



Commander's Legal Handbook 2025

The Judge Advocate General's Legal Center and School
Misc. Pub. 27-8

This Handbook is designed to assist Commanders with legal situations by helping them to recognize and avoid issues, or take immediate actions necessary to preserve the situation when legal issues arise. Commanders should always consult their servicing Judge Advocate to discuss specific cases.

Summary of Key Changes in This Edition:

- All chapters updated for current law and policy.
- Added Scope and Purpose to the front matter
- Consolidated prior prefaces into a single introduction.
- All Military Justice chapters incorporate the integration of the Office of Special Trial Counsel (OSTC) including two new diagrams in Chapter 1.
- The separate urinalysis chapter was eliminated -- urinalysis is addressed as a search within Chapter 7.
- A number of chapters are renamed to align with the current program name in Army policy.
- Added a new Chapter 26 on Social Media Use.
- Rewritten Chapter 55 on Consumer Protection Law.
- Added a new Chapter 58 on Environmental Law.

This publication is not meant to replace or supersede the independent legal advice of your servicing Judge Advocate.

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**The Judge Advocate General's
Legal Center and School**

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IMPORTANT NOTE: The Commander's Legal Handbook is current as of 7 July 2025. Policies can change often, so please consult your servicing Office of the Staff Judge Advocate to ensure that you have the latest guidance.

Scope and Purpose

As an Officer of the Armed Forces of the United States you are a citizen-soldier, a warrior in the profession of arms, a member of a skilled profession, an unwavering defender of the Constitution and a servant of the nation. A leader of character, you accept unmitigated personal responsibility and accountability to duty, for your actions and those of your subordinates.

--US Dept of Defense, *The Armed Forces Officer*, xiii (2017)

As indicated in the *Armed Forces Officer*, officers in general, and particularly officers in command, have an extremely broad and pervasive level of responsibility. That responsibility is expressed in the current priorities of the Department of Defense. These are restoring the Warrior Ethos, rebuilding our military, and defending our homeland -- all with a focus on lethality, meritocracy, accountability, standards, and readiness. Many command responsibilities are tied to, and depend upon, law and policy. **It is the purpose of the *Commander's Legal Handbook* to help Commanders to succeed in achieving the DoD Priorities by providing them the information on law and policy that they need to inspire and lead their formations across the entire breadth of their command responsibilities.**

Army Regulation 600-20, Paragraph 1-6c.(4) in discussing the characteristics of command leadership reflects many of the legal and policy aspects of a commander's responsibility that are addressed in this handbook, advising that:

Professionally competent leaders will develop respect for their authority by—

(a) Striving to develop, maintain, and use the full range of human potential in their organization. This potential is a critical factor in ensuring that the organization is capable of accomplishing its mission.

(b) Giving troops constructive information on the need for and purpose of military discipline. Articles (Art.) in the Uniform Code of Military Justice (UCMJ) that require explanation will be presented in such a way to ensure that Soldiers are fully aware of the controls and obligations imposed on them by virtue of their military Service (see UCMJ, Art. 137).

(c) Properly training their Soldiers and ensuring that both Soldiers and equipment are in the proper state of readiness at all times.

* * *

Leaders at all levels promote the individual readiness of their Soldiers by developing competence and confidence in their subordinates. In addition to being mentally, physically, tactically, and technically competent, Soldiers must have confidence in themselves, their equipment, their peers, and their leaders. A leadership climate in which all Soldiers and DA Civilians are treated with fairness and justice will be crucial to development of this confidence within Soldiers.

Commanders are responsible for developing disciplined and cohesive units sustained at the highest readiness level possible.

In addition, the regulation, based on requirements of exemplary conduct in 10 USC §7233, requires that "All commanding officers and others in authority in the Army are required—

- 1. To show in themselves a good example of virtue, honor, patriotism, and subordination.*
- 2. To be vigilant in inspecting the conduct of all persons who are placed under their command.*
- 3. To guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them.*
- 4. To take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge."*

With all of this in mind, it is our hope that this handbook will prove useful for commanders, promoting their success, their confidence, and their ability to meet the extremely broad and critically important responsibilities to our Soldiers, our Army, our Nation, and our Constitution that make selection for command both a challenge and an extreme honor.

Table of Contents

Scope and Purpose	iii
Introduction: The Commander's Responsibility to Practice Preventive Law.....	1

Military Justice.....5

1. Introduction to Military Justice	7
2. Misconduct: Options and Duties of the Commander	13
3. Unlawful Command Influence	19
4. Commander's Preliminary Inquiry (R.C.M. 303)	27
5. Nonjudicial Punishment (Article 15, UCMJ).....	29
6. Company Grade Article 15 Script	43
7. Search & Seizure	51
8. Self-Incrimination, Confessions, and Rights Warning	67
9. Punitive Articles of the UCMJ	73
10. Fraternization and Improper Senior-Subordinate Relationships	77
11. Proper Responses to Reports of Sexual Assault	81
12. Victim Programs.....	97

Investigations.....103

13. Administrative Investigations.....	105
14. AR 15-6 Investigations.....	107
15. Mishap Investigations (AR 385-10).....	117
16. Line of Duty Investigations	121
17. Fatal Incident Family Briefs.....	129
18. Financial Liability Investigations of Property Loss (FLIPL).....	135

Standards of Ethical Conduct.....145

19. Standards of Ethical Conduct in the Army	147
20. Commander's Coins	153
21. Support to Non-Federal Entities.....	155
22. Government Motor Vehicle Transportation.....	159
23. Accompanying Spouse Travel.....	161
24. Soldier and Family Readiness Groups	163
25. Annual Filing of Financial Disclosure Forms	167
26. Social Media Use.....	171

Administrative Law & Personnel Actions173

27. Administrative Reprimands.....	175
28. "Flagging" Soldiers from Favorable Personnel Actions	179
29. Enlisted Separations	181
30. Officer Separations	197
31. Bars to Continued Service.....	201
32. Qualitative Service Program (QSP).....	207
33. Removal of Enlisted Soldiers from Promotion Lists.....	209

34. Removal of Commissioned & Warrant Officers from Promotion Lists	213
35. Security Clearances - Suspension and Revocation.....	215
36. Sexual Harassment	217
37. Domestic Violence Amendment to the Gun Control Act (Lautenberg).....	221
38. Article 138 Complaints.....	225
39. Relief from Command.....	227
Civilian Personnel Law.....	229
40. Law of Federal Employment	231
41. Labor-Management Relations	235
Medical-Legal Issues.....	237
42. Impact of Misconduct on the Integrated Disability Evaluation System Process.....	239
43. Mental Health Evaluations	247
44. Command Access to Soldiers' Protected Health Information (HIPAA).....	255
Individual Soldier Rights	261
45. Tattoo, Branding, Body Mutilation, & Jewelry Policy	263
46. Conscientious Objection.....	267
47. Extremist Organizations and Activities	269
48. Political Activities by Members of the Armed Forces.....	273
49. Whistleblower Protection	275
50. Service Member's Civil Relief Act (SCRA)	279
51. Religious Accommodation	283
Claims and Client Services.....	287
52. Article 139 Claims.....	289
53. Foreign and Deployment Claims.....	293
54. Family Support Obligations	295
55. Consumer Protection Law	299
Government Information Practices.....	303
56. Freedom of Information Act (FOIA) Program	305
57. Privacy Act Program.....	307
Environmental Law	309
58. Environmental Law	311
National Security Law	319
59. Rules of Engagement.....	321
60. Law of Armed Conflict.....	329
Contract and Fiscal Law	339
61. Fiscal Law for Commanders	341
62. Government Contract Law for Commanders	349
APPENDIX: Useful References for Commanders.....	355

Introduction

The Commander's Responsibility to Practice Preventive Law

"An ounce of prevention is worth a pound of cure."

-- Benjamin Franklin

A. BE PROACTIVE, NOT JUST REACTIVE

This Handbook is designed to assist you in taking proper immediate action when faced with a variety of legal issues that might arise during your command. The purpose of your actions should be to preserve the legal situation until you can consult with your servicing Judge Advocate. However, like most aspects of your command responsibilities, you can fail if you just wait for things to come to you. You need to be proactive in preventing problems before they occur.

In the legal arena, this means establishing and enforcing high standards, ensuring your Soldiers are fully aware of those standards and properly trained to comply with them. You must also properly train your Soldiers on all Army policies and higher-level command standards so that they also understand and comply with them. Soldiers must also be well-versed in the Army Values and be able to apply those values to real-world situations, which will usually keep them well within legal bounds.

All Soldiers have seen issues in the news that can occur when we are not proactive about discipline and standards: bullying, harassment, hazing, domestic violence, sexual assault, and even murder are recent examples. All of these circumstances present serious legal issues. But, fundamentally, they also represent a breakdown in unit standards, training, and discipline. Your objective as a Commander should be to develop solid systems and a command climate that prevents legal issues, rather than just reacting to them. In sum, it is every bit as important to train your Soldiers to maintain a high level of discipline and compliance with law, policy, and military standards, as it is to train them to perform your Mission Essential Task List (METL). In legal circles, we call this effort to prevent legal problems before they arise by properly training Soldiers, "preventative law." The responsibility to practice preventative law belongs to the Commander.

B. PREVENTIVE LAW

While responsibility for practicing preventative law remains with the Commander, your servicing Judge Advocate stands ready to assist you in meeting this responsibility. One of the most valuable services a Judge Advocate can provide to a Commander is eliminating problems before they ever occur through a robust preventative law program.

While preventative law is often contemplated in the context of the legal assistance program, e.g., a class on avoiding unscrupulous payday lenders or auto dealers using bait-and-

switch schemes, the concept of preventative law is central to good order and discipline as well. For example, proper training and emphasis on the standards contained in a General Order #1 prior to entering a Theater of Operations can go a long way toward avoiding the types of problems mentioned above. Your Judge Advocate can help you to properly emphasize these standards in a number of ways. For example, they can help you to cover how previous Soldiers have violated this directive and the administrative and punitive actions that followed the offenses without violating due process, privacy, or practicing unlawful command influence. They can also help you to analyze systems and look at weak points and behaviors in your organization that, while not violating the law now, might lead to legal issues. For example, they can help you to craft policies for barracks living arrangements, curbing abuse of alcohol, and providing security while respecting privacy – all of which can help to prevent sexual assaults.

So, as you read and use this guide, please do not use it as an excuse to avoid your servicing Judge Advocate. We hope that you will reach out to your lawyer, and that they will reach out to you, so that through your relationship with this important member of your personal staff, you can receive the advice and assistance you need to have an exceptional and rewarding command experience.

C. TOP 10 SITUATIONS WHERE YOU SHOULD IMMEDIATELY CONSULT YOUR SERVICING JUDGE ADVOCATE

1. After receiving a report of any criminal offense

Many offenses have reporting or other policy requirements, such as sexual assault, sexual harassment, hazing, etc. Your servicing JA will ensure that all of these requirements are met and then can advise you on your options to handle the report and/or the offense.

2. Before appointing an investigating officer

If you need to initiate a preliminary commander's inquiry, an informal investigation or a board of officers under AR 15-6 informal or formal investigation (including EO investigations), or a line of duty or financial liability investigation of property loss, ask your servicing JA for assistance. Your servicing JA can offer advice on the appropriate type of investigation as well as assist in drafting the appointment memorandum that governs the scope of the investigation.

3. Before conducting any search (for example: drug test, breath test, barracks room)

Your servicing JA will be able to confirm whether you have sufficient information (or probable cause) to conduct the search, thus enabling you to use the search results in follow-up administrative, non-judicial or courts-martial proceedings.

4. Whenever you are considering any adverse personnel action against a Soldier.

Your servicing JA will help you to ensure that your action complies with all law and regulation and is feasible before you announce your intention to pursue the action. Adverse

actions include, but are not limited to, flagging a Soldier, administrative separation, removing the Soldier from certain status positions (such as drill sergeant), relief for cause, and issuing a memorandum of reprimand.

5. Before administering nonjudicial punishment under UCMJ, Article 15.

Your Servicing JA will help you to ensure that your action complies with the UCMJ and can be supported at court-martial if the Article 15 is declined.

6. After receiving a family support or debt collection complaint

Your servicing JA can identify what type of support is required, identify if an exception exists, identify if “payment in kind” is appropriate, and assist in doing “the math” when formulas must be used in the event of multiple dependent children located in various households. Additionally, they can confirm that the letter you must draft within fourteen days meets the requirements of AR 608-99. Similarly, Soldiers are expected to pay their debt to creditors, but only creditors are entitled to assistance from the Command, debt collectors are not. Your servicing JA can help you to determine the status of the entity requesting your assistance and what your proper options are as a commander.

7. Before approving any fundraising activity

Fundraising approval authority is subject to state law and current installation policy. Regardless of whether it is for your FRG or some other entity, you need to discuss this fully with your JA before taking any action.

8. Before providing (or agreeing to provide) support to any private organization (PO)

Support to POs is limited by the Joint Ethics Regulation (JER) and subject to the proper approving authority. All POs must be supported equally with no preferential treatment (that is, if you provide support to one PO, you must be prepared to provide similar support to all similarly situated POs).

9. Before collecting monies for departure gifts

Your servicing JA can define a “donating group” and inform you of the limitations for soliciting in the government workplace. Furthermore, he can make suggestions to ensure there is no improper pressure on subordinates or an appearance of impropriety.

10. Before purchasing certain items with official funds.

Certain items that have become traditional in military culture are not allowed to be purchased with official funds, or have very specific rules governing their purchase. These types of items include, but are not limited to, commander’s coins, T-shirts, food items, and bottled water. Your servicing JA can help you to ensure your purchase is proper.



Military



Justice



Introduction to Military Justice

A. SOURCES OF AUTHORITY

The military justice system derives its authority from four major sources:

1. The United States Constitution

The United States Constitution authorizes Congress to make rules for the regulation of the armed forces, which includes the authority to make rules for military justice. Pursuant to this power, Congress enacted the Uniform Code of Military Justice. The Constitution makes the President the Commander-in-Chief of the armed forces and entrusts the President with the duty of ensuring that the laws are faithfully executed. The Constitution also guarantees various rights to those accused of crimes, including Soldiers. But the Constitution does not provide Soldiers with all of the rights that civilians enjoy.

2. The Uniform Code of Military Justice (UCMJ)

The UCMJ is a federal law and the basis of our military justice system. It determines what conduct is criminal, establishes the various types of courts, and sets forth the procedures to be followed in the administration of military justice. You can find the UCMJ in Appendix 2 of the Manual for Courts-Martial, United States, 2024 or in 10 United States Code (USC) §§801-940.

3. The Manual for Courts- Martial (MCM)

The MCM is an executive order that details the rules for administering military justice. For example, it sets forth the rules of evidence for courts-martial and contains a list of maximum punishments for each offense.

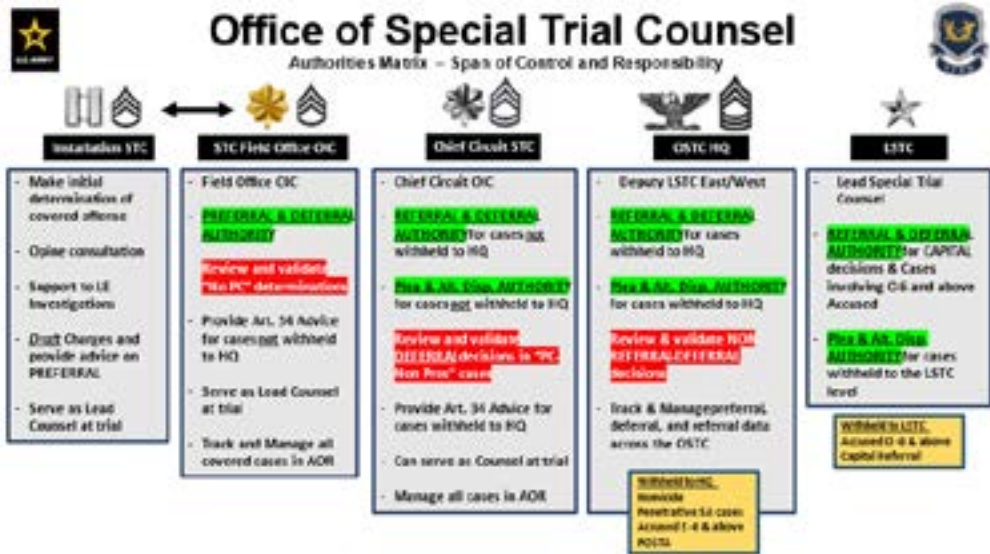
4. Army Regulation 27-10

AR 27-10 supplements the MCM and is the basic Army regulation for administering military justice.

B. ROLE OF COMMANDERS

Commanders are responsible for both enforcing the law, protecting Soldiers' rights, and protecting and caring for victims of crime. Unit discipline and morale may depend on how wisely its commander exercises his or her authority. Commanders are also responsible for providing administrative support to judicial proceedings. In addition to ensuring that accused Soldiers appear at all proceedings, in uniform, commanders may also be required to provide witnesses, vehicles, drivers, escorts, and bailiffs for those proceedings. Commanders should also support the service of their officers on court-martial panels.

As of 28 December 2023, based on reforms contained in the FY22 NDAA and FY23 NDAA, the Office of Special Trial Counsel (OSTC) has exclusive authority over covered offenses. Covered offenses are those offenses defined at Article 1(17), UCMJ and include: 117a (wrongful broadcast), 118 (murder), 119 (manslaughter), 119a (death of an unborn child), 120a (mailing obscene material), 120 (rape and sexual assault), 120b (sexual assault of a child), 120c (other sexual misconduct), 125 (kidnapping), 128b (domestic violence), 130 (stalking), 132 (retaliation), 134 (child pornography) and 134 (formal, substantiated cases of sexual harassment effective 1 January 2025). Commanders may not take action on covered offenses until deferral by the special trial counsel has occurred. After deferral, a commander may not refer a covered offense to a special or general court-martial. Please see the chart below detailing disposition authority for covered offenses.



Although commanders have a limited role to play in the disposition of covered offenses, they remain responsible for maintaining good order and discipline within the unit and play critical roles in the process regarding pretrial restraint, the Article 32 process, and the convening of courts-martial.

C. RIGHTS OF SOLDIERS

The military justice system provides for certain fundamental rights and safeguards that must be considered in any case involving criminal conduct.

1. Presumption of Innocence

Under our legal system, everyone is presumed innocent until a court finds them guilty beyond a reasonable doubt or a commander finds them guilty by a preponderance of the evidence in a nonjudicial punishment hearing. A court or commander may make a fair and just decision only after hearing all the evidence relating to the guilt or innocence of an accused.

2. Legal Counsel and Right to Remain Silent

Laws prohibit compulsory self-incrimination and provide that anyone suspected of committing a crime has the right to consult with a lawyer. Congress realized that Soldiers may not understand their rights and may be intimidated by the mere presence of a superior. Therefore, under military law no one may question a suspect without first determining that the suspect understands the nature of the offense, the right to remain silent, and the right to counsel. If interrogators violate these rights, the evidence obtained may not be used against the accused. You must protect your unit members' rights and preserve the government's case by ensuring that your subordinate commanders understand and comply with UCMJ, Article 31, and right-to-counsel requirements.

3. Search and Seizure

The United States Constitution protects every citizen from unreasonable searches and seizures; however, the right to privacy is not absolute. Courts have balanced individuals' rights against society's needs and have established rules for determining when a search is reasonable. The evidence obtained from unreasonable searches may not be used in a trial. This discourages indiscriminate invasion of privacy by government officials. Under military law, you may authorize searches if you determine such searches will not violate Soldiers' rights. However, a court-martial may well review your decisions. You should consult your judge advocate before ordering a search or a seizure.

4. Prompt Action

The Sixth Amendment to the Constitution and UCMJ, Article 10, guarantee the right to a speedy trial. The accused Soldier has the right to be advised of the charges against him as early as possible. Normally, the accused must come to trial within 120 days of either pretrial restraint or referral of charges, whichever is earlier. Actions that you take may trigger the speedy trial clock without you knowing it. If you believe you must place restrictions or restraint on a Soldier it is best to talk with your judge advocate before doing so. If you place any restrictions on an accused without first seeking legal counsel, talk to your judge advocate immediately. A speedy trial assists both the government and the accused, decreasing the possibility that fading memories or the availability of evidence will impact ascertaining all the facts.

D. THE COURT-MARTIAL SYSTEM

1. Justice Is the Goal of the Court-Martial System

Courts-martial are adversarial proceedings. That is, lawyers representing the government and the accused present facts and arguments most favorable to each side. In doing so, they fol-

low the rules of procedure and evidence. The judge decides questions of law. The court-martial members apply the law and decide questions of fact.

2. Duties of Counsel

At a court-martial, a trial counsel represents the government, and a defense counsel represents the accused. Each counsel is duty-bound to do everything possible within the law to represent the interests of his or her client. Trial counsel also have the duty to protect the rights of crime victims and the rights of the accused.

3. Determination of Criminal Conduct

A crime is an act for which the law provides a penalty. Violations of Army regulations, state and federal laws, and the orders of superiors may constitute criminal conduct punishable under the UCMJ. You can resolve any question of what constitutes criminal conduct under the UCMJ by calling your staff judge advocate or your servicing judge advocate. A Soldier's conduct may be substandard or personally offensive without being criminal.

4. Types of Courts-Martial

The court-martial system consists of three types of courts-martial: a summary court-martial, a special court-martial, and a general court-martial.

a. Summary Court-Martial

A summary court-martial (SCM) is a court composed of one officer who may or may not be a lawyer. The SCM handles minor crimes of enlisted Soldiers only, and has simple procedures. The maximum punishment, which depends upon the rank of the accused, is limited to confinement for one month (for E4s and below), forfeiture of two-thirds pay for one month, and reduction in grade. An SCM may not try an accused against his or her will. If he or she objects, you may consider trial by a higher court-martial, if not a covered offense withheld to the OSTC. The accused does have the right to military counsel at an SCM and may see a trial defense attorney before the court-martial.

b. Special Court-Martial

There are two types of special court-martial (SPCM) under Art. 16, UCMJ. The first consists of a military judge and four members (though the accused may elect to be tried by military judge alone). The maximum sentence for this type of SPCM is a bad conduct discharge (BCD), confinement for twelve months, forfeiture of two-thirds pay per month for twelve months, and reduction to the lowest enlisted grade. (See MCM, R.C.M. 201(f)(2)(B).) If a BCD is adjudged, the accused has a right to an automatic appeal to the Army Court of Criminal Appeals. The second type of SPCM consists of a military judge alone and no members. This SPCM has certain limitations. Specifically, no punitive discharge is authorized, confinement cannot exceed six months, and there cannot be a forfeiture of pay to exceed six months.

c. General Court-Martial

A general court-martial (GCM) tries cases over all Soldiers for the most serious offenses. It consists of a military judge, eight members (unless the accused elects to be tried by a military judge alone), a trial counsel, and a defense counsel. Unless waived by the accused, a formal preliminary hearing (an “Article 32” hearing) must occur before a general court-martial may try the case. The GCM may adjudge the most severe sentences authorized by law, including the death penalty.

d. Typical Army Court-Martial Process

The following is a diagram of a typical court-martial process. The process for some courts-martial may differ in some respects from the diagram, but ordinarily a court-martial follows the process below. Note that while all three types of courts-martial are depicted on the diagram, an accused Soldier will be tried only by the one type of court convened in his or her case. Please note that for a covered offense withheld by OSTC, the chain of command and their decisions regarding the type of court-martial, if any, represented below would be made by the OSTC.

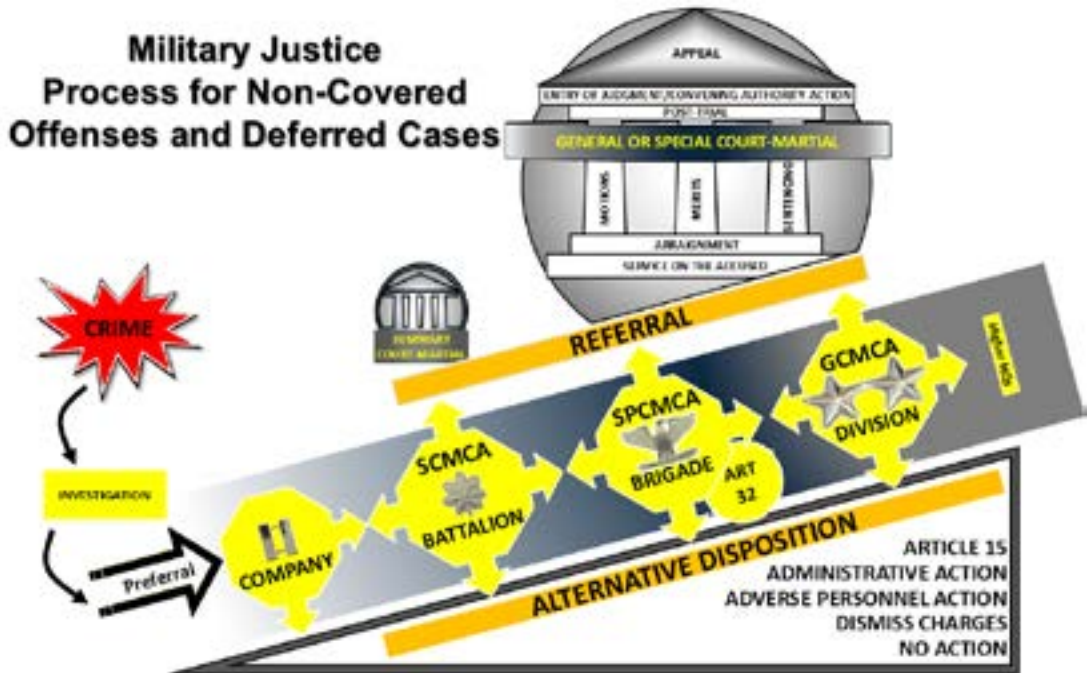
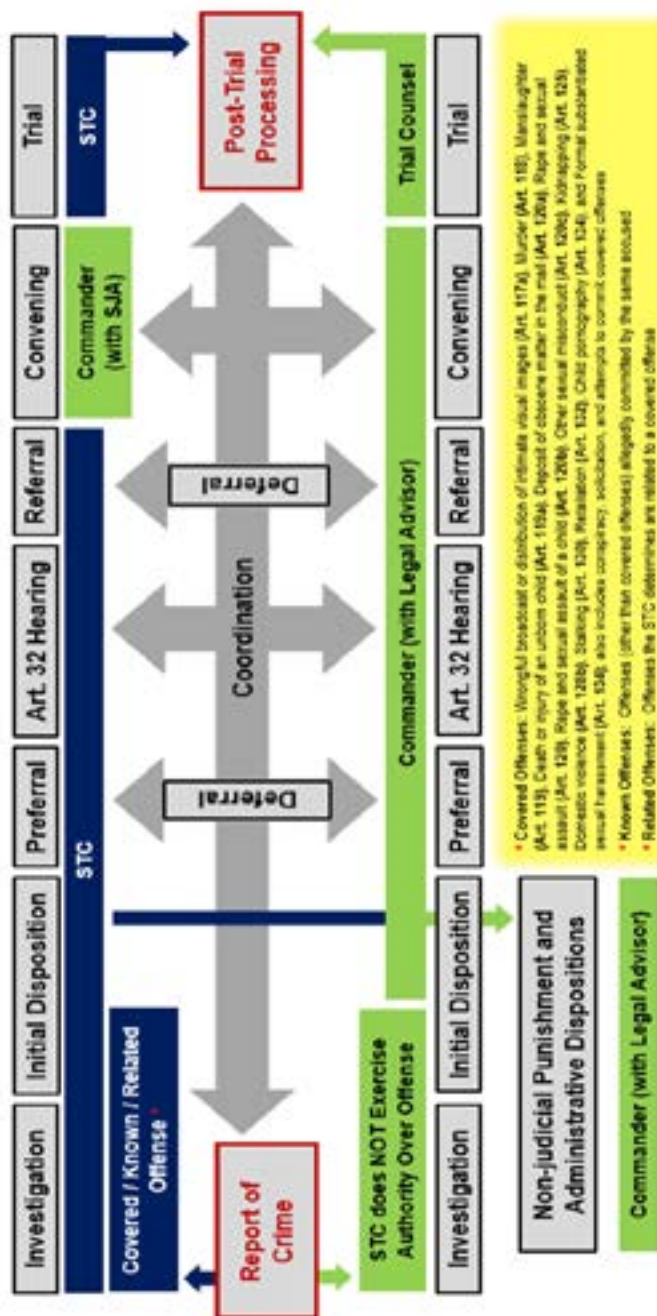


Diagram #1: Military Justice Process for Non-Covered Offenses

COVERED OFFENSES FLOW CHART



Overlapping, interdependent roles and responsibilities

Diagram #2: Military Justice Process for Covered Offenses

Misconduct: Options and Duties of the Commander

This chapter provides an OVERVIEW of the considerations and decisions the Commander needs to make after he or she learns of misconduct. Many of the areas are discussed in more detail in later chapters of the Guide. Cross-references are provided in those instances. Your servicing Judge Advocate is always available to talk through these options with you. You should consult them early and often as you think through these options.

A. OVERALL RESPONSIBILITIES

1. A Commander's System

The disciplinary system in the military is a commander owned and operated system. Commanders must act responsibly and in support of the goals of the system in order to protect their prerogatives.

2. Goals of the System

There are dual goals in our system that often must be balanced in the commander's judgment. First is maintaining good order and discipline in the unit. The second goal is justice which requires a disciplinary system that is fair to the Soldiers facing it. Both goals are equally important and intertwined with each other.

3. The Commander's Role

The Commander plays a quasi-judicial role in the system, making decisions that in the civilian sector would be made by professional prosecutors or judges. Commanders must remain neutral and detached from the circumstances by making the best decision for the unit, the Soldier, and the interest of justice. Commanders must consider each case, even those under the exclusive authority withheld to OSTC, individually in the context of a consistent disciplinary philosophy.

B. INVESTIGATE

The Commander's primary obligation is to ensure that allegations of misconduct are expeditiously, fairly, and impartially investigated. There are several options for investigating depending on the circumstances. See Army Regulation 195-2, Appendix B. As allegations of misconduct arise, your servicing Judge Advocate can discuss these investigative options with you and help you to determine the best course of action. For serious crimes, like drug offenses, sexual offenses, etc., you need to report the offense to CID immediately. For less serious crimes that involve property or people, you need to report the offense to the military police. These law enforcement organizations will generally conduct the investigation. For many crimes that affect

discipline without also affecting property or people, you may be responsible for conducting the investigation; talk to your legal advisor. In all instances, when you receive a report or learn of misconduct, your servicing Judge Advocate is in the best position to ensure you are complying with your reporting and investigative requirements.

1. Preliminary (informal) investigation (aka “Commander’s Inquiry”)

Except for special trial counsel covered offenses as defined by Article 1(17) UCMJ, upon receipt of information that a member of the command is “accused or suspected of committing an offense . . . triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.” Rule for Courts- Martial (R.C.M.) 303. This can be a very informal investigation. No appointment letter is required. If you receive a report of a covered offense you must promptly forward the report to a special trial counsel.

2. AR 15-6 Investigation (See Chapters 13 & 14)

You, or a superior commander, may conduct (or direct) an AR 15-6 investigation, especially if you are not sure whether a criminal offense has been committed. Often, these investigations involve formal appointments. If you want to conduct an AR 15-6 investigation, contact your servicing Judge Advocate.

3. Article 32, UCMJ Preliminary Hearing

“[A] preliminary hearing shall be held before referral of charges and specifications for trial by general court-martial.” Article 32(a)(1)(A). For cases that are being considered for a general court-martial, your brigade commander (the special court-martial convening authority) may appoint an Article 32 preliminary hearing. If a special trial counsel is exercising authority over the charges and specifications, the special trial counsel shall request a hearing officer and the command must provide a preliminary hearing officer.

The Article 32 preliminary hearing will generally require the appointment of a judge advocate officer to conduct the preliminary hearing and will take a week or two to complete. The preliminary hearing must take priority over all other duties for the hearing officer, who will be provided an independent legal advisor to assist them. Each general court-martial requires a preliminary hearing. However, an accused can waive his or her right to an Article 32 preliminary hearing. At the preliminary hearing, the accused and his or her counsel will be present.

Victims named in the charge sheet have the right to be notified, present evidence and be present during the preliminary hearing proceedings.

C. CONSIDER ALTERNATIVES TO DISPOSE OF THE MATTER

1. No action/dismissal. Sometimes the appropriate action is no action or dismissal.

2. Nonpunitive/Adverse Administrative Action

- Flag (See Chapter 28).
- Letter of reprimand (Local or AMHRR Filing).

- Bar to Continued Service (Impose/appeal/lift) (See Chapter 31).
- Relief for cause.
- Administrative separation (which chapter, type of discharge, notification or board) (See Chapters 29 & 30).

3. Nonjudicial punishment (Article 15) (See Chapters 5 & 6)

- Summarized
- Company-grade
- Field-grade
- Other Decisions: Suspend punishment, Filing determination, Appellate action.

4. Judicial action (See Chapter 1)

Consult with your Servicing Judge Advocate immediately if you believe the situation will warrant judicial action. Chapter 1 contains a description of the types of courts available, which are: Summary, Special, and General Court-Martial.

5. RCM 306 Factors and Non-Binding Disposition Guidance

Except for offenses over which a special trial counsel has exercised authority and has not deferred, each commander has discretion to dispose of a charge or suspected offense. A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally. When determining the disposition of a matter, the Commander should review and consider the non-binding disposition guidance issued by the Secretary of Defense which is contained at Appendix 2.1 of the 2024 Manual for Courts-Martial. Your servicing Judge Advocate can assist you in discussing and considering this guidance as it relates to a particular set of facts.

D. PRETRIAL RESTRAINT (R.C.M. 304)

During the investigation and disposition of a misconduct allegation, a Commander may determine that conditions or restraints are needed on the subject Soldier to ensure no further misconduct. Absent emergency or exigent circumstances, you should ALWAYS discuss the case with your servicing Judge Advocate before imposing pretrial restraint of any type. By implementing any type of restraint higher than conditions on liberty, you may have triggered the “speedy trial clock”—that is you will have started to use the limited number of days the government has to prepare and bring the accused to trial.

1. Types of pretrial restraint (R.C.M. 304(a))

a. Conditions on liberty

Conditions on liberty include actions like pulling pass privileges and ordering an accused not to contact someone else, or not go to a specific location. These types of conditions do not trigger the speedy trial clock.

b. Restriction in lieu of arrest

Restriction in lieu of arrest includes restricting an accused to a specified area. These types of restrictions trigger the speedy trial clock. If you do something more severe than pulling pass privileges or issuing a no-contact order, you have probably issued restrictions in lieu of arrest.

c. Arrest

The line between restriction in lieu of arrest and arrest is not clear. Generally, if the accused is still going to work and performing all duties, then he or she is not in arrest. However, if the restrictions you put on the accused are too strict, a court might conclude that the accused was under arrest by looking at the totality of the circumstances surrounding the restrictions. Arrest triggers both the speedy trial clock and speedy trial protections under Article 10 of the UCMJ. Under Article 10, someone that is being held in arrest or pretrial confinement gets the highest priority for having his or her case processed. If the government is not moving the case at a reasonable pace, the case can be dismissed with prejudice. In addition, if the conditions are so strict that the accused is essentially in jail, then the accused may be entitled to other judicial relief.

Consult your Judge Advocate before imposing any conditions on a Soldier suspected or accused of a crime. Additionally, be advised that Soldiers and Commanders often refer to all pretrial restraint as “restriction,” but the legal definition of the restraint (whether they are conditions on liberty, restriction in lieu of arrest, or arrest), and their corresponding consequences, will depend on all the facts surrounding the restraint.

d. Pretrial confinement.

There is no bail system in the military. Thus, the general presumption is that Soldiers will not go into pretrial confinement and pretrial confinement shall not be used ordinarily for cases involving summary courts-martial. However, if you order an accused into confinement, he will stay there unless a military magistrate or military judge overrules your decision. Therefore, you must consult with your servicing Judge Advocate and carefully follow the procedures outlined below.

2. Procedures for pretrial confinement. (R.C.M. 305)

To order someone into pretrial confinement, you must comply with the following requirements:

- Have probable cause, that is, a reasonable belief that the person committed an offense triable by court-martial AND
- Confinement is necessary because the accused is a flight risk OR will commit serious future misconduct; AND
- Lesser forms of restraint are inadequate. It is not enough that the accused is a pain in the neck or a hassle. He must either be a flight risk OR have the potential to commit SERIOUS future misconduct, which could include SERIOUS threats to your unit’s discipline and readiness. You are not required to try lesser forms of restraint in those cases where lesser forms will be obviously inadequate. Keep in mind that once the accused goes into pretrial confinement, you are responsible for his well-being while he is in confinement (you or

someone from your command will likely have to visit him or her on a regular basis) and you will be responsible for bringing the accused to his attorney for case work and to all of the proceedings.

Within 48-hours of ordering the accused into confinement, your decision must be reviewed by a neutral and detached officer. Within 72-hours, you must memorialize your decision into a memorandum. Within 7-days, a magistrate will review your decision and decide whether continued pretrial confinement is necessary. Very often, you will write the 72-hour memorandum immediately and the magistrate will conduct the 7-day review within 48-hours, which satisfies the 48-hour review requirement, too. Remember, it is essential that you consult with your servicing Judge Advocate before placing any restraints on a Soldier's liberty.

E. TRIAL DECISIONS

1. Request for Discharge in Lieu of Court-Martial. Chapter 10, AR 635-200

a. Requirements

- Offense must carry a punitive discharge as a possible punishment or,
- Combination of charges would permit a BCD under R.C.M. 1003(d) and
- Case is referred to a court authorized to adjudge a punitive discharge.

b. Relationship between covered offenses

In cases where the special trial counsel has exercised authority and not deferred, the GC-MCA will obtain concurrence from the special trial counsel prior to action on the request for discharge in lieu of trial by court-martial.

c. Approval Authority

Only a General Court-Martial convening authority may approve or disapprove. For offenses over which a special trial counsel has exercised authority and not deferred, the GCMCA may not approve the request unless the special trial counsel agrees to withdraw and dismiss charges and specifications. See AR 27-10 para. 5-25.

d. Type of discharge

Usually Under Other than Honorable Conditions.

e. When to recommend/accept?

Some examples include cases where it is unlikely the court will give much of a sentence; there is a need to protect child victims from testifying; the command chooses not to use a massive outlay of resources; the unit is preparing to deploy, or if there is no negative effect on command disciplinary climate.

2. Plea Agreements. R.C.M. 705.

Many courts-martial are resolved by plea agreements. Plea agreements are made between the accused and convening authority or the accused and special trial counsel where the accused agrees to plead guilty to some or all of the charged offenses and the convening authority agrees to limit any possible sentence. In cases where special trial counsel has exercised authority and has not deferred, an agreement can only be made by the accused and special trial counsel. Any such agreement may bind convening authority and commanders. However, you may be asked for your recommendation on whether the convening authority should accept a plea agreement.

