineer Regiment provides a professional organized, trained, disciplined and uniformed rapid response force of engineers of all disciplines to assist the Maryland Military Department, state and local government agencies, and civil relief organizations in response to any impending or actual emergency. The mission of the 121<sup>st</sup> Engineer Regiment consists of inspection and assessment of Maryland Army National Guard facilities. Other mission support areas consists of internal engineer support to the Defense Force, disaster assessment after a natural or manmade incident, and the assessment of critical infrastructure prior to a disaster.

### Finance Corps

Individuals in the Finance Corps are professionals in the fields of banking, investment management, accounting, and insurance. Their skills are put to use counseling Maryland National Guard and Air National Guard members and their families on personal finance, college savings, investment and retirement strategies, insurance, and taxes.

### Information Technology & Communications

The Information Technology and Communications Directorate works to provide the Defense Force with secure and assured information technology and communication services. It is staffed with experienced IT professionals that work in many areas of the IT and communications fields.

### Cyber Security

The Cyber Security Unit provides professional, civilian-military expertise in cyber security to the Maryland Military Department and state and local agencies as a service and assistance to their own cyber security programs. During cyber emergencies, the Defense Force Cyber Security Unit will provide expertise to restore systems to normal operation.

### Cavalry Troop A and the Maryland Defense Force Band

The Maryland Defense Force Cavalry Troop A provides the Maryland Military Department with a ceremonial unit that is a visible link to Maryland's many horse cavalry units of the past, while supporting recruiting and public relations efforts of both the National Guard and Defense Force. The Maryland Defense Force Band provides musical support for the Defense Force, support for the 229<sup>th</sup> Army Band, and supplemental professional musical support to the Maryland Military Department and the Maryland National Guard. The Defense Force Band enhances community relations, general recruitment, and troop morale. Its goal is to communicate the mission of the Maryland Defense Force and the



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### **History of the Maryland Defense Force**

Formally established by the Maryland legislature in 1917, the Maryland Defense Force proudly traces its heritage and tradition back to the 17<sup>th</sup> Century. That inherited spirit of service gave birth to the Maryland State Guard during both World Wars and is the origin of the Maryland Defense Force.

#### **World War I**

On April 6, 1917, Congress declared war on Imperial Germany and her allies and entered the Great War raging on the European Continent. President Wilson called upon the

National Guard units of Maryland for service overseas in Europe. The people of Maryland and the Governor consequently lost control of the only organized and trained defensive body at their disposal, leaving the state open to acts of aggression, unrest, and disaster. In response, the Maryland General Assembly unanimously passed the State Guard Bill (S.B.12), legally authorizing the Governor to:

recruit (through volunteering or draft), equip, train and otherwise maintain a body of armed troops within this State, to be known as the Maryland State Guard and, empowered the Governor to call the State Guard into active State service when the public interest and safety require.

Maryland's citizens responded to a call to service and filled the vacant armories in and around Baltimore, Hagerstown, Frederick, Salisbury, and Annapolis. Nine companies totaling 34 officers and 518 men turned out twice-weekly to drill and train. The State Guardsmen did turn out for active duty twice, in 1919, to keep the peace during controversial criminal trials in Annapolis and Easton.

As quickly as the State Guard came, it went, officially disbanding on March 1, 1920, making way for the Maryland National Guard to return to their armories.

#### **World War II**

In September 1940, Congress, responding to the growing threat



and possibility of involvement in combat operations against the forces of Germany and Japan, again inducted the National Guard troops of the 48 states into federal service.

Once again facing the need for an active, trained, and properly equipped force capable of patrolling and providing a competent response to emergencies in the absence of the National Guard, Maryland passed the State Guard Act on February 14, 1941. The Act expanded and defined the role of the State Guard with greater authority and responsibility in case of activation and detailed a mission of service “in case of insurrection, invasion, tumult, riot, breach of peace or imminent danger thereof, or to enforce the laws of this state with all the authority of sheriffs and deputy sheriffs.”

The authority of a soldier of the Maryland Defense Force called to service in active duty remains similar today: to possess “all the authority of a peace or law enforcement officer.” Md. Public Safety Code Ann. § 13-702(c)(1).

Because the civilian employees that made up the State Guard could not be placed on patrol duty for the indefinite duration of the war, a Special Military Police unit of the Maryland State Guard consisting of 324 officers and men was established on January 9, 1942. By then, the State Guard consisted of: the brigade headquarters company; a radio section; a chemical warfare section; eight infantry battalions; one engineer battalion; one medical battalion; one special military police unit and an African-American battalion.

Muster roles place membership at a high of 2,731 officers and enlisted men enrolled on the muster books for 1944. From October 2, 1941, to August 15, 1945, the Maryland State Guard was called out on 11 separate occasions around the state from Elkton to Cumberland, in addition to the constant patrolling by the Special Military Police unit. State Guardsmen were (and still are) compensated with pay as their National Guard counterparts when on active duty.