- Either side, the government or defense, may initiate the agreement.
- Some examples of when you may consider recommending that the convening authority accept a plea agreement are cases where the offer presents an acceptable sentence for the offense, in order to save significant resources, and to expedite the resolution of the process or cases relying on the testimony of reluctant witnesses.
- Counter-offers from the side that did not initiate the agreement are permitted; you may be asked for your recommendation if there is a counter-offer.

Unlawful Command Influence

A. SHIFT IN ROLE

In your legal role as a commander, you must have a shift in mindset. You play a quasi-judicial role within the military justice system that precludes you from directing subordinate commanders in the way that you might otherwise do in an operation. Even if you think that you are just “mentoring” and “coaching,” you can commit Unlawful Command Influence (UCI). Generally, UCI is the improper use, or perception of use, of a superior authority to interfere with the court-martial process. The readings in the Appendix to this Chapter offer a good explanation as to why commanders should use caution when discussing the military justice system, and why, before you do so, you should consult with your servicing Judge Advocate. This chapter is not meant to discourage commanders from talking about military justice, good order and discipline with subordinates. When done so properly, a command appropriately exercises lawful command emphasis, which is a tool you should use to reinforce issues related to military justice.

B. FRAMEWORK

1. Accusatory (the process of bringing charges) v. Adjudicative (the actual trial)

Accusatory UCI happens when someone that is responsible for bringing charges or processing charges takes a certain action because someone else pressured him or her to take that action. Adjudicative UCI is unlawful influence that taints the trial process itself – the military judge, the defense counsel, the panel members, or a witness is pressured to do or not do something.

2. Apparent v. Actual

UCI does not have to actually occur for there to be a problem. If the conduct in question would cause members of the public to think that the accused cannot receive a fair trial – then that can be enough for the military judge to grant the accused some relief. This is often referred to as “apparent UCI.” However, Article 37 of the UCMJ, states that before appellate relief can be awarded to an accused, there must be a determination that the UCI act materially prejudiced a substantial right of the accused. This would appear to nullify apparent UCI, but future case law may determine that apparent UCI can still occur.

3. Inadvertent v. Intentional

A commander or superior does not have to intend to commit UCI or have some sinister purpose. A commander or superior can have good intentions and still commit UCI. This happens most frequently when commanders mentor subordinates or address Soldiers about military

justice topics but stray from discussing good order, discipline and process into discussing specific cases or expected results.

4. Conduct That Does Not Constitute UCI

Article 37, UCMJ recognizes the reality that commanders frequently seek and offer mentorship in the subordinate and superior relationship dynamic. Accordingly, Article 37, UCMJ now permits commanders broader authority to talk about military justice matters. Specifically, the following conduct does not constitute UCI:

Statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, or a particular court-martial finding or sentence, or do not relate to a particular accused.

A superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of this chapter with a subordinate convening authority or officer.

A subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense.

However, these permissions are still subject to other express prohibitions in Article 37, UCMJ. Fundamentally, while mentorship may occur, superior convening authorities or officers may still not direct subordinates to make a particular disposition in a specific case. Subordinate convening authorities and officers must exercise independent discretion.

5. The MCM v. Administrative Matters

The principles of UCI fully apply to Article 15s and all courts-martial. Because this concept arises in the UCMJ, it is generally limited to procedures that are found in the UCMJ. Accusatory UCI concepts generally do not apply to administrative proceedings like administrative separation boards. In fact, there are several regulations that include requirements for subordinates to initiate separation boards, GOMORs, or grade reduction boards. The Secretary of the Army can direct a subordinate to initiate a GOMOR or a separation board. However, the Secretary of the Army could not do the same for a court-martial or Article 15. Because tampering with an administrative proceeding is already a violation of the UCMJ, UCI generally does not apply to administrative proceedings.

6. What Are Things You Can Do That Are NOT UCI?

- Withhold authority over types of offenses, types of offenders, or certain commanders. Often, battalion commanders withhold drug offenses and certain types of assaults to their level, and often, commanding generals withhold the authority to deal with officer and senior NCO misconduct. A very recent example is the withholding of the disposition of Sexual Assault cases to the Brigade Commander by Secretary of Defense Policy Memo (See Chapter 12).
- Reach down and take specific cases.
- Send cases back down to subordinate commanders with the guidance to take any action, to include no action, in order to dispose of the case at their level. If you send a case back

down to a subordinate, you cannot attach strings, as in, “I’ll let you handle this case provided you at least give X, Y, or Z.”

- Provide mentorship to subordinate commanders as to factors or considerations you normally consider when evaluating disposition options in cases. Any guidance or mentorship should not cause a subordinate convening authority or officer to think, “My boss wants me to do X.”
- Offer broad statements about criminal activity that are non-specific to any particular case or accused. For example, “We will aggressively investigate all allegations of sexual assault and we treat the rising number of cases very seriously.”

C. PROBLEM AREAS

1. Deployed Commander Communicating To Rear Detachment Commander

Rear detachment commanders usually brief the forward commander on what is going on in detachment. That can be a problem when the rear commander briefs legal actions to the forward commander. The forward commander may give explicit instructions on what to do in cases, or there might be implicit approval of certain actions but not others. If you are a rear detachment commander and you have UCMJ authority, you must exercise it independently from that forward commander. If your forward commander wants information on the legal actions in the rear unit, the best course of action is to have your Judge Advocate communicate that information. Your Judge Advocate will be vigilant toward the UCI concerns.

2. Policy Memos, OPDs, and Mentoring

Commanders are used to coaching and mentoring across the full spectrum of leadership and often want to share their philosophy on military justice as they try to develop junior leaders. When this coaching and mentorship covers military justice, however, problems may arise. Subordinate commanders may start to change their actions based not on what they think the appropriate action is, but based on what they think their superior wants to see. Congress was aware of this tension and wrote in Article 37 that it is acceptable to give general instruction on military justice on things like procedure and what constitutes offenses. Once you start to talk about expectations of results, specific offenders, or any matter that may alter the way a subordinate commander decides disposition, a witness testifies, or a potential panel member votes regarding guilt or a sentence, you may be committing UCI. In Appendix B, you will see some readings on this problem. Note that this tension has been around for a long time. You will not be the first commander that will want to coach and mentor on military justice, and you won’t be the last. The best thing to do is to talk to your Judge Advocate about how to craft a message that provides Lawful Command Emphasis and avoids UCI.

3. Subordinates Committing UCI Without Your Knowledge

As you gain experience and responsibility in the court-martial process, you tend to commit fewer mistakes and instead, have to deal with the mistakes of your subordinates. If your

Judge Advocate brings you a problem that a subordinate has created, work to fix it at your level. Often, if you fix the problem, the military judge will later find that you solved the problem.

D. EXAMPLES OF UCI

- “I am absolutely uncompromising about discipline in the leader ranks.”
- “I am going to CRUSH leaders who fail to lead by example.”
- “There is no place in the Army for drug users.”
- “Reduction in grade and \$500 is a starting point.”
- “TDS is the enemy.”
- “The accused is a scumbag. Stay away from him.”
- “You testified for the accused? You have embarrassed the unit.”
- PAO comments: “They will likely be discharged from the Army.”

E. PREVENTING A PROBLEM

- Have your Judge Advocate give a class to your unit on lawful command emphasis vs. unlawful command influence and the ways that people in at your level of command can communicate without committing unlawful command influence.
- Have your Judge Advocate review statements or policies prior to signature or release.
- Ensure that your SJA and PAO are working together on statements.
- Focus on the process, not the result; focus on the offense, not the offender. If you need to
- make a public statement about a case, use language like this:

“[This type of misconduct] has no place in the Army. [This type of misconduct] erodes unit cohesion and mission effectiveness. Allegations of [this type of misconduct] will be thoroughly investigated and appropriate action will be taken based on that investigation.”

F. FIXING A PROBLEM

While each problem is unique, there are some common steps you might consider. Consult your servicing Judge Advocate before you take action in any case. By taking proactive action to cure UCI before trial, you reduce the chances of the military judge taking adverse action at trial.

- Consult with your SJA.
- Issue a revised policy statement.
- Conduct an investigation.
- Take corrective action against someone who commits UCI.
- Transfer offenders.
- Apologize.
- Provide a briefing on duty to testify.

Appendix A

The 10 Commandments of Unlawful Command Influence

COMMANDMENT 1: Do not stack the panel, nor select nor remove court- members in order to obtain particular result in a particular trial.

COMMANDMENT 2: Do not disparage the defense counsel or the military judge.

COMMANDMENT 3: Do not communicate an inflexible policy on disposition or punishment.

COMMANDMENT 4: Do not place outside pressure on the judge or panel members to obtain a particular decision.

COMMANDMENT 5: Do not intimidate witnesses or discouraged them from testifying.

COMMANDMENT 6: Do not order a subordinate to dispose of a case in a certain way.

COMMANDMENT 7: Be careful coaching or mentoring subordinate commanders on military justice without talking to your legal advisor first.

COMMANDMENT 8: Do not disparage the accused or tell others not to asso- ciate with him, and do not allow subordinates to do so, either.

COMMANDMENT 9: Ensure that subordinates and staff do not commit un- lawful command influence, inadvertently or not.

COMMANDMENT 10: If a mistake is made, raise the issue immediately and cure with an ap- propriate remedy.

Appendix B

Recurring Problem: The Policy Statement

When commanders make policy statements about the military justice system, particularly about what types of offenses warrant what kinds of courts or sentences, commanders run the risk that they will commit both adjudicative UCI (some witnesses may not now come forward on the accused's behalf, and some panel members may now punish in accordance with what they believe the convening authority believes) and accusatory UCI (some commanders may make a particular decision in a case because that is what they think their commander wants them to do, not because that is their independent decision).

Commanders are used to coaching and mentoring their subordinates in all areas of command responsibility and leadership, but here, the law has carved out an exception. Commanders should consult with their staff judge advocates before entering this area.

Note that Art. 37(a) exempts general instructional or informational courses on military justice if such courses are designed solely for the purpose of instructing members of the command in the substantive and procedural aspects of courts-martial. Commanders should consider asking their staff judge advocate to provide training on military justice and should allow judge advocates to give advice on particular cases. The readings below help illuminate the line between mentorship and unlawful command influence.

United States v. Treagle, 18 M.J. 646 (A.C.M.R. 1984)

The duties of a division commander as a court-martial convening authority and as the primary leader responsible for discipline within the division are among the most challenging a commander can perform. On the one hand, effective leadership requires a commander to supervise the activities of his subordinates diligently and ensure that state of good order and discipline which is vital to combat effectiveness. On the other hand, he must exercise restraint when overseeing military justice matters to avoid unlawful interference with the discretionary functions his subordinates must perform. The process of maintaining discipline yet ensuring fairness in military justice requires what the United States Court of Military Appeals has called "a delicate balance" in an area filled with perils for the unwary. Many experienced line officers have expressed similar conclusions. Excerpts from two particularly useful and authoritative examples are reproduced [below].

Correction of procedural deficiencies in the military justice system is within the scope of a convening authority's supervisory responsibility. Yet in this area, the band of permissible activity by the commander is narrow, and the risks of overstepping its boundaries are great. Interference with the discretionary functions of subordinates is particularly hazardous. While a commander is not absolutely prohibited from publishing general policies and guidance which may relate to the discretionary military justice functions of his subordinates, several decades of practical experience under the Uniform Code of Military Justice have demonstrated that the risks often outweigh the benefits. The balance between the command problem to be resolved and the risks of transgressing the limits set by the Uniform Code of Military Justice is to be drawn by the com-

mander with the professional assistance of his staff judge advocate. Although the commander is ultimately responsible, both he and his staff judge advocate have a duty to ensure that directives in the area of military justice are accurately stated, clearly understood and properly executed.

Excerpts from a letter which the Powell Committee recommended The Judge Advocate General of the Army send to officers newly appointed as general court-martial convening authorities. (Committee on the Uniform Code of Military Justice, Good Order and Discipline in the Army: Report to Honorable Wilber M. Bruckner, Secretary to the Army, 17-21 (18 Jan 1960)).

Dear :

Because it is of the utmost importance that commanders maintain the confidence of the military and the public alike in the Army military justice system, the following suggestions are offered you as a commander who has recently become a general court-martial convening authority, in the hope that they will aid you in the successful accomplishment of your military functions and your overall command mission.

A serious danger in the administration of military justice is illegal command influence.

Congress, in enacting the Uniform Code of Military Justice, sought to comply with what it regarded as a public mandate, growing out of World War II, to prevent undue command influence, and that idea pervades the entire legislation. It is an easy matter for a convening authority to exceed the bounds of his legitimate command functions and to fall into the practice of exercising undue command influence. In the event that you should consider it necessary to issue a directive designed to control the disposition of cases at lower echelons, it should be directed to officers of the command generally and should provide for exceptions and individual consideration of every case on the basis of its own circumstances or merits. For example, directives which could be interpreted as requiring that all cases of a certain type, such as larceny or prolonged absence without leave, or all cases involving a certain category of offenders, such as repeated offenders or offenses involving officers, be recommended or referred for trial by general court-martial, must be avoided. This type of directive has been condemned as illegal by the United States Court of Military Appeals because it is calculated to interfere with the exercise of the independent personal discretion of commanders subordinate to you in recommending such disposition of each individual case as they conclude is appropriate, based upon all the circumstances of the particular case. The accused's right to the exercise of that unbiased discretion is a valuable pretrial right which must be protected. All pretrial directives, orientations, and instructions should be in writing and, if not initiated or conducted by the staff judge advocate, should be approved and monitored by him.

The results of court-martial trials may not always be pleasing, particularly when it may appear that an acquittal is unjustified or a sentence inadequate. Results like these, however, are to be expected on occasion. Courts-martial, like other human institutions, are not infallible and they make mistakes. In any event, the Uniform Code prohibits censuring or admonishing court members, counsel, or the law officer with respect to the exercise of their judicial functions. My suggestion is that, like the balls and strikes of an umpire, a court's findings or sentence which may not be to your liking be taken as 'one of those things.' Courts have the legal right and duty

to make their findings and sentences unfettered by prior improper instruction or later coercion or censure.

Excerpts from an article by General William C. Westmoreland discussing the relationship of military justice to good order and discipline in the Army. (Westmoreland, Military Justice—A Commander's Viewpoint, 10 Am.Crim.L.Rev. 5, 5–8 (1971)).

As a Soldier and former commander, and now as Chief of Staff of the Army, I appreciate the need for a workable system of military justice. Military commanders continue to rely on this system to guarantee justice to the individual and preserve law and order within the military.

An effective system of military justice must provide the commander with the authority and means needed to discharge efficiently his responsibilities for developing and maintaining good order and discipline within his organization. Learning and developing military discipline is little different from learning any discipline, behavioral pattern, skill, or precept. In all, correction of individuals is indispensable. The military commander should have the widest possible authority to use measures to correct individuals, but some types of corrective action are so severe that they should not be entrusted solely to the discretion of the commander. At some point he must bring into play judicial processes. At this point the sole concern should be to accomplish justice under the law, justice not only to the individual but to the Army and society as well.

I do not mean to imply that justice should be meted out by the commander who refers a case to trial or by anyone not duly constituted to fulfill a judicial role. A military trial should not have a dual function as an instrument of discipline and as an instrument of justice. It should be an instrument of justice and in fulfilling this function, it will promote discipline.

The protection of individual human rights is more than ever a central issue within our society today. An effective system of military justice, therefore, must provide of necessity practical checks and balances to assure protection of the rights of individuals. It must prevent abuses of punitive powers, and it should promote the confidence of military personnel and the general public in its overall fairness. It should set an example of efficient and enlightened disposition of criminal charges within the framework of American legal principles. Military justice should be efficient, speedy, and fair.

Commander's Preliminary Inquiry

(R.C.M. 303)

A. DEFINED

Under Rule for Court-Martial 303, if a commander receives information that a member of his or her command is accused or suspected of committing an offense or offenses triable by court-martial, except those offenses defined in UCMJ, Article 1(17), as “covered offenses” withheld to the Office of the Special Trial Counsel, the immediate commander is required to make or cause to be made a preliminary inquiry into the charges or suspected offenses. The preliminary inquiry is usually informal; however, the degree of investigation required depends on the seriousness or complexity of the case.

B. WHO MAY CONDUCT THE INQUIRY?

Inquiry into simple or minor offenses may be a matter of the commander obtaining information from the suspected offender's chain of command. More complicated cases may require the appointment of an investigating officer. See Chapter 14 for more information on conducting an investigation under Army Regulation 15-6. In complex or serious cases the commander should, and occasionally must seek the assistance of law enforcement investigators. For example, in incidents of sexual assault, the commander must immediately refer the case to the Criminal Investigation Division (CID) for investigation. Further, any allegation of covered offenses, as defined by UCMJ, Article 1(17), must be immediately referred to special trial counsel for action under R.C.M. 303A.

A commander who is a special or general courts-martial convening authority should not personally conduct the preliminary inquiry, but instead should appoint another officer to do so. This will preserve the quasi-judicial role of the commander and prevent his disqualification as the convening authority.

If there is any doubt as to whether to seek the assistance of law enforcement, the commander should contact the command's Judge Advocate.

C. WHAT IS THE SCOPE OF THE INQUIRY?

The inquiry should gather all reasonably available evidence on:

- Guilt or innocence;
- Aggravation; and
- Extenuation and Mitigation.



Nonjudicial Punishment

(Article 15, UCMJ)

A. REFERENCES

- UCMJ art. 15.
- Manual for Courts-Martial, pt. V (2024) [hereinafter MCM].
- U.S. Dep’t of Army Reg. 27-10, Legal Services: Military Justice, chs. 3, 4, 20 (20 Mar 2024) [hereinafter AR 27-10].

B. INTRODUCTION

Proceedings under Article 15 are not criminal prosecutions. Nonjudicial punishment (NJP) provides commanders with an essential and prompt means of maintaining good order and discipline, and promotes positive behavior changes in service members without the stigma of a court-martial.

C. AUTHORITY TO IMPOSE NONJUDICIAL PUNISHMENT

1. Who may impose?

a. Commanders (AR 27-10, para. 3-7a.)

The term “commander” means a commissioned officer who, by virtue of that officer’s grade and assignment, exercises primary command authority over a military organization or prescribed territorial area, that under pertinent official directives is recognized as a command. This can include detachment commanders and commanders of provisional units. Whether an officer is a commander is determined by the duties he or she performs, not necessarily by the title of the position occupied.

b. Joint Commanders (AR 27-10, para. 3-7b.)

A joint commander or officer in charge, to whose command soldiers are assigned or attached, may impose nonjudicial punishment upon such Soldiers. A joint commander or officer in charge, alternatively, may designate one or more Army units and will for each such Army unit designate an Army commissioned officer as commanding officer for the administration of discipline pursuant to Article 15, UCMJ.

2. Can Article 15 authority be delegated? (AR 27-10, para. 3-7c.)

Article 15 authority may not be delegated. However, the exception is that General court-martial convening authorities and commanding generals can delegate Article 15 authority to one deputy or assistant commander, or the chief of staff (if the chief of staff is a general officer or frocked to general officer rank). The delegation must be in writing.

3. Can Article 15 Authority of Subordinate Commanders Be Limited?

The short answer is, “Yes.” However, only certain types of limitations are permissible and there are some limits that are expressly not permitted.

a. Permissible limitations (AR 27-10, para. 3-4c.; para. 3-7d.)

The superior commander may totally withhold all Article 15 authority from the subordinate. Alternatively, the superior commander may partially withhold authority, for example over certain categories of personnel (i.e., all officer cases), particular offenses (i.e., all cases involving drugs), or individual cases (i.e., the disposition of SPC Smith’s case). There is no requirement that limitations be written but is a good idea to do so (e.g., write a memorandum or publish in post regulation).

b. Impermissible limitations (MCM pt. V, para. 1d(2); AR 27-10, para. 3-4b.)

The superior commander cannot direct a subordinate commander to impose an Article 15. If the authority to issue nonjudicial punishment remains with the subordinate, it is up to the subordinate to decide, independently, how to dispose of the case, by either issuing nonjudicial punishment or not. Similarly, the superior commander cannot issue regulations, orders, or “guides” that either directly or indirectly suggest to subordinate commanders that:

- Certain categories of offenders or offenses are to be disposed of under Article 15.
- Predetermined kinds or amounts of punishment are to be imposed for certain categories of offenders or offenses.

D. WHO CAN RECEIVE NONJUDICIAL PUNISHMENT?

1. Military Personnel of a Commander’s Command (AR 27-10, para. 3-8.)

- Assigned.
- Affiliated, attached, or detailed.
- The “Beans and Bullets” Rule. AR 27-10, para. 3-8a(3)(b). Look to the facts to determine where the Soldier slept, ate, was paid, performed duty, the duration of the status, and other similar factors. If the facts show the Commander is providing the Soldier these services, then the Soldier can be considered ‘of the command’ of the Commander for purposes of imposing nonjudicial punishment.

2. Personnel of Other Armed Forces (services) (AR 27-10, para. 3-8c.)

An Army commander is not prohibited from imposing NJP on members of his or her command that are from other services. However, if an Army commander imposes NJP on members

of another service, he or she may only do so under the circumstances and procedures outlined for imposing NJP prescribed by that member's parent service.

E. HOW TO DECIDE WHAT OFFENSES ARE APPROPRIATE FOR NONJUDICIAL PUNISHMENT

1. Relationship to administrative corrective measures

NJP should be used when administrative corrective measures (for example, denial of pass privileges, counseling, extra training, administrative reductions in grade, administrative reprimands) are inadequate due to the nature of the minor offense or because of the servicemember's service record. NJP is generally used to address intentional disregard of or failure to comply with standards of military conduct, while administrative corrective measures generally are used to address misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, and similar deficiencies. AR 27-10, para. 3-3a.

Commanders and supervisors need to ensure that extra training does not become extra duty (punishment) that was given without following NJP procedures. Extra training must relate directly to the deficiency observed and must be oriented to correct that particular deficiency, although extra training can occur after duty hours. AR 27-10, para. 3-3d.

2. NJP may be imposed for minor offenses (MCM pt. V, para. 1e; AR 27-10, para. 3-9.)

Whether an offense is minor depends on several factors:

- The nature of the offense and the circumstances surrounding its commission;
- The offender's age, rank, duty assignment, record and experience;
- The maximum sentence impossible for the offense if tried by a general court-martial. As a rule of thumb, a minor offense is one that does not authorize the imposition of a dishonorable discharge or confinement in excess of one year if tried at a general court-martial. MCM pt. V, para. 1e. However, the maximum punishment authorized for an offense is not controlling. Determining what is a minor offense versus a major offense is within the discretion of the imposing commander.

3. Limitations

a. Double punishment prohibited

Once an Article 15 has been imposed, a commander cannot impose another Article 15 for the same offense or substantially same misconduct. Commanders need to bring all known offenses, with the exception of those where a special trial counsel has exercised authority, that are determined to be appropriate for disposition by NJP and that are ready to be considered at that time. This includes all offenses arising from a single incident or course of conduct. MCM pt. V, para. 1f(3); AR 27-10, para. 3-10.

b. Statute of limitations (MCM pt. V, para. 1f(4); AR 27-10, para 3-12)

NJP may not be used for offenses committed more than 2 years before the date of imposition unless the statute of limitations has been tolled for AWOL or waived by the Soldier.

c. Civilian courts

NJP may not be imposed for an offense that has been tried by a federal court. NJP may not be imposed for an offense that has been tried by a state court unless the Commander complies with Chapter 4 of AR 27-10. If you think you have such a case, discuss it with your servicing Judge Advocate before taking any action.

d. Offenses withheld by the Office of Special Trial Counsel (MCM pt. II, Rule 306(a))

For offenses over which a special trial counsel has exercised authority and has not deferred, commanders will not issue nonjudicial punishment until they have consulted with and received concurrence from that special trial counsel.

e. Courts-Martial

NJP should not be used when it is clear that only a court-martial will meet the needs of justice and discipline.

4. Preliminary inquiry

Prior to deciding on how to handle the disciplinary issue at hand, Commanders need to comply with the requirements of AR 27-10, para. 3-14a. This may be accomplished by a cursory review of available evidence, including police reports and other documents. Commanders must be aware that allegations of sexual assault must be immediately referred to CID for investigation. Further, any allegations of covered offenses must be immediately referred to special trial counsel.

Upon completion of a preliminary inquiry or for covered, known, or related offenses, as defined in AR 27-10, para. 30-5, deferred to the command by the special trial counsel, NJP should be conducted at the lowest level of command commensurate with the needs of discipline. If the commander believes that his or her authority is insufficient to impose proper NJP, then he or she should send the case to a superior using DA Form 5109. A superior commander may also return a case to a subordinate commander for appropriate disposition.

F. TYPES OF NONJUDICIAL PUNISHMENT

1. Summarized Article 15 (AR 27-10, para. 3-16.)

Summarized Article 15's may only be used with enlisted Soldiers. In summarized proceedings, the punishment cannot exceed:

- 14 days extra duty
- 14 days restriction
- An oral admonition or reprimand, or

- Any combination thereof.

Summarized Article 15's may be imposed by company or field grade officers and are re- corded on DA Form 2627-1.

2. Formal Article 15 (AR 27-10, para. 3-17.)

Formal Article 15's are appropriate whenever:

- the Soldier is an officer, or
- Punishment (for any soldier) might exceed 14 days extra duty, 14 days restriction, oral admonition or reprimand, or any combination thereof.

Formal Article 15's are classified as company grade Article 15s, field grade Article 15s, and general officer Article 15s. Technically, "general officer Article 15s" are only imposed on officers (general officers can impose greater punishments on officers than other commanders can). General officers can impose Article 15s on enlisted personnel, too, but the available punishments are the same as those available to field grade officers. All formal Article 15's are recorded on DA Form 2627.

The maximum available punishment is based on rank of imposing commander (company grade, field grade, or for officer offenders, general officer) and the rank of the Soldier receiving the punishment. AR 27-10, para. 3-19, tbl. 3-1. This table of punishments is reproduced in Tables 5-1 and 5-2 below. Usually, commanding generals withhold authority over officer misconduct using the local AR 27-10. Company grade or field grade NJP over another officer is very rare.

TABLE 5-1: ENLISTED PUNISHMENTS

	Summa- rized	Company Grade	Field Grade
Extra Duty	14 days	14 days	45 days
Restriction	14 days	14 days	60 days (45 days if combined with extra duty)
Reduction		1 grade (E1-E4)	1 or more grade (E1-E4) 1 grade (E5-E6)
Forfeitures		7 days	½ of 1 month's pay for 2 months
Reprimand/Ad- moni- tion	Oral	Oral /written	Oral/written

TABLE 5-2: OFFICER PUNISHMENTS

	Company Grade	Field Grade	General Officer
Restriction	30 Days	30 Days	60 Days or 30 Days Arrest in Quarters
Forfeitures			½ of 1 month's pay for 2 months
Reprimand /Admonition	Written	Written	Written

a. Reduction in grade

In general, a commander who can promote to a certain grade can also reduce from that grade. Officers and enlisted soldiers above the grade of E-6 cannot be reduced at an Article 15.

b. Forfeiture of pay

Forfeitures are based on grade to which reduced, whether or not reduction is suspended. Forfeitures may be applied against a soldier's retired pay. AR 27-10, para. 3-19b(6)(b).

c. Admonition and reprimand

Officer admonitions and reprimands must be in writing. Enlisted admonitions and reprimands can be oral or in writing. Admonitions and reprimands imposed under NJP should state clearly that they were imposed as punishment under Art. 15. This is to contrast them with admonitions and reprimands given as an administrative matter, which have different procedures. See AR 600-37. Written admonitions and reprimands are prepared in memorandum format and attached to the DA Form 2627.

d. Combination of punishments (AR 27-10, para. 3-19b(7))

Commanders can combine punishments. No two or more punishments involving the deprivation of liberty may be combined to run either consecutively or concurrently, except that restriction and extra duty may be combined but not to run for a period in excess of the maximum duration allowed for extra duty. For officers, arrest in quarters may not be imposed in combination with restriction. MCM pt. V, para. 5d(1).

e. When Does Punishment Begin?

Punishment generally begins on the day imposed. Unsuspended punishments of reduction and forfeiture take effect on the day imposed. Commanders can delay other punishments for up to 30 days for legitimate reasons (quarters, TDY, brief field problem). However, once commenced, deprivation of liberty punishments will run continuously unless the Soldier is at fault or is incapacitated (cannot pause deprivation of liberty once it has commenced because of a field-exercise).

G. NOTICE REQUIREMENTS (THE “FIRST READING”)

1. Soldier must be notified of the following:

- Commander’s intention to dispose of the matter under Article 15.
- Offense(s) of which the Soldier is suspected.
- Maximum punishment that the commander could impose under Article 15.
- Soldier’s rights under Article 15.

2. Delegating the notice responsibility

The commander may delegate the notice responsibility to any subordinate who is a SFC or above (if senior to soldier being notified). The commander still needs to personally sign the DA Form 2627 or 2627-1. This is a good way to involve the first sergeant or command sergeant major. For a script that can be used during the first reading, see AR 27-10, App. C, or Chapter 6 of this handbook.

H. SOLDIER’S RIGHTS

1. Formal Article 15’s

During a formal Article 15, the Soldier is entitled to the following rights.

a. A copy of DA Form 2627

Items 1 and 2 must be completed on the copy the Soldier receives that the defense counsel may review and properly advise the Soldier.

b. Reasonable decision period and to consult with counsel

This period is usually 48 hours. However, the actual period is determined by the complexity of the case and the availability of counsel. So the period can be longer than 48 hours. Additionally, the Soldier can request a delay, which the imposing commander can grant for good cause.

c. Right to remain silent

d. Right to demand trial by court-martial (unless attached to or embarked on a vessel. MCM pt. V, para. 3))

e. Right to Request an open or closed hearing (AR 27-10, para. 3-18(g)(2))

Ordinarily, hearings are open. An open hearing usually takes place in the commander’s office with the public allowed to attend. In practical terms, an open hearing means the office door would be open; a closed hearing, the office door would be closed. The commander should consider all facts and circumstances when deciding whether the hearing will be open or closed.

f. Right to Request a spokesperson

The spokesperson need not be a lawyer. Trial Defense Service does not usually provide counsel for Article 15 hearings. The TDS counsel will advise the Soldier, and then the Soldier will attend the hearing on their own. However, the Soldier may retain a lawyer at his or her own expense.

g. Right to Examine available evidence

h. Right to Present evidence and call witnesses (AR 27-10, para. 3-18i.)

The commander determines if the witness is reasonably available, considering that witness and transportation fees are not available. Reasonably available witnesses will ordinarily only be those at the installation concerned.

i. Right to Appeal

Only one appeal is permissible pursuant to UCMJ, Art. 15 proceedings. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than 5 calendar days after the punishment is imposed will be presumed to be untimely, unless the superior commander, in the superior commander's sound discretion for good cause shown, determines it to be timely. While the punishment generally runs during the appeals period, if the command takes longer than the designated period, and the Soldier requests, the punishments involving deprivation of liberty will be interrupted until the appeal is completed.

2. Summarized

The rights in a summarized proceeding are similar to the formal proceeding, but are limited to the following:

- Right to meet with counsel
- Reasonable decision period (normally 24 hours).
- Demand trial by court-martial.
- Remain silent.
- Hearing.
- Present matters in defense, extenuation, and mitigation.
- Confront witnesses.
- Appeal.

I. HEARING

1. The hearing is non-adversarial

This means that the hearing is not like a courtroom hearing (i.e., a court-martial). Neither the Soldier nor their spokesperson (or retained lawyer) may examine or cross-examine witnesses unless allowed by the commander. However, the Soldier or spokesperson or lawyer can indicate to the imposing commander the relevant issues or questions that they would like the commander to explore or ask witnesses about.

2. In the commander's presence unless extraordinary circumstances

The Soldier will be allowed to personally present matters in defense, extenuation, or mitigation to the Commander, except when appearance is prevented by the unavailability of the Commander or by extraordinary circumstances (i.e. – the Soldier is stationed at a remote geographic location separate from the Commander).

3. Rules of evidence

Commander is not bound by the formal rules of evidence, except for the rules pertaining to privileges. Privileges include spouses not being required to testify against their spouse and clergy not being required to testify against their parishioner.

The Commander may consider any matter the he or she believes is relevant (including, e.g., unsworn statements and hearsay). But beware that if the Soldier turns down the Art. 15, the Military Rules of Evidence will apply at a court-martial. So, evidence that the commander considers at Article 15 may not be admissible at the court-martial.

4. Degree of Proof

Before finding a Soldier guilty, the commander must be convinced by a preponderance of the evidence that the Soldier committed the offense(s). If there is an offense charged that occurred prior to 28 July 2023, not barred by the statute of limitations, the degree of proof for the entire DA Form 2627 is the stricter proof beyond a reasonable standard.

J. CLEMENCY (AR 27-10, SECTION V)

The imposing commander, a successor in command, or the next superior authority may grant clemency. Clemency can include the following processes.

1. Suspension of the Punishment

The execution of a punishment of reduction or forfeiture may be suspended for no more than four months. Other punishments may be suspended for no more than six months. For summary Art. 15s, suspensions are for no more than three months. The suspended punishment is automatically remitted if no misconduct during the suspension period.

a. Vacation of Suspension

If the Soldier violates a punitive article of the UCMJ (or other stated condition) during the suspension period, the commander may vacate the suspension. If the vacation involves a condition on liberty, reduction in rank, or forfeiture of pay, the commander should hold a hearing as outlined in AR 27-10, para. 3-25. For the vacation of other punishments, the Soldier should be given notice and an opportunity to respond. If the Soldier is absent without leave when the commander proposes vacation, special rules apply. In this instance, ensure that you consult with your servicing Judge Advocate. The conduct that led to the vacation can serve as a separate basis for a new NJP action.

b. Appeal of Vacation of a Suspended Sentence

No appeal is authorized from the vacation of a suspended sentence.

2. Mitigation

The commander can reduce the quantity or quality of the punishment.

3. Remission

The commander can cancel any portion of the unexecuted punishment.

4. Setting aside and restoration

Commanders can set aside any part or amount of a punishment, whether executed or unexecuted, and restore whatever rights, privileges or property that was affected are restored. This should only be done when there was “clear injustice,” or an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. Generally, this type of clemency should occur within four months from the date that punishment was imposed.

K. FILING (AR 27-10, PARAS. 3-6, 3-37)

Any record of nonjudicial punishment which includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance folder of the Soldier’s AMHRR. This requirement applies to Soldiers in all components, regardless of grade. Imposing commanders do not have the option to designate these documents be filed locally or in the restricted folder of the Soldier’s AMHRR. AR 27-10, para. 3-6b.

1. Summarized Article 15

DA Form 2627-1 is filed locally. The form is destroyed two years after imposition of the Article 15 or upon the transfer of the Soldier from the unit.

2. Formal Article 15

a. Specialist/Corporal (E-4) and below

The original DA Form 2627 is filed locally in the unit nonjudicial punishment or unit personnel files. The form is destroyed two years after imposition of the Article 15 or upon transfer of the Soldier to another general court-martial convening authority.

b. All other soldiers

Performance restriction or restricted section of AMHRR. In addition to the local filing discussed above, the Commander may file the Article 15 in the Soldier's Army Military Human Resource Record (AMHRR). If filing in the AMHRR, the Commander must decide whether to file the Article 15 in the performance portion of the file or the restricted portion. The performance section is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection. The restricted section contains information not normally viewed by career managers or selection boards, so filing in the restricted portion benefits the Soldier. **NOTE: If an E5 or above already has an Art. 15 in the restricted section, AR 27-10 requires that it will be redirected to performance section.**

c. Sex-related offenses

Any record of NJP which includes a finding of guilty for having committed a sex-related offense will be filed as a sex-related offense in the performance portion of the Soldier's AMHRR. This requirement applies to all Soldiers in all components, regardless of grade. Commanders do not have the option to designate these documents to be filed locally or in the restricted portion of the Soldier's AMHRR.

d. Other Factors Informing the Commander's Filing Decision

A commander's decision where to file is as important as the decision relating to the imposition of NJP itself. Commanders should consider:

- Interests of the Soldier's career.
- Soldier's age, grade, total service, whether Soldier has prior NJP, and recent performance.
- Army's interest in advancing only the most qualified personnel for positions of leadership, trust, and responsibility.
- Whether the conduct reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, evidence of serious character deficiency, or substantial breach of military discipline.

3. Review of the Filing Decision by Superior Authority

The imposing commander's filing decision is subject to review by superior authority. However, the superior commander cannot direct that a UCMJ, Article 15 report be filed in the

performance portion of the AMHRR that the imposing commander directed to be filed in the restricted portion.

L. APPEALS (AR 27-10, SECTION VI)

The Soldier only has the right to one appeal under Article 15. This appeal operates as follows.

1. Time limits to appeal

The Soldier has a “reasonable” time to appeal. However, after five calendar days, the appeal is presumed to be untimely and may be rejected.

2. Who acts on an appeal?

The next superior commander generally handles the appeal. The superior authority should act on appeal within five calendar days (three calendar days for summarized proceedings). While the punishment generally runs during the appeals period, if the command takes longer than the designated period, and the Soldier requests, the punishments involving deprivation of liberty will be interrupted until the appeal is completed.

3. Procedure for submitting appeal

The Soldier submits their appeal through the imposing commander using the appropriate space on DA Form 2627. The submission of additional matters is optional. However, if additional materials are submitted, they must be forwarded to the appellate authority.

4. Action by appellate authority

The appellate authority may conduct an independent inquiry into the matter. They may also take appellate action, even if Soldier does not appeal.

a. Legal Review

In certain circumstances, the Article 15 must be referred to the OSJA for a legal review prior to action on the appeal. MCM, Part V, para. 7(e).

Circumstances requiring a legal review include:

- Reduction in one or more pay grades from E4 or higher, or
- More than 7 days arrest in quarters, more than 7 days correctional custody, more than 7 days forfeiture of pay, or more than 14 days of either extra duty or restriction

You may always refer an Article 15 for legal review in any case, regardless of punishment imposed. Review is typically done by the unit’s trial counsel.

b. Matters considered

The appellate authority must review the appropriateness of the punishment and whether the proceedings were conducted under law and regulations. Their consideration is not limited to the written matters in the record; the appellate authority may make additional inquiries. The appel-

late authority may consider the record of the proceedings, any matters submitted by the service member, any matters considered during the legal review, and any other appropriate matters. The rules do not require that the service member be given notice and an opportunity to respond to any additional matters considered.

c. Appellate Authority's Options

In acting on the Appeal, the Appellate authority may:

- Approve the punishment.
- Suspend all or any part of the punishment.
- Mitigate the punishment.
- Remit all or any part of the punishment.
- Set Aside the Article 15. This includes setting aside the earlier NJP in order to refer the case to court-martial.

5. Petition to the Department of the Army Suitability Evaluation Board (DAS-EB)

Sergeants (E-5) and above may petition to have DA Form 2627 transferred from the performance to the restricted section. The Soldier must present evidence that the Article 15 has served its purpose and transfer would be in the best interest of the Army.

Soldiers can also petition for complete removal of the Article 15. Normally, petitions are not considered until at least one year after imposition of punishment. Soldiers may seek assistance with these types of petition from the Trial Defense Service or Legal Assistance Office at their installation.

M. PUBLICIZING NONJUDICIAL PUNISHMENT (AR 27-10, PARA. 3-22)

It is permissible for commanders to publish the results of Article 15's, but they must delete the Soldier's social security number and relevant privacy information. Where punishment has been imposed for sexual harassment or a sex-related offense, commanders will publish the results of the NJP, regardless of the rank of the Soldier.

1. Timing

Commanders may announce the result at next unit formation after punishment is imposed, or, if the Article 15 is appealed, after the decision on appeal. Additionally Commanders can post the results on the unit bulletin board or online newsletter. Commanders should take care to scrub personally identifiable information from the Article 15.

2. Commander Considerations

When considering whether to publicize Article 15's or not, the Command must avoid inconsistent or arbitrary policies. So, the commander should decide whether they will publish the

Article 15's or not, and then be consistent in publishing them throughout the command tour. Additionally, before publishing the punishments of sergeants and above, consider:

- The nature of the offense.
- The individual's military record and duty position.
- The deterrent effect.
- The impact on unit morale or mission.
- The impact on the victim.
- The impact on the leadership effectiveness of the individual concerned.

N. SUPPLEMENTARY ACTION

Supplementary Action is any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment under formal Art. 15 proceedings after action has been taken on an appeal, or the DA Form 2627 has been distributed to agencies outside the unit (personnel, finance). Supplementary actions must be recorded on a DA Form 2627-2.

Company Grade Article 15 Script

In the following script, **BOLD** language are instructions and notes, NORMAL PRINT is what you would read/say to the Soldier.

Appendix C of AR 27-10 is the source document for this script. It has been modified for clarity and to make it easier to follow the recommended procedures.

NOTE: As commander, you may delegate performance of the Notification, Election of Rights, and Appellate Rights sections to an appropriate subordinate. Your First Sergeant is especially well suited for this role.

A. NOTIFICATION

NOTE: The commander may delegate the Notification portion.

NOTE: It is important the commander sign following Item 2 on the DA Form 2627 before Notification takes place. Leave the Date and Time blocks blank. The person performing the notification should fill in these blanks with the current time and date at the actual Notification.

CDR/1SG: As your commander, (I have)(the company commander has) disciplinary powers under Article 15 of the UCMJ. (I have)(The commander has) received a report that you violated the Uniform Code, and (I am)(the commander is) considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings (I)(he) will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the UCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

NOTE: Wait for the soldier to read items 1 and 2 of DA Form 2627. Allow him or her to retain a copy of the form until the proceedings are finished and the commander has either imposed punishment or decided not to impose it.

CDR/1SG: Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

Soldier: Yes/No.

NOTE: If the soldier does not understand the offense(s), explain the offense(s) to him/her.

CDR/1SG: Do you understand item 2? Do you have any questions about your rights in these proceedings?

Soldier: Yes/No.

NOTE: If the soldier does not understand his or her rights, explain them in greater detail. If the soldier asks a question you cannot answer, recess the proceedings. You may find the answer in one of the following sources: Article 15, UCMJ; Part V of the Manual for Courts-Martial (MCM) (2019); AR 27-10, Chapter 3; or contact your JA office.

CDR/ISG: There are some decisions you have to make.

CDR/ISG: Number One. You have to decide whether you want to demand trial by court-martial. If you demand a court-martial, these proceedings will stop. (I)(the commander) then will have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.

CDR/ISG: Number Two. If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other evidence in defense, extenuation, and/or mitigation. Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence in your behalf.

CDR/ISG: Evidence in defense is facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in defense, you can still present evidence in extenuation or mitigation.

CDR/ISG: Evidence in extenuation is circumstances surrounding the offense, showing that the offense was not very serious.

CDR/ISG: Evidence in mitigation is facts about you, showing that you are a good soldier and that you deserve light punishment.

CDR/ISG: Number Three. You can make a statement and request to have a spokesperson appear with you and speak on your behalf. (I)(The commander) will interview any available witnesses and consider any evidence you think (I)(he/she) should examine.

CDR/ISG: Number Four. Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

Soldier: Yes/No.

Note: If the soldier does not understand, explain each of the decisions to the soldier.

CDR/ISG: If you do not demand trial by court-martial and after you have presented your evidence, (I am)(the commander is) convinced that you committed the offense, (I)(he/she) could then punish you. The maximum punishment (I)(he/she) could impose on you would be:

E1-E4: Admonition/reprimand; 14 days extra duty; 14 days restriction; forfeiture of 7 days pay; and reduction in rank of one grade.

E5-E6: Admonition/reprimand; 14 days extra duty; 14 days restriction; and forfeiture of 7 days pay.

CDR/ISG: You should compare this punishment with the punishment you could receive in a court-martial.

NOTE: If the soldier requests to be informed of the maximum court-martial sentence you may state the following: The maximum sentence you could receive in a court-martial is (sentence) for the offense(s).

NOTE: Part IV, MCM lists for each punitive article the punishments a court-martial may impose for violations of the various Articles of the UCMJ. You may inform the soldier that referring the charges to a summary or special court-martial would reduce the maximum sentence. For example, a summary court may not impose more than 1 month of confinement and hard labor. A special court may not impose more than 12 months of confinement.

NOTE: You should not inform the soldier of the particular punishment you/the commander may consider imposing until all evidence has been considered.

CDR/1SG: As Item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is located at _____. Would you like to talk to an attorney before you make your decisions?

Soldier: Yes/No.

NOTE: If the answer is yes, go to (1) below. If the answer is no, continue at (2) below.

(1) CDR/1SG: I will provide you whatever assistance I can to help you consult an attorney. I encourage you to consult the attorney promptly. You may consult with an attorney by telephone. You are to notify me if you encounter any difficulty in consulting an attorney.

NOTE: Skip the following statement and go to the next one.

(2) CDR/1SG: I understand you do not wish to consult an attorney. You should understand you are provided an opportunity to do so.

CDR/1SG: You now have 48 hours to think about what you should do in this case. You may advise (me) (the commander) of your decision at any time within the 48-hour period. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, (I)(the commander) can continue with these Article 15 proceedings even without your consent.

CDR/1SG: You are dismissed unless you have made all your decisions and are fully prepared to proceed immediately. Do you want to wish to proceed immediately?

Soldier: Yes/No.

NOTE: If the answer is no, go to (1) below. If the answer is yes, continue at (2) below.

(1) CDR/1SG: You are dismissed.

NOTE. At this point, you should recess the proceedings.

(2) CDR/1SG: I understand you do not wish consult with an attorney, have made your decisions, and are prepared to proceed immediately.

B. ELECTION OF RIGHTS

NOTE: The commander may delegate the performance of the Election of Rights portion.

NOTE: If conducted during the same session as the Notification, skip the next statement.

CDR/ISG: As your commander, (I have)(the commander has) disciplinary powers under Article 15 of the UCMJ. (I have)(The commander has) received a report that you violated the Uniform Code, and (I am)(the commander is) considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings, I will use DA Form 2627. I am handing you this form. (I)(The First Sergeant) initially notified you of this charge on _____.

CDR/ISG: Turn your attention to Item 3 of the DA Form 2627. Do you demand trial by court-martial?

Soldier: Yes/No.

NOTE: If the answer is yes, go to (1) below. If the answer is no, continue at (2) below.

(1) CDR/ISG: Initial Block a, sign and date Item 3. Because you have demanded trial by court-martial, these proceedings will stop. (I)(The commander) now must decide whether to initiate court-martial proceedings against you. I will notify you when (I have)(the commander has) reached a decision. You are dismissed.

NOTE: This concludes the proceeding.

(2) CDR/ISG: Initial Block b of Item 3 indicating your choice to not demand trial by court-martial.

CDR/ISG: An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated soldiers of the chain of command, available witnesses and a spokesperson, if designated, will be present. Do you request an open hearing?

Soldier: Yes/No.

CDR/ISG: Initial Block b(1) of Item 3 indicating your choice.

CDR/ISG: Do you wish to be accompanied by a spokesperson?

Soldier: Yes/No.

CDR/ISG: Initial Block b(2) of Item 3 indicating your choice.

CDR/ISG: Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offense(s), or any other information about yourself that you would like me to know? And/or do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

Soldier: Yes/No.

CDR/ISG: Initial Block b(3) of Item 3 indicating your decision, and sign and date the form in the space provided under that item.

NOTE: Wait until the soldier initials the blocks and signs and dates the form.

NOTE: In the event the soldier does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, see paragraph 3-18f(4) of AR 27-10.

C. PRESENTATION OF EVIDENCE AND MATTERS

NOTE: The commander **CANNOT** delegate the Presentation of Evidence and Matters portion.

NOTE: If the soldier has no witnesses or matters to present, the commander may skip to Imposition of Punishment.

NOTE: If the commander delegated both the Notification and Election of Rights for this Article 15, making this the first time the soldier is appearing before the commander, read the following statement. If not, the commander may skip to the next statement.

CDR: As your commander, I have disciplinary powers under Article 15 of the UCMJ. I have received a report that you violated the Uniform Code, and I am considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings, I will use DA Form 2627. I am handing you this form. You were initially notified of this charge on _____.

CDR: Do you need additional time to gather your evidence?

Soldier: Yes/No.

NOTE: If the soldier needs additional time to gather his or her evidence, give the soldier a reasonable period to gather the evidence. Tell the soldier when the proceedings will resume and recess the proceedings.

NOTE: If the soldier has witnesses and/or evidence, and the soldier is prepared to present them, proceed as follows:

CDR: I will now examine whatever matters you wish to present.

NOTE: Ensure that the soldier has the opportunity he or she deserves to present any evidence.

CDR: Do you have any further evidence to present?

Soldier: Yes/No.

NOTE: Consider the evidence presented. If the evidence persuades you that you should not punish the soldier, terminate the proceedings, inform the soldier, and destroy all copies of DA Form 2627. If you are convinced that the soldier committed the offense(s) by a preponderance of the evidence and deserves to be punished, proceed to Imposition of Punishment.

D. IMPOSITION OF PUNISHMENT

NOTE: The commander **CANNOT** delegate the Imposition of Punishment portion.

NOTE: If the soldier presented evidence and matters to the commander, skip the following statement and go one to the next one.

CDR: As your commander, I have disciplinary powers under Article 15 of the UCMJ. I have received a report that you violated the Uniform Code, and I am considering imposing nonjudi-

cial punishment. This is not a formal trial like a court-martial. As a record of these proceedings, I will use DA Form 2627. I am handing you this form. (I)(The First Sergeant) initially notified you of this charge on _____.

CDR: I have considered all the evidence. I am convinced that you committed the offense(s). I impose the following punishments: _____.

NOTE: Announce punishment. Many Legal Offices prefer you do not annotate the punishment on the DA Form 2627. They may provide you a punishment worksheet to use. Consult with your Legal Office to determine the preferred method.

NOTE: After you have imposed punishment, complete Items 4, 5 and the provided Punishment Worksheet.

E. APPELLATE ADVICE

NOTE: The commander may delegate the Appellate Advice portion.

NOTE: Hand the DA Form 2627 and the punishment worksheet (if used) to the soldier.

CDR/ISG: Read the (DA Form 2627)(punishment worksheet) which lists the punishment (I have) (the commander has) just imposed on you. Now read Item 6 which points out that you have a right to appeal this punishment to the appeal authority. You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (correctional custody, restriction or extra duty), at your request, will be interrupted pending the decision on the appeal.

CDR/ISG: Do you understand your right to appeal?

Soldier: Yes/No.

CDR/ISG: Do you desire to appeal?

Soldier: Yes/No.

NOTE: If the answer is yes, go to (2) below. If the answer is no, continue at (1) below.

(1) CDR/ISG: If you do not want to appeal, initial the first block in Item 5 and sign and date in the blanks below Item 5.

NOTE: Now give the soldier detailed orders as to how the commander wants him or her to carry out the punishments.

CDR/ISG: You are dismissed.

NOTE: This concludes the proceeding.

(2) CDR/ISG: Do you want to submit any additional matters to be considered in an appeal?

Soldier: Yes/No.

NOTE: If the answer is yes, go to (2) below. If the answer is no, continue at (1) below.

(1) CDR/ISG: Initial the second block in Item 5 and sign and date the blanks below Item 5. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

NOTE: This concludes the proceeding.

(2) CDR/ISG: If you intend to appeal and do not have the additional matters with you, Item 5 will not be completed until after you have obtained all the additional material you wish to have considered on appeal.

CDR/ISG: Do you have your additional material with you?

Soldier: Yes/No.

NOTE: If the answer is yes, go to (2) below. If the answer is no, continue at (1) below.

(1) CDR/ISG: When you have obtained this material, return with it by _____ (Five calendar days from imposition of punishment). At that time, you will complete Item 5 by initialing the third block and signing and dating in the blanks below. After you complete Item 5, I will send the DA Form 2627 and the additional matters you submit to _____ (Appeal authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date).

CDR/ISG: You are dismissed.

NOTE: This concludes the proceeding.

(2) CDR/ISG: Give me the material. Complete Item 5 by initialing the third block and signing and dating in the blanks below. After you complete Item 5, I will send the DA Form 2627 and the additional matters you submit to _____ (Appeal authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date).

CDR/ISG: You are dismissed.

NOTE: This concludes the proceeding.



Search & Seizure

A. INTRODUCTION

The Fourth Amendment protects individuals from "unreasonable" searches and seizures. It requires searches and seizures to be conducted pursuant to a warrant, based on probable cause. The Fourth Amendment applies to Soldiers - they do not waive their Fourth Amendment rights when they join the Army. However, the Fourth Amendment applies to Soldiers differently than it does to Civilians. This is because a Soldier's privacy rights are balanced against not only law enforcement needs but also against military necessity and national security. Consequently, a search may be considered reasonable in a military setting, but would not be so in the civilian world.

Search authorizations are an example of how the Fourth Amendment applies to Soldiers and Civilians differently. A civilian search warrant must be in writing, under oath, and issued by a civilian magistrate. A military search authorization, on the other hand, need not be in writing, need not be under oath, and may be issued by a commander. Despite these technical distinctions, a search warrant and a search authorization function in the same way.

Other examples of how the Fourth Amendment applies to Soldiers differently than to civilians are barracks inspections for ensuring health and welfare and urinalysis testing. Most civilians presently are not subject to random urinalysis testing for illegal drug use. Soldiers, however, must give urine samples during routine health and welfare inspections. This greater intrusion into a Soldier's privacy is justified because of the detrimental impact that illegal drug use has on military operations and national security.

Although the general rule is that the Fourth Amendment requires a warrant based on probable cause, there are several situations where there may be an exception, such as searches of government property or seizures of items in plain view. However, it is not advisable to rely upon any exception to the rule as the remedy for violations of the Fourth Amendment is for the evidence to be excluded at court-martial.

The search and seizure rules are complex and constantly changing because of court interpretations and new technology. Although searches of computers, cell phones, and data fall within the protections of the Fourth Amendment, they present new and unique issues. Commanders should work closely with their legal advisors and law enforcement when dealing with the searches of digital media. The best advice is to contact your legal advisor whenever a search and seizure issue comes up, no matter the context. Your legal advisor can assist you with proposed courses of action and recommend alternatives which will decrease the likelihood that evidence may be found inadmissible at a court-martial.

B. PROBABLE CAUSE & WARRANTS

1. Probable Cause

a. *Defined*

There is probable cause to search when there are reasonable grounds to believe that items connected with criminal activity are located in the place or on the person to be searched.

b. *Evaluating Probable Cause*

A neutral and detached commander may determine that probable cause exists based on his or her personal observations, or information from others. The commander's task is to determine from the totality of the circumstances whether it is reasonable to conclude that evidence of a crime is in the place to be searched. Probable cause determinations should be based on factual and reliable information.

1) Factual Basis

If the commander did not personally observe the information, but is relying on an informant, the following can use the following criteria to evaluate the factual basis of the information:

- *Personal observation.* The trustworthiness of information can be established if the informant personally observed the criminal activities. In drug cases, you should also inquire why the informant believes that what he or she saw was drugs. You should determine whether the informant had a class on drug identification, furnished reliable information in the past, or had substantial experience with drugs.
- *Admission of the suspect.* An informant's information is considered reliable if based on statements he or she heard from the suspect.
- *Self-verifying detail.* The factual basis of an anonymous tip may be established if the tip is so detailed that the information must have been obtained as a result of a personal observation.

2) Reliability

The commander should also be satisfied as to the credibility of the person furnishing the information. This may be established by one or more of the following:

- *Demeanor.* When the information is personally given to the commander, the commander can judge the informant's believability at that time. In many cases the individual may be a member of the commander's unit and the commander is in the best position to judge the credibility of the person. Even when the person is not a member of the commander's unit, the commander can personally question the individual and determine the consistency of statements made by the individual.
- *Past reliability.* This is one of the easiest methods for establishing believability: knowledge that the informant has proven reliable in the past. A commander should examine the underlying circumstances of past reliability, such as a record that the informant has furnished correct information in the past.

- *Corroboration.* Corroboration means that other facts back up the information provided. Corroboration and the demeanor of the person are particularly important when questioning first-time informants with no established record of past reliability.
- *Declaration against interest.* The person furnishing the information may provide information that is against that person's own interest. For example, when a person knowingly admits to an offense and has not been promised any benefit, he or she may be prosecuted for that offense. This lends a great degree of reliability to the information furnished.
- *Good citizen informants.* Often, the informant's background renders him or her credible. For instance, a victim or a bystander with no reason to lie may be considered reliable. In addition, law enforcement officers and good Soldiers are generally considered reliable sources of information.

2. Search Warrants and Authorizations

a. Commander's Authorization

A commander may authorize searches of his or her Soldiers and equipment, or areas the commander controls, when there is probable cause to believe that items connected with criminal activity are located in the place or on the person to be searched. The commander should consult a legal advisor first. A commander may not delegate the authority to authorize searches to others in the unit. The power to authorize a search, however, may devolve to an acting commander if the commander is absent. The authority of an acting commander to authorize searches should be documented in writing by the absent commander.

A commander, much like a judge, must remain objective when deciding whether there is sufficient information to justify a search authorization. When a commander is actively involved in a criminal investigation, he or she is disqualified from acting as the authorizing official.

A commander is not neutral and detached if he or she initiated or orchestrated the investigation or conducted the search personally. On the other hand, knowledge of an ongoing investigation within the unit, disdain for certain kinds of crime, and personal information or knowledge about a suspect's character does not disqualify a commander from granting a search authorization.

If a commander is unsure whether a court will view his or her involvement in a particular case as disqualifying, the commander should send the person seeking the authorization to the military magistrate or to the next higher commander who has no involvement with the case.

b. Magistrate's and Judge's Authorization

A military magistrate (a designated Judge Advocate) or a military judge on your installation can also authorize searches. Using a magistrate to authorize a search may be preferable to requesting authorization from a commander for several reasons. First, commanders may be involved in an investigation related to a search and their neutrality could become an issue. Second, the magistrate may authorize searches anywhere on an installation; therefore, issues of scope of authority are avoided. Third, if a search authorization is contested at trial, the commander will not have to testify.

c. Procedures for Obtaining an Authorization to Search

Army Regulation 27-10, Military Justice (20 April 2024), sets out the procedures for obtaining an authorization to search. Written or oral statements (including those obtained by telephone or radio), sworn or unsworn, should be presented to the commander, magistrate, or military judge. The authorizing official will then decide whether probable cause to search exists, based upon the statements and will issue either a written or an oral authorization to search. Written statements and authorizations are preferred to avoid problems later if the search is challenged at trial. When granting authority to search, the authorizing official must specify the place to be searched and the things to be seized. Commanders should consult with their servicing Judge Advocate to prepare a request for search authorization (DA Form 3744); DA Form 3745 is a search authorization form.

d. Scope of an Authorized Search

Once the search authorization has been granted, the person conducting the search must carefully comply with the limitations imposed by the authorization. Only those locations which are described in the authorization may be searched and the search may be conducted only in areas where it is likely that the object of the search will be found. For example, if an investigator has authority to search the quarters of a suspect, the investigator may not search a car parked on the road outside. Likewise, if an authorization states that an investigator is looking for a 25-inch television, the investigator may not look into areas unlikely to contain a television, such as a medicine cabinet or file cabinet.

e. Detention

An authorization to search for contraband implicitly carries the limited authority to detain occupants of a home, apartment, or barracks room while the search is conducted. Law enforcement or command representatives may also detain occupants leaving the premises at the time law enforcement arrive to execute the search authorization.

C. WHEN THE FOURTH AMENDMENT DOES NOT APPLY

1. Nongovernmental Searches

The Fourth Amendment only protects Soldiers against searches by U.S. government officials. It does not cover searches by private persons or foreign officials.

a. Private Searches

The Fourth Amendment does not prohibit searches by private persons (roommates or family members), unless the private search was directed by a commander or police investigator. Be careful when working with unit informants. Telling them to “keep your eyes open” is permissible; telling them to bring you evidence may violate the Fourth Amendment and render the evidence inadmissible.

b. Foreign Searches

The Fourth Amendment applies only to the U.S. Government. Searches by German or Korean police need not comply with the Fourth Amendment unless the foreign search is directed, conducted, or participated in by U.S. agents. Foreign police may freely exchange criminal information with the military police.

2. No Reasonable Expectation of Privacy

The Fourth Amendment does not apply unless the suspect has a reasonable expectation of privacy in the area searched.

a. Government Property

A Soldier has no reasonable expectation of privacy in most government property, including military vehicles, tents, common tool kits, and office desks. No authorization is required to search these places. But the Fourth Amendment protects items issued for personal use, such as wall lockers, foot lockers, and field gear. These items may be examined only during inspections and properly-authorized searches.

b. Government Email and Computer Systems

Although government email, computers, and cell phones should follow the rules stated above for government property, appellate case law has found a reasonable expectation of privacy in these areas in certain circumstances. Changes in technology and how we use it often occur faster than case law can adapt to them, so consult your legal advisor if you want to search for digital evidence on a government information system. Depending on the circumstances, an authorization may not be required, especially if there was a proper DOD log-on banner on the device to be searched, and a properly filled out user agreement signed by the individual to be searched. Generally, many DOD logon banners explicitly render any expectation of privacy unreasonable.

c. Abandoned Property

There is generally no expectation of privacy in abandoned property, such as a car abandoned on a public road, on-post quarters after a person has checked out, items thrown from a window or to the ground, garbage containers placed on a street curb, or a building destroyed by fire. Therefore, no authorization or probable cause is required to search or seize these items.

d. Open View (Plain View)

What a person knowingly exposes to the public is not subject to Fourth Amendment protection. For example, the exterior of a car parked on a public street is not protected by the Fourth Amendment. An item is in plain view if law enforcement (or military personnel) can see it from a place they have a lawful right to be in and it is apparent that the object is some kind of contraband or evidence of a crime. For example, a platoon sergeant conducting room inspections has a right to be in each barracks room. If he sees drugs on a desk in the room, those drugs are in

plain view and there is no reasonable expectation of privacy in the item. It may also be used to obtain a search authorization for further search.

e. Sensory Aids

So long as a person is lawfully present in an area, he or she may properly use low-technology devices that enhance the senses. For example, flashlights may be used to look inside cars and dogs may sniff cars, luggage, or field gear. On the other hand, a thermal imaging device may not be used to observe activity inside a private home. In addition, special rules exist for the use of wiretaps and electronic “bugs.”

D. EXCEPTIONS TO THE FOURTH AMENDMENT

1. Exigent Circumstances

In emergencies, where the delay necessary to get a warrant would result in the removal, destruction, or concealment of evidence, a warrant is not required. However, probable cause is still required in these situations. For example, a staff duty officer walking through a barracks who smells marijuana coming from a Soldier’s room may enter the room and “freeze” the situation. If he apprehends the Soldier for using marijuana, he may conduct a search of the Soldier incident to apprehension and may also seize any items in plain view. He should then seek a search authorization before he searches the rest of the room.

2. Automobile Exception

If there is probable cause to search an automobile, a warrant or authorization is generally not required. For example, if a commander has probable cause to believe that drugs are located in a Soldier’s car, he may search the car without obtaining a warrant or search authorization. This exception exists because such evidence may be easily lost if the automobile is driven away before a warrant or authorization is obtained. However, the best course of action is to “freeze the scene” (by not allowing a driver to move the automobile) and call military law enforcement to investigate.

3. Consent Searches

A Soldier may consent to a search. However, the consent must be voluntary and not coerced by the influence of rank or position. When requesting consent, you should advise the Soldier that he or she has the right not to consent. If the Soldier does consent, he or she can withdraw the consent at any time. In this case, the search must stop immediately. A Soldier may consent to a partial search (for example, everything in the room, but not the wall locker). Article 31, UCMJ, rights and written consent are recommended but not required. Do not threaten a Soldier that the search will be conducted even if he or she refuses to give consent because such a threat invalidates consent.

4. Search Incident to Apprehension

Any person who has been properly apprehended may be searched in order to ensure the safety of the apprehending person and others, and to prevent destruction of evidence. Only the person's clothing and body and any areas within the person's reach may be searched. The searcher may not search the contents of a cellular phone seized from the apprehended person, without a search authorization. When a person is apprehended in an automobile, the entire passenger compartment may be searched, but only if the individual is within reaching distance of the passenger compartment at the time of the search, or if it is reasonable to believe the vehicle contains evidence of the crime for which the individual was just arrested. The scope of this vehicle search incident to apprehension includes the glove box, console, backseat and under the seats, but does not include the trunk.

5. Inspections

a. General

Inspections are a function of command. The commander has the inherent right to inspect the barracks to ensure the command is properly equipped, maintained, and ready, and that personnel are present and fit for duty. A commander conducting an inspection may find items that could aid in a criminal prosecution. These items may be seized and used as evidence for an Article 15 or court-martial.

1) Primary Purpose Test

An inspection must have a primary administrative purpose. Inspections to ensure security, readiness, cleanliness, order, and discipline are permissible. Inspections may include an examination to locate and confiscate unlawful weapons and other contraband, since confiscation of contraband is a means of ensuring security, readiness, and order. If the primary purpose of an inspection is to obtain evidence for an Article 15 or court-martial, it is not an inspection and may be considered a search. If it is a search, the Fourth Amendment applies. An inspection may have a dual purpose, both administrative and criminal, so long as the primary purpose is administrative.

2) Scope

The scope of an inspection must reflect its purpose. If the purpose is broad (general security, readiness, fitness for duty) then the intrusion may be broad (unroll sleeping bags, check inside pockets, unlock containers). If the purpose of the inspection is narrow (for example, only to check helmet accountability), then one cannot inspect beyond that purpose.

3) Subterfuge rule

An inspection may not be used as a subterfuge for a search. This normally takes place when a commander feels an individual has contraband in his possession or living area but lacks sufficient information to amount to probable cause, and uses an "inspection" to search that person for the contraband. Evidence discovered during an improper inspection usually is not admissible for court-martial (although technically admissible at an Article 15, commanders

should be aware that if a Soldier refuses Article 15, there may not be enough evidence to prove a crime at a court-martial). If (1) an inspection immediately follows a report of a specific offense and was not previously scheduled, or (2) specific persons are targeted, or (3) specific persons are subjected to substantially different intrusions, then the government will be required to show by clear and convincing evidence that the primary purpose of the examination was administrative, and that the inspection was not a ruse for an illegal criminal search. The commander's testimony will be crucial to this issue.

b. Health and Welfare Inspections

The most common type of inspection is a commander's inspection of the unit to protect the health and welfare of the unit's Soldiers. The primary purpose of such an inspection must be administrative. Commanders should ensure that the scope of the inspection is consistent with the purpose and that everyone is treated alike. For example, if one Soldier's wall locker is inspected with "extra care" during a health and welfare inspection, the inspection will likely be found to be an unlawful subterfuge for a criminal search.

c. Drug Dogs

A commander conducting a health and welfare inspection may use a drug detector dog to enhance the senses of individuals conducting the inspection. Drug detector dogs may be used to inspect barracks, automobiles, and other areas, but as a matter of DA policy, will not be used to inspect persons. Drug dogs may not sniff individual Soldiers or formations. When a request is made for a handler and dog to go to a particular unit, the commander requesting the team should coordinate with either the provost marshal or the Military Working Dog Detachment. Before the dog is used, the handler should demonstrate the reliability of the dog. The test for reliability consists of certification from an approved training course, the training and utilization alert record, and performance demonstrated to the commander.

d. Lost Weapons Lock-downs

The commander has the right to conduct an inspection for weapons or ammunition after a unit has been firing or has found a weapon missing. The commander or designated representatives may inspect all persons who were on the range and others who were in a position to steal the weapon, and their barracks and private automobiles. Commanders should exercise caution and ensure the inspection is conducted consistent with the primary purpose test and all Soldiers are treated alike.

e. Gate Inspections

A gate inspection is another form of an administrative inspection. An installation commander may authorize gate inspections to check drivers' licenses and vehicle registrations, deter drug traffic, reduce DUI incidents, prevent terrorist attacks, deter larcenies, or any other legitimate administrative purposes. Inspections may include all vehicles, or only those designated by the commander, such as every tenth vehicle.

1) Written guidance

The installation commander must issue written instructions defining the purpose (e.g. security, drugs, or and DUIs), times, locations, and methods for gate inspections. It is important to limit the discretion of the gate guards conducting the inspection. Some discretion to consider traffic patterns is permissible so long as it is provided by the written guidance.

2) Notice

All persons must receive notice in advance that they are subject to inspection upon entry, while within the confines, and upon departure from the installation. A warning sign or visitor's pass are common ways to give notice.

3) Drug dogs / Technological Aids

Metal detectors, drug dogs, and other technological aids may be used during gate inspections.

4) Civilian Employees

Civilian employees may be entitled to overtime pay when their working conditions are affected by gate inspection delays. Check the local collective bargaining agreement to gauge this impact.

5) Entry inspections

Civilians entering the installation may only be inspected with their consent. If they refuse to consent, they should be denied access to the installation. Soldiers may be ordered to comply with an inspection, and may be inspected over their objection, using reasonable force, if necessary.

6) Exit inspections

Civilians exiting the installation may be inspected over their objection, using reasonable force if necessary. Civilians who refuse to comply with an exit inspection should be informed of possible administrative sanctions (loss of post driving privileges, bar letter). Immediately notify the installation commander if this happens. If contraband is found, detain the civilians and notify the local civilian police. The standard for exit inspections for Soldiers is the same as for entry inspections; they may be ordered to submit to an inspection and reasonable force may be used if necessary.

f. Inventories

1) General

A commander is required to conduct an inventory of a Soldier's property when the Soldier is AWOL, admitted to the hospital, or on emergency leave. The commander or a designated representative should also inventory the property of an individual who has been placed in military or civilian confinement. If the person conducting the inventory discovers items that would aid in a criminal prosecution, those items may be seized and used as evidence.

2) Automobiles

Under some circumstances, automobiles may also be inventoried. When a person is arrested for DUI or for some other offense which requires transportation to the MP station, the person's vehicle may be secured. If the vehicle is impounded, it may be inventoried. If a person is arrested for DUI just as he pulls into his quarters' parking lot, there is no reason to impound the vehicle. But if the person is arrested on an outer road of the post where there is a possibility of vandalism, the vehicle may be impounded and inventoried.

E. APPREHENSIONS

1. Contacts and Stops and Apprehensions

a. Contacts

Officers, NCOs, and MPs may initiate "contact" with persons in any place they are lawfully situated. Generally, such contacts are not "apprehensions" subject to the Fourth Amendment. Most contacts do not result from suspicion of criminal activity. Examples of lawful contacts include questioning witnesses to crimes and warning pedestrians that they are entering a dangerous neighborhood. These types of contacts are entirely reasonable, permissible, and within the normal activities of law enforcement personnel and commanders.

b. Stops

An officer, NCO, or MP who reasonably suspects that a person has committed, is committing, or is about to commit a crime has the obligation and authority to stop that person. Both pedestrians and occupants of vehicles may be stopped. If the person is a suspect and is to be questioned, rights warnings should be read. The stop must be based on more than a hunch. The official making the stop should be able to state specific facts to support the decision to stop an individual. If the individual making the stop reasonably suspects the stopped person is armed and dangerous, they may frisk or pat down the person for weapons.

c. Apprehensions

Arrests in the military are called apprehensions. Any officer, NCO, or MP may apprehend individuals when there is probable cause to apprehend. Generally, a person is apprehended when he or she is not free to leave. The person making the apprehension should identify himself or herself and tell the suspect he or she is under apprehension. The suspect should also be told the reason for the apprehension and read his or her Article 31, UCMJ, rights, preferably from a rights warning card, as soon as practicable. If the suspect resists apprehension he or she may be prosecuted for resisting apprehension or disobeying an order. Civilians may be detained until military or civilian police arrive.

2. Probable Cause to Apprehend

A person may be apprehended only if there is probable cause that the person has committed a crime. Probable cause to apprehend is a common sense appraisal based on all of the facts and circumstances present. An example of probable cause to apprehend is when you or some other

reliable person has seen an individual commit a violation of the UCMJ, such as using marijuana, assaulting someone, breaking another's property, or being drunk and disorderly.

3. Arrest Warrants

Generally, if there is probable cause, no authorization to apprehend (arrest warrant) is required in the military. One important exception is when you apprehend someone in a "private dwelling," such as on-post family quarters, or any off-post quarters. If the person to be apprehended is in a "private dwelling," the apprehending officer must obtain authorization to make the apprehension from a military magistrate or the commander with authority over the private dwelling (usually the installation commander). Barracks and field encampments are not considered private dwellings; therefore, no special authorization is needed to apprehend someone there. Also, to apprehend a person at off-post quarters requires coordination with civilian authorities and may require an arrest warrant from a civilian judge.

F. URINALYSIS TESTS

1. Use of Test Results

There are four kinds of urine tests: inspections, probable cause tests, consent tests, and fitness-for-duty tests. Results from inspection, probable cause, and consent urine tests may be used for Article 15, court-martial and administrative separation purposes. The results of a fitness-for-duty test may not be used as a basis for an Article 15 or court-martial. In addition, a positive fitness-for-duty test result may not be used in an administrative separation action unless the Soldier receives an honorable discharge.

Command-directed. Be wary of the term "command-directed" urinalysis. Any urine test ordered by the commander (inspection, probable cause, fitness-for-duty) is "command-directed." The ability to use the test results for UCMJ or separation purposes depends on the type of test (inspection, probable cause, consent), not on whether or not it is labeled "command-directed." A fitness-for-duty test is normally "command-directed," but a positive result may not be used for UCMJ purposes.

2. Limited Use Policy

The Limited Use Policy prohibits the use of some urinalysis results in UCMJ or administrative proceedings. An example is a positive urinalysis result for a test taken during the Army Substance Abuse Program (ASAP) by a Soldier who self-referred to the program. The Limited Use Policy is outlined in Army Regulation 600-85.

3. Urinalysis inspections

a. Unit integrity

A unit urinalysis test is merely another form of inspection. All of the Soldiers in a unit may be tested or Soldiers may be "randomly" selected, usually based on the final digit of their social

security number or DOD identification number, for testing. Alternatively, a portion of the unit (platoon, section, squad) may be tested.

b. Battalion Prevention Leader

When the government loses a urinalysis case it is rarely due to laboratory errors. Army urine testing laboratories are now widely regarded as the models for comparison and employ the most stringent scientific testing equipment and techniques. When the government loses a urinalysis case or decides not to prosecute one, it is primarily due to problems at the unit level, usually with the chain of custody. Many of these problems stem from the Battalion Prevention Leader. If a commander takes a Soldier who cannot perform adequately as a squad leader and makes that Soldier the Battalion Prevention Leader, it is likely that there will be problems.

4. Probable cause urine tests

Probable cause urine tests follow the same rules as other probable cause searches. If, under the totality of the facts and circumstances, a commander has a reasonable belief that a Soldier has used drugs, then he may order the Soldier to provide a urine sample. The results of that test are admissible at court-martial or administrative hearing. Common examples of probable cause urine tests are (1) when drugs are discovered on a Soldier's person, car, wall locker or field gear; and (2) when a Soldier has been observed using drugs. Note, probable cause to order a urinalysis may be affected by drug detection times. For example, if a commander receives information that one of their Soldiers used drugs two weeks ago, probable cause may depend on the drug and whether a urinalysis may still be able to detect it. Commanders should consult with law enforcement and their legal advisors if this issue arises.

5. Consent urine tests

a. Consent must be voluntary

A consent urine test is a form of consent search. No probable cause or authorization is required, but the commander must be able to show that the Soldier voluntarily consented to provide a urine sample and was not coerced by the rank or position of the person requesting the sample. Article 31 rights are not required to prove voluntary consent, but if the Soldier is asked questions about his suspected drug use, then Article 31 rights would be required.

b. What to do if the Soldier asks questions

If a Soldier asks the commander, "What are my options?" a new problem arises. In response to the "what are my options" question, the commander should explain the differences between a consent urine test and one ordered by the commander. The results of a consent urine test may be the basis for an Article 15, court-martial or administrative separation. The results of a fitness-for-duty urine test may not. If the Soldier understands these differences and nevertheless consents, the consent will probably be viewed as voluntary.

c. Consent as a back-up

If a commander has probable cause to order a urine test, he may still request a consent sample as a precautionary alternative. If the Soldier asks “what are my options” the commander should explain that the results of a consent urine test are admissible and, if the Soldier refuses to consent, the commander may order a urine test. However, the commander should also tell the Soldier that if the commander orders the test, the results may not be admissible if it is later determined that the commander did not have probable cause. In this case, the test results may not be used for Article 15 or court-martial purposes and may only be used in an administrative separation if the Soldier receives an honorable discharge.

6. Medical Urinalysis

A medical urinalysis is one conducted for a valid medical purpose, including emergency treatment, periodic physicals, and as necessary for diagnosis or treatment. If the test was conducted as part of emergency care related to an actual or possible drug overdose, the test results may qualify for Limited Use protections in accordance with Army Regulation 600-85.

7. Fitness-for-duty urine tests

A commander may order a urine test to determine the “fitness-for-duty” of any Soldier when the commander observes, suspects, or otherwise becomes aware that the Soldier may be affected by illegal drug use. The results of such a fitness-for-duty test are inadmissible for court-martial purposes. They are inadmissible because AR 600-85 balances the needs of the military with the individual privacy rights of the Soldier and will not allow test results based on mere suspicion to be used for punishment. A commander can order a Soldier to provide a urine sample based solely on mere suspicion; but because this is not based upon probable cause, an inspection, or consent, the results may only be used to refer the Soldier for rehabilitative treatment or separate him from the service with an honorable discharge. Before a commander orders a Soldier to provide a urine sample, the commander should understand how the urinalysis results may be used to prevent later confusion when the results come back.

a. Suspicion is less than probable cause

Reasonable suspicion sufficient to order a fitness-for-duty test must be based upon facts which a commander can articulate. However, it need not amount to probable cause.

Appendix A

Commander's Guide To Articulate Probable Cause To Search

1. Probable cause to authorize a search exists if there is a reasonable belief, based on facts, that the person or evidence sought is at the place to be searched. Reasonable belief is more than mere suspicion. Witness or source should be asked three questions:

a. Who, what, where and when? Get specific facts!