By 1947, the last of the Maryland State Guard formations of World War II were disbanded, and once again the role of state defense was returned to the established National Guard units. During the ensuing Cold War, a variety of federal and state legislative efforts

grappled with the need for additional state troops and to define their role and purpose.

### **Expanded Role of the National Guard**

The "Total Force" doctrine adopted by the U.S. Army in 1970 expanded the role that National Guard troops would play in future Army deployment plans. If rapid expansion and deployment of force was necessary, Reserve and National Guard units would be called upon first, before the Army turned to a draft to supplement its strength. National Guard units were called upon to change their mission to adopt key logistical and security support roles such as vehicle maintenance and military police functions. This plan was demonstrated in the rapid activation of many National Guard support units in the First Gulf War and worked well.

The states that contributed these units recognized that a rapid call up of their National Guard forces left a defense deficit at home, a void that needed to be supplemented in their own right. During the spring 1983 legislative session, Maryland took advantage of federal changes made in 1958 to the language of the National Defense Act of 1916, allowing states to voluntarily maintain forces of their own in times of peace, and passed a reactivation of the State code establishing the Maryland Defense Force on July 1, 1983.

By 1995, more than 20 states had revitalized and organized their state defense units to fill the state defense void. In 1994, the Maryland Defense Force was tasked with armory staffing; possible suppression of terrorism; search and res-

cue; and disaster relief.

The September 11, 2001, terrorist attacks and the subsequent War on Terrorism crystallized a need for layered state defenses and support organizations and tasked the Maryland Defense Force with a new mission: "To provide competent supplemental professional and technical support to the Maryland Military Department as required." Col. Michael Osborn, *Ready When Called: The Maryland Defense Force*, MARYLAND BAR JOURNAL November/December 2007, at 15, 16.

### **Legal Basis of the Maryland Defense Force**

At present, the legal basis for the Maryland Defense Force is contained in 32 U.S.C. §109 and the State Militia Law, which is contained in Title 13 of the Public Safety Article of the Maryland Code. The basic regulation governing criteria and guidance for administration, operations, and training for the Maryland Defense Force is Maryland Military Regulation 1-12 (August 2011). Federal law provides that in time of peace any state or territory including the District of Columbia may maintain no troops other than those of the National Guard and the Defense Forces authorized by Title 32 of the United States Code. Section 109 states:

In addition to its National Guard, if any, a state or territory, Puerto Rico, The Virgin Islands, or the District of Columbia may, as provided by its laws, organize and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding

general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the Armed Forces.

Maryland Defense Force soldiers are considered "state personnel," while on duty or training, even if they are serving in a non-active duty (volunteer) capacity. See 81 Op, Atty. Gen. Md. 121 (1996). In addition, soldiers are covered for workers compensation, in the event of a service-related injury, during state active duty or in training. See Md. Public Safety Code Ann. § 13-210.

### **The Maryland Judge Advocate Corps is Looking for a Few Good Men and Women**

Maryland Defense Force lawyers have provided thousands of hours of pro bono support to Maryland citizens, National Guard soldiers and airmen, and their families. Often, this support is in the form of rushing to court on short notice to seek a stay of proceedings for a deployed guardsman. Some examples of legal matters in which Defense Force lawyers have become involved include:

- Estate and probate support to families left behind when a guardsman is killed in action;
- Establishing guardianship when a soldier is injured such that she or he is unable to participate in his or her own care, property or financial decisions;
- Intervention in family law matters involving separation and divorce, custody, child support, visitation, parental rights or property division;
- Intervention against debt collection efforts by creditors



against deployed soldiers or airmen;

- Pursuit of, or defense against, home improvement contractors, service providers or others who seek to retain funds from guardsmen;
- Employment and reemployment disputes upon the return home of deployed guardsmen;
- Real estate disputes, including title, deposits, improvements, quiet use or eviction;
- Bankruptcy qualification, discharge or renegotiation of debt;
- Public school enrollment, services to special needs children, expulsion, qualification for in-state college tuition and fees at Maryland institutions;
- Certifying children and, at times, parents, as dependents so they may qualify for medical care at military treatment

facilities run by the federal government;

- Immigration and naturalization concerns;
- Motor vehicle title, registration and insurance coverage issues;
- Qualification of veterans' or military associations as IRS section 501(c) organizations; and
- Tax issues, both federal and state.

As previously noted, in addition to legal support to guardsmen and their families, Judge Advocates also represent the command. In doing so, they provide assistance to commanders in matters relating to the state military justice system, organization, personnel, statutory and regulatory interpretation, orders for duty out of state, and training. While many Defense Force attorneys have prior military experience,

prior service is not a prerequisite for commission as a Judge Advocate. The only real prerequisite is a sincere desire to assist soldiers and airmen, their families, and the citizens of Maryland. The need for Maryland Judge Advocates is most acute in the areas of family law, consumer protection, real estate, creditor-debtor rights, and military and veteran's assistance. To learn more – or to volunteer – please visit <http://mddf.maryland.gov>.

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