- 1) Be specific: how much, size, color, etc.
- 2) Is it still there (or is information stale)?
 - a) If the witness saw a joint in barracks room two weeks ago, it is probably gone; the information is stale.
 - b) If the witness saw large quantity of marijuana in barracks room one day ago, it is probably still there; the information is not stale.

b. How do you know? Which of these apply:

- 1) "I saw it there." Such personal observation is extremely reliable.
- 2) "He [the suspect] told me." Such an admission is reliable.
- 3) "His [the suspect's] roommate/wife/friend told me." This is hearsay. Get details and call in source if possible.
- 4) "I heard it in the barracks." Such rumor is unreliable unless there are specific corroborating and verifying details.

c. Why should I believe you? Which of these apply:

- 1) Witness is a good, honest Soldier; you know him from personal knowledge or by reputation or opinion of chain of command.
- 2) Witness has given reliable information before; he has a good track record (CID may have records).
- 3) Witness has no reason to lie.
- 4) Witness has truthful demeanor.
- 5) Witness made statement under oath. ("Do you swear or affirm that any information you give is true to the best of your knowledge, so help you God?")
- 6) Other information corroborates or verifies details.
- 7) Witness made admission against own interests.

2. The determination that probable cause exists must be based on facts, not only on the conclusion of others. The determination should be a common sense appraisal of the totality of all the facts and circumstances presented. Make a written note of the reasons why you authorized the search in case authorization becomes an issue later.

3. Talk to your legal advisor!



Self-Incrimination, Confessions, and Rights Warning

A. SOURCES OF THE RIGHTS

A Soldier's privilege against self-incrimination and right to counsel come from four sources:

1. The Fifth Amendment

"No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

2. Uniform Code of Military Justice

a. Article 31(a), UCMJ

"No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him."

b. Article 31(b), UCMJ

"No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by a court-martial."

3. The Sixth Amendment

"In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense."

4. Army Regulations

a. AR 15-6 – Investigations

No military witness or respondent will be compelled to incriminate himself (see Article 31, UCMJ). No witness or respondent not subject to the UCMJ will be deprived of his rights under the Fifth Amendment.

b. AR 27-10 - Nonjudicial Punishment

The imposing commander will ensure that the Soldier is notified of his right to remain silent and his right to consult with counsel.

c. AR 635-200 - Enlisted Personnel Separations

Article 31, UCMJ, applies to board procedures.

This list of regulations is not exhaustive; other regulations also impose a rights warning requirement. Always review regulations governing a specific type of investigation or proceeding to decide if rights warnings are required. Soldiers are entitled to warnings in accordance with Article 31, UCMJ and *Miranda v. Arizona* (Miranda warnings).

B. THE RIGHTS WARNING DECISION

Whenever a member of a command team or someone subject to the code intends to conduct official questioning of a Soldier, they must read a rights warning. Failure to read the Soldier their rights could result in the statement being suppressed or excluded. Each element of this standard is discussed below:

1. Official

The first part of the rule requires rights warnings when the questioner acts in an official capacity. Law enforcement personnel and commanders almost always act in an official capacity. In contrast, when a Soldier brags about criminal conduct in response to a friend's question, those statements may be used against the Soldier because the friend is not acting in an "official" capacity and is not required to read rights warnings to the Soldier.

2. Questioning

Questioning is a broad term and includes any formal or informal words or actions that are designed to elicit (or reasonably likely to result in) an incriminating response. If someone in an official are trying to get the Soldier to tell you something that you can use against them, you are questioning the Soldier. For example, it is questioning if you bring a Soldier suspected of stealing a rifle into your office and attempt to get a response by showing the Soldier the recently recovered stolen weapon.

It is not questioning when a Soldier volunteers information or spontaneously gives information without any "words or actions reasonably likely to elicit an incriminating response" from the commander. If you want to question the Soldier after any volunteered information, then you must give rights warnings.

3. Suspected or accused

You do not have to advise all Soldiers of their rights before questioning them. Witnesses, who are not suspected or accused of offenses, need not be advised of any privilege against self-incrimination, even though you are conducting official questioning. A Soldier becomes a suspect when you believe, or have enough information such that you reasonably should believe that the Soldier committed an offense. Because of this "reasonableness" standard, you cannot avoid rights warnings by simply saying that you did not suspect the Soldier being questioned. A Soldier becomes an "accused" after court-martial charges have been preferred against him.

4. Summary

When you officially question a suspect or accused, you must read the rights warnings prior to the questioning. If you must re-interview the suspect, you should complete another rights advisement before questioning, and ensure defense counsel is present if necessary.

C. RIGHTS WARNINGS

Rights warnings should be read verbatim from DA Form 3881, Rights Warning Procedure/Waiver Certificate (attached below) or GTA 19-06-006, How to Inform Suspect/Accused Persons of Their Rights (Rights Warning Card) (attached below).

D. VOLUNTARY WAIVER OF RIGHTS

After reading the rights warnings to the suspect, ask these questions:

- Do you understand your rights? (Yes)
- Do you want a lawyer? (No)
- Are you willing to make a statement? (Yes)

If the answers in the parentheses are given, the suspect has waived his or her rights and you may proceed with your interview. If the suspect does not understand his or her rights, you should explain the rights further; if he or she wants to remain silent or see an attorney, you should stop the interview, make a note of the request, and call your legal advisor. Be sure to specifically note whether the suspect wants to remain silent, have an attorney, or both. Different rules apply to each request.

E. PRESENCE OF COUNSEL

In certain circumstances, defense counsel must be present before questioning a Soldier about misconduct. For example, if charges have been preferred against a Soldier, then defense counsel must be present before questioning the Soldier about the charged offenses. If the questioning focuses on uncharged misconduct, defense counsel may not have to be present. Even if no charges are preferred, if the Soldier in a previous custodial interrogation requests to consult with a lawyer, then normally a defense counsel must be present before conducting a subsequent interrogation. However, it is best practice to notify the Soldier's attorney if they are going to be questioned. Further, if you suspect the Soldier of an offense and are going to question them, you must read them their rights. This area can be very complicated; therefore, contact your legal advisor before questioning a Soldier who has had charges preferred against him, or has previously asked for a lawyer.

F. REMEDY: EXCLUSION

If the questioning official violates the voluntariness doctrine; the requirement to give rights warnings; the rules on obtaining a waiver; or, the rules about the presence of counsel, then any statement obtained from a suspect that might have been used against the suspect at trial will

be excluded from evidence. Any evidence derived from the statement may also be excluded. To avoid this catastrophic result, commanders and law enforcement officers should default to notifying Soldiers of their rights.

HOW TO INFORM SUSPECT/ACCUSED PERSONS OF THEIR RIGHTS	(For civilians not subject to the UCMJ) "YOU HAVE THE RIGHT TO TALK PRIVATELY TO A LAWYER BEFORE, DURING, AND AFTER QUESTIONING AND TO HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE ONE YOU ARRANGE FOR AT YOUR OWN EXPENSE, OR IF YOU CANNOT AFFORD A LAWYER AND WANT ONE, A LAWYER WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING BEGINS."
Use this card only when DA Form 3881, Rights Warning Procedure/Waiver Certificate, cannot be used. Complete DA Form 3881 as soon as possible. VERBAL RIGHTS WARNING Inform the person of your official position, the nature of the offense(s), and the fact that he/she is a suspect/accused. Then read him/her the following-do not paraphrase; read verbatim.	4. "IF YOU ARE NOW WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION, WITH OR WITHOUT A LAWYER PRESENT, YOU HAVE A RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME, OR SPEAK PRIVATELY WITH A LAWYER BEFORE ANSWERING FURTHER, EVEN IF YOU SIGN A WAIVER CERTIFICATE."
"BEFORE I ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS." 1. "YOU DO NOT HAVE TO ANSWER MY QUESTIONS OR SAY ANYTHING." 2. "ANYTHING YOU SAY OR DO CAN BE USED AS EVIDENCE AGAINST YOU IN A CRIMINAL TRIAL." 3. (For personnel subject to the UCMJ) "YOU HAVE THE RIGHT TO TALK PRIVATELY TO A LAWYER BEFORE, DURING, AND AFTER QUESTIONING AND TO HAVE A LAWYER PRESENT WITH YOU DURING QUESTIONING. THIS LAWYER CAN BE A CIVILIAN YOU ARRANGE FOR AT NO EXPENSE TO THE GOVERNMENT OR A MILITARY LAWYER DETAILED FOR YOU AT NO EXPENSE TO YOU, OR BOTH."	Make certain the suspect/accused fully understands his/her rights. Then say: "DO YOU WANT A LAWYER AT THIS TIME?" "AT THIS TIME, ARE YOU WILLING TO DISCUSS THE OFFENSE(S) UNDER INVESTIGATION AND MAKE A STATEMENT WITHOUT TALKING TO A LAWYER AND WITHOUT HAVING A LAWYER PRESENT WITH YOU?" (See DA Form 3881 for more detailed instructions.) Department of the Army Graphic Training Aid Supersedes GTA 19-6-5, July 1965
	GTA 19-06-006, June 1991

Fig. 8-1 - Rights Warning Card

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE For use of this form, see AR 190-30; the proponent agency is P56G			
DATA REQUIRED BY THE PRIVACY ACT			
AUTHORITY:	Title 10, United States Code, Section 3012(g)		
PRINCIPAL PURPOSE:	To provide commanders and law enforcement officials with means by which information may be accurately identified.		
ROUTINE USES:	Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.		
DISCLOSURE:	Disclosure of your Social Security Number is voluntary.		
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)		6. ORGANIZATION OR ADDRESS	
9. SSN	7. GRADE/STATUS		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
Section A. Rights			
The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____			
Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:			
1. I do not have to answer any question or say anything. 2. Anything I say or do can be used as evidence against me in a criminal trial. 3. (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both. - 2 - (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.			
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.			
5. COMMENTS (Continue on reverse side)			
Section B. Waiver			
I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.			
WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE	
1a. NAME (Type or Print)	4. SIGNATURE OF INVESTIGATOR		
5. ORGANIZATION OR ADDRESS AND PHONE	6. TYPED NAME OF INVESTIGATOR		
2a. NAME (Type or Print)	7. ORGANIZATION OF INVESTIGATOR		
6. ORGANIZATION OR ADDRESS AND PHONE			
Section C. Non-waiver			
1. I do not want to give up my rights ☐ I want a lawyer ☐ I do not want to be questioned or say anything			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 282B) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

Fig. 8-2 - Rights Warning /Waiver Certificate
(Front Page)

PART 3 - RIGHTS WARNING PROCEDURE	
THE WARNING	
1. WARNING - Inform the suspect/accused of: a. Your official position, b. Nature of offense(s), c. The fact that he/she is a suspect/accused. 2. RIGHTS - Advise the suspect/accused of his/her rights as follows: "Before I ask you any questions, you must understand your rights." a. "You do not have to answer my questions or say anything." b. "Anything you say or do can be used as evidence against you in a criminal trial." c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer	can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both." - or - (For civilians not subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins." 4. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate." Make certain the suspect/accused fully understands his/her rights.
THE WAIVER	
"Do you understand your rights?" (If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.) "Have you ever requested a lawyer after being read your rights?" (If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)	"Do you want a lawyer at this time?" (If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.) "At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)
SPECIAL INSTRUCTIONS	
WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate. IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances. PRIOR INCRIMINATING STATEMENTS: 1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.	2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisement. NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused. WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")
COMMENTS (Continued)	

REVERSE OF DA FORM 3881

AFD LC 10-0003

Fig. 8-3 - Rights Warning/Waiver Certificate
(Back Page)

Punitive Articles of the UCMJ

Art.	Title
GENERAL PROVISIONS	
77	Principals
78	Accessory after the fact
79	Conviction of offense charged, lesser included offenses, and attempts
INCHOATE OFFENSES	
80	Attempts
81	Conspiracy
82	Soliciting Commission of Offenses
PLACE OF DUTY OFFENSES	
83	Malingering
84	Breach of Medical Quarantine
85	Desertion
86	Absence without leave (AWOL)
87	Missing movement; Jumping from a Vessel
87a	Resistance, Flight, Breach of Arrest, and Escape
87b	Offenses Against Correctional Custody and Restriction
AUTHORITY OFFENSES	
88	Contempt toward officials
89	Disrespect toward / assault of a superior commissioned officer
90	Willfully disobeying a superior commissioned officer
91	Insubordinate conduct toward a Noncommissioned, petty officer or warrant officer
92	Failure to obey order or regulation

Art.	Title
93	Cruelty and maltreatment
93a	Prohibited activities with a military recruit/trainee by a person in a position of special trust
94	Mutiny and sedition
ENEMY/POST OFFENSES	
95	Offenses by Sentinel or Lookout
95a	Disrespect toward sentinel or lookout
96	Releasing prisoner without proper authority; drinking with a prisoner
97	Unlawful detention
98	Misconduct as a prisoner
99	Misbehavior before the enemy
100	Subordinate compelling surrender
101	Improper use of countersign
102	Forcing a safeguard
103	Spies
103a	Espionage
103b	Aiding the Enemy
FALSITY OFFENSES	
104	Public records offenses
104a	Fraudulent enlistment, appointment, or separation
104b	Unlawful enlistment, appointment, or separation
105	Forgery
105a	False or unauthorized pass offense
106	Impersonation of an officer, NCO, petty officer, agent, or official

Art.	Title
106a	Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button
107	False official statements; false swearing
107a	Parole violation
PROPERTY OFFENSES	
108	Loss / damage / destruction / wrongful disposition of military property
108a	Captured or Abandoned Property
109	Waste / spoilage / destruction of non-military property
109a	Mail matter; wrongful taking, opening, etc.
VESSEL / VEHICLE OFFENSES	
110	Improper hazarding of a vessel or aircraft
111	Leaving the scene of a vehicle accident
INTOXICATION / DRUG OFFENSES	
112	Drunkenness or other incapacitation offenses
112a	Wrongful use, possession, etc., of controlled substances
113	Drunken / reckless operation of a vehicle, etc.
ENDANGERMENT / THREATENING OFFENSES	
114	Endangerment offenses
115	Communicating Threats
116	Riot or breach of peace
117	Provoking Speech or Gestures
117a	Wrongful broadcast / distribution of inmate images
MURDER / MANSLAUGHTER / CHILD ENDANGERMENT	
118	Murder

Art.	Title
119	Manslaughter
119a	Death or injury of an unborn child
119b	Child endangerment
SEXUAL OFFENSES	
120	Rape and sexual assault generally
120a	Mails; deposit of obscene matter
120b	Rape and sexual assault of a child
120c	Other sexual misconduct (Indecent viewing / recording / broadcasting; forcible pandering; indecent exposure)
LARCENY / FRAUD OFFENSES	
121	Larceny and wrongful appropriation
121a	Fraudulent use of credit cards, debit cards, and other access devices
121b	False pretenses to obtain services
122	Robbery
122a	Receiving Stolen Property
123	Offenses concerning government computer
123a	Making / Drawing / Uttering check, draft, or order without sufficient funds.
124	Frauds against the United States
124a	Bribery
124b	Graft
OFFENSES AGAINST PERSONS	
125	Kidnapping
126	Arson; burning property with intent to defraud
127	Extortion
128	Assault
128a	Maiming
128b	Domestic Violence
129	Burglary; unlawful entry

Art.	Title
130	Stalking
OBSTRUCTION OFFENSES	
131	Perjury
131a	Subornation of Perjury
131b	Obstruction of Justice
131c	Misprision of a serious offense
131d	Wrongful refusal to testify
131e	Prevention of authorized seizure of property
131f	Noncompliance with procedural rules
131g	Wrongful interference with an adverse administrative proceeding
132	Retaliation
OFFENSES OF GENERAL APPLICATION	
133	Conduct unbecomg an officer and a gentleman
134	General Article

Art.	Title
	Enumerated Article 134 offenses:
	• Animal Abuse • Bigamy • Check; worthless making and uttering by dishonorably failing to maintain funds • Child pornography • Debt; dishonorably failing to pay • Disloyal Statements • Disorderly conduct; drunkenness • Extramarital sexual conduct • Firearm; discharging through negligence • Fraternization • Gambling with subordinate • Homicide, negligent • Indecent conduct • Indecent language • Pandering and prostitution • Self-injury with intent to avoid service • Sexual Harassment • Straggling



Fraternization and Improper Senior-Subordinate Relationships

A. REFERENCES

- Manual for Courts-Martial, 2024 Edition
- AR 600-32, Conduct Between Soldiers of Different Grades, 18 January 2024
- DoDI 1304.33, Protecting Against Inappropriate Relations During Recruiting and Entry Level Training

B. OVERVIEW

The Army's policy regarding senior-subordinate relationships imposes prohibitions on many personal and business relationships between officers and enlisted Soldiers and noncommissioned officers (NCOs) and junior enlisted Soldiers. The policy does, however, permit many relationships in settings such as community-based organizations, church activities, sports events, and family and unit social functions. Violations of the policy may be punishable under the UCMJ, as a failure to obey order or regulation (Art. 92) or prohibited activities with military recruit or trainee by person in position of special trust (Art. 93a).

For purposes of these provisions, the term "officer" includes both commissioned and warrant officers. When used without a qualifier, the term "enlisted" refers to both noncommissioned officers and junior enlisted Soldiers. The term "noncommissioned officer" refers to Soldiers in the grade of corporal to command sergeant major/sergeant major. The term "junior enlisted Soldier" refers to Soldiers in the grade of private to specialist.

C. PROHIBITED PERSONAL RELATIONSHIPS

Certain types of relationships between officers and enlisted Soldiers or between noncommissioned officers (NCOs) and junior enlisted Soldiers are automatically prohibited. These types of relationships include ongoing business relationships, including lending money and commercial solicitation; dating, shared living accommodations (other than due to operational necessity); engagement in intimate or sexual relationships; and gambling. This policy applies to relationships between Army officers and enlisted Army Soldiers or Army NCOs and junior enlisted Soldiers, as well as between Army officers or enlisted and members of other services. If a Soldier is about to be promoted to a rank which would place a previously acceptable relationship into a prohibited category (e.g. junior enlisted to NCO or NCO to warrant officer) the couple must terminate the relationship or marry within one year of the appointment or change of status.

The prohibition does not apply to marriages between an officer and an enlisted member or an NCO and a junior enlisted Soldier. When evidence of fraternization prior to their marriage exists, commanders may take appropriate command action on the prior fraternization. The pro-

hibition also does not apply to Guard and Reserve Soldiers when the relationship exists primarily due to civilian acquaintanceship as long as they are not in an activated status.

The regulation also prohibits relationships during recruiting and entry-level training between trainees and all permanent party Soldiers (regardless of rank or assignment) as well as between recruits and recruiters. Entry-level training is Recruit and Initial Skill Training, to include Officer Candidate School, ROTC, and Service Academies. A trainee is any military or civilian member undergoing initial military training in a formal training course with a unique training identifier, or as part of an in-residence training or education course. A trainer is any military or civilian member who is responsible for planning, organizing, or conducting initial military training as part of a formal training course, with a unique training course identifier, or as part of an in-residence training or education course. A prospect is any person who has expressed, to recruiting personnel, an interest in enlisting or receiving an appointment in a Military Service and who appears to possess, or who may in the future possess, the potential and qualifications for enlistment or appointment in a Military Service. A prospect maintains a “prospect status” for a period of one year from the date he or she expresses their loss of interest to recruiting personnel.

Prohibited conduct includes developing or attempting to develop, or conducting a personal, intimate, or sexual relationship with any prospect, applicant, recruit, or trainee; use of grade or position, threats, pressure, or promise of return of favors or favorable treatment to gain sexual favors; making sexual advances toward, or seek or accept sexual advances; allowing a prospect, applicant, recruit, or trainee to enter their dwelling or privately owned vehicle; establishing a common household; providing alcohol; attending social gatherings or establishments on a personal social basis; gambling; lending or borrowing money; soliciting donations; hiring or employing in an official or personal capacity; accepting personal goods in an unofficial or personal capacity; and participating in closed-door discussions. Training commands (e.g. TRADOC, AMEDDC) and the U.S. Army Recruiting Command publish supplemental regulations prohibiting additional conduct.

Before performing recruiter and trainer duties, recruiters and trainers must sign a DD Form 2982 (Recruiter/Trainer Prohibited Activities Acknowledgement). No later than the first visit or at the onset of the first training session, recruits and trainees must sign a DD Form 2983 (Recruit/Trainee Prohibited Activities Acknowledgement). Recruiters must all provide applicants with contact information they can use to notify someone if they believe their recruiter has acted improperly.

Exceptions to prohibitions may be granted to accommodate previously established relationships prior to the recruiting or training (e.g. family members). Only the recruiter’s or trainer’s commander at the grade of O-4 or above may approve these exceptions. Additionally, the policy is not intended to eliminate professional development and mentorship and the prohibitions do not apply to command-authorized unit social events and social development programs.

D. PERSONAL RELATIONSHIPS BETWEEN SOLDIERS OF DIFFERENT RANKS

This policy prohibits all relationships between officers or Soldiers of different rank (whether the relationships are officer-officer, officer-enlisted, or enlisted-enlisted, NOT relationships based on position, e.g. CO and XO where both are O-3s) which result in any of the following:

- Compromise, or appear to compromise, the integrity of supervisory authority or the chain of command.
- Cause actual or perceived partiality or unfairness.
- Involve or appear to involve the improper use of rank or position for personal gain.
- Are, or are perceived to be, exploitative in nature.
- Cause an actual or clearly predictable adverse impact on discipline, authority, morale or the command's ability to accomplish its mission.

E. BUSINESS RELATIONSHIPS AND GAMBLING

All business relationships between officers and enlisted Soldiers or NCOs and junior enlisted Soldiers, except for landlord-tenant relationships and one-time business transactions (such as the sale of a car) are prohibited. Furthermore, the policy prohibits the borrowing and lending of money (no de minimis exception), and commercial solicitations, between officers and enlisted Soldiers or NCOs and junior enlisted Soldiers. There is an exception for Guard and Reserve Soldiers when the relationship exists primarily due to civilian employment. Gambling between officers and enlisted personnel or NCO's and junior enlisted Soldiers is strictly prohibited (e.g. NCAA pool with a monetary buy-in is prohibited).

F. TEAM-BUILDING RELATIONSHIPS

Social contacts between officers and enlisted Soldiers, or between Soldiers of different ranks, in forums such as community organizations, church activities, sports events, family gatherings, and unit social functions are permitted.

G. ENFORCEMENT OF POLICY

The policy recognizes that commanders are responsible for enforcing the terms and conditions of the policy. It also recognizes, however, that all military personnel share the responsibility for maintaining professional relationships.

1. Responsibility of All Soldiers

While the senior Soldier in a relationship generally is in the best position to terminate or limit the relationship; the policy holds accountable all Soldiers who violate the policy.

2. Substantiated Violations by Recruiter or Trainer

Substantiated violations by an Army recruiter or Army trainer providing entry-level training requires the commander to initiate administrative separation unless the Soldier is otherwise

being punitively discharged or dismissed for the violation as part of a court-martial sentence. DA Civilian recruiters or trainers may be subject to administrative or disciplinary action and removal from federal service. Commanders who receive information that a contractor is accused or suspected of engaging in prohibited activities will immediately contact the contracting officer.

3. Commanders' Options

Commanders have a wide variety of options at their disposal in addressing violations of the policy. Commanders must carefully consider all of the facts and circumstances in reaching a disposition that is warranted, appropriate and fair while evaluating the minimum action necessary to ensure the needs of good order and discipline are satisfied. These options include, but are not necessarily limited to, the following:

- Counseling.
- Orders to Cease the Prohibited Conduct.
- Verbal or Written Reprimands.
- Reassignment.
- Adverse Evaluation Reports.
- Nonjudicial Punishment.
- Separation from the Army.
- Bar to Reenlistment.
- Denial of Promotion.
- Demotion.
- Court-Martial.

4. UCMJ Violations

Violations of the policy as defined in AR 600-32 may be punished under Article 92, UCMJ, Failure to obey order or regulation. If the offender is an officer, the conduct may be punished under Article 134, Fraternization. Applicable punitive articles under the UCMJ may include:

- Article 90: Willfully Disobeying Superior Commissioned Officer.
- Article 92: Failure to Obey Order or Regulation.
- Article 93a: Prohibited Activities with Military Recruit or Trainee by Person in Position of Special Trust.
- Article 133: Conduct Unbecoming an Officer.
- Article 134: Fraternization.
- Article 134: Extramarital Sexual Conduct.
- Article 134: Gambling with Subordinate.
- Article 134: Sexual Harassment.

Proper Responses to Reports of Sexual Assault

The DoD policy on sexual assault is found in Department of Defense Instruction 6495.02. Army policy on sexual assault is found in Army Regulation 600-52. AR 600-52, para. 1-6, explains that the Sexual Harassment/Assault Response and Prevention (SHARP) Program "has two legally required, overarching responsibilities: prevention and response."

"The Army is dedicated to the primary, secondary, and tertiary prevention of sexual harassment and sexual assault. Prevention of sexual harassment and sexual assault are the commander's responsibilities. The SHARP Program assists Army leadership in its approach to prevent and reduce harmful behaviors and in developing specific prevention activities to prevent and respond to sexual harassment and sexual assault."

- A sexual assault report is one of the most sensitive issues that you will have to deal with as a commander. This is especially true if both the victim and the alleged offender are in your unit.
- All commanders must immediately report information about a sexual assault to CID, make sure all notification and reporting requirements are completed, protect sensitive information, and work with CID, the Special Trial Counsel (STC), the Trial Counsel (TC) and possibly the Special Victim Counsel (SVC) throughout the military justice process.
- The victim's commander must ensure the safety and well-being of the victim, reserve judgment on the credibility of the report, treat the victim with dignity and respect, and protect the victim from retaliation.
- The accused's commander must ensure the safety and well-being of the accused, make sure the accused is flagged, understand the accused is entitled to due process and innocent until proven guilty, and protect the accused from pretrial punishment and ostracism in the unit.

The Department of Defense (DoD) and the Army are committed to reducing sexual assault incidents, while increasing reporting rates, through a comprehensive policy that includes prevention, training/education, victim advocacy, response, reporting and accountability.

A. IDENTIFY AND UNDERSTAND THE SPECIAL VICTIM CAPABILITY

Early in your command, you should identify and meet the key professionals that will assist you in this area. In addition to your servicing judge advocate, the following personnel will be a part of the special victim team:

- **Special Trial Counsel (STC)** - STCs are specially-trained judge advocates who are responsible for the prosecution of covered offenses including domestic violence, sexual crimes, and other serious offenses like murder. STCs are located at every major installation

and are assigned to 28 field offices and eight circuit headquarters with worldwide jurisdiction.

- The unit **Trial Counsel (TC)** remains a critical part of a commander's response to sexual assault and a critical part of the team in providing services to the victim.
- **Special Victim Counsel (SVC)** – SVCs are specially-trained judge advocates who represent eligible victims throughout the military justice process. Victims may receive an SVC if they are eligible for military legal assistance and are victims of rape and sexual assault (Article 120, UCMJ); rape and sexual assault of a child (Article 120b, UCMJ); indecent viewing, visual recording, or broadcasting (Article 120c, UCMJ); forcible pandering (Article 120c, UCMJ); indecent exposure (Article 120c, UCMJ); stalking (Article 130, UCMJ); and/or aggravated assault or strangulation/suffocation of a spouse, intimate partner, or an immediate family member (Article 128(b), UCMJ). SVCs are located at installations worldwide. Communications between a victim and their SVC are privileged.
- **Special Victim Investigator** - CID investigator responsible for the investigation of certain offenses, involving victims of sex-related offenses and domestic violence.
- **Special Trial Counsel Noncommissioned Officer** – Primary duties are those that directly support the mission of Office of Special Trial Counsel.
- **Special Victim Liaison (SVL)** – Specially trained facilitator and coordinator who provides information and assistance in obtaining available victim/witness services in sexual assault cases. The SVL also works with the Victim Advocate (VA) who is responsible for providing crisis intervention, referral, and ongoing nonclinical support to a sexual assault victim.
- **Victim Witness Liaison (VWL)** – Impartial facilitator who guides victims and witnesses through the trial process. Provides services to all victims and government witnesses as a facilitator and coordinator for services, benefits (including transitional compensation) and possibly travel. Maintains relationship with the local confinement facility.
- **The Sexual Assault Response Coordinator (SARC)** is the principal POC for sexual assault and sexual harassment. In 2023, SHARP began a restructure to assign the SARCs and VAs to the senior commander, but every brigade will have an identified supporting SARC and VA. The installation Lead SARC is the single point of contact and supervisor for all unit Victim Advocates. The SARC can act as a command advisor and assist in establishing a meaningful training program that will meet the annual requirements, and importantly, help commanders to identify local trends and issues.
- **Sexual Assault Prevention and Response (SAPR) Victim Advocates (VA)** are assigned to the installation Lead SARC and will help to facilitate services for victims of sexually related offenses. All conversations between the VA and the victim are confidential and privileged.
- **Family Advocacy Program Victim Advocates (FAP VA)** are not assigned to your unit but will provide victim advocacy services when a sexual assault occurs as a result of domestic abuse or involves child abuse.

- **The Sexual Assault Review Board (SARB)** convenes monthly and is designed to ensure proper case management of sexual assault cases. It is chaired by a senior commander or deputy commander, usually the installation commander, and will include the victim's commander, all SARCs assigned to the installation, VA, CID, SJA, SVWL, SVC, Chaplain, provost marshal, and personnel who are trained to perform a safety assessment of each sexual assault victim..

B. PREVENTING SEXUAL ASSAULT

Get involved early so that you can set the conditions that will prevent sexual assaults from happening in the first place. Sit down with the unit SARC within 30 days of taking command and go over unit trends, assessment tools and proposed prevention strategies. Command support, unit culture, peer to peer mentorship and bystander intervention may be effective prevention techniques to help reduce incidents of sexual assault.

Key data from the most recent DoD Sexual Assault Response and Prevention Office includes:

- The DoD received 8,515 total reports of sexual assault of which 5,536 were unrestricted and 2,979 were restricted. (FY 2023 DoD Annual Report on Sexual Assault in the Military).
- Junior enlisted members and those under the age of 21 face heightened risk for unwanted sexual contact compared to other segments of the military population.
- An estimated 12.2% of active duty women and an estimated 2.0% of active duty men under the age of 21 indicated experiencing unwanted sexual contact.

Understand these conditions and work to control them.

Assessment tools include but are not limited to command climate surveys, and Defense Equal Opportunity Organizational Climate Surveys (DEOCS). The DEOCS is a DoD command management tool offered annually or within 120 days of taking command. See Army Directive 2013-29 for mandatory command assessments.

Elements of prevention include leadership involvement, peer to peer mentorship, education and training, accountability, organizational support, community involvement, deterrence, and communication. Prevention begins with leadership and your command climate, fostering a culture of mutual respect and responsibility. Every incident of sexual assault, sexual harassment and retaliation degrades mission readiness, and the command's handling of each unrestricted allegation will be seen and evaluated by all.

C. RETALIATION

Commanders at all levels must work to prevent professional and social retaliation against crime victims, those who report crimes, witnesses and victim advocates while holding offenders accountable.

Staff Judge Advocates, Brigade Judge Advocates, Trial Counsel, or Special Trial Counsel will assist commanders in identifying and investigating retaliation, and holding offenders

appropriately accountable. Commanders will incorporate unit-level SHARP annual training, MEO training and training on the prevention of hazing, bullying, retaliation and reprisal into the overall training plan for the unit. See “Improving the Effectiveness of Essential and Important Army Programs,” Army Directive 2018-23.

Reprisal is a form of professional retaliation, which is an important training subject because command actions can be the subject of reprisal complaints, and investigated as a crime under “Retaliation,” Article 132, UCMJ. Article 132 defines reprisal as any personnel action taken or withheld, with the intent to retaliate against any person for reporting or planning to report a criminal offense. This could include imposing an unfavorable personnel action, or withholding a favorable personnel action from a victim or someone who reported a crime because they reported (or you believed they reported) a crime, and done with the intent to retaliate. AR 600-52 also prohibits reprisal against crime victims or persons who report and is punishable under Article 92, UCMJ. The inspector general investigates allegations of reprisal.

Ostracism is a word to describe social retaliation. It happens when anyone excludes the victim or someone who reported a crime from social acceptance or friendship because they reported (or someone believed they reported) a crime. If anyone ostracizes a reporter or victim with the intent to discourage reporting or to discourage justice in any way, that could also be punishable under AR 600-52 and Article 92, UCMJ. Usually, the command will investigate allegations of social retaliation.

Social retaliation presents a complex issue for the command, as identified in the April 2016 DoD Retaliation Prevention and Response Strategy. While acts of social retaliation may technically be punished under the UCMJ, many acts that feel like social retaliation to the victim may not rise to the level of criminal conduct. Commanders must assess whether taking UCMJ action will have the effect of making the retaliation worse along with any impacts on good order and discipline. Social retaliation may be better addressed as a larger command culture issue, and through engaged leadership at all command levels and corrective training promoting a culture of dignity and respect, commanders may better address and prevent peer-to-peer retaliation.

Acts of cruelty, oppression or maltreatment against crime victims or persons who report crimes is also prohibited by AR 600-52. For example, if a peer, teammate, or friend of the accused commits acts of cruelty, oppression or maltreatment against someone who they believed reported a criminal offense, they could be prosecuted under Article 92, UCMJ for violating AR 600-52. Anyone who assaults, threatens, wrongfully punishes, harasses or mistreats a Soldier subject to their orders may, under certain circumstances, be prosecuted for cruelty and maltreatment under Article 93, UCMJ.

Online misconduct may also form the basis for command action. Online misconduct is the use of electronic communication to inflict harm, including but not limited to harassment, bullying, hazing, stalking, discrimination, retaliation or any other types of misconduct that undermine dignity and respect. Soldiers or civilian employees who participate in such misconduct, whether offline or online, may be subject to criminal or administrative action. Online-related incidents should be reported and addressed at the lowest possible level.

Victims of sexually related offenses will most likely disclose incidents of retaliation to their SVC or VA. Retaliation reporters file a DD Form 2910-2, "Retaliation Reporting Statement for

Unrestricted Sexual Assault Case," if they wish to report their retaliation through the SAPR Program.

D. REPORTS OF SEXUAL ASSAULT

There are two kinds of reports: restricted and unrestricted. Victims can only officially make a restricted report when they sign a DD Form 2910 electing the restricted reporting option. Only a select group of people (SARCs, VAs, and health care professionals) may complete the DD Form 2910. Other individuals, including the chaplain or an attorney, may have confidentiality and privilege, but cannot officially receive a restricted report.

If the retaliation reporter **did not** file a DD Form 2910-2, the commander shall immediately confer with their JA, IG office, and STC to ensure the allegations are referred to the appropriate office for evaluation. If the retaliation reporter **did** file a DD Form 2910-2, the commander will immediately refer the retaliation report to CID and contact their STC. The STC has exclusive authority to determine if a reported retaliation offense is a covered offense, under Article 132 (Retaliation).

Commanders should be aware of the "Victim Confiding in Another Person" provision of DoDI 6495.02, Enclosure 4. The victim can still elect to make a restricted report even if they tell another person, so long as the victim did not personally report the sexual assault to law enforcement or the victim did not previously file an unrestricted report on the same incident by signing a DD 2910. Thus, even if the command and CID are alerted of the sexual assault allegation by a third-party or even the victim, the victim can still file a restricted report and elect not to participate in the investigation.

However, if the command is aware of a sexual assault allegation, the command must immediately notify CID even if the victim chooses to file a restricted report. Additionally, CID is still required to conduct an independent investigation. If a restricted report already exists, CID should conduct an independent investigation without the assistance of the victim, SARC or VA. The victim may submit a "Section 540K Declination to Participate in the CID Investigation" letter to document his or her decision not to participate in the investigation and the reason for declining should they choose.

Commanders should work with SARCs to correctly train all Soldiers on what they should do when their friend or teammate tells them about a sexual offense.

1. Immediate Action Drill 1: Relay Report To Law Enforcement

Report EVERY allegation of a sexual assault offense to CID immediately. You must also inform your chain of command, servicing judge advocate, STC, and the SARC.

There is very little discretion in what you do when you hear about a sexual assault. If you learn about an allegation of sexual assault, you must report that allegation to CID immediately. DO NOT conduct any internal command directed investigation into the sexual assault or make any conclusions of whether the conduct meets the elements of sexual assault.

Sexual assault is broadly defined as a sexual act or sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. The term “sexual assault” when used for reporting purposes, includes the crimes of rape, sexual assault (which includes nonconsensual oral and anal sex), abusive or aggravated sexual contact, and attempts to commit these acts.

Many sexual assault allegations may fall into the category of abusive sexual contact. Always call CID, your judge advocate, and your STC if you learn of an allegation or what may be abusive sexual contact. Also, keep in mind that rape and sexual assault are commonly interchanged, but there are legal distinctions.

The Department of Defense defines a sexual assault victim as anyone who makes an allegation of sexual assault. Do not make a credibility judgment about the victim and decide not to treat them as a victim. You must always treat the victim with dignity and respect. You must also remember that the alleged perpetrator is presumed innocent until proven guilty in a court of law.

2. Immediate Action Drill 2: Safeguard The Victim

You need to take immediate actions to ensure that the victim is safe. Notify the SARC immediately and ensure the SARC enters cases into the Defense Sexual Assault Incident Database (DSOID) within 48 hours of the report, and no later than 96 hours in deployed locations. Active duty, reserve component (including National Guard), dependents over 18 years, and DoD civilian employees are all entitled to SARC and VA services. You should require that the victim receives timely access to comprehensive medical and psychological treatment, including emergency care, unless the victim declines healthcare.

Medical examinations and the health and safety of the victim take priority over any CID investigation. If you are speaking with the victim before the VA and the reported incident may have occurred recently, discuss the Sexual Assault Forensic Examination (SAFE) option and ask if the victim would be willing to have a SAFE.

Inform the victim that they can consult with a Special Victim’s Counsel (SVC). Ask if the victim would like to speak to a chaplain, family member, emergency contact, or other support person. Facilitate any requests for support.

If the victim and alleged offender work in the same unit, they may have daily interaction. You should consider issuing a military protective order (DD Form 2873) to the alleged offender to minimize contact and safeguard the victim. The first O-6 in the subject’s chain of command will, as soon as possible, but no later than six hours after determining an MPO is warranted (such as the presence of a threat of physical harm), ensure that the subject’s commander issues a DD Form 2873 (MPO) to the subject, submits it to the installation Directorate of Emergency Service or Provost Marshal Office (DES/PMO), and provides a copy to the protected individual (victim). You may also consider other forms of pretrial restraint against the alleged offender, to included pretrial confinement. Consult with your TC and the STC on the forms and consequences of pretrial restraint decisions.

The victim may also request an expedited transfer from the unit. The first commander authorized to transfer the victim must decide within five calendar days. The presumption is that you will transfer the victim if requested after a credible report. If you disapprove the victim's

expedited transfer request, you must document the grounds on which it was disapproved, and the victim will be given the opportunity to request a review by the first GO in his or her chain of command. The GO must make a decision within five calendar days of submission of the request for review.

In some cases, the victim may not want to transfer from the unit. In those cases, consider transferring the alleged offender. Always discuss your options with your TC, judge advocate, and STC.

The SARB will also conduct a safety assessment determining the victim's safety, risk of suicide, and concerns about retaliation. If the victim's safety is in jeopardy, the installation commander should set up a High-Risk Response Team (HRRT) which will monitor the victim's safety and develop a plan to manage the situation.

If you are the victim's immediate commander, dealing with a victim can be complex. You must be careful not to re-traumatize them with the actions that you take. Work with the SARC, VA, STC, TC or SVC to ensure that any actions you take are truly in the victim's best interest or are necessary for good order and discipline. For example, the decision to remove the victim from their duties may be made with the best intentions, however some victims will perceive that act as retaliation and harmful to their career. Victim advocates and SVCs are specially trained and will help you to interact with and safeguard the victim. If the victim elects to have an SVC, call the SVC after discussing with the STC and determine the appropriate scope of your interactions with the victim. Understand that the SARC, VA and SVC all have confidentiality and privilege with the victim and so they cannot tell you what the victim has told them unless they are given permission from the victim.

3. Immediate Action Drill 3: Reporting Requirements

Immediately send a Commander Critical Information Requirements Report (CCIR) in accordance with Dep't of the Army Memorandum "Guidelines and Process for Commander's Critical Information Requirements (CCIR) Regarding Sexual Assault and Sexual Harassment Incidents," 11 April 2018, your local policy, and with the assistance of the victim's SARC and investigators. When the subject of the report is a senior leader, SHARP professional, SVC, STC, CID Investigator, SVL, Drill Sergeant, Recruiter, Chaplain, Sexual Assault Nurse Examiner (SANE), or any other curious case, the information should be reported to the Army Operations Center within 24 hours. Always protect the personal information of the victim and subject and only send to those who have a legitimate "need to know."

Battalion commanders must, within 8 calendar days, complete a Sexual Assault Incident Response Oversight Report (SAIRO) with assistance from the victim's SARC and CID. Guidance for the SAIRO can be found in DTM-14-007, September 30, 2014. The SAIRO will be provided to the installation commander, first O-6 and GO in the victim's chain of command, and the first O-6 and GO in the subject's chain of command. If the victim is a servicemember, the victim's immediate commander submits the SAIRO. If the victim is a civilian, then the accused's immediate commander will submit the SAIRO. Contents include basic information about the incident (no Personally Identifiable Information or information that could lead to identification of the victim or subject); advocacy services offered; input of victim's commander; healthcare; investigation; safety; expedited transfers; and legal services.

The Senior Commander, typically the senior GO at the installation, is tasked with ensuring the victim's immediate commander provides monthly updates to victims who filed an unrestricted report regarding the sexual assault until the final disposition of the reported assault. This is a non-delegable commander duty and must occur within 72 hours of the SARB. The victim's immediate commander who is attending the SARB is the same commander providing the victim with his or her monthly update. In addition to the requirement of providing monthly updates to the victim, brigade commanders (or brigade-equivalent commanders) will also notify the Soldier complainant within 2 business days of receiving the final outcome of any judicial, non-judicial, or administrative proceedings. This duty is also not delegable. (AD 2022-13)

E. DISPOSITION ACTION

Law enforcement agents, prosecutors, and defense counsel will develop the evidence in the case and will eventually present what they have learned to commanders for disposition. For covered offenses, and all other offenses in which the STC has exercised authority, initial disposition decisions will be made by the STC and, upon deferral, will be returned to the command for appropriate action. At the conclusion of the investigation for non-covered offenses and upon deferral for covered offenses, you will be asked to recommend or determine what action you believe should be taken in the case. For your reference, there is non-binding disposition guidance in Appendix 2.1 of the 2024 Manual for Courts-Martial, and you should always consult your servicing judge advocate.

In a sex-related offense, the file should contain documentation of the victim's preferences for certain dispositions, along with the victim's preference as to whether the charges are prosecuted by the military, or by any other state or federal civilian criminal jurisdiction with the ability to prosecute the accused. (See Rule for Courts-Martial 306A(d)). If the victim desires civilian prosecution of the offense, commanders must discuss with their judge advocate and the STC on the commander's duty to ensure the civilian authorities are notified and the victim is notified of the civilian authority's decision when received. While commanders should consider the victim's preferences, the commander maintains the discretion to take appropriate action on non-covered offenses and covered offenses which have been deferred by a STC.

With the passing of the FY 2022 NDAA, the Office of the Special Trial Counsel (OSTC) has the authority to dispose of covered offenses which includes allegations of rape, sexual assault, forcible sodomy, and attempts to commit these acts. Commanders cannot act on covered offenses, including known or related offenses, unless deferred by a STC. If a STC defers a covered offense back to a commander or convening authority, that commander or convening authority can take no action, take administrative action, or administer nonjudicial punishment, but they cannot refer a covered offense to a special or general court-martial, even if the covered offense is deferred back to the command. If you seek to administer nonjudicial punishment on a deferred offense, you should consult with the STC and your judge advocate prior to initiating action.

Pursuant to the Safe-to-Report (AD 2022-10), disposition authority for a victim's collateral misconduct directly related to a sexual assault is withheld to O-6 and above commanders who possess SPCMCA (brigade commanders). Collateral misconduct is any victim misconduct that

might be in time, place, or circumstance associated with the victim's sexual assault incident. The victim's collateral misconduct may include crimes like underage drinking or fraternization. If the victim's brigade commander determines that the victim's misconduct is minor and collateral to the sexual assault, the commander may not take any disciplinary action against the victim, to include written counseling.

It is important to note that most collateral misconduct will be considered a known or related offense in a sexual assault case in which the STC may exercise authority, so the brigade commander may not take any disciplinary action until the STC defers the case. Discuss your options regarding collateral misconduct with your judge advocate and STC.

Your local withholding policy may also withhold the authority for a victim's collateral misconduct at a higher level, so always check what authority you have when you take command.

If the disposition involves adverse administrative action (to include a memorandum of reprimand), non-judicial punishment or a court-martial conviction for rape, sexual assault, aggravated or abusive sexual contact (Article 120); rape or sexual assault of a child (Article 120b); indecent viewing, recording and broadcasting, forcible pandering, indecent exposure (Article 120c); stalking (Article 130), or attempts of any of the above crimes, then the action must be filed in the performance-disciplinary section of the Soldier's AMHRR. Additionally, commanders must contact their servicing judge advocate (BJA or TC) to ensure that the offense meets the criteria for a sex-related offense, and the process for coding the Soldier's or Officer's ERB or ORB with the appropriate assignment consideration code (ACSO) is completed through HRC (see para. 3-4, AR 600-37)

F. REGISTERED SEX OFFENDERS

If one of your Soldiers is convicted, in a court-martial or a civilian court, of rape, sexual assault, abusive sexual contact, sex trafficking, sexual abuse, domestic assault by a habitual offender, or an offense for which he or she needs to register as a sex offender (see 34 USC 20911, 18 USC 1591, 18 USC Chapter 109A, 18 USC 117, and DoDI 1325.07) and the Soldier does not receive a punitive discharge, then the command must initiate separation. For a list of qualifying convictions, see AR 27-10, ch. 24. In those situations, consider the following administrative courses of action. It is very important, however, that you consult your TC before proceeding.

1. Separation IAW AR 635-200

You MUST initiate a separation action IAW AR 635-200, ch.14. This does not mean that you must separate; however, you must initiate the action and consider the Soldier for separation. The commander who initiates separation is likely not the separation authority and the Soldier will have an opportunity to challenge the separation (either through a separation board or rebuttal).

If, after initiating separation, the Soldier is retained, separation under the Secretary of the Army's plenary authority will be initiated IAW AR 635-200, para. 14-12 or AR 135-178, Chapter 13.

Commanders will initiate an elimination action of any commissioned and warrant officer convicted of a sex offense, whose conviction did not result in a dismissal, IAW AR 135-175 or AR 600-8-24 as appropriate.

2. Bar to Reenlistment

If the Soldier is retained under that separation procedure, you may issue a bar to reenlistment under AR 601-280, para. 8-3g.

3. Security Clearance

You may choose to revoke the Soldier's security clearance under AR 380-67, para. I-12.

4. Administrative Reduction

If the Soldier was convicted at a civilian trial, you may initiate administrative reduction procedures under AR 600-8-19, para. 7-3.

5. Administrative Reprimand

You may issue an administrative reprimand under AR 600-37, para. 3-4.

6. Prohibited Assignments

Soldiers convicted of an offense noted in AR 27-10 or Title 42, USC §16911, will not be assigned or deployed on a temporary duty, temporary change of station, or permanent change of station status to duty stations OCONUS.

Please see the Commander's Checklist which begins on the next page.

Appendix A

Commander's Sexual Assault Victim Assistance Checklist

The actions in the following list are to be taken in the event of receiving a report of sexual assault. Although the commander has significant leadership responsibility for actions after a report of sexual assault, not necessarily all of the actions listed below will be taken by the commander personally. This list is non-inclusive. Commanders must review AR 600-52, AR 27-10, DoDI 6495.02, the Commander's Legal Handbook, and the SHARP Guidebook along with other pertinent guidance regarding sexual assault to ensure they are aware of all requirements.

VICTIM'S COMMANDER

- 1) _____ Ensure the physical safety of the victim. Ensure designated personnel conduct a formal Safety Assessment.
- 2) _____ Determine if the victim desires or needs a Military Protective Order, particularly if the victim and the alleged offender are in the same command, unit, duty location, or living quarters. Coordination with other commanders is necessary if the alleged offender is assigned to a different commander.
- 3) _____ Ensure the victim is provided emergency healthcare, regardless of visible injuries, unless the victim declines healthcare. Ensure that sexual assault victims are given priority, and treated as emergency cases.
- 4) _____ Consider offering the victim convalescent leave to facilitate recovery if the victim desires.
- 5) _____ Notify CID and commanders in the chain of command (as appropriate) immediately, as soon as the victim's immediate safety is assured, and medical treatment procedures elected by the victim are initiated.
- 6) _____ Ensure the SARC is notified immediately and the SARC enters the case into DSAID no later than 48 hours or 96 hours when deployed.
- 7) _____ Ensure the victim understands the availability of victim advocacy and the benefits of accepting confidential advocacy and support.
- 8) _____ Inform the victim of the availability of the Special Victim Counsel (SVC), to confidentially explain, among other issues, the military justice process. In cases in which the victim may be involved in collateral misconduct, inform the victim of the opportunity to consult with defense counsel.

- 9) _____ Contact your judge advocate and Special Trial Counsel (STC). If the victim is involved in collateral misconduct, the STC may exercise authority over the offense so you must not take any disciplinary action until the STC defers the case. If the STC has deferred the victim's collateral misconduct, refer to the Safe-to-Report policy and discuss your options with your judge advocate.
- 10) _____ Collect only the necessary information (e.g., victim's identity, location, and time of the incident, name and/or description of offender(s)). **DO NOT ASK DETAILED QUESTIONS AND/OR PRESSURE THE VICTIM FOR RESPONSES OR INFORMATION ABOUT THE INCIDENT.**
- 11) _____ Ask if the victim needs a support person to immediately join them. If the support person is a personal friend or family member, advise the victim this support person could later be called to testify as a witness if the case goes to trial.
- 12) _____ Ask if the victim would like a chaplain to be notified and notify accordingly.
- 13) _____ Make appropriate administrative and logistical coordination for movement of victim to receive care. (Involve minimum number of personnel possible on a need-to-know basis).
- 14) _____ Ensure the victim is made aware of his/her options during each phase of the medical, investigative, and legal processes. (Reference AR 600-52, AR 27-10, DoDI 6495.02, DoDI 1030.2)
- 15) _____ Ensure CID notifies victims and witnesses of their rights through a completed Victims and Witnesses of Crime form, DD Form 2701. (Reference AR 27-10).
- 16) _____ Inform the victim of the resources available through the Victim and Witness Assistance Program (VWAP) (AR 27-10). Also, inform the victim of resources accessible from anywhere in the world (that is, Military One Source (from U.S.: 1-800-464-8107; International: 800-464-81077; International collect: 484-530-5889, 24-hours-a-day, 7-days-a-week)).
- 17) _____ To the extent practicable, strictly limit knowledge of the facts or details regarding the incident to only those personnel who have a legitimate need-to-know. Protect the victim's privacy.
- 18) _____ Ensure the chain of command does not conduct any formal or informal investigative interviews or inquiries.
- 19) _____ Throughout the investigation, consult with the victim, and listen/engage in quiet support, as needed, and provide the victim appropriate emotional support resources.
- 20) _____ Continue to monitor the victim's well-being, particularly if there are any indications of suicidal ideations.
- 21) _____ Determine the best courses of action for separating the victim and the alleged offender during the investigation:
 - Discuss with the SARC or VA to determine whether the victim requests an Expedited Transfer. Expedited Transfers are only available for Unrestricted Reports.

- Determine if the alleged offender needs/desires to be transferred to another unit.
- Coordinate with sexual assault response agencies and the chain of command (involve as few people as possible and only on a need to know basis, protecting the victim's privacy) to determine if the victim's condition warrants redeployment or reassignment until there is a final legal disposition of the sexual assault case and/or the victim is no longer in danger.
- To the extent practicable, preferential consideration related to the reassignment should be based on the victim's desires.

- 22) _____ If you receive a retaliation allegation through a DD Form 2910-2, immediately refer the allegation to CID. If you receive a retaliation allegation but the reporter has not filed a DD Form 2910-2, immediately contact your judge advocate to ensure you refer the allegation to the appropriate office for evaluation.
- 23) _____ Monitor incidents of coercion, ostracism, discrimination, or reprisal against the victim. Continue to monitor the unit's overall climate to prevent organizational divisiveness.
- 24) _____ If the alleged offender is a foreign national or from a coalition force, confer with SJA on responsibilities, options, and victim's rights (in theater).

REPORTING AND NOTIFICATION REQUIREMENTS

- 25) _____ Complete a CCIR in accordance with local policy and SHARP policy.
- 26) _____ Confirm the SARC entered all reported sexual assaults into the DoD Sexual Assault Incident Database (DSOID) within 48 hours of the report.
- 27) _____ If a battalion commander, complete and forward the SAIRO report within 8 calendar days of the unrestricted report.
- 28) _____ Attend the monthly Sexual Assault Review Board (SARB). If the Senior Commander or Deputy Commander, chair the monthly SARB and direct the required SARB members to attend the meetings.
- 29) _____ Update the victim on the status of the case within 72 hours of the monthly SARB.
- 30) _____ Notify the victim within two business days of receiving the final outcome of any judicial, non-judicial, or administrative proceedings.

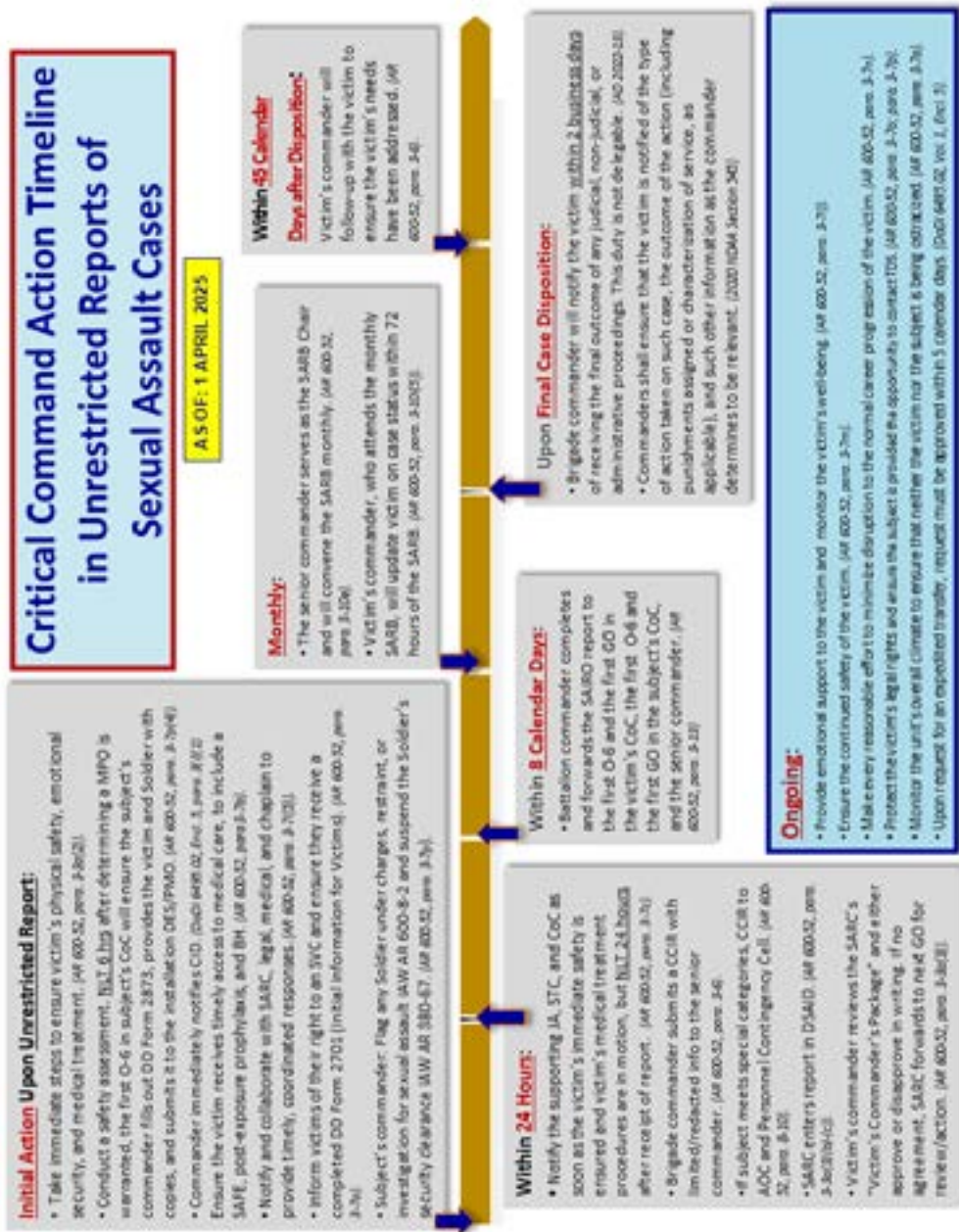
ALLEGED OFFENDER'S COMMANDER

- 1) _____ Notify CID, military police, installation provost marshal, and commanders in the chain of command (as appropriate) immediately after receiving a report of a sexual assault incident.
- 2) _____ Avoid questioning about the sexual assault allegation with the alleged offender since doing so may jeopardize the criminal investigation.
- 3) _____ Contact your judge advocate.
- 4) _____ Ensure the alleged offender has access to defense legal services and is informed about the investigative, legal, and command processes involved.

- 5) _____ Flag (suspend favorable personnel actions) any Soldier under charges, restraint, or investigation for sexual assault in accordance with AR 600–8–2 (Suspension of Favorable Actions), and suspend the Soldier’s security clearance in accordance with AR 380–67, The Department of the Army Personnel Security Program.
- 6) _____ Strictly limit information pertinent to an investigation to those who have a legitimate need-to-know.
- 7) _____ Ensure procedures are in place to inform the alleged offender about available counseling support. Take precautions that the alleged offender and victim are not in the same counseling sessions, groups, or classes.
- 8) _____ Monitor the well-being of the alleged offender, particularly for any indications of suicidal ideation, and ensure appropriate intervention occurs if indicated.
- 9) _____ With the benefit of the SARC, VA, legal, and/or investigative advice, determine the need for a “no contact” order, or the issuance of an MPO, DD Form 2873. No later than six hours after determining an MPO is warranted, ensure the MPO is issued to the alleged offender, submitted to the installation Directorate of Emergency Services or Provost Marshal Office, and a copy is provided to the victim.
- 10) _____ Monitor for incidents of coercion, ostracism, discrimination, or reprisal against the victim and the alleged offender.
- 11) _____ Always confer with TC and STC to consider legal options and responsibilities such as pretrial restraint and appropriate disposition of the alleged offense.

Appendix B

Critical Time Standards in Sexual Assault Cases





Victim Programs

A. REFERENCES

- Army Reg. 600-52, Sexual Harassment/Assault Response and Prevention Program
- Army Reg. 27-3, The Army Legal Assistance Program, Chapter 7 (Special Victims' Counsel Program)
- Army Reg. 27-10, Military Justice, Chapter 17 (Victim and Witness Assistance)
- DoDD 6495.01, Sexual Assault Prevention and Response Program (23 January 2012, Incorporating Change 5, 10 November 2021)
- DoDI 6495.02, Volume 1, Adult Sexual Assault Prevention and Response: Program Procedures (28 March 2013, Incorporating Change 9, March 18, 2025)
- DoDI 1030.02, Victim and Witness Assistance Procedures (27 July 2023)
- Army Directive 2022-10 (Safe-to-Report for Victims of Sexual Assault)
- Army Directive 2022-13 (Reforms to Counter Sexual Harassment/Sexual Assault in the Army)

B. SEXUAL HARASSMENT/ASSAULT RESPONSE AND PREVENTION PROGRAM (AR 600-52)

The SHARP Program implements DoD and Army policy regarding sexual harassment and sexual assault. The Army does not tolerate or condone sexual harassment, sexual assault, or associate sexual behaviors. The SHARP Program enhances Army readiness by fostering a culture free of sexual harassment and sexual assault through prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances safety, well-being, and readiness. In FY23, the SHARP program has been restructured so that unit-level SARCs/VAs are consolidated on the Senior Commander's TDA and report directly to the Lead SARC, outside the chain of command.

1. Command Responsibilities Regarding SHARP Program

(See AR 600-52, para. 1-26 and 1-27 for a complete list of command responsibilities)

a. *Senior/Installation Commanders*

- Require the lead SARC to review the HQDA monthly QC reports.
- Ensure that a safety assessment is conducted for all victims who report a sexual assault.

- Chair the monthly installation SARB and require the lead SARC to be present at each SARB.
- Ensure 24/7 sexual assault response capability and Victim Advocate (VA) availability.
- Ensure one trained and certified SARC and VA to support brigade(s) and brigade equivalent.
- Educate all Soldiers and staff on restricted/unrestricted reporting policies.
- Establish written procedures for reporting of sexual assault throughout the chain of command and to law enforcement.
- Ensure coordinated execution of the SHARP Program across all commands and organizations to deliver a seamless, timely, and efficient process for victims.
- Establish local policy designating which level of commander is responsible for executing the requirements of the victim's or subject's immediate commander and include the designation in the organization's SHARP SOP.
- Create an SOP to implement a "Connect to Care" approach that requires sexual assault responders to provide a warm handoff to the appropriate resource, service provider, or POC.

b. Unit Commanders

- Immediately notify the SARC and CID upon receipt of information of a sexual assault.
- Ensure all eligible victims have access to a SHARP Program.
- Ensure victim safety. Consider a Military Protective Order (MPO). Inform both military and civilian authorities if a MPO is issued.
- Meet with the SARC within 30 days of taking command for a SHARP briefing.
- Publish a command policy for SHARP that is in accordance with brigade command policies.
- Ensure that SHARP policy memorandums and a list of victim service resources are posted on the unit bulletin boards.
- Ensure that assigned personnel are trained on SHARP policy.
- Incorporate unit-level SHARP annual training and document the training on unit training schedules.
- Ensure that command climate surveys are conducted and that their questions and results are coordinated with the SARC.
- Establish and enforce procedures to protect victims and witnesses from retaliation, reprisal, ostracism, intimidation, or maltreatment.

2. Command Responsibilities Regarding Sexual Harassment Allegations/Cases

(See Ch. 36 of this handbook and AR 600-52, Chapter 2, para. 2-8 through 2-17, detailing brigade commander responsibilities.)

Sexual Harassment is a form of discrimination that involves unwelcomed sexual advances, requests for sexual favors and other verbal and physical conduct of a sexual nature, where submission to or rejection of the conduct may affect a person's career, or where the behavior "creates an intimidating, hostile or offensive working environment." Sexual harassment is unacceptable conduct that will not be tolerated. Commanders and supervisors will ensure that assigned personnel are familiar with the Army policy on sexual harassment.

- Upon receipt of a complaint, notify your judge advocate, SARC. Note that on 1 January 2025, OSTC has exclusive authority over allegations of formal and substantiated complaints of sexual harassment. You must immediately notify the STC for these sexual harassment complaints.
- Establish and implement a plan to protect the complainant, any named witnesses, and the subject from acts of reprisal.
- Resolve the complaint as quickly as possible through thorough and immediate investigation.
- Take corrective action as appropriate.

NOTE: Sexual harassment allegations may also be investigated by CID as cruelty, oppression, or maltreatment when in conjunction with another offense normally investigated by CID. If the victim is a military recruit or trainee, and the offender is in a training leadership position or a recruiter, then the new offense of "Prohibited Activities with Military Recruit or Trainee by Person in Position of Special Trust," Article 93a, UCMJ, may apply. At any time, a battalion or brigade commander may request a CID investigation. See AR 195-2, Appendix B.

The brigade commander will ensure that both the victim and the subject are informed of the appeal process. The first appeal level is the SPCMCA or a commander in the CoC that is at least two organizational levels about the level at which the appellant is assigned. The second and final level appeal will be forwarded to the Corps, ACOM, ASCC, or DRU commander with GCMCA. The victim's brigade commander will inform the SARC of the outcome of the appeal filed by either the victim or the subject.

C. SPECIAL VICTIM COUNSEL PROGRAM

A Special Victim Counsel (SVC) is a legal assistance attorney who may represent, counsel, and advise victims of rape, sexual assault, aggravated and abusive sexual contact (Article 120); rape and sexual assault of a child (Article 120b); indecent viewing, recording and broadcasting, forcible pandering, indecent exposure (Article 120c); stalking (Article 130) and attempts thereof under Article 80 of the Uniform Code of Military Justice. Some victims of Domestic Violence (Article 128b) may also be eligible for SVC services. Eligibility for a SVC is tied to 10 USC §1044 eligibility for legal assistance. Victims who make either a restricted or unre-

stricted report of any of the aforementioned crimes must be offered the services of a SVC upon report to a Sexual Assault Response Coordinator (SARC), Victim Advocate (VA), Military Criminal Investigative Office, Victim Witness Liaison, Trial Counsel or healthcare personnel. Trial counsel and CID must notify the victim of their right to an SVC before taking a statement or beginning an interview.

SPECIAL VICTIMS' COUNSEL PROVIDE THE FOLLOWING LEGAL SERVICES TO VICTIMS:

- Legal consultation regarding the Victim Witness Assistance Program.
- Legal consultation regarding responsibilities and support provided by the SARC and VA, including Military Rule of Evidence 514.
- Legal consultation regarding potential for civil litigation against parties other than the Department of Defense.
- Legal consultation regarding collateral misconduct and the victim's right to seek defense counsel.
- Legal consultation regarding the military justice system.
- Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the offense.
- Legal consultation regarding eligibility and requirements for services available for medical and mental health services.
- Legal consultation and assistance in personal civil legal matters.
- Legal consultation regarding any proceedings of the military justice process in which a victim can participate as a witness or other party, in Military Protective Orders and Civilian Protective Orders, in understanding and obtaining any military and veteran benefits, such as transitional compensation.
- Other legal assistance as the Secretary of Defense authorizes of the relationship between a SVC and client.

D. FAMILY ADVOCACY PROGRAM (AR 608-18)

The Victim Advocacy Services Program falls under the Family Advocacy Program (FAP). The program provides comprehensive assistance and support to victims of child and spouse abuse, including the services of a Victim Advocate, crisis intervention, safety planning, assistance in securing medical treatment for injuries, referral to military and civilian shelters and other resources available to victims.

Victim Advocacy services are available 24 hours a day/7 days a week to Soldiers and Family members. Victims have the same reporting options as victims do through SHARP: restricted and unrestricted.

E. VICTIM WITNESS ASSISTANCE PROGRAM (AR 27-10, Ch. 17; DoDI 1030.01)

The Victim Witness Assistance Program (VWAP), supervised by OSTC, was established to support all victims of and witnesses to crime, thereby mitigating the physical, psychological, and financial hardships suffered by victims and witnesses as they are guided through the military justice process. VWAP objectives include keeping victims and witnesses informed of important case developments, thereby fostering the full cooperation of victims and witnesses within the military justice system, and ensuring that victims and witness are advised of and afforded certain rights and informed of available programs. The VWAP supports military justice prosecution efforts by encouraging the development and strengthening of victim and witness services, communicating with local confinement facilities, consolidating information pertaining to victim and witness services, and coordinating multidisciplinary victim/witness services by and through victim/witness liaisons (VWL). Specially trained VWLs called Special Victim Liaisons (SVLs) provide support to victims in sexual assault and domestic violence-related courts-martial and are members of the prosecution team. Communications between VWL/SVWLs and victims or witnesses are not privileged.

1. Victim Witness Liaisons/Special Victim Liaisons

- Act as primary point of contact for victims and witnesses to obtain information on courts-martial developments and assistance in securing available services.
- Coordinate victim services with SHARP and/or FAP victim advocate.
- Advise victims of their rights to certain services using DD Forms 2701, 2702, 2703, and 2704.
- Ensure that victims receive or are referred the appropriate assistance..

2. Victim Rights (Article 6b, UCMJ and AR 27-10, Paragraph 17-11)

All crime victims have rights which must be ensured by the OSJA, OSTC, as well as the command (the below list is not exclusive):

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of hearings regarding confinement, Article 32 preliminary hearings, courts-martial, sentencing, clemency and parole hearings, and the release or escape of the accused.
- The right to be reasonably heard at a pretrial confinement hearing, sentencing hearing, and clemency and parole board hearing.
- The right to be treated with fairness, dignity, and a respect for privacy.
- The right to be present at public court proceedings unless the court determines otherwise for fairness or other good cause.
- The reasonable right to confer with the Government attorney.

- The right to restitution, if appropriate.
- The right to proceedings free from unreasonable delay.
- The right to have an attorney or victim advocate present with them in a defense interview.
- The right to be informed in a timely manner of any plea agreement, separation-in-lieu-of-trial agreement, or non-prosecution agreement relating to the offense.



Investigations



Administrative Investigations

This chapter provides an OVERVIEW of the considerations when conducting various administrative investigations. Many of the areas are discussed in more detail in later chapters of the Guide. Cross-references are provided in that instance.

A. REFERENCES

- DODI 6055.07, Mishap Notification, Investigation, Reporting, and Record Keeping, 6 June 2011 (Change 2, 11 June 2019).
- AR 15-6, Procedure for Administrative Investigations and Boards of Officers, 1 April 2016.
- AR 195-2, Criminal Investigation Activities, Appendix B, 21 July 2020.
- AR 385-10, The Army Safety and Occupational Health Program, 24 July 2023.
- AR 638-8, Army Casualty Program, 7 June 2019.
- AR 600-8-2, Suspension of Favorable Actions (Flags), 5 April 2021.
- AR 600-8-4, Line of Duty Policy, Procedures, and Investigations, 12 November 2020.
- AR 638-34, Army Fatal Incident Family Brief Program, 26 April 2023.
- AR 735-5, Relief of Responsibility and Accountability, 10 March 2024.

B. INTRODUCTION

All the Services have specific procedures for various types of administrative investigations. In the absence of more specific regulatory guidance, the Army uses AR 15-6, Procedure for Investigating Officers and Boards of Officers. AR 15-6 contains the basic rules for Army investigations and boards. If an investigation is appointed under a specific regulation, that regulation will control the proceedings.

Commanders have inherent authority to investigate any matter under their responsibility, unless otherwise prohibited or limited, if undertaken for the purpose of furthering the good order and discipline of their command. Administrative investigations are different from criminal investigations and are usually conducted by non-law enforcement personnel. However, administrative investigations may form the basis for criminal charges, or may lead to criminal investigation. (See Appendix B, AR 195-2, Criminal Investigation Activities, to determine which UCMJ offenses are investigated by CID, MPI, or unit commander.)

C. FLAGGING ACTION IS MANDATORY

Suspension of favorable personnel actions is mandatory if an investigation (formal or informal) is initiated on a Soldier by military or civilian authorities. Regardless of the reason for an arrest by civilian authorities, an arrested Soldier must be immediately flagged IAW AR 600-8-2, paragraphs 2-1 and 2-2. The regulation defines “investigation” broadly and suspension of favorable actions on a Soldier is mandatory when military or civilian authorities initiate any investigation or inquiry that may potentially result in disciplinary action, financial loss, or other loss to the Soldier’s rank, pay, or privileges. AR 600-8-2, paragraphs 2-1e and 2-2a.

D. WHAT DO WE INVESTIGATE?

- Training accidents
- Operational accidents
- Combat operations (e.g. friendly fire, hostile deaths)
- Garrison operations
- Minor misconduct
- Serious military-specific misconduct
- Complaints and inquiries
- Property damage
- Off-duty and on-duty incidents
- Other incidents/events that may affect unit readiness or effectiveness

E. WHY DO WE INVESTIGATE?

- To gather, analyze, and record relevant information
- To collect, assemble, analyze, and record available evidence about a particular matter
- To discover information upon which to make decisions
- To ascertain facts and to report them to the appointing authority
- To learn lessons, sustain success and correct mistakes
- To further transparency and accountability

****Expect that every investigation will be scrutinized by Congress and released to the public****

AR 15-6 Investigations

This chapter provides an OVERVIEW of procedures for conducting investigations in accordance with Army Regulation 15-6.

A. AR 15-6, PROCEDURES FOR PRELIMINARY INQUIRIES, ADMINISTRATIVE INVESTIGATIONS, AND BOARDS OF OFFICERS

1. Applicability

Applies to the Active Army, the Army National Guard, and the U.S. Army Reserve, unless otherwise stated within the regulation.

2. Purpose

AR 15-6 establishes procedures for preliminary inquiries, administrative investigations, and boards of officers not specifically authorized by any other directive. AR 15-6 or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment (i.e., AR 635-200, Active Duty Enlisted Administrative Separations, authorizing formal separation boards IAW AR 15-6 for enlisted Soldiers.) In case of a conflict between the provisions of AR 15-6, when made applicable, and the provisions of a specific directive authorizing the investigation or board, the specific regulation would govern.

Even when not specifically directed, AR 15-6 may be used as a general guide for investigations or boards authorized by another directive, but in that case, its provisions are not mandatory (i.e., AR 385-10, The Army Safety and Occupational Health Program, requirements).

Once an investigating officer is appointed, a commander is ultimately responsible for ensuring the investigation is completed in a timely manner and a quality final product is produced. It's recommended that the appropriate commander meet regularly with their legal advisor or appoint a member of his staff to meet weekly with the Chief of Administrative Law for status updates on investigations.

3. Function of an Investigations per AR 15-6

Investigations under AR 15-6 are used to ascertain facts and report them to the appropriate appointing authority. It is the duty of the investigating officer (IO) or board to thoroughly and impartially ascertain and consider the evidence on all sides of each issue, to make findings and recommendations that are warranted by the facts, and to comply with all appointing authority instructions.

B. TYPES OF INVESTIGATIONS AND BOARDS

When deciding whether to use a preliminary inquiry, administrative investigation, or board of officers, consider the purpose of the fact-finding, seriousness of the subject matter, complexity of the issues involved, need for documentation, and desirability of providing a hearing for persons whose conduct is being investigated.

1. Preliminary Inquiry (Chapter 4, AR 15-6)

A preliminary inquiry is used to ascertain the magnitude of a problem, to identify and interview witnesses, to summarize or record witnesses' statements, to determine whether an investigation or board may be necessary, or to assist in determining the scope of a subsequent investigation. A preliminary inquiry may be used to satisfy the inquiry requirement, sometimes referred to as "commander's inquiry," in RCM 303, MCM. If an administrative investigation is not required, a preliminary inquiry may be the appropriate tool to expediently resolve the matter, which may mitigate the impact of collateral administrative requirements (i.e., flagging) for extended periods of time.

2. Administrative Investigation (Chapter 5, AR 15-6)

Administrative investigations may be used to investigate any matter, to include individual conduct. The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual. Even if the purpose of the investigation is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other regulations or by higher authority.

Administrative investigations provide great flexibility. Generally, one IO is appointed (although an investigation team may be appointed consisting of one IO and one or more assistant IOs); there is generally no formal hearing that is open to the public but IOs can use whatever method they deem most efficient and effective for acquiring information. Statements are taken at informal sessions; and there is no named respondent with a right to counsel (unless required by Art 31(b), UCMJ), right to cross-examine witnesses, or other additional rights specific to AR 15-6 boards of officers.

Although the investigative procedures are not intended to provide a hearing for interested persons, commissioned officers (grades O-1 and above) have a right to respond to adverse information in a report of proceedings. This right exists regardless of whether adverse administrative action is recommended or contemplated against the officer. When an officer has the right to respond, the portion of the report of proceedings and supporting evidence pertaining to the adverse information will be referred to the office after being properly redacted. The officer will have at least 10 business days to respond. The officer's response will be included as an exhibit to the report of proceedings.

3. Board of Officers (Chapter 7, AR 15-6)

Boards of officers are not normally used unless required by regulation. Examples: Officer and enlisted separation boards (AR 600-8-24 and AR 635-200) and Flying Evaluation Boards (AR 600-105).

Generally, boards of officers are used to provide a hearing for an individual. An appointing authority may wish to designate a named respondent. A formal board of officers offers extensive due process rights to respondents under investigation. Formal boards include a president, voting members, and a recorder who presents evidence on behalf of the government. A Judge Advocate (JA) is normally appointed as recorder but is not a voting member. If a recorder is not appointed, the junior member of the board acts as recorder and is a voting member. Additionally, a non-voting legal advisor will be appointed to the board.

C. MANDATORY FLAGGING ACTION

Suspension of favorable personnel actions is mandatory if a preliminary inquiry, administrative investigation, board of officers, or civilian investigation identifies a Soldier as a subject or suspect. Regardless of the reason for an arrest by civilian authorities, an arrested Soldier must be immediately flagged IAW AR 600-8-2, paragraphs 2-1 and 2-2. The regulation defines “investigation” broadly and suspension of favorable actions on a Soldier is mandatory when military or civilian authorities initiate any investigation or inquiry that may potentially result in disciplinary action, financial loss, or other loss to the Soldier’s rank, pay, or privileges. AR 600-8-2, paragraphs 2-1e and 2-2a. Commanders can request an exception to policy to AR 600-8-2. Commanders should consult with their legal advisor to determine if the circumstances warrant a requesting and exception and the proper way to request one.

D. APPOINTING AUTHORITY (PARA. 2-1)

1. Boards

The following people may appoint a board of officers after consulting with the JA or legal advisor prior to appointing a board: any general court-martial or special court-martial convening authority; any general/flag officer; any commander, deputy commander or special, personal or principal staff officer in the grade of colonel or above at HQDA, the installation, activity, or unit level; any state adjutant general; and any DA GS-14 or above civilian supervisor assigned as a division or department chief. Principal Deputies, Assistant Deputy Chiefs of Staff, and Assistant Secretaries of the Army are authorized to serve as appointing authorities at HQDA.

2. Preliminary Inquiries and Administrative Investigations

The following individuals may appoint a preliminary inquiry, administrative investigation, or board: any officer or civilian employee authorized to appoint a board; a commander at any level; a special, personal, or principal staff officer or supervisor in the grade of major or above.

3. Special cases

Only a General Court-Martial Convening Authority (GCMCA) or general/flag officer in a command billet with a servicing SJA can appoint an investigation or board if there is property damage of \$2,000,000 or more, the loss or destruction of Army aircraft or unmanned aircraft system with a replacement cost of \$2,000,000 or more, an injury or illness likely to result in death or permanent total disability, the death of one or more persons. Class A training accidents resulting in, or likely to result in, the permanent total disability or death of one or more persons;

combat related deaths involving non-DOD personnel and insider (green on blue) attack will be appointed by the next superior authority to the GCMCA or general/flag officer authorized to appoint serious incident investigations.

4. Friendly Fire Mishaps

In accordance with DoDI 6055.07, the combatant commander has the responsibility to convene an investigation to inquire into a friendly fire incident. DoDI 6055.07 defines friendly fire as a circumstance in which members of a U.S. or friendly military force are mistakenly or accidentally killed or injured in action by U.S. or friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force.

DoDI 6055.07 states that the Combatant Commander or his or her designee will convene a legal investigation for all incidents of friendly fire. U.S. Central Command has delegated this authority to Service Component Commanders, General Officer/Flag Officer in command of subordinate Joint Command or Joint Task Force, and General Officer/Flag Officer commanders with GCMCA. (CENTCOM Commander Policy - Friendly Fire Reporting, Investigation, and Dissemination, 14 June 2013).

AR 638-8 requires commanders to complete an AR 15-6 investigation of all friendly fire incidents that result in the death or wounding of a Soldier.

AR 638-8 requires all AR 15-6 investigations of friendly fire incidents be convened by the GCMCA. This includes injury cases as well as fatality cases. (NOTE: In practice, this does not conflict with DODI 6055.07 since the Combatant Commander will or has delegated authority to a GCMCA to convene the investigation. The GCMCA should coordinate with their legal advisor to confirm delegation IAW AR 638-8.)

5. Hostile Death Investigations

AR 638-8 requires AR 15–6 investigations for all hostile deaths. Hostile deaths are those resulting from a terrorist activity – such as by an IED or VBIED – or casualties caused “in action” – such as a direct-fire engagement with an opposing force.

The GCMCA may, in writing, delegate appointing/approval authority to a subordinate commander exercising SPCMCA for hostile death cases only. This authority may not be further delegated.

If evidence is discovered during a hostile death investigation, convened pursuant to this delegation, that indicates that the death(s) may have been the result of friendly fire, the IO will immediately suspend the investigation and inform the appointing authority and legal advisor. At this time, the friendly fire reporting and investigation requirements must be followed. This requires the GCMCA notify the combatant commander who will appoint a new investigation into the friendly fire incident. The combatant commander may appoint the same officer who was conducting the hostile death investigation if the officer is otherwise qualified. Any evidence from the hostile fire investigation should be provided to and considered by the IO or board conducting the friendly fire investigation.

6. Suspected Suicides

AR 600-92 requires an administrative investigation for all suspected or confirmed suicides. This requirement does not apply to suicide attempts. The appointing authority for all suicide investigations is the GCMCA. The IO will be in the rank of O-4 and above.

The purpose of the suicide investigation is “to identify factors that contributed to the Soldier’s suicide, identify lessons learned, and provide recommendations for Soldier care solutions and best practices. The purpose is not to make a determination of death, lay blame for the Soldier’s death, nor supersede the local coroner’s determination of death assessment.”

The AR 15-6 investigation will serve as the basis for the Suicide Incident Family Brief that must be offered to the primary NOK (and to the parents of the decedent when they are secondary NOK, when practicable) for confirmed cases of suicide that occur on or after 15 April 2010. The Suicide Incident Family Brief should be conducted utilizing the procedures for Fatal Training/ Operational Accident Presentations to Next of Kin described in AR 600-34.

E. THE MEMORANDUM OF APPOINTMENT (PARA. 2-1)

Administrative investigations and boards will be appointed in writing but, when necessary, may be appointed orally and later confirmed in writing. Preliminary inquiries may be appointed orally or in writing. A written memorandum of appointment is preferred.

The memorandum of appointment should specify purpose and scope of investigation and nature of findings and recommendations required. The appointing authority should include any special instructions or guidance for the IO. AR 15-6 includes examples of memorandums of appointment. The memorandum of appointment is important and should include enough detail as is necessary to fully inform and guide the IO. Any changes to the scope of the investigation should be documented in writing.

Those who may be appointed as IOs and board members shall be those persons who are best qualified for the duty by reason of education, training, experience, length of service, and temperament. Only commissioned officers, warrant officers, or Department of the Army civilian employees permanently assigned to a position graded as a GS-11 or above will be appointed as IOs or voting members of boards. Non-commissioned officers in the grade of E-7 or above may be appointed as IOs when the appointing authority determines that military exigencies exist and no commissioned officers, warrant officers or qualified Department of the Army civilian employees are readily available. For formal complaints of sexual harassment, the IO must come from outside the brigade sized elements and be trained in how to conduct a sexual harassment investigation.

IOs and voting board members must be senior to any individual whose conduct is under investigation, unless military exigencies make this impracticable. Non-voting members (i.e., legal advisor, judge advocate recorder) do not have to be senior. Specific regulations may require additional qualifications (i.e., officers, professionally certified, security clearance.)

F. CONDUCTING THE ADMINISTRATIVE INVESTIGATION (Ch. 3)

Before starting an investigation, the IO must review all written materials provided and meet with the legal advisor prior to beginning an administrative investigation. The legal advisor should explain legal considerations and assist the IO in developing an investigation plan.

In developing the investigation plan, the IO should ask the following questions which should already be generally addressed in the appointment memorandum: What are the questions that need answering so the approving authority can make a decision? What specific findings and recommendations must be made? What is the timeline? What is the scope of the investigation?

The IO should consider the facts known and gaps (and more importantly, how to fill the gaps); potential witnesses and order of interviewing; physical and documentary evidence required; possible criminal, counter-intelligence, or other implications; Article 31 Uniform Code of Military Justice (UCMJ) warnings; Privacy Act requirements; regulations and laws involved; and chronology of the investigation as well as chronology of the incident under investigation. The IO should discuss all of these matters with the legal advisor.

Generally, an IO is not bound by the Military Rules of Evidence (MREs). Anything that in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. The IO may gather evidence that is ultimately determined irrelevant; if the evidence is not relevant, it should not be included in the investigation. All evidence is given such weight as circumstances warrant. For example, medical records, counseling statements, police reports, and other records may be considered, regardless of whether the preparer of the record is available to give a statement or testify in person.

Although an IO is generally not bound by the Military Rules of Evidence, the following limitations do still apply:

- **Privileged Communications.** The rules in section V, part III, MCM, concerning privileged communications between lawyer and client (MRE 502), privileged communications with clergy (MRE 503), spousal privilege (MRE 504), psychotherapists (MRE 513), and victim advocates (MRE 514) apply.
- **Investigations related to sex offenses.** With limited exceptions, evidence of an alleged victim's sexual behavior or sexual predisposition is not relevant (MRE 412).
- **Polygraph Tests.** The person involved in the polygraph test must consent to the use of any evidence regarding the results, or regarding the taking or refusing of a polygraph.
- **Relevance.** Evidence must be relevant. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
- **“Off the record” statements are not allowed.** Findings and recommendations cannot be based on statements not contained in the report of investigation.
- **Statements regarding disease or injury.** A Soldier cannot be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury. Any such statement against interest is invalid under 10 USC 1219 and may not be considered on the issue of the origin, incurrence, or aggravation of the disease or injury.

IOs generally do not have subpoena power to compel witnesses to appear and testify. Commanders and supervisors may order military personnel and civilian employees to appear and testify. No military witness can be compelled to incriminate himself or herself (UCMJ Article 31) or to make a statement or produce evidence that is not material to an issue that might tend to degrade them. Before any Soldier is ordered to appear or testify, the legal advisor should be consulted.

No witness not subject to the UCMJ can be required to make a statement or produce evidence that would violate the 5th Amendment to the U.S. Constitution. If a witness invokes UCMJ Article 31 or the 5th Amendment, the IO must stop questioning and contact the legal advisor. The legal advisor should assist the IO when an invocation is made. This may require sending the witness to see a legal assistance or Trial Defense Service attorney for advice. If the IO, in consultation with the legal advisor, determines that the invocation is not well taken, the IO may order military and civilian employee witnesses to testify, or they may contact the witness's supervisor for assistance.

Weingarten rights may be necessary for bargaining unit member employees. If a civilian employee, who is a member of a certified bargaining unit represented by a labor organization, reasonably believes that he or she might be disciplined as a result of an interview, and requests union representation, then the employee is entitled to have a union representative present during the interview.

If a bargaining unit member requests union representation, the IO should consult with the legal advisor. The IO's options are to grant the request, discontinue the interview, or offer the employee the choice between continuing the interview unaccompanied by a union representative and having no interview at all.

A confession or admission obtained by unlawful coercion or inducement likely to affect its truthfulness will not be accepted as evidence.

If members of the Armed Forces acting in their official capacity conduct or direct a search that they know is unlawful, evidence obtained as a result of that search may not be accepted or considered by an IO or board. Such evidence is acceptable only if it can reasonably be determined by the legal advisor or, if none, by the IO or president that the evidence would inevitably have been discovered. In all other cases, evidence obtained as a result of any search or inspection may be accepted, even if it has been or would be ruled inadmissible in a criminal proceeding.

1. Findings and Recommendations (Para. 3-10 thru 3-11)

A finding is a clear and concise statement of fact directly established by evidence in the record. It includes negative findings (evidence does not establish a fact). In arriving at findings, the IO should not exceed the scope of appointment. Each finding of fact should refer back to evidence gathered in the investigation. If, however, there is a matter that emerged during the investigation that is outside of the scope, the IO should consult with the legal advisor on how to proceed regarding that matter. The IO must make all efforts to avoid an investigation "gap" that is never addressed because of a seemingly limited scope.

The standard of proof is preponderance of the evidence: findings must be supported by greater weight of evidence than supports a contrary conclusion. The weight is not determined by number of witnesses, but by considering all evidence and factors such as demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indicators of veracity.

The IO should work with the legal advisor to develop the findings based on the record of investigation facts, the commander's appointment memorandum, and any applicable regulation.

The recommendations must be consistent with the findings. They can be negative (e.g., no further action taken). The legal advisor should ensure that the recommendations make sense and are supported by the record of investigation.

IOs and boards make recommendations according to their understanding of the rules, regulations, and customs of the service, guided by fairness to the Government and to individuals.

2. Deliberations and Voting (Boards of Officers)

Deliberations are conducted in private. Only voting members of the board may deliberate and vote. If consultation with non-voting member is required, the named respondent, if any, has right to attend consultation.

Boards with more than one member reach decisions by voting. Majority vote controls. In the event of a tie, the president's vote determines the ultimate outcome.

3. Legal Review (Para. 2-7)

All administrative investigations and boards directed under AR 15-6 require a legal review. The legal review determines whether the investigation complies with requirements in the appointing order and other legal requirements, what effects of any investigation errors would have, whether sufficient evidence (preponderance of the evidence) supports the findings (including findings of no fault, no loss, or no wrongdoing) and recommendations, and whether the recommendations are consistent with the findings. The legal review should also advise the appointing authority whether the evidence supports any additional relevant findings, or suggests that additional investigation is appropriate to address additional concerns.

Appointing errors occur when the appointing authority does not have the authority to appoint the particular investigation. If that is the case, the proceedings are a nullity unless an appropriate authority ratifies the appointment.

Substantial errors are errors that have a material adverse effect on an individual's substantial rights.

Harmless errors are defects in the proceedings that do not have a material adverse effect on an individual's substantial rights.

The preference is to not have the legal advisor that advised the IO from also completing the legal review. It is recommended that a second attorney conduct an independent legal review.

If a judge advocate finds an investigation legally insufficient, he or she should work with the IO to try to remedy the error(s). Under no circumstances should the legal advisor or the

judge advocate conducting the legal review rewrite any portion of the report of investigation without the IO's permission, or try to hide anything from the report from the appointing authority or anyone else. If the legal insufficiencies cannot be resolved, the judge advocate should prepare an appropriate legal review describing the errors for the appointing authority. Just like the IO's report, however, the appointing authority is not necessarily bound by the legal review.

4. Action By Appointing Authority (Para. 2-8)

Unless otherwise provided by another directive, the appointing authority is neither bound, nor limited, by the findings or recommendations of an investigation or board. The appointing authority has the option to approve as is, disapprove, return to the IO for additional investigation, or except/substitute findings and recommendations ("Exceptions and Substitutions"). The appointing authority may consider all relevant information, even information not considered by IO. Unless otherwise provided by another directive (i.e., AR 635-200, appointing authority bound by board recommendation of retention), the appointing authority is not bound by findings or recommendations and may take action less favorable than recommended.

The appointing authority's decision can be documented on DA Form 1574-1 (Report of Proceedings by IO) or DA Form 1574-2 (Report of Proceedings by Board of Officers) or can be documented in a separate memorandum. If documented in a separate memorandum, the DA Form 1574-1 or 1574-2, if used, should still be annotated and signed by the approving authority.

Once approved by the approving authority, the report of investigation becomes an official agency decision and thus becomes subject to the provisions of the Freedom of Information Act (5 USC § 552).

No adverse administrative action may be taken by a commander based on an administrative investigation until the following occurs (unless another regulation already provides appropriate due process procedures): (1) notice is given to the subject of the investigation of the allegations against him or her; (2) the subject is given a copy of the investigation subject to any required redactions; and (3) the subject is given a reasonable opportunity to rebut the allegations. The Commander must consider the subject's rebuttal to the investigation, if submitted in a timely manner, before taking any adverse action.

5. Release of AR 15-6 Investigative Reports and Materials (Para. 3-18)

AR 15-6 documents hold no special, automatic status under either the Privacy Act or the Freedom of Information Act. The individual parts of a report of investigation must be analyzed under both laws to determine suitability for release.

No part of a report should be released (unless specifically authorized by law or regulation such as a valid Freedom of Information Act request) without the approval of the approving authority. Note, one exception to this is concerning commissioned officers (grade O-1 and above) when there has been a substantiated finding containing adverse information (as defined in the glossary of AR 15-6) regarding that commissioned officer. In these cases, the portion of the report of investigation and supporting evidence pertaining to the adverse information must be referred to the officer.

Administrative investigations must be retained by the approving authority for five years in digital and original hard copy (this requirement is routinely managed by the servicing legal office). In cases where the report of investigation contains adverse information regarding a commissioned officer, cases that are serious, complex, or high-profile cases that result in national media interest, Congressional investigation, and/or substantive changes in Army policies or procedures or have value for historical and lessons-learned purposes, appointing authorities are required to keep the report of proceedings for a period of ten years. When investigation or board is conducted in a deployed environment and pertains to deployed operations, the approval authority should provide a copy of the final report of proceedings to the replacing unit prior to redeploying. The approval authority will keep the original and a digital copy of the report of proceedings at home station.

Mishap

Investigations (AR 385-10)

This chapter provides an OVERVIEW of procedures for conducting mishap investigations (formerly known as mishap investigations). Please consult your legal advisor early and often during the process of the investigation.

A. APPLICABILITY

AR 385-10, The Army Safety and Occupational Health Program applies to Active Army, the Army National Guard, and the U.S. Army Reserve. It also applies to Army civilian employees and the U.S. Army Corps of Engineers and Civil Works activities and tenants and volunteers.

1. Purpose

AR 385-10 establishes policies, responsibilities, and procedures to safeguard and preserve Army resources worldwide against mishap loss. Chapter 3 provides policies and procedures for initial notification, investigating, and reporting of Army mishaps.

2. Function of an AR 385-10 Mishap Investigation (Para 3-11)

Legal mishap investigations are essential to protect confidential safety information and to maintain the integrity of the safety investigation. Appointing authorities, depending on the type of incidents, should grant safety investigation priority over other Army regulatory investigations. Administrative investigations for litigation, disciplinary or administrative action, or claims against the U.S. Army in association with mishaps are conducted separately from safety investigations. The convening authority experiencing a mishap has the dual authority to direct both concurrently, thereby ensuring comprehensive reports for both administrative action and mishap prevention, respectively.

B. WHAT IS A MISHAP? (PARA. 3-3 AND 3-9)

An Army mishap is defined as an unplanned event, or series of events, which results in one or more of the following: occupational illness to Army military or Army civilian personnel; on-duty injury or occupational illness, or medically diagnosed work-related aggravation or complication of preexisting injuries to military or civilian personnel involving: 1) injury to members of the visiting public, 2) Fratricide, 3) damage to Army property or equipment, or 4) Damage to property or occupational illness resulting from Army operations.

Mishap categories (classes) are used to determine reporting and investigation requirements. Class A is damage totaling \$2.5M or more; mishaps involving manned aircraft (unmanned aircraft mishaps determined by cost to repair/replace) destroyed/missing/abandoned; injury/oc-

occupational illness resulting in fatality or permanent total disability. (Note: friendly fire fatalities must be reported and investigated as a Class A mishap.) Class B is damage between \$600k - \$2.5M; injury/occupational illness resulting in permanent, partial disability; three or more personnel hospitalized in a single occurrence. Class C is damage between \$60k - \$600k; a nonfatal injury/ occupational illness that causes one or more days away from work or training beyond the day or shift on which it occurred or disability at any time (that does not meet the definition of Class A or B and is a day(s) away from work case). Class D is damage between \$25k - \$60k; a nonfatal injury/ occupational illness resulting in restricted work, transfer, medical treatment greater than first aid; needle sticks/cuts from contaminated objects; medical removal under OSHA standard; occupational hearing loss; work-related tuberculosis. Class E is an aviation mishap in which there has been damage between \$5k and \$25k. Class F is an aviation incident confined to aircraft turbine engine and drone engine damage due to unavoidable internal or external foreign object (does not include installed aircraft auxiliary power units). Class G and H are biological and chemical mishaps, respectively.

C. REPORTING AND INITIAL NOTIFICATION (PARA 3-4, 3-11, AND FIGURE 3-1)

All Army mishaps and incidents, including occupational illnesses and injuries, regardless of how minor, are reportable to the unit/local safety office. The unit/local safety office will determine the reporting and investigative requirements for the mishap.

D. PRIVILEGED SAFETY INFORMATION (PARA. 3-22)

For a safety investigation, privileged safety information includes:

- 1) Information given to a safety investigator pursuant to a promise of confidentiality and any information derived from that information or direct or indirect references to that information.
- 2) Products of deliberative processes of safety investigators.

E. CONDUCTING THE MISHAP INVESTIGATION (PARA. 3-12 THRU 3-15)

The type and extent of the investigation depends upon the class and type of mishap. The appointing authority is a Commander with general court-martial jurisdiction over the installation or unit responsible for the operation, personnel, or materiel involved in the mishap; Commander, U.S. Army Reserve Command, for U.S. Army Reserve units; and State Adjutant General for National Guard units.

The following mishaps must be investigated by a board consisting of at least three members:

- **All on-duty Class A and B mishaps.** Upon notification of a Class A or B mishap, the Cdr, U.S. Army Combat Readiness/Safety Center, will determine whether a Centralized Mishap Investigation or a Local Mishap Investigation will be conducted.

- **Centralized Mishap Investigation Board.** Some members provided by Army Combat Readiness Center and some provided from the local command.
- **Local Mishap Investigative Board.** Members provided from the local command.
- Any mishap that an **appointing authority**, or Cdr, U.S. Army Combat Readiness/Safety Center, **believes may involve a potential hazard serious enough to warrant investigation** by multimember board.
- **Class C Aircraft Mishaps** must be investigated by a board consisting of at least one member.

Single-Officer Investigations (does not require formal board appointment orders). The following mishaps will be investigated by one or more officers, warrant officers, safety officers/NCOs, supervisors, or DA safety and occupational health specialists GS 9 or higher:

- All off-duty military mishaps
- Class C and D ground mishaps
- Aircraft Class D, E, and F mishaps
- Class E and FOD incidents.

The board must be composed of Army officers or warrant officers, DA safety and occupational health specialist/manager/engineer GS-9 or higher, full-time technicians holding federally recognized officer or warrant officer status, DoD medical officer or DoD contracted medical officers, DoD maintenance personnel, subject matter expert senior NCOs, E-5 and above in MOS 93U, 33U, 52D (UAS mishaps), DoD weather officers, any other personnel approved by Commander, Combat Readiness/Safety Center.

For Class A and B mishaps, board members will not be from the same unit that incurred the mishap (battalion/ company/battery/troop or detachment.) Rank/grade/specialty requirement varies with type of mishap.

Note special board member qualification requirements of AR 385-10, paras. 3-15e.(4) and 3-16 (aviation mishap boards will include qualified aviators; watercraft investigations will include Army marine warrant officer.)

The U.S. Army Combat Readiness/Safety Center will review all mishap reports.

F. LEGAL INVESTIGATION OF MISHAPS (PARA. 3-19)

These investigations are formerly known as the accident investigation.

Used to obtain and preserve all available evidence for use in litigation, claims, disciplinary action, or adverse administrative action. Such investigations are often conducted simultaneously but independently of the legal mishap investigation. They are essential to protect confidential safety information and to maintain the integrity of the safety investigation.

A commander whose personnel or equipment or whose operations resulted in a mishap may conduct a legal mishap investigation. Refer to AR 27-20 or AR 15-6 for this type of investigation.

G. ACCESS TO INFORMATION AND PRIVILEGED SAFETY INFORMATION (PARA. 3-20 THRU 3-22)

The safety investigation has priority (collection of evidence/access to scene) over the legal investigation and all other investigations except a criminal investigation conducted by military police investigators (MPI) or Criminal Investigation Division (CID). The safety investigation may obtain all information collected by the legal or criminal investigation. Safety Mishap Investigation Reports will not be enclosed in any other report unless the sole purpose of the report is mishap prevention. Only factual information may be possibly obtained by the legal (AR 15-6) investigation from the safety investigation.

Information that will not be given to the collateral investigation include (punitive): witness summaries taken by safety board members under a promise of confidentiality; preliminary or final, findings, analysis, and recommendations; voice recordings of intra-cockpit communications without Commander, U.S. Army Combat Readiness/Safety Center authorization. See AR 385-10, para. 3-22 for a complete list of what information can be shared by the safety board.

H. RELEASE OF INFORMATION FROM MISHAP INVESTIGATION REPORTS (PARA. 3-21 AND 3-23)

The Safety Information Board President will not provide access to witness summaries made pursuant to a promise of confidentiality; preliminary or final board findings and recommendations; and, recordings of intra-cock pit communications. makes Unauthorized disclosure of privileged safety information under AR 385-10, para. 3-21b is punishable under Article 92, UCMJ. Freedom of Information Act requests for safety mishap investigation reports must be referred to the U.S. Army Combat Readiness/Safety Center.

Line of Duty Investigations

A. REFERENCE

- AR 600-8-4, Line of Duty Policy, Procedures, and Investigations, 12 November 2020
- Army Directive 2023-17, Reserve Component Line of Duty Requests and Behavioral Health Investigations, 14 December 2023

B. APPLICABILITY

Applies to the Active Army, the Army National Guard, the U.S. Army Reserve, ROTC Simultaneous Membership Program Cadets, U.S. Military Academy Cadets, Senior ROTC Cadets, and applicants for enrollment while engaged in a flight or flight instruction or while performing authorized travel to or from or while attending training or a practice cruise.

1. Purpose

Prescribes procedures governing line of duty determinations of Soldiers whose service is interrupted by death, or certain injuries, diseases, or illnesses.

2. Function of an AR 600-8-4 Line of Duty Investigation

To determine the duty status of Soldiers who die or sustain certain injuries, diseases, or illnesses, and to determine whether such death, injury, disease, or illness occurred in the line of duty.

3. When Investigation is Required (Para. 2-2)

An LOD investigation must be conducted for all Soldiers, regardless of Component if the Soldier experiences a loss of duty time for a period of more than 24 hours and:

- The injury, illness, or disease is of lasting significance (to be determined by a physician, physician's assistant, or nurse practitioner);
- There is a likelihood that the injury, illness, or disease will result in a permanent disability; or
- If a Reserve Component (RC) Soldier requires follow-on care for an injury, illness, or disease incurred during a period of active duty.

4. Possible Outcomes (Para. 2-5)

The possible outcomes are the following:

- **In Line of Duty (ILD):** The injury, illness, disease, or death did not occur while the Soldier was AWOL and was not due to the Soldier's own misconduct or gross negligence.

For USAR/ARNG Soldiers, the injury, illness, disease, or death occurred while the Soldier was in a duty status, as defined in AR 638–8 or direct travel status. This finding also applies in suicide cases when Soldiers are AWOL and considered mentally unsound at both the inception of AWOL and at time of death (mental soundness can only be determined by a behavioral health expert).

- **Not in Line of Duty-Not Due to Own Misconduct (NLD-NDOM):** A formal investigation with supporting evidence, that the injury, illness, disease, or death occurred during a period when a Soldier was AWOL, was mentally sound at the inception of AWOL, and which was not directly caused by Soldier’s own misconduct or gross negligence. Conditions that existed prior to service (EPTS) typically fall under this determination.
- **Not in Line of Duty-Due to Own Misconduct (NLD-DOM):** A formal investigation determined that the Soldier’s injury, illness, disease, or death was proximately caused by the Soldier’s own misconduct or gross negligence.
- **In Line of Duty-EPTS-Service Aggravated (ILD-EPTS-SA):** This finding is made when there is clear and unmistakable evidence the Soldier’s injury, illness, or disease existed prior to service and the condition has been service aggravated. Aggravation will be determined by an appropriate provider in accordance with DODI 1332.18.
- **Not in Line of Duty-EPTS-Not Service Aggravated (NLD-EPTS-NSA):** This finding is made when there is clear and unmistakable evidence the member’s injury, illness, or disease EPTS and the condition has not been service aggravated. Aggravation will be determined by an appropriate provider in accordance with DODI 1332.18.
- **In Line of Duty-This Episode Only (ILD-This Episode Only):** This determination relates to a one-time event, where no serious injury or illness has occurred, but warranted the Soldier be attended to by a medical physician. This incident occurred while the Soldier was in an authorized duty status at the time of the episode. Treatment should be limited for this particular episode only. A Reserve Component Soldier is not authorized military treatment if episode occurs while not in an authorized duty status. A Formal LOD should be conducted to determine the cause of episode.
- **Presumptive in Line of Duty (PILD):** HRC uses this determination in cases of hostile action, death of natural causes, or death of passengers in a commercial carrier or military vehicles (see para 2–2c). Specific Reserve Component personnel (specified in the Delegation of Authority memorandum from the TAG) can use this determination in cases of Soldiers transferring between components with the proper medical documentation. (See paragraph 2–2c for eligible RC personnel and who is responsible within the RC and guidelines for issuing a PILD finding).

5. Benefits Affected by Line of Duty Investigations

- **Extension of enlistment.** An enlisted Soldier who is unable to perform duties for more than one day because of his or her intemperate use of drugs or alcohol or because of disease or injury resulting from the Soldier’s misconduct is liable after returning to duty to serve for a period that, when added to the period that he or she served before the absence from duty, amounts to the term for which he or she was enlisted or inducted.

- **Longevity and retirement multiplier.** Eligibility for increases in pay because of longevity and the amount of retirement pay to which a Soldier may be entitled depends on the Soldier's cumulative years of creditable service. An enlisted Soldier who is unable to perform duties for more than one day because of his or her intemperate use of drugs or alcohol or because of disease or injury resulting from misconduct is not entitled to include such periods in computing creditable service, in accordance with the DOD Financial Management Regulation.

- **Forfeiture of pay.** Pay is forfeited for any Soldier on active duty who is absent from regular duties for a continuous period of more than one day because of disease that is directly caused by and immediately following his or her intemperate use of drugs or alcohol. Pay is not forfeited for absence from duty caused by injuries or a disease not directly caused by and immediately following the intemperate use of drugs and alcohol. Forward, in a timely manner, pay adjustment document(s) to the Soldier's supporting military pay office. NOTE: pay only forfeited for intemperate use of drugs or alcohol, but not misconduct and/or gross negligence.

- **Disability retirement and severance pay.** Soldiers who sustain permanent disabilities while on active duty must meet requirements of the applicable statutes to be eligible to receive certain retirement and severance pay benefits. One of these requirements is that the disability must not have resulted from the Soldier's misconduct or gross negligence and must not have been incurred during a period of AWOL.

- **Medical and dental care for Soldiers on duty other than active duty.** A Soldier of the ARNG/USAR is entitled to hospital benefits, pensions, and other compensation, similar to that for Soldiers of the Regular Army for injury, illness, or disease incurred ILD, under the following conditions prescribed by law:

- While performing active duty for a period of 30 days or less;
- While performing inactive duty training;
- While performing duty or service on funeral honors duty;
- While traveling directly to or from the place at which that Soldier is to perform or has performed any of the above;
- While remaining overnight immediately before the commencement of inactive duty training, or while remaining overnight, between successive periods of inactive duty training, at, or in the vicinity of the site of the inactive duty training; or
- While remaining overnight immediately before serving on funeral honors duty at or in the vicinity of the place at which the Soldier was to serve, if the place is outside reasonable commuting distance from the Soldier's residence.

- **Benefits administered by the Department of Veteran Affairs.** In determining whether a veteran or his or her survivors or Family members are eligible for certain benefits, the

Veterans Administration will make an independent decision with respect to benefit eligibility.

6. Analysis

a. Did the Soldier's intentional misconduct or gross negligence proximately cause the injury, illness, or death?

Injury, illness, or death caused by Soldiers own misconduct can never be in line of duty. Violation of a regulation by itself is not misconduct, it is simple negligence. Regulatory violations should be considered in the analysis, however.

b. What was the Soldier's status?

Duty status refers to an authorized duty status – on leave, on pass, present for duty, versus unauthorized status – AWOL, deserter, DFR. It does not refer to worker's compensation or claim's theories of "performing military duties" or "job-related."

c. Did the injury, illness, or disease exist prior to service?

A medical evaluation solely to determine if the condition, which causes injury, illness, disease, or death, existed prior to service is required to determine service aggravation or service connection.

Example of Soldier found to be in Line of Duty. Soldier is injured in car crash while on leave. Crash is caused by another driver's negligence. Soldier is considered to be in the line of duty.

Example of Soldier found not in Line of Duty Not Due to Own Misconduct: Soldier is AWOL (while mentally sound), but otherwise doing nothing wrong. While walking down the street, Soldier is hit by a car that jumps the curve and is seriously injured. Soldier is considered to be not in the line of duty, but not due to own misconduct. NOTE: NLD-NDOM may also be based on an Existing- Prior-To-Service (EPTS) condition, not aggravated by service.

Example of Soldier found not in Line of Duty Due to Own Misconduct: Soldier gets drunk at a party and attempts to drive home but is involved in an accident on the way. If the intoxication proximately caused the accident, the Soldier is considered to be not in the line of duty due to own misconduct.

7. Procedures

Presumptive Finding of In Line of Duty – No investigation is required when a disease does not involve a factor cited at subparagraph b below; injury is the result of enemy action or terrorist attack; or death by natural causes or death occurs while a passenger on a common commercial carrier or military vehicle or aircraft. NOTE: only HRC (or delegee) can determine if conditions satisfy presumptive findings of ILD.

a. Informal Investigation

An informal investigation is conducted when no misconduct is suspected, no negligence is suspected, and a formal investigation is not required. At a minimum, the Medical Treatment Facility (MTF) representative and commander must sign a DA Form 2173. Supporting exhibits should be attached.

A special court-martial convening authority (SPCMCA) is appointing and approving authority (National Guard appointing authority is the commander of at least battalion or squadron size unit). SPCMCA should approve informal investigation in writing “By Authority of the Secretary of the Army.”

NOTE: Informal investigation can only result in an ILD determination except in the case where the MTF finds that a EPTS. In that event, the status would be NLD-NDOM.

b. Formal Investigation

For a formal investigation, the appointing Authority is the SPCMCA. Final approving authority is the General Court-Martial Convening Authority (GCMCA).

The investigating officer must be senior in grade to the individual investigated. May be a commissioned officer, warrant officer, or commissioned officer of another U.S. military service in joint activities where Army has been designated as the executive agent.

Formal investigations are required when any of the following factors are present: strange or doubtful circumstances; injury or death involving alcohol or drug abuse; self-inflicted injuries or suicide; injury or death incurred while AWOL; training death of a USAR/ARNG Soldier; Injury or death of a USAR or ARNG member while traveling to or from authorized training or duty; injury or death occurring while enroute to final acceptance in the Army; USAR/ARNG Soldier serving active duty tour of 30 days or less is disabled by disease, in connection with an appeal of an unfavorable finding of alcohol or drug abuse; or a valid request for formal investigation is made (e.g., requested by the Physical Disability Agency).

8. Evidentiary standards and presumptions

Soldier is presumed ILD UNLESS rebutted by a preponderance of evidence contained in the investigation. This means the Investigating Officer has to overcome that presumption and show appropriate evidence that the Soldier was NLD. A finding or determination must be supported by a greater weight of evidence than supports a contrary conclusion.

9. Timeline for Active Component Soldiers

- Informal: 60 calendar days after incident.
- Formal: 180 calendar days after incident.

NOTE: updates required every 30 days

10. Procedural Due Process Requirements

During Evidence Collection: Soldier is not required to make a statement against interest. Soldier must be advised that he or she does not have to make a statement against interest. If Soldier is not informed of her right not to make statement, or is forced to make statement, the statement cannot be used in making the LOD determination.

Regarding Adverse Findings: Investigating officer must provide Soldier with written notice of proposed adverse finding, a copy of the investigation, and the supporting evidence. The investigating officer must issue warning regarding making statements against interest. The investigating officer must give a reasonable opportunity to reply in writing and to offer rebuttal. If investigating officer receives a response, it must be considered before finalizing findings. If investigating officer does not receive a response, the investigating officer may proceed to finalize the findings.

Formal investigations must receive a legal review before a final determination is made. Informal investigations may receive a legal review but it is not required. (Para. 3-6 & 4-5)

11. Final Approving Authority (GCMCA or Field Grade Designee) Decision

Final approving authority either approves or disapproves the finding under the authority of the Secretary of the Army. The report must be forwarded to the service member through his command. The transmittal letter must notify the service member of his right not to make a statement against interest and of his appellate rights.

12. Appellate Rights (Para. 4-17)

The service member may appeal in writing within 30 days after receipt of the notice of adverse finding. The service member's appeal is to the final approving authority. The final approving authority may only change the finding to "in line of duty," based on new evidence. Surviving family members may appeal NLD decisions.

13. Special Considerations

Always consult the Rules Governing Line of Duty and Misconduct Determinations at Appendix D, AR 600-8-4.

The regulation also discusses and provides direction regarding pregnancies, venereal disease, conditions existing prior to service, intoxication and drug use, etc. throughout chapter 4.

Mental responsibility, emotional disorder, suicide, and suicide attempts. Soldier may not be held responsible for acts if, as the result of, mental defect, disease or derangement, Soldier unable to comprehend or appreciate the nature of conduct. These disorders are presumed LD unless they existed prior to service.

Suicide and suicide attempt line of duty investigations must determine whether Soldier was mentally sound. Investigating officer must, therefore, inquire into the Soldier's background. A mental health officer must review the evidence and render an opinion whether the Soldier was mentally sound at the time.

C. PROCEDURES FOR SOLDIERS OF THE U.S. ARMY RESERVES AND ARMY NATIONAL GUARD

1. General

Commanders, Medical Officers, S1s, SJAs, UA, Personnel NCOs, and RC Soldiers who learn of a Soldier's illness, injury, disease or death that occurred under circumstances that warrant a LOD investigation / determination shall take an active role in ensuring that an investigation/ determination is initiated, completed, and uploaded into the LOD module in a timely manner.

2. Important Notes:

- Casualty Assistance Centers are responsible for completing and forwarding LOD Investigations in all cases involving death when a Soldier is in an authorized duty status.
- RC Soldiers will not be separated or retired without their consent while a LOD determination is pending.
- Medical Evaluation Board (MEB) / Physical Evaluation Board (PEB) will also be completed prior to separation or retirement of the Soldier.
- Behavioral Health (BH) LODs require a completed DA Form 3822 with the BH condition annotated on the DA Form, eliminating the need for BH records to be included in the LOD electronic system. The IO will request and upload the DA Form 3822 along with the DA Form 2173, and the DD Form 261.
- A formal LOD is required for any illness, injury, disease or death incurred while performing AT, IDT, or ordered to active duty for less than 30 days.

Refer to Army Directive 2023-17 to ensure the RC Soldier is being processed by the proper command, the correct procedures are followed, and the timelines are met.



Fatal Incident Family Briefs

This chapter provides an OVERVIEW of the requirements, content, and procedures for fatal incident or suicide Family briefs. Detailed requirements are found in AR 638-34, Army Fatal Incident Family Brief Program.

A. APPLICABILITY: ACTIVE ARMY, ARMY NATIONAL GUARD, AND ARMY RESERVE WHILE SERVING ON ACTIVE DUTY

1. Purpose

Presentations of death investigations will be offered under the following circumstances: military training or operational accidents, noncombat military exercises, certain hostile incidents, friendly fire accidents, where litigation is anticipated for or against the Government or a Government contractor, and suicide. In addition, the Army will extend the same procedures for DA Civilian employees, excluding suicides. AR 638-34, Army Fatal Incident Family Brief Program, prescribes policies that govern the presentations and implements guidance required by law and DoDI 1300.18, DoD Personnel Casualty Matters, Policies, and Procedures.

2. Functions of the AR 638-34 Fatal Incident Family Brief Program

To provide a thorough explanation of the releasable investigative results of any collateral investigation(s) in a standardized way, to ensure the Family fully understands the circumstances of the incident in a dignified, understanding, and professional way, and to ensure the Family is reassured of the Army's concern regarding the tragedy and is aware of the compassion of Army leaders.

B. CONGRESSIONAL REQUIREMENT

Pub. L. 102-484, § 1072, Oct. 23, 1992, 106 Stat. 2508 requires the Service Secretaries to ensure that fatality reports and records pertaining to members of the Armed Forces who die in the line of duty are made available to Family members.

Within a reasonable period of time after the Family members are notified of the death, but not more than 30 days after the date of notification, the Secretary must:

- In any case under investigation, inform the Family members of the names of the agencies conducting the investigation and of the existence of any reports by such agencies that have been or will be issued; and
- Furnish, if the Family members desire, a copy of any completed investigative report to the extent such reports may be furnished consistent with the Privacy Act and the Freedom of Information Act.

C. ARMY IMPLEMENTATION

1. Key definitions

- **Briefer:** The assigned commander who will present appropriate findings to the Family, most often the deceased Soldier's colonel or higher commander.
- **Class A mishap:** An Army mishap in which the resulting total cost of property damage is \$2 million or more; an Army aircraft is destroyed, missing, or abandoned; or an injury or occupational illness results in a fatality or permanent total disability.
- **Fatal Incident Family Brief:** Includes all categories of Army Chief of Staff mandated offers of a Family brief to the Primary Next of Kin (PNOK) of a deceased Soldier serving on active duty, regardless of component, that died under circumstances described in this chapter.
- **Primary Next of Kin (PNOK):** A person of any age most closely related to the deceased Soldier according to the line of succession. Seniority, as determined by age, will control when the persons are of equal relationship. (see DoDI 1300.18 for additional information).
- **Soldier:** Members of the Army serving on active duty in any component, members of the Reserve Officers' Training Corps Simultaneous Membership Program, cadets of the United States Military Academy, cadets on orders who are enrolled in Senior Reserve Officers' Training Corps, and applicants for enrollment engaged in a flight or in-flight instruction authorized by Section 2110, Title 10, United States Code.
- **Suicide Incident Family Brief:** A subset of the Fatal Incident Family Brief Program that includes mandatory offer of suicide incident Family brief to PNOK of a deceased Soldier serving on active duty at the time of death whose manner of death was suicide as listed on either a death certificate or autopsy report.

2. AR 15-6 Collateral (Death) Investigations

Investigations that follow AR 15-6 procedures are required for the following fatality cases: all Class A accidents resulting in a Soldier's death, suspected cases of friendly fire, suspected suicides, or when anticipating litigation for or against the Government or Government contractor, when anticipating disciplinary or adverse action against any individual, or when there is a high likelihood of public interest.

These investigations are often referred to collectively as collateral or death AR 15-6 investigations, and are typically in addition to other required safety, line of duty, and criminal investigations following a fatality. If a conflict occurs between investigations regarding access to an incident site, acquiring and examining evidence, and interviewing witnesses, the criminal investigation has primacy over all other investigations. The safety investigation then has primacy, only after criminality has been ruled out. While there is some evidence in criminal or safety investigations that may not be releasable, a spirit of cooperation is otherwise required to ensure the death investigation IO has access to remaining available evidence.

3. Updates to PNOK

Periodic updates while an AR 15-6 death investigation is ongoing will be provided to the PNOK and other Family members designated by the PNOK. These updates are intended to share information concerning the progress of the investigation. Unauthorized or premature disclosure of additional information compromises the integrity of the investigation.

The approving authority's legal office must review each update to ensure that it contains no admission of liability, waiver of any defense, offer of compensation, or any statement that might jeopardize the Army's litigation posture.

Updates are provided to the Casualty and Mortuary Affairs Operation Center (CMAOC), who in turn will direct the Casualty Assistance officer (CAO) to provide the update to the Family.

4. Presentations to PNOK

It is Army policy to present appropriate facts, findings, and recommendations of fatal training, operational, or friendly fire accidents; hostile deaths; and confirmed Soldier suicides to the PNOK in a dignified, understanding, and professional manner. Figure 5-1 of AR 638-34 provides a sample statement of offer to provide a fatal incident Family brief.

Should a fatal incident involve a DA Civilian, the GCMCA has discretion to offer a fatal incident Family brief to the PNOK of the DA Civilian. The commander will notify HRC immediately after making a decision to brief the PNOK of the DA Civilian.

Presentations may take the form of fatal incident Family briefs or suicide incident Family briefs. Table 2 – 1 of AR 638-34 establishes the process and sequencing of events for fatal incident Family briefs. Table 2 – 2 establishes the process and sequencing of events for suicide incident Family briefs. For both types of briefs, the collateral investigation(s) appointing or approval authority will assign a colonel-level (O6) or higher commander or other colonel-level (O6) designee to be the briefer. The briefer is most often the deceased Soldier's colonel or brigade-level commander who will present the releasable investigation to the PNOK. This level of leadership demonstrates the Army's depth of concern and the importance placed on the incident.

The Family brief takes place only after final approval of the collateral investigation and a formal offer to receive the presentation is accepted by the PNOK.

5. .Preparing the presentation to the PNOK

Once the investigation is complete and approved, the CMAOC contacts the Army command commander and the collateral investigation appointing/approval authority in order to coordinate appointment of the briefer who is "most often the deceased Soldier's colonel or brigade level commander."

The command is ultimately responsible to provide an O6 to present the briefing as the CMAOC does not provide briefing teams.

The CAO then follows up with the PNOK to arrange for the presentation date and forward the preferred dates (primary and secondary) to the CMAOC.

6. Briefing Team, Scheduling, and Coordination

At a minimum, the briefing team must consist of the briefer (an O6, again, typically from the chain of command), the Family's CAO, and a chaplain from the affected unit. The briefer must consider including the SJA or legal advisor or PAO representative when it is apparent that a Family has invited, or may invite, the local media or a Family legal representative to attend the presentation.

The CAO must work with the PNOK to obtain a list of people the PNOK intends to invite to the presentation to enable the presentation team to determine the family's intent to invite media or legal representation. The CAO should further provide information the family climate and intended location of the briefing.

NOTE: The Army is prohibited from putting conditions or limitations upon those the family wishes to invite to the presentation.

The PNOK will select a preferred date (based on a window provided by the briefer), time (primary and alternate), and location for the presentation. The best location for the PNOK to receive the presentation is the PNOK's home. However, Families may elect to receive the presentation at a location of the PNOK's choosing.

The briefer must also consider including an interpreter if the PNOK or other attending family members do not understand English.

7. Conducting the Family Presentation

The briefer will schedule a time for a rehearsal with all team members present.

The presentation team members will wear either the Army Service Uniform or Army Green Service Uniform during the presentation. In extraordinary circumstances, the briefer may authorize different attire, particularly if requested by the PNOK.

The briefer's primary responsibility is to meet personally with the PNOK and deliver a thorough open explanation of the releasable facts and circumstances surrounding the accident. At a minimum, the briefer must provide the following:

An explanation of the unit's mission which highlights the Soldier's significant contributions to the mission and the Army; an accurate account of the facts and circumstances leading up to the accident or incident; the sequence of events that caused the accident, if applicable; a very clear explanation of primary and contributing factors causing the accident or incident as determined by the collateral investigation(s); and actions taken at the unit level to correct any deficiencies.

If differences occur in the findings of the various death investigations, the briefer should be prepared to present these differences and, through the use of SME, be able to offer reasons as to why those differences may exist.

The briefer should be prepared to answer questions related to benefits, entitlements, internment, and delivery of personal effects.

The briefer will exercise considerable caution to avoid blaming the Soldier, a Family member, or other individuals for the incident. Continuing emotions of anger and guilt are common. For suicide incidents, many stem from relationship issues, including but not limited to issues

with or that affect the PNOK who is receiving the presentation. The briefer needs to consider special circumstances or dynamics in conducting a suicide incident Family brief.

If a fatal incident Family brief must proceed with a legal representative or private attorney present, but without Army legal advice or representation, the briefer must inform the PNOK that the presentation is strictly intended to provide information to the PNOK. Therefore, they can only respond to questions from the PNOK, not those of the attorney.

8. Style of Presentation

Dialogue without notes, but with maps and diagrams of training areas, etc., when appropriate, is preferred. This works best for a briefer who is intimately familiar with the accident or incident and its investigation(s).

Bullet briefing charts work well, as they tend to help the briefer stay focused. Charts must be reviewed and approved in advance by the SJA.

Simple notes and/or any executive summary offered as written materials must be reviewed and approved by the SJA and copies should be left with the PNOK if requested.

9. Completion of Family Presentation

Upon departure from the briefing site, the appropriate POC should place telephone calls to the following personnel: (1) The installation POC (if the presentation was on a military installation) to report completion and to provide a preliminary indication of how the presentation was received. (2) The Casualty Incident Section chief in CMAOD to report completion of the fatal incident Family brief.

Within 10 working days of completion of the presentation, the briefer will submit an AAR to the AR 15 – 6 approval authority.

10. SJA Requirements

The OSJA is required to review the presentation to ensure that it contains no admission of liability, waiver of any defense, offer of compensation, or any other statement that might jeopardize the Army's litigation posture. This may include review of briefing charts, notes, and executive summaries.

The SJA or legal advisor must provide a non-redacted copy of the collateral investigation(s) report to CMAOC.

The regulation is not intended to provide the PNOK with information not otherwise releasable under the Privacy Act or the Freedom of Information Act.

The SJA must redact the collateral investigation(s) report and prepare the required number of copies. At a minimum, the briefer, each team member, and each PNOK will be given a redacted copy.

The SJA also must prepare a letter to accompany the redacted version of the report delivered to the family and will explain, in general terms, the reasons for the redactions.

If an attorney representing the PNOK has a list of questions for the PNOK to ask, the briefer must offer to take the questions back to their servicing SJA or legal advisor for a response. The briefer should not attempt to answer questions that require an SME.

11. Release of the Collateral Investigation

The investigation will be released in the following order: Interested offices within DOD and DA; PNOK and other family members designated by the PNOK; members of Congress, upon request; and members of the public and media.

Financial Liability Investigations of Property Loss (FLIPL)

This chapter provides an OVERVIEW of procedures for financial liability investigations.

A. REFERENCE

- AR 735-5, Relief of Responsibility and Accountability (10 April 2024)

B. FINANCIAL LIABILITY INVESTIGATIONS OF PROPERTY LOSS

1. Applicability

Applies to the Active Army, the Army National Guard/Army National Guard of the U.S., and the U.S. Army Reserve.

a. Purpose

Prescribes the policies and procedures regarding the relief of accountability and responsibility for Government property (GP), and assessment or relief from liability for property loss (physical loss and loss of accountability), damage, or destruction or theft (LDDT).

b. Tools

FLIPLs must be processed using eFLIPL at <https://eflipl.army.mil>. The Approving Authority may approve temporary manual processing in writing per paragraph 1-9. Units must use the DA Form 7531 to track investigations.

2. Function of an AR 735-5 FLIPL

A FLIPL is used to document the circumstances concerning the loss, damage, destruction, or theft (LDDT) of Government property and serves as, or supports, a voucher for adjusting the property from accountable records. It also documents any charge of financial liability assessed against an individual or entity or provides for the relief from financial liability.

It is used to enforce property accountability and is not intended as corrective action or punishment. If appropriate, however, commanders may use administrative or disciplinary measures (e.g., reprimand, Article 15) based on the LDDT of Government property.

C. ALTERNATIVES TO FLIPLs (PARA. 4-3)

- **Statement of Charges/Cash Collection Voucher** (para. 4-6).
- **Cash sales** of hand tools and organizational clothing and individual equipment (para. 4-4b).

- Unit level commanders may **adjust losses** (para. 12-19).
- An **abandonment order** (para. 12-8).
- Approval authority may sign **damage statement** when property is unserviceable and there is no evidence of negligence or misconduct (12-12).
- **Recovery of property** unlawfully held by civilians is authorized by showing proof that it is U.S. property, so long as there is no breach of peace or trespass on private premises.
- **Army Regulation 15-6 investigations** and other collateral investigations can be used in conjunction with the DD Form 200 to supplement the FLIPL.

D. MANDATORY FLIPLS (PARA. 5-3).

A FLIPL must be processed when:

- Negligence or willful misconduct is suspected as the cause, and the individual does not admit liability and refuses to reimburse for the full value of the loss is determined per Chapter 7.
- Property is lost, damaged, or destroyed by an outgoing accountable officer, unless voluntary reimbursement is made for the full value of the loss less depreciation.
- The amount of admitted loss or damage exceeds an individual's monthly base pay.
- The damage to Government quarters or furnishings exceeds one month's base pay.
- The loss involves certain bulk petroleum products totaling more than \$1,000.
- A specified type of controlled item is lost or destroyed (requires AR 15-6 investigation).
- Loss involves public funds or other negotiable instruments valued at \$750 or greater, or any such loss and the individual does not voluntarily reimburse Army.
- A higher authority or other DA regulation directs a FLIPL.
- Loss or damage involves GSA vehicle with damage more than \$1,000.
- Loss resulted from fire, theft, or natural disaster.
- Loss involves certain recoverable items with a recoverability code of D, F, H, or L.
- Losses due to combat where equipment is determined captured, abandoned, or a physical loss.

E. JOINT FLIPLS

Absent a loan agreement stating otherwise, apply the regulation of the Service that owns the property (property is located on that Service's property account).

Paragraph 12-4 of AR 735-5 outlines the reciprocal agreement between the Army and Air Force, which explains the process for processing FLIPLs that find Air Force personnel liable for the LDDT of Army property. Upon completion of the investigation, it should be forwarded to the appropriate Air Force approval authority for final action.

For all other situations where non-Army personnel are found to be liable for the LDDT of Army property, follow the procedures found in AR 735-5, paragraph 12-3.

F. INITIATING THE FLIPL (PARAS. 5-7 AND 5-19)

Upon discovering the LDDT of Government equipment, the hand receipt holder, accountable officer, or person with most knowledge of the incident will initiate a FLIPL within 15 calendar days (active Army) or 75 calendar days (Army Reserve and National Guard).

Certain losses (certain controlled items identified in paragraph 13-25) require an AR 15-6 investigation as the underlying investigative mechanism. The DD Form 200 will be completed as the adjustment document, but the appointing or approving authority should not conduct a separate FLIPL.

Initiation of a FLIPL is complete when forwarded to the appointing/approving authority for appointment of a Financial Liability Officer (FLO).

The approving authority is an Army officer or DA Civilian authorized to appoint a FLO and approve FLIPLs “by authority of the Secretary of the Army.” The approving authority does not have to be a court-martial convening authority.\

1. Approving Authority

The following personnel are approving authorities for FLIPLs.

- For final LDDT less than or equal to \$5,000, the first O-5 in the rating chain (if delegated by the O-6 approval authority in writing and the item is not a sensitive item, is not communications security, and does not contain personal identifiable information).
- For final LDDT less than \$250,000, the first O-6 or supervisory GS-15 in the rating chain.
- For final LDDT of \$250,000 or greater or any final loss of a controlled item, the first general officer or Senior Executive Service Civilian in the rating chain.

2. Appointing Authority

The appointing authority is an officer or Civilian designated by the approving authority with responsibility for appointing FLOs. The approving authority may designate, in writing, a lieutenant colonel (or major in a lieutenant colonel billet) or DoD Civilian in the grade of GS-13 (or a GS-12 in a GS-13 billet) or above as an appointing authority.

Regardless of who initiates the FLIPL, it is processed through the chain of command of the individual responsible for the property at the time of the incident, provided the individual is subject to AR 735-5. AR 735-5, para. 13-5.

3. Financial Liability Officer (FLO)

In order for the FLO to be qualified, he/she must be senior to the person subject to possible financial liability, “except when impractical due to military exigencies.” The FLO can be

an Army commissioned officer, warrant officer, or enlisted Soldier in the rank of sergeant first class or above; a Civilian in the grade of GS-7 or above; or a Wage Leader or Wage Supervisor employee. In joint commands or activities, the FLO can be any DoD commissioned or warrant officer or non-commissioned officer that is E-7 or above assigned to the activity or command.

G. CONDUCTING THE INVESTIGATION (PARAS. 8-1 AND 8-2)

The FLO's primary duty is the investigation, and he/she should begin immediately upon being appointed. He/she will receive a briefing prior to beginning the investigation. While AR 735-5 does not mandate who provides the briefing, the unit S4 or judge advocate should provide it.

The FLO must seek out all the facts that surround the LDDT; conduct a thorough and impartial investigation; physically examine damaged property and release it for turn-in or repair; interview and obtain statements from individuals with useful information; resolve conflicting statements and confirm self-serving statements; organize investigation in accordance with the regulation; determine the cause and value of the LDDT of Government property and determine if assessment of financial liability is warranted.

H. ASSESSMENT OF FINANCIAL LIABILITY (PARA. 6-6)

Individuals may be held financially liable for the LDDT of Government property if they were negligent or have committed willful misconduct and their negligence or willful misconduct is the proximate cause of that LDDT. Before a person may be held liable, the facts must show that a loss to the Government occurred. Two types of losses that can result in financial liability:

- 1) **Actual loss**, where there is the LDDT of property; and
- 2) **Loss of accountability**, where it is impossible to determine if there has been actual LDDT because it is impossible to account for the property.

The actual value at the time of the loss is the preferred method of valuing the loss. Determine the item's condition item at the time of the loss or damage. Determine a price value for similar property in similar condition sold in the commercial market within the last six months.

Depreciation is the least preferred method of determining the loss to the Government. Compute financial liability according to AR 735-5, Table 7-1.

1. Responsibility

The type of responsibility a person has for property determines the obligations incurred by that person for the property. The type of obligation a person has toward property is relevant when determining whether a person was negligent. There must be a finding of either negligence or willful misconduct before an individual may be held liable.

- **Command Responsibility.** Commanders have an obligation to insure proper use, care, custody, and safekeeping of Government property within their command. Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to command at any level.

- **Supervisory Responsibility.** The obligation of a supervisor for the proper use, care, and safekeeping of Government property issued to, or used by, subordinates. It is inherent in all supervisory positions, is not contingent upon signed receipts or responsibility statements, and cannot be delegated. It arises because of assignment to a specific position.

- **Direct Responsibility.** The obligation of a person to ensure the proper use, care, custody, and safekeeping of all Government property for which he/she has receipted. Direct responsibility is closely related to custodial responsibility.

- **Custodial Responsibility.** The obligation of an individual for property in storage, awaiting issue, or turn-in to exercise reasonable and prudent actions to properly care for, and ensure proper custody, safekeeping, and disposition of the property are provided. Custodial responsibility results from assignment as a supply sergeant, supply custodian, supply clerk, or warehouse person, and is rated by, and answerable directly to, the accountable officer or the individual having direct responsibility for the property. Responsibilities include ensuring the security of all property stored within the supply room and storage annexes belonging to the supply room or SSA is adequate; observing subordinates to ensure they properly care for and safeguard property; enforcing security, safety and accounting requirements; if unable to enforce any of these, reporting the problems to their immediate supervisor.

- **Personal Responsibility.** The obligation of a person to exercise reasonable and prudent actions to properly use, care for, safeguard, and dispose of all Government property issued for, acquired for, or converted to a person's exclusive use, with or without receipt. **A person can only be held liable if the facts show that he/she acted negligently or engaged in willful misconduct.**

- **Simple negligence.** The failure to act as a reasonably prudent person would have acted under similar circumstances. A "reasonably prudent person" is an average person, not a perfect person. Consider what could be expected of the person considering their age, experience, and special qualifications; the type of responsibility involved; and the type and nature of the property (more complex or sensitive property normally requires a greater degree of care); and the nature, complexity, level of danger, or urgency of the activity ongoing at the time of the LDDT of the property. Examples of simple negligence are:

- failure to do required maintenance checks
- leaving weapon leaning against a tree while attending to other duties
- driving too fast for road or weather conditions, or
- failing to maintain proper hand receipts.

- **Gross negligence.** An extreme departure from the course of action expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act. These elements can be express or implied. It does not include thoughtlessness, inadvertence, or errors in judgment. Examples of gross negligence are:

- driving a vehicle at a speed in excess of the posted speed limit

- intentionally trying to take a sharp curve without slowing down and
 - living in family quarters with an unsupervised child who likes to play with matches with matches in reach.
- **Willful misconduct.** Any intentional or unlawful act. Willfulness can be express or implied. Includes violations of law and regulations such as theft and misappropriation of Government property. Examples of willful misconduct include:
 - throwing a tear gas grenade into the mess tent to let the cooks know what he thought about breakfast which results in the tent burning to the ground; and
 - stealing a self-propelled howitzer, operating it without the proper knowledge and experience, thereby damaging several buildings.

2. Proximate Cause.

Before holding a person financially liable for a loss to the Government, the facts must clearly show that the person's conduct was the "proximate" cause of the LDDT. That is, the person's acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the LDDT, and without which the LDDT would not have occurred.

Foreseeable consequences do not require actual knowledge of actual results. You do not need to foresee the particular loss or damage that occurs, but you must foresee that some loss or damage may occur.

Examples of proximate cause.

- Failing to stop at a stop sign or look in both directions, which leads to striking another vehicle in an intersection.
- Soldier A illegally parks his vehicle in a no parking zone. Soldier B backs into A's vehicle. B did not check for obstructions to the rear of his vehicle. A's misconduct is not the proximate cause of the damage. Instead, B's negligent driving is the proximate cause.

Independent intervening cause is an act that interrupts the original flow of events or consequences of the original negligence. It may include an act of nature, criminal misconduct, or negligence.

I. CONCLUDING THE INVESTIGATION

Liability not recommended by the FLO (para. 11-2). If financial liability is not recommended, the investigation is forwarded through the appointing authority, if any, to the approving authority for action. Keep in mind that negative findings (i.e., that no one should be liable) must also be supported by evidence.

Liability recommended by the FLO (paras. 11-3, 11-8). If financial liability is recommended against an individual, the individual is referred to as the respondent. Respondents have certain rights. The FLO will notify the respondent by memorandum of the proposed recommen-

dition of financial responsibility. **The notification memorandum will inform the respondent of the right:**

- To inspect and copy the report of investigation and records related to the debt. A copy of the investigation is normally sent with the notification.
- To obtain free legal advice (military and DA Civilians) from the servicing legal office.
- To submit a statement and other evidence to rebut the recommendation.

Time limits for submitting rebuttal evidence to the FLO are as follows:

- 7 calendar days when investigation is hand delivered to the respondent;
- 15 calendar days when respondent is unavailable but in the same country and the investigation is physically mailed or emailed;
- 30 calendar days when respondent is unavailable and in a different country and the investigation is physically mailed or emailed.

The FLO must consider the respondent's rebuttal. Regardless of whether the FLO changes the recommendation, the investigation is forwarded through the appointing authority, if any, to the approving authority for decision.

The approving authority is not bound by the recommendation of the FLO. The approving authority may decide not to impose liability or to impose liability.

Note: If the FLO recommended no liability and therefore did not provide the individual with notice and opportunity to rebut, the approving authority must do so before assessing liability.

When the approving authority decides to impose liability, the approval authority must notify the respondent of that collection efforts will commence in 30 days (60 days for ARNG). In the memorandum the approval authority must also notify the respondent of the right:

- To inspect and copy the file.
- To legal advice.
- To request reconsideration based on legal error.
- To a hearing (for DoD Civilians only).
- To request remission of indebtedness. This option is limited: to enlisted Soldiers, when it would avoid extreme hardship, and only to unpaid portions of a debt. Suspend collection action long enough for the Soldier to submit a request for remission of the debt. Must request reconsideration before submitting request for remission of indebtedness.
- To request extension of collection time.
- To petition Army Board for Correction of Military Records in accordance with AR 15-185. Petition must be based on unjustness and can only be made after appeal authority acts on request for reconsideration.

- Civilian employees may avail themselves of the grievance/arbitration procedures. Request for reconsideration, a hearing, or remission or cancellation of debt stops all collection action pending outcome of request.

Before the approving authority approves a recommendation of liability, a judge advocate must review the FLIPL for legal sufficiency of the evidence and propriety of the findings and recommendations. The FLO's recommendations do not bind the approving authority, but the approving authority cannot assess liability if the findings and recommendations are found to be legally insufficient (para. 11-4).

J. DECISION BY APPROVING AUTHORITY WITHOUT INVESTIGATION (SHORT FLIPL) (PARA. 5-24, 5-25)

When initial information indicates there was no negligence involved in the LDDT of Government property, the approving authority may relieve all individuals from liability.

When initial information indicates that negligence or willful misconduct was the proximate cause of the LDDT of Government property, the approving authority may assess liability by:

- Notifying the respondent of the intent to hold him/her liable. Notification must include all the facts upon which the decision is based and must include notice of all the respondent rights as outlined above. The respondent has the right to submit a rebuttal.
- The approving official must consider the rebuttal, if submitted, and make a determination.
- The information and rebuttal must receive a legal review.
- The approving authority makes a final decision and notifies the respondent accordingly.

K. RELIEF FROM LIABILITY

Respondent must request reconsideration and/or appeal within 30 days of liability notification, and it can be based only on legal error. The request is submitted to the approving authority. If the approving authority does not reverse the decision, the request becomes an appeal, which is forwarded to the appeal authority by the approving authority.

Appeal authority is the next higher commander or DA Civilian in the chain of command or supervision. The decision of appeal authority is final. Only further recourse is application to Army Board for Correction of Military Records. The investigation must receive a legal review by a legal advisor prior to appeal authority action.

Reopening FLIPLs is not an appeal. The authority to reopen rests with the approval authority. It may occur as part of an appeal of the assessment of financial liability; when a response is submitted to the surveying officer from the person charged subsequent to the approving authority having assessed liability; when a subordinate headquarters recommends reopening based upon new evidence; when the property is recovered; or when the approving authority becomes aware that an injustice has occurred.

L. LIMITS ON FINANCIAL LIABILITY

1. General Rule.

The general rule is that an individual will not be charged more than one month's base pay. The amount charged is based upon the respondent's base pay at the time of the loss.

For ARNG and USAR personnel, base pay is the amount they would receive if they were on active duty.

For DA Civilian employees, "base pay" is 1/12 of their annual pay.

2. Exceptions to the general rule (para. 7-4, 11-3).

When negligence or willful misconduct are shown to be the proximate cause for a loss, the following individuals or entities will be assessed the full amount of the Government's loss, minus amounts charged to others: (1) Accountable officers; (2) states and territories of the United States; (3) contractors and contractor employees; (4) nonappropriated fund activities; (5) persons losing public funds; (6) Soldiers losing personal arms or equipment; (7) persons, who lose, damage, or destroy Government quarters, and/or furnishings and equipment provided by the Government for use in quarters, through gross negligence or willful misconduct; (8) individuals or entities not federally employed.

3. Collective financial liability.

Two or more persons may be held liable for the same loss. There is no comparative negligence. Financial loss is apportioned according to AR 735-5, tables 7-2 and 7-3. Each respondent pays a percentage of the loss in accordance with their percentage of pay when all respondents' pay is totaled. If one of the collective liability respondents is not federally employed, divide the total amount of the loss by the total number of respondents. Each respondent is liable for that amount or their monthly pay, whichever is less.

M. TOTAL PROCESSING TIME

Active Army: 75 days.

U.S. Army Reserve: 240 days.

Army NG: 150 days.



Standards of



**Ethical
Conduct**



Standards of Ethical Conduct in the Army

A. INTRODUCTION

This chapter contains the most common guidelines, rules, restrictions, and prohibitions contained in frequently used ethics authorities, to include statutes, the Code of Federal Regulations, and the Joint Ethics Regulation. It is not all inclusive. Exercise caution when applying these rules. Because many ethical constraints involve making fine distinctions, Commanders should contact their supporting judge advocate or ethics official when issues in the categories detailed in this chapter arise.

B. GIFTS

1. General

Federal regulations and the Department of Defense (DoD) Joint Ethics Regulation (JER) restrict DoD employees when it comes to soliciting and accepting gifts. However, several exceptions and exclusions authorize DoD employees to personally accept gifts.

2. Gift Exclusions

A gift is defined as any gratuity, favor, discount, entertainment, hospitality, or any other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodging and meals. It does not include, among others:

- Coffee, donuts & modest non-alcoholic refreshments not intended as a meal;
- Greeting cards, plaques, trophies, and other items with little intrinsic value intended primarily for presentation;
- Rewards & prizes for contests open to public;
- Commercial discounts available to the public or military; or
- Anything for which an employee pays market value.

3. Rules and Exceptions for Gifts Between Employees

In general, a DoD employee may not accept a gift from a lower paid employee or solicit for or give a gift to a superior. Two major exceptions allow employees to accept gifts from fellow employees.

First, an employee may accept a gift on a **traditional gift-giving occasion** as long as the gift is valued at \$10.00 or less (no cash). Examples would include birthdays or holidays. This exception also authorizes DoD members to accept the unsolicited gift of personal hospitality at

someone's home (of a type customarily provided to personal friends) or host/hostess gifts (of a type and value given on such occasions).

Second, an employee may accept a gift on a **special, infrequent occasion**. Examples of a special, infrequent occasion would include marriage, illnesses, birth or adoption of a child, or an occasion that terminates a subordinate-official superior relationship such as a change of command, PCS, or retirement. When accepting a gift based on a special, infrequent occasion, the following rules apply.

- The gift must be no more than the current minimal value per donating group. Minimal value is currently \$480 (a/o 2023). Minimal value is adjusted every three years for inflation and will be updated again by the General Service Administration (GSA) in 2026;
- If any employee donates to more than one donating group, the value of the gifts becomes aggregated;
- If the gift exceeds minimal value, the employee may not “buy down” the value of the gift;
- Employees may solicit for contributions for the gift as long as the solicitation does not exceed \$10.00 (although the employees may contribute more than \$10.00). Solicitation must be free from coercion;
- All contributions must be voluntary.

4. Rules for Gifts from Foreign Governments

Members of the military may personally accept a gift from a foreign government (federal, state, or local government) that is valued at \$480.00 or less. The GSA periodically adjusts this amount. The value of the gift must be based on its fair market value in the United States, not the market value in the donor nation. A gift from a foreign government to your spouse is treated as a gift to you.

5. Rules for Gifts from Outside Sources

DoD employees are prohibited from accepting gifts from a prohibited source. In addition, DoD employees cannot accept a gift offered because of the employee's official position. However, there are thirteen general exceptions, including the following:

- **\$20/\$50 Rule.** A DoD employee can accept a gift from an outside source valued at \$20 or less (other than cash), per source, per occasion, not to exceed \$50 in a calendar year.
- **Personal Relationship.** Gifts from outside sources based on a preexisting personal relationship.
- **Widely Attended Gathering.** For information about the possibility of accepting a gift of free attendance at a widely attended gathering consult your ethics official.

6. Declining and Disposing of Gifts

DoD employees' actions should always promote the public's trust. For this reason, a DoD employee should consider declining otherwise permissible gifts if he or she believes that a rea-

sonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift.

Generally, a DoD employee who receives a prohibited gift may dispose of it by promptly returning it to the donor or paying the donor its market value. For other possible dispositions options, consult your ethics official.

C. TRAVEL

Chapter 4 of the JER and the Joint Travel Regulation, paragraph 020206 contains the key rules associated with travel benefits.

1. Air Travel

Service members should not wear their uniforms when traveling in any class of travel above coach. Consult AR 670-1 for updated guidance in this area.

2. Frequent Flyer Miles

Frequent flyer miles accrued during official travel belong to the traveler. Travelers can use frequent flyer miles to upgrade a government purchased ticket or for any other purpose.

3. On-the-Spot Upgrades

Travelers may accept an unsolicited offer from the airline to upgrade their government ticket to a premium class of travel even if they are in uniform. However, senior officers must always consider the potential appearance of impropriety and it may be prudent to decline the upgrade if traveling in uniform.

4. Airline "Bump" Rules

You may not volunteer to take a later flight in exchange for travel benefits offered by the airline if it will interfere with your mission. If there is no impact on the mission and no additional cost to the government, you may accept the travel benefits offered by the airline in exchange for taking a later flight.

An involuntarily bumped traveler is "awaiting transportation" for per diem and miscellaneous expense reimbursement; therefore, any monetary compensation from the airline (including meal and/or lodging vouchers) for the denied seat belongs to the government. The service member must turn in all such items with the travel voucher.

D. USE OF NON-TACTICAL VEHICLES

1. Domicile to Duty

Army Regulation 58-1 and federal law provide extremely narrow exceptions for the use of a non-tactical vehicle (NTV) between the place of duty and private domicile. Commanders should consult with an ethics official prior to using their NTV to travel to or from their domicile.

2. Travel to Commercial Air Terminals

Army Regulation 58-1, paragraphs 2-3 and 4-6, limit the circumstances under which a commander can use an NTV to travel to a commercial air terminal. Because each situation is fact-specific, consult with your ethics official.

3. Spousal NTV Travel

Spouses may travel in an NTV to an official function as long as space is available, the spouse's presence does not bump a member of the official party, and the spouse's presence does not require a larger vehicle.

E. USE OF GOVERNMENT RESOURCES

Government resources shall be for official use and authorized purposes only. Official use is any use necessary to accomplish the mission. Under the following limited circumstances, a commander in the rank of O-4 and above can authorize government resources for personal use:

- The use has no adverse effect on duty performance;
- Is of reasonable duration and frequency;
- Serves a legitimate public interest;
- Does not reflect adversely on the DoD;
- Does not overburden government communications; and
- Creates no significant additional cost.

Examples of acceptable personal use of a government resource would be short (local) phone calls home, limited personal use of the internet, or making a few personal photocopies. Government resources may never be used to operate a private business. Additionally, personnel and NTVs may never be used for personal use.

F. FINANCIAL DISCLOSURE

The DoD currently uses two different financial disclosure forms, the OGE 450 and the OGE 278. Which form an individual must use depends on the rank or grade and responsibilities of that individual; therefore, commanders should contact their servicing judge advocate or ethics official to determine whether they are required to file a financial disclosure form.

1. Confidential Financial Disclosure Report (OGE 450)

Persons required to file this form include military members (O-6 and below) and civilian employees (GS/GM-15 and below) when the official position of such members or employees requires them to participate personally and substantially in taking an official action for contracting or procurement, or if the supervisor of such member or employee determines the position requires such a report to avoid an actual or apparent conflict of interest.

2. Public Financial Disclosure Report (OGE 278)

Persons required to file this form include regular and reserve officers whose grade is O-7 or above (the requirement begins when a reserve general officer reaches sixty active duty days in a calendar year); members of the Senior Executive Service; and civilian employees whose positions are classified above GS/GM-15 or whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM-15.

G. CONFLICTS OF INTEREST

Under federal law and the JER, personnel shall not engage in any personal business or professional activity that places them in a position of conflict between their private interests and the public interest of the U.S. In order to preserve the public confidence in the Army, even the appearance of a conflict of interest must be avoided. The following general rules apply:

1. Inside Information

Army personnel shall not use inside information to further a private gain for themselves or others if that information was obtained by reason of their position and is not generally available to the public.

2. Commercial Solicitation

Active duty members shall not engage in commercial solicitations or solicited sales to DoD personnel junior in rank at any time.

3. Fundraising

Fundraising is not allowed in the federal workplace, with limited exceptions for the Combined Federal Campaign, the Army Emergency Relief Fund, and Soldier and Family Readiness Groups. For rules and exceptions on fundraising see AR 1-10 and consult your ethics official.

4. Endorsement

DoD employees are prohibited from using their grades, titles or positions in connection with any commercial enterprise or for endorsing a commercial product. DoD employees must not use their official capacities and titles, positions, or organization names to suggest official endorsement or preferential treatment of any non-Federal entity.

5. Outside Employment

DoD employees are prohibited from accepting employment outside of the Army if it interferes with or is not compatible with the performance of government duties, or if it might discredit the government. Commanders typically approve outside employment.

With some exceptions, DoD employees who are required to file a financial disclosure report shall obtain written approval from the Agency Designee before engaging in outside employment with a prohibited source. Financial disclosure filers should speak with their ethics official prior to engaging in any such activity.

There are several service restrictions that apply when a DoD employee is presented with an offer to speak at an event, lecture, or write on a particular topic. Commanders are highly encouraged to consult with their servicing judge advocate or ethics official prior to accepting an offer to teach, speak, or write.

H. SOCIAL MEDIA USE

The standards of conduct rules apply to social media. Under DoD Instruction 5400.17, social media accounts are either official or personal. Commanders should consult their servicing judge advocate (ethics official) and public affairs officer for the use of an official social media page. Further, the standards of conduct apply to all Soldiers' personal social media pages, including professional networking pages like LinkedIn. *See Chapter 26 for a more detailed discussion of Social Media.*

Commander's Coins

A. REFERENCES

- 10 U.S.C. § 1125.
- DoD Instruction 1348.19, Award of Medals, Trophies, Badges, and Similar Honors in Recognition of Accomplishments, 3 February 2014 (C1, 5 May 2020).
- AR 37-47, Official Representation Funds of the Secretary of the Army, 14 October 2020.
- AR 215-1, Military Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities, 24 September 2010.
- AR 600-8-22, Military Awards, 19 January 2024.

B. OVERVIEW

Commanders must recognize fiscal rules that affect their purchase and distribution of coins. Coins may be purchased, depending on circumstances, using appropriated funds (APF), non-appropriated funds (NAF), official representation funds (ORF), or private funds. Many Army Commands and Army Service Component Commands either place dollar limits or create formulas based upon the number of Soldiers in a unit, to limit the purchase of commander's coins.

1. Purchase with Appropriated Funds

Commanders may present coins purchased with APF only to reward Soldiers and DA civilians for outstanding duty performance or to recognize unique achievements. Commanders may not present coins purchased with APF as merely gifts, mementos, or tokens of appreciation (e.g., as a "farewell" gift or during a visit to a unit). Coins purchased with APF may not be presented to contractor employees, family members, members of a non-Federal entity (NFE) or private organization (PO), or to Soldiers as an award for participating in a NFE/PO activity. While some individual commands may require it, commanders presenting coins purchased with APFs should keep a register detailing the circumstances of each presentation.

2. Purchase with Non-Appropriated Funds

Commanders may present coins purchased with NAF only to award Soldiers and DoD civilians for excellence in athletic or nonathletic competitions, proficiency in recreational programs, or unusual accomplishment in supporting special events.

3. Private Funds

Commanders wishing to present coins to anyone for any reason may purchase them with their own private funds. Commanders should keep receipts for all such purchases. It is prudent to ensure coins purchased with private funds are distinct from those purchased with APF, NAF, or ORF. Though Commanders may typically give coins to anyone for any reason when they purchase them, Commanders should still seek ethics advice prior to giving a personal coin to a contractor. Presenting a personal coin to a contractor could violate DoD Policy regarding contractor recognition. This type of recognition could be used against the government in a dispute involving contract performance.

Support to Non-Federal Entities

A. REFERENCES

- 5 C.F.R. §§ 2635.704, 2635.705, 2635.808.
- Joint Ethics Regulation, 15 May 2024.
- DoD Instruction 1000.15, Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations, 24 October 2008.
- DoD Instruction 5410.19, Community Outreach Activities: Policy Overview and Evaluation Procedures, vol 1, 29 September 2021.
- DoD Instruction 5410.19, Community Outreach Activities: OSD Outreach Programs, Speaking Engagements, and Support to Non-DoD Organizations, vol 2, 29 September 2021.
- DoD Instruction 5410.19, Community Outreach Activities: Honors to National Symbols; Annual Patriotic and Military Observances, vol 3, 29 September 2021.
- DoD Instruction 5410.19, Community Outreach Activities: Ceremonial, Musical, and Aerial Event Support, vol 4, 29 September 2021.
- AR 360-1, The Army Public Affairs Program, 8 October 2020.

B. BASIC ETHICS PRINCIPLES REGARDING OFFICIAL SUPPORT TO NON-FEDERAL ENTITIES (NFEs)

1. Use Government Property Only for Authorized Purposes

Official DoD resources in support of NFEs (e.g., speakers, use of DoD facilities, or other logistical support) is an improper use of funds and resources unless it is for an official or authorized purpose consistent with the restrictions in 5 C.F.R. 2635, Subpart G and the JER. This applies even if the NFE provides compensation or reimbursement. Federal law entitles some NFEs to particular types of support (e.g., CFC, Red Cross, USO, etc.).

Official communications channels may be used to notify DoD personnel of NFE-sponsored events of common interest that support the goal of enhancing morale, welfare, or professional education.

Logistical support and DoD speakers may be provided to NFE-sponsored events (other than fundraisers) if the support supports a public affairs purpose and meets all of the following factors:

- Support does not interfere with official duties;
- Support serves community relations, public affairs, or military training interests
- The NFE event is appropriate for DoD association;

- The NFE event benefits the DoD or the local community;
- The NFE event has no admission fee, or has an admission fee that is not beyond the reasonable costs of sponsoring the event, or DoD support to the event is incidental;
- The NFE is not receiving preferential treatment—the command is able and willing to provide the same support to comparable events sponsored by similar organizations;
- DoD support is not provided instead of similar commercially available resources and services;
- The NFE event does not starge a controversy or confrontation.

2. No NFE may Receive Preferential Treatment.

In an official capacity, DoD personnel may not solicit for an NFE, endorse an NFE, or fundraise for an NFE. In addition to any ethical concerns, prior to supporting any NFE event, commanders must also consider whether any current policy or fiscal guidance would limit their ability to support an NFE event. For example, current Army conference policies impose specific requirements on Soldiers attending or supporting a conference.

C. MANAGEMENT OF NFEs IN AN OFFICIAL CAPACITY

Management in an official capacity is limited to “designated” organizations only:

- Army Emergency Relief.
- Air Force Aid Society.
- Navy-Marine Corps Relief Society.
- Coast Guard Mutual Assistance.
- Entities regulating and supporting service academy athletics programs.
- Entities regulating international athletic competitions.
- Entities accrediting service academies and other DoD schools.
- Entities regulating military health care, including health care associations and professional societies.

DoD personnel serving in a “management” position may not participate in the internal management or day-to-day operations of the NFE. Compensation is not permitted. Appointed by agency.

D. PERSONAL PARTICIPATION IN NFEs

Generally, DoD personnel may participate in NFE management in a personal capacity. However, DoD personnel may not serve in a personal capacity if the position was offered because of the DoD employee’s official position. Any personnel participation in a NFE may create a conflict of interest. *See Chapter 19 for a more detailed discussion of conflicts of interest.*

1. Active Duty

General officers may not serve on the boards of directors of companies or other entities that do business with the DoD or focus their business principally on military personnel.

Regular component officers in the grade of O-6 and below and regular component enlisted personnel in the grade of E-9 who serve in a leadership position that spans an entire installation may not serve on the boards of directors of companies or other entities that do business with the DoD or focus their business principally on military personnel unless they receive an exception.

2. Reserve Component

Reserve component officers in the grades of O-10 and O-9 may not serve on the boards of directors of companies or other entities that do business with the DoD or focus their business principally on military personnel.

Reserve component officers in the grades of O-8 and O-7 who serve more than 179 days (need not be consecutive) during the immediately preceding period of 365 consecutive days on active-duty, and who serve on the board of a company or other entity that focuses its business principally on military personnel, must resign from such a board. Reserve officers in this situation should consult with their ethics official immediately.

Reserve component officers in the grades of O-8 and O-7 who serve more than 179 days (need not be consecutive) during the immediately preceding period of 365 consecutive days on active-duty, and who serve on the boards of directors of companies or other entities that do business with the DoD, may be permitted to continue service on such board, but must seek an ethics determination by an appropriate ethics official.

3. Personnel Personally Participating in NFEs may not:

- Take official action on matters involving those NFEs.
- Solicit funds from their subordinates.
- Use their official titles or positions to endorse an NFE.
- Use government resources and time in support of personal participation in NFEs (generally).



Government Motor Vehicle Transportation

A. REFERENCES

- Joint Ethics Regulation, 15 May 2024.
- Joint Travel Regulations.
- DoD Manual 4500.36, DoD Acquisition, Management, and Use of Non-Tactical Vehicles, 7 July 2015 (C1, 20 December 2018).
- DoD Administrative Instruction 109, Use of Motor Transportation and Scheduled DoD Shuttle Service in the Pentagon Area, 31 March 2011 (C2, 22 February 2022).
- AR 58-1, Management, Acquisition, and Use of Motor Vehicles, 23 March 2020.

B. GOVERNMENT MOTOR VEHICLE TRANSPORTATION

1. The Use of Army Motor Vehicles is Restricted to Official Purposes Only

Changes of command, promotions, retirements, unit activations/deactivations are considered official business internal to the Army community. Attendance by the Army community is encouraged. For that reason, the use of a GOV or GOVs to attend such activities should be managed and not discouraged. However, transportation will begin and end at the transported individual's normal place of duty, not a personal residence or domicile.

2. Domicile-To-Duty Transportation

Except for certain extremely limited exceptions prescribed by statute, D-T-D transportation is not transportation for official purposes, and use of government vehicles for this purpose is prohibited.

Authorized exceptions to the D-T-D prohibition are outlined in AR 58-1, paragraph 5-3. Note that all exemptions require Secretary of the Army approval except subparagraph 5-3d pertaining to overnight retention of a government vehicle for next day departure pursuant to temporary duty orders.

Combatant Commanders may make a written determination that allows D-T-D if operationally necessary. See AR 58-1, paragraph 5-3e.

3. Transportation To and From Terminals

It is generally not permissible to use Non-tactical vehicles to go to and from transportation terminals. Non-tactical vehicles owned or otherwise controlled by the DoD may be used for trips only when at least one of the following conditions is met:

- Used to transport official non-DoD visitors invited to participate in DoD activities, provided that this use does not impede other primary mission activities;
- Used by individuals authorized domicile-to-duty (D-T-D) transportation, for example, the Secretary of the Army or the Chief of Staff, Army;
- Necessary because of emergency situations or to meet security requirements;
- Terminals are located in areas where other means of transportation are not available or cannot meet mission requirements in a responsive manner;
- Authorized in the Pentagon Area by DoD Administrative Instruction Number 109;
- Necessary because other methods of transportation cannot reliably or adequately meet mission requirements, based on a case-by-case factual assessment.

4. Official After-Hours Functions

Transportation to official after-hours functions will be treated as an exception to policy for which prior approval is required. All transportation to after-hours functions will begin and end at the individual's normal place of duty.

Official motor vehicle transportation requirements do not include transportation to private social functions; personal errands or side trips for unofficial purposes; transportation of dependents or visitors without an accompanying official; or in support of non-DoD activities unless specifically approved under the provisions of Army regulations.

Accompanying Spouse Travel

A. REFERENCES

- Joint Travel Regulations, Chapter 3
- DoD Directive 4500.56, DoD Policy on the Use of Government Aircraft and Air Travel
- DoD Instruction 4515.13, Air Transportation Eligibility
- Secretary of the Army Memorandum: Delegations of Authority for Travel on Government and Commercial Aircraft, 25 November 2024
- Administrative Assistant to the Secretary of the Army Memorandum: Department of the Army Travel on Government and Commercial Aircraft, 19 December 2024
- Department of the Army, Deputy Chief of Staff, G-3/5/7 Memorandum: Certification of Army Recurring Events for Army Spouse Travel, 24 January 2025
- AR 1-50, Army Conference Policy
- AR 58-1, Management, Acquisition, and Use of Motor Vehicles

B. OVERVIEW

As a general rule, spouses or other family members of an authorized traveler may not accompany Army personnel, either military or civilian, on official business at government expense. Rather, spouse travel on either military or commercial aircraft is accomplished as an exception to policy.

C. INVITATIONAL TRAVEL FOR ARMY SPOUSES

The Joint Travel Regulation (JTR) lists a number of specifically enumerated circumstances when a spouse may travel at government expense by using an Invitational Travel Authorization (ITA). These circumstances are listed at paragraph 030501.A.1-11. Examples include instances when:

- The spouse is a volunteer in accordance with 10 U.S.C. § 1588 and the travel is within the scope of the volunteer agreement; is unrelated to a program or command supervised by the sponsor; and is in strict compliance with the JTR, Chapter 3.
- The spouse will confer with DoD officials on DoD matters as a subject matter expert. In this instance, the individual's status as a spouse is incidental to his or her status as a subject matter expert, and the circumstances of travel are not to be confused with accompanying spouse travel.

If a spouse does not meet the requirements under one of these specifically enumerated circumstances, there is a "catch-all" provision under paragraph 030501.A.12, that authorizes a

spouse to travel at government expense if the spouse is “legitimately performing a direct service for the government” (the direct service standard). Each instance of invitational and spouse travel must be approved on a case-by-case basis, blanket approvals are not authorized, and complete requirements must be submitted to the approval authority at least 14 calendar days prior to the date of travel.

D. APPROVAL AUTHORITIES

Each occurrence of spouse travel is approved on a case-by-case basis. Blanket travel orders for spouses are not permitted. All complete requirements must be submitted to the approval authority at least 14 calendar days prior to the date of travel. All spouse ITA travelers under JTR paragraphs 030501-A11 or A12 must be "legitimately performing a direct service for the Government" as certified by the Secretary of the Army or designee. Commanding Generals of Army Commands, Army Service Component Commands, Direct Reporting Units, heads of Army activities, HQDA Principle Officials are the certifying authority for all ITA requests under JTR 030501-A11 and A12 of spouses of personnel within their command or organizations. The AASA and DAASA are the approval authority for ITAs requests under JTR 030501-A11 and A12 for spouses of personnel not under other assigned approval authorities.

E. MOTOR VEHICLE TRANSPORTATION

Spouses of DA officials may be authorized transportation in government vehicles only when accompanying their Army sponsor, the use of the vehicle has already been authorized to accomplish official business, and there is space available. Such transportation must be provided at no additional cost to the government, and the spouse's presence may not require a larger vehicle than that already authorized.

Soldier and Family Readiness Groups

A. REFERENCES

- Joint Ethics Regulation, 15 May 2024.
- AR 608-1, Army Community Service Center, Appendix J, 19 October 2017.
- AR 600-20, Army Command Policy, 8 February 2025.
- AR 210-22, Support for Non-Federal Entities Authorized to Operate on Department of the Army Installations, 12 May 2022.
- AR 600-29, Fundraising Within the Department of the Army, 16 December 2022.
- Army Directive 2019-17, Changes to the Soldier and Family Readiness Group Program, 1 April 2019.

B. OVERVIEW

A Soldier and Family Readiness Group (SFRG) is a command-sponsored organization created to foster a climate of mutual support within the unit. SFRG goals include supporting the military mission through provision of support, outreach, and information to family members. In accordance with Army Directive 2019-17, “The primary goals and expectations of SFRGs are to:

- 1) act as an extension of the unit command in providing official and accurate command information to Soldiers and their Families,
- 2) connect Soldiers and Families to the chain of command and provide support between the command and SFRG members,
- 3) connect SFRG members to available on- and off-post community resources, and
- 4) offer a network of mutual support.”

C. FUNDRAISING

1. Establishment of an SFRG Fund

SFRG mission-essential activities are supported using a unit’s appropriated funds (APF). Therefore, SFRG mission-essential activities may not be augmented with private money, and any such augmentation may violate the Anti-Deficiency Act. Army Regulation 608-1, paragraph J-7a, allows commanders to authorize their SFRG to maintain one informal fund in accordance with AR 600-20. Informal funds are private funds generated by SFRG members that are used to benefit the SFRG membership as a whole. Currently an informal fund may not exceed more than \$10,000 in annual gross receipts during a calendar year with limited exceptions that may be granted by Brigade Commanders. For instructions on how to handle a situation where your

SFRG exceeds the \$10,000 cap, commanders should consult their servicing judge advocate or ethics official. The SFRG informal fund must have a Standard Operating Procedure (SOP) memorializing the SFRG members' determination of the purpose of the SFRG informal fund. The following statement must be included in the SFRG informal fund SOP: "This [S]FRG informal fund is for the benefit of the [S]FRG members only and is established exclusively for charitable purposes and to provide support to Soldiers and Family members as the Soldiers and Families adapt to Army life. It is not a business being run to generate profits. It is not an instrumentality of the United States Government." The SFRG SOP must be approved by the unit commander and a majority of the SFRG members.

Informal funds may not be deposited or mixed with APF, unit MWR funds, unit cup and flower funds, or personal funds. Use of informal funds is limited to expenses consistent with the purpose and function of the fund and the fund's SOP and must benefit the SFRG membership as a whole. Examples include using informal funds to support SFRG newsletters that contain mostly unofficial information, parties, social outings, volunteer recognition, and picnics.

2. Pre-Approval Requirements for Fund Raisers

Joint Ethics Regulation (JER), paragraph 2-400f, exempts organizations composed primarily of DoD employees or their dependents from the general prohibition against fundraising when the organization is fundraising among their own members for the benefit of welfare funds for their own members or their dependents. The fundraising must be pre-approved by the head of the command or organization after consultation with the ethics official.

Therefore, an SFRG may conduct a fundraiser on an installation, from its own community members or dependents, and from all persons benefiting from the SFRG, if:

- The commander approves of the fundraising effort after consultation with the commander's servicing Staff Judge Advocate (SJA) or ethics official (See Army Directive 2019-17 for specific approval authority);
- The fundraising purpose is consistent with the approved SOP; and
- The manner of fundraising is consistent with the JER and AR 1-10.

Approval by the appropriate authority is required before conducting a fundraiser. The approval authority is dependent on installation policy and where the fundraiser will be held but can range from company commander to installation commander. Additionally, coordination with other agencies may be necessary. For example, if food is sold, local policy may require prior coordination with preventive medicine. Additionally, fundraising within the Army Reserve must comply with applicable Army Reserve regulations.

3. Taxes

SFRGs must comply with all Federal, State, and local tax laws, including state excise taxes. SFRGs must seek private counsel or contact proper tax officials to ensure compliance with all tax laws.

4. Insurance

SFRGs often overlook liability for injuries or even death caused by their fundraising activities. Finding insurance coverage may be difficult. Nevertheless, SFRGs and their members face the possibility of personal liability for damages caused by their activities. The best course is to select safe activities and, in some cases, to include Army safety experts in the planning process. Insist that private vendors, who may assist you with a fundraiser, carry appropriate insurance coverage.

5. Raffles, Lotteries, & Games of Chance

Raffles and lotteries are subject to State law, local installation policy, and AR 1-10

6. Money Accountability

Money raised by SFRGs must be guarded carefully. The fund custodian and the alternate custodian are responsible for maintaining, accounting for, and documenting expenditures. This does not mean that only one signature is required to spend money, however. Custodians of SFRG money are liable to the SFRG if they lose it. The custodian should open a noninterest-bearing checking account (interest-bearing accounts may be liable for local, State, or Federal taxes, and responsible to file tax returns). Although SFRGs may qualify for exemption from Federal income tax, pursuant to Section 501 of the Internal Revenue Code, the savings to be achieved may not equal the time and effort required to obtain an exemption.

The informal fund custodian will provide informal fund reports to the unit commander monthly and as requested. An annual report on the SFRG informal fund activity will be provided to the first colonel (O-6) commander or designee in the unit's chain of command no later than 30 days after the end of the calendar year. Reports are also required when a change of command or change of custodian occurs. Detailed records should be maintained on how money is raised and how it is spent. The SFRG membership should make spending decisions. The SFRG membership should determine the amount of money the SFRG leadership may spend without consulting the entire membership. Commanders must review SFRG financial records annually in accordance with local installation policy. Fidelity bonding should be purchased by an organization for members or employees handling monthly cash flows exceeding \$500 (bonding will equal the normal maximum amount of cash handled.)

7. How SFRG's May Spend Money

SFRG funds should be used for activities that support the entire group rather than for specific individuals. Thus, inviting third party representatives for the purpose of sales, such as Tupperware or LuLaRoe, does not support the entire group or the broad goals of an SFRG. The use of funds should not duplicate what other agencies provide (i.e., establishing a loan fund or emergency food locker when other agencies such as ACS and AER already have programs established). Finally, SFRG monies may not be spent in a way that appears improper or contrary to Army interests.

D. AUTHORIZED SUPPORT

Appendix J of AR 608-1 outlines the types of support authorized to SFRGs. They include the following:

1. Official Mail

The requirements are that it must be for an official, mission-related purpose and be approved by the commander. Official mail cannot be used to support private organization activities, fund-raisers, or commercial ventures.

2. SFRG Newsletters

Newsletters can be printed with APF provided that the information is considered official and approved by the commander. To qualify for use of APF, the newsletter cannot contain any personal or social information, or information regarding private organizations, fundraisers or commercial ventures.

3. Use of Government Facilities

SFRG volunteers may use government facilities to include dedicated office space, desks, equipment, supplies, and telephones needed to accomplish their assigned duties.

4. Use of Military Vehicles

Requirements for the use of military vehicles are outlined in AR 58-1, paragraphs 2-3(f) and 6-5. Government vehicles may also be used when several criteria are met, as provided for in AR 608-1, paragraph J-3.

Annual Filing of Financial Disclosure Forms

A. REFERENCES

- 5 CFR Part 2634.
- Joint Ethics Regulation, 15 May 2024.
- Website: www.fdm.army.mil
- Website: www.integrity.gov

B. CONFIDENTIAL FINANCIAL DISCLOSURE – OGE FORM 450

1. Purpose of Filing

OGE Form 450s are filed in order to ensure DoD employees do not engage in official financial transactions or decision-making in which, due to their private interests, they may have a conflict of interest.

2. Who Must File

- Personnel in “covered positions” including:
- All Army installation commanders, unless they are an OGE 278 filer.
- Special Government Employees (SGE) defined at 18 U.S.C. § 202(a), generally defined as employees performing temporary duty for 130 days or less in any 365 day period. Consult with an ethics official to determine whether an SGE, including U.S. Army Reserve or National Guard members, are required to file.
- Civilian employees at grade GS-15 and below, and military personnel below grade O-7, when they participate personally and substantially in taking official action for:
 - Contracting or procurement,
 - Administering or monitoring grants, subsidies, licenses, or other Federal benefits,
 - Regulation or auditing of non-Federal entities, or
 - Activities in which the final decision may have a direct and substantial economic impact on the interests of a non-Federal entity.

3. Who is Excluded from Filing

Personnel not employed in contracting or procurement positions, who have authority to make purchases of less than \$2,500 per purchase, and less than \$20,000 cumulatively per year.

Pursuant to a memorandum signed by the Secretary of the Army on 11 October 2001, the following personnel are presumptively excluded from filing:

- Officers in the grade of O-3 and below, enlisted Soldiers in the grade of E-6 and below, and civilians in the grade of GS-6 and below. Warrant officers are not included in this category. These exclusions do not extend to officers in the Acquisition Corps.
- Government purchase card holders whose cumulative annual purchases do not exceed the simplified acquisition threshold.
- None of these exclusions preclude supervisors from requiring subordinates to file the form when, in the supervisor's judgment, the subordinate has duties involving the exercise of significant independent judgment over matters that will have a substantial impact on the integrity of Army operations and relationships with non-Federal parties. Further, these exclusions do not apply to individuals who hold contracting warrants, or otherwise fall within categories defined in the Code of Federal Regulations or the Joint Ethics Regulation. Commanders are advised to consult with an ethics official before granting an exclusion.

In addition, personnel may be excluded by the head of an agency because:

- The possibility that the employee will be involved in a real or apparent conflict of interest
- is remote.
- The effect on the integrity of the federal government is inconsequential.
- There is a substantial degree of supervision and review.

4. When Must One File?

The OGE 450s are due by 15 February of each year. Personnel who move into a "covered" position must file a new entrant report within 30 days of doing so. If that person filed an annual OGE 450 as part of their previous duty position, a new entrant report is not required.

C. PUBLIC FINANCIAL DISCLOSURE – OGE 278

1. Purpose of Filing

To report the personal financial holdings of DoD employees holding certain status.

2. Who Must File

Military personnel in the grade of O-7 or higher and Senior Executive Service (SES) personnel. This does not include "frocked" O-7s, who wear the rank but do not receive the pay. Reserve Component General Officers are required to file upon reaching 60 active duty days in a calendar year.

3. Filing and Reporting Requirements

Contact your ethics official for assistance in determining what assets, liabilities, and outside activities must be disclosed on the OGE 278 and OGE 278-T. The OGE 278-T is a periodic transaction report which must be submitted within 30 days of certain transactions.

4. When Must One File?

The OGE 278 is due by 15 May of each year. If it is more than 30 days overdue, a \$200 fine is assessed to the filer. New entrants must file within 30 days of assuming a new position.

5. The OGE 278 is Subject to Disclosure under the Freedom of Information Act

Given that the OGE 278 may be made publicly available, filers are encouraged to protect their personally identifiable information (PII). Ethics officials can assist filers in protecting their PII to the maximum extent allowable under law and regulation.

D. FINANCIAL DISCLOSURE ONLINE

All financial disclosure statements, are now filed online. OGE 450s are filed in the Financial Disclosure Management (FDM) system at www.fdm.army.mil. OGE 278s and 278-Ts are now filed in the Integrity system run by the Office of Government Ethics (OGE).



Social Media Use

A. REFERENCES

- 5 CFR Part 2635
- Joint Ethics Regulation, 15 May 2024
- DoD Instruction 5400.17, Official Use of Social Media for Public Affairs Purposes, 12 August 2022 (C1, 24 January 2023).
- AR 600-20, Army Command Policy, 8 February 2025.
- AR 600-100, Army Profession and Leadership Policy, 5 April 2017.
- AR 360-1, The Army Public Affairs Program, Chapter 8, 8 October 2020.

B. OVERVIEW

Over the last few decades social media use has changed dramatically across the United States and the World. Commanders must be cognizant about its role as a communication tool and know the limitations that apply to Service members when engaging in social media either officially or personally. It is DoD policy that the military needs to adapt to changing trends and technologies on social media platforms to take full advantage of social media as a communication tool and in support of the National Defense Strategy.

C. OFFICIAL SOCIAL MEDIA ACCOUNTS

Commanders can use official social media platforms to communicate directly to the public. However, DoDI 5400.17 and AR 360-1 provide procedures and guidance on creating and maintaining an external official presence (EOP). There are three types of official social media accounts: organizational, institutional, and individual. All EOPs (official social media pages- ie. a unit's Facebook page) and their content represent the Army, reflect the Army's values, and serve as official communication with the general public, the news media, and internal Army audiences. Since EOPs are public record, Commanders cannot disable or terminate an account without following proper procedures to archive the account. Official social media accounts may never be used to engage in political activity (see Chapter 48). Commanders should consult with their public affairs officer and servicing judge advocate regarding creating, disabling, or maintaining an official social media account.

D. PERSONAL SOCIAL MEDIA ACCOUNTS

1. Personal Social Media Misconduct

All Soldiers and Army civilian personnel are expected to uphold the Army values in all aspects of life, which includes social media. Soldiers are subject to the Uniform Code of Military Justice at all times, including their online activities. The Army's policies on sexual harassment, equal opportunity discrimination, harassment, and fraternization are applicable to personal social media conduct. Commanders may have authority to prohibit Soldiers' social media activities if the commander determines the activities adversely affect good order and discipline or morale within the command.

2. Personal Social Media Monetization Restrictions

The Joint Ethics Regulation, paragraph 2-508, prohibits DoD Personnel from using their official position or public office for personal financial gain, for the endorsement of any product or service, or enterprise, or for the private gain of friends, relatives, or persons with whom the DoD personnel is affiliated in a non-government capacity. DoD personnel may reference their official position on their personal social media, but any reference should include a disclaimer that the views do not reflect those of the DoD. However, DoD personnel who receive compensation from personal social media, including revenue from advertising, sponsorships, or promotion of commercial ventures accounts that generate revenue, are prohibited from using their official position to support the personal social media compensation.

3. Personal Social Media Political Activities

DoD personnel's political activities on personal social media are also restricted. Service members may not engage in political activity via social media while on duty or in the workplace. Service members may follow, like, or comment on the social media page of a candidate for partisan office, a political party or a partisan group provided they are not on duty or in the workplace. It is permissible to express your personal views on social media, but Service members may not solicit votes for a partisan candidate or use contemptuous words toward elected official. Additionally, Service members should use disclaimers if identifiable as a Service member. Service members may not post links to, share, or repost comments or posts from any social media account of a political party or candidate running for partisan office. Additionally, Service members may not post, share, or like a post or other social media content that solicits political contributions (fundraising). Further, they may not post pictures or videos on social media endorsing a candidate while on duty or in uniform. Finally, Service members may never use official social media accounts or use social media in their official capacity to engage in political activity.

Administrative Law



& Personnel Actions



Administrative Reprimands

A. REFERENCE

- AR 600-37, Unfavorable Information
- AR 600-8-104, Army Military Human Resource Records Management

B. OVERVIEW

Administrative reprimands are an adverse administrative action used to rehabilitate a Soldier and/or document unfavorable information related to a Soldier. While reprimands may be adjudged as punishment from a court-martial or non-judicial proceedings, an administrative reprimand is not a punitive action under the Uniform Code of Military Justice. An administrative reprimand issued by a general officer is referred to as a general officer memorandum of reprimand (GOMOR).

An administrative reprimand filed in a Soldier's Army Military Human Resources Record (AMHRR) can significantly impact a Soldier's career and may result in non-selection for promotion, removal from a selection list, bar to continued service, administrative separation, or other adverse action.

C. ISSUING AND FILING AUTHORITIES (LOCAL FILE AND AMHRR)

1. Authority to Issue and Direct Filing in a Local File

Authority to issue and file an administrative reprimand in an enlisted Soldier's local file is restricted to commanders in the recipient's chain of command; school commandants; any general officer (to include those who are frocked); or any officer exercising general court-martial convening authority (GCMCA) over the recipient. While immediate supervisors of enlisted personnel may issue reprimands, they may only direct filing in the Soldier's local file if they are also in one of the above positions. Otherwise, the immediate supervisor must send the reprimand to one of the above officials for decision on whether to file the reprimand locally.

Authority to issue and file an administrative reprimand in an officer's local file is restricted to commanders in the recipient's chain of command who are senior in grade or date of rank to the recipient; the recipient's designated rater, intermediate rater, or senior rater under the officer evaluation system; any general officer (to include those who are frocked) who is senior to the recipient; or the GCMCA over the recipient or the GCMCA's designee.

Reprimands may only be locally filed for up to 18 months or until reassignment of the recipient to another general court-martial jurisdiction, whichever is sooner. The reprimand or document memorializing the filing decision must state the length of time the reprimand is to remain in the local file and provide a point of contact for the Soldier to contact after the

expiration date to ensure removal. Both the Soldier and unit are equally responsible for removing the reprimand from the local file once the designated removal date is reached.

2. Authority to Issue and Direct Filing in the AMHRR

Any official with authority to issue an administrative reprimand in a Soldier's local file may also issue an administrative reprimand with the intent to request that the reprimand be filed in the Soldier's AMHRR. However, regardless of issuing authority, only certain general officers may direct filing in the Soldier's AMHRR. These include, among others, a general officer exercising GCMCA over the recipient or the GCMCA's designee or delegate; a general officer commander over the recipient; the Commander, Human Resources Command; any HQDA staff principal; a State Adjutant General or designee; or the chief of any designated special branch pursuant to 10 U.S.C. § 3064 or their designee (i.e. Judge Advocate General's Corps, Chaplains, or Corps of the Army Medical Department).

Permanently filed reprimands will be filed in the performance portion of the AMHRR. Commanders may not file reprimands in the restricted portion of the AMHRR.

D. PROCESS

Administrative reprimands require inclusion of specific language and strict adherence to the process outlined in AR 600-37. Additionally, there are special processing requirements for reprimands resulting from sex-related offenses and many commands have local withholding policies based on a recipient's rank or position. As a result, commanders considering issuing a reprimand, especially if they intend to file the reprimand in a Soldier's AMHRR, should consult with their servicing judge advocate. AR 600-8-2 requires commanders to flag Soldiers until final decision on the filing of the reprimand.

1. Referral

Reprimands must be referred to the recipient concerned for comment. This referral will include and list applicable portions of investigations, reports, and other documents that serve, in part or in whole, as the basis for the reprimand.

2. Submission of Matters

Once referred, recipients will be provided 7 calendar days or, if not on active duty, 30 calendar days to provide a statement or other material that rebuts, explains, or mitigates the unfavorable information. Traditionally, local Legal Assistance or, in certain cases, Trial Defense Service offices provide Soldiers assistance in submitting matters.

3. Review and Decision

Statements and other evidence furnished by the recipient will be reviewed and considered by the officer authorized to direct filing in the AMHRR (or local file). The statements and/or material submitted by the recipient will be attached as enclosures to the reprimand along with the recipient's acknowledgment of referral. The filing authority should receive recommendations from the recipient's chain of command in writing. A filing authority should only forward a reprimand

mand for inclusion in the AMHRR after considering the circumstances and alternative measures. Minor behavior infractions or developmental mistakes will not normally be recorded in a Soldier's AMHRR. However, once placed in the AMHRR, such information will be permanently filed, unless removed through the appeals process. Appropriate filing authorities may direct filing in the AMHRR or local file or return the document to the issuing authority. If also the issuing authority, the filing authority may withdraw/rescind the reprimand. Decisions by the issuing/filing authority must be memorialized in an endorsement or addendum to the reprimand.

E. APPEALS PROCESS

The Department of the Army Suitability Evaluation Board (DASEB) at the Army Review Boards Agency is the sole appeal authority for reprimands filed in a Soldier's AMHRR. However, like all military records, if a recipient is unsuccessful at the DASEB and has exhausted all other administrative remedies, the recipient may further appeal to the Army Board for Correction of Military Records. Appeals may be made for removal of the reprimand from the AMHRR or transfer of the reprimand to the restricted portion of the AMHRR (see AR 600-8-104 for when the restricted portion of the AMHRR is accessed by boards or other personnel). The DASEB will normally only consider appeals from Soldiers in the grade of E-6 and above.

1. Appeals for Removal from the AMHRR

To remove the reprimand from the AMHRR, recipients must show, by clear and convincing evidence, that the document is either untrue or unjust, in whole or in part. Evidence submitted in support of the appeal may include, but is not limited to, an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions.

2. Appeals for Transfer to Restricted Portion of the AMHRR

To transfer the reprimand to the restricted portion of the AMHRR, recipients must provide substantial evidence that the intended purpose of the reprimand has been served and indicate how transfer would be in the best interest of the Army. Such evidence may include, but is not limited to, statements of support from the imposing authority, the Soldier's current chain of command, the Soldier's chain of command at the time of imposition, and/or other memoranda of support; subsequent evaluation reports (other than academic); notarized witness statements; official documents; court documents; statements of remorse; documents demonstrating rehabilitation; other documents proving the intended purpose of the reprimand has been served; and legal documents. Recipients may not initiate this appeal until they have received at least one evaluation (other than academic) since imposition.

3. Appeals from Local Filing

Recipients of locally filed reprimands may appeal to have the reprimand removed prior to the designated removal date by providing substantive evidence justifying removal to the original filing authority or a higher-level commander in the chain of command.



“Flagging” Soldiers from Favorable Personnel Actions

A. REFERENCE

- AR 600-8-2, Suspension of Favorable Personnel Actions (Flag), 5 Apr 21

B. FLAG MANAGEMENT ISSUE

Command teams may face challenges with flag management. Poor flag management is detrimental to the Army’s morale and negatively impacts the Army’s collective ability to manage the force by making timely and informed decisions.

1. Initiation and Removal

Flags will be initiated within 3 working days after identification of the Soldier’s circumstances requiring imposition of a flag and removed within 3 working days after determination that the Soldier no longer has circumstances requiring a flag.

2. Mandatory Flag

Suspension of favorable personnel actions is mandatory if an investigation is initiated on a Soldier by military or civilian authorities. This is required for all command investigations—commander’s inquiry, AR 15-6 preliminary investigation, or AR 15-6 administrative investigation. Regardless of the reason for an arrest, an arrested Soldier also must be immediately flagged. The regulation defines “investigation” broadly and suspension of favorable actions on a Soldier is mandatory when military or civilian authorities initiate any investigation or inquiry that may potentially result in disciplinary action, adverse administrative action, or other loss to the Soldier’s rank, pay, or privileges. However, the initiation of a DD Form 200 (Financial Liability Investigation of Property Loss), in and of itself, will not result in the initiation of a flag. AR 600-8-2, paragraphs 2-1e and 2-2a.

3. Flag Code

The circumstances requiring initiation of a flag should accurately be reflected on the DA Form 268 using the proper reason/flag code. AR 600-8-2, paragraphs 2-2 and 2-3, and table 2-1.

4. Effective Date

The effective date of the flag is the date that the circumstance(s) requiring the flag occurred, not the date the flag was initiated. AR 600-8-2, paragraph 2-4.

5. Removal Considerations

A flag based on an arrest, investigation, court-martial, or Article 15 will not be removed until the Soldier is acquitted at court-martial or civilian trial and no other adverse action arising from the incident or charges is contemplated; when UCMJ action is closed or dropped without action; or when punishment (confinement, probation, restriction, extra duty, etc.) from court-martial, civilian trial, or non-judicial punishment is completed (including any term of suspension). A flag for a Soldier on a HQDA promotion list may only be removed by Commander, HRC (for active and USAR Soldiers), or by Director, Army National Guard (for ARNG or ARNGUS Soldiers). Additionally, flags must be reviewed until removed. They must be reviewed at least monthly by unit level commanders, and reviewed and validated monthly at the battalion level if the report contains flags over 6 months old. AR 600-8-2, paragraphs 1-9, 2-9, and 2-10.

Enlisted Separations

A. REFERENCES

- DoD Instruction 1332.14, Enlisted Administrative Separations
- DoD Instruction 1332.29, Involuntary Separation Pay
- AR 15-6, Procedures for Administrative Investigations and Boards of Officers
- AR 135-178, Enlisted Administrative Separations
- AR 600-8-2, Suspension of Favorable Personnel Actions
- AR 600-9, The Army Body Composition Program
- AR 600-20, Army Command Policy
- AR 600-85, Army Substance Abuse Program
- AR 635-200, Active Duty Enlisted Administrative Separations
- NGR 600-200, Enlisted Personnel Management
- U.S. Army Reserve Command (USARC) Memorandum, subject: Delegation of Separation Authority #20-09, Separation Authority Under AR 135-178, dtd 21 Oct 20

B. INTRODUCTION

The topic of enlisted administrative separations covers both favorable and unfavorable separations. Examples of favorable separations include retirement and honorable discharge separations at the expiration of a Soldier's service obligation. Examples of unfavorable separations include separation based on misconduct and unsatisfactory performance. Additionally, enlisted administrative separations are either involuntary (initiated by the chain-of-command) or voluntary (initiated by the Soldier). This outline does not contain all bases for administrative separation but attempts to identify the most common separation actions encountered by commanders, including unique issues when the separation involves Reserve Component Soldiers.

When analyzing enlisted administrative separations, consider:

1. What is the Reason for the Separation Action? Is the Separation Voluntary or Involuntary?

The various bases for enlisted administrative separations are generally found in AR 635-200, AR 135-178 for U.S. Army Reserve (USAR) personnel, and NGR 600-200 for Army National Guard (ARNG) personnel under different chapter headings (e.g., Ch. 14, AR 635-200 covers misconduct separations for active duty Soldiers). Hence, separation actions are often called "chapters." These chapters cover both voluntary and involuntary separations.

2. Who has the Authority to Approve the Separation?

Only certain commanders can direct or approve separations. These authorities are identified in the applicable separation regulation and can be impacted by separate delegations or withholdings of authority.

3. What Type of Discharge is Possible?

There are different types of administrative discharges (also known as characterizations of service), and often the type of discharge a Soldier can receive is contingent upon the reason for separation and the authority approving the separation. Characterizations may affect benefits eligibility and can carry a social judgment. Consequently, the contemplated characterization of service may dictate whether the Soldier is entitled to an administrative separation board.

4. What Procedural Steps are Required to Separate the Soldier?

Various factors (e.g., the reason for the separation, the number of years the Soldier has in the Army, and the type of discharge) determine the procedural requirements for the separation action.

C. THE AUTHORITY TO ORDER SEPARATIONS

NOTE: Citations without reference to a regulation will be to AR 635-200. Regulations applicable to the USAR and ARNG have similar, though not identical, provisions under different chapters. Separation authorities for active duty (AD) Soldiers are discussed in paragraph 1-20, AR 635-200.

1. Secretary of the Army (SA)

The SA has virtually unlimited authority to separate an enlisted Soldier. Secretarial plenary authority is discussed in paragraph 15-1.

2. General Court-Martial Convening Authority (GCMCA)

GCMCAs may approve all separations in AR 635-200, except: SA plenary authority cases (para. 15-1); reduction in force (RIF), strength limitations, and budgetary constraints (para. 16-7); Qualitative Management Program (QMP) (para. 16-11); voluntary separations of Soldiers serving indefinite enlistments (para. 4-4); conviction by a foreign court (para. 14-9a).

3. General Officer (GO) in Command with a Legal Advisor

Has the same separation authority as a GCMCA except lack of jurisdiction (para. 5-8) and discharge in lieu of court-martial (Ch. 10). Additionally, only a GCMCA may serve as the separation authority for cases involving Soldiers who filed an unrestricted report of sexual assault within 24 months or for Chapter 7 and Chapter 14 cases where a medical evaluation board is also being processed.

The USARC Commanding General has delegated authority to take final action on enlisted separations to USARC General Officer Commanders who have a judge advocate or legal advisor. Please see current USARC delegations of authority for further guidance.

4. Special Court-Martial Convening Authority (SPCMCA)

A SPCMCA may convene an administrative separation board contemplating an under other than honorable conditions (OTH) discharge. However, separation authority remains at the General Officer level. A SPCMCA may act as the separation authority under the following chapters:

- Ch. 5, Convenience of the Government (except para. 5-9, Lack of Jurisdiction);
- Ch. 6, Dependency or Hardship;
- Ch. 7, Defective Enlistments, Reenlistments, and Extensions;
- Ch. 8, Pregnancy;
- Ch. 9, Alcohol or Other Drug Abuse Rehabilitation Failure;
- Ch. 10, Discharge in Lieu of Court-Martial (if delegated for Absent Without Leave (AWOL) reasons at an installation with a personnel confinement facility (PCF), and may only approve before trial, but may never disapprove);
- Ch. 11, Entry Level Performance and Conduct;
- Ch. 12, Retirement for Length of Service;
- Ch. 13, Unsatisfactory Performance;
- Ch. 14, Misconduct (General (under honorable conditions) characterizations);
- Ch. 16, Selected Changes in Service Obligations; and
- Ch. 18, Failure to Meet Body Fat Standards.

5. Lieutenant Colonel (LTC)-Level Commander with a Legal Advisor

This authority includes promotable MAJs assigned to LTC-level command positions, but not MAJs or promotable MAJs who are acting commanders. A LTC-level commander may not take action on an OTH discharge. A LTC-level commander may take action with regard to the following chapters:

- Ch. 5, Separation of Personnel Who Did Not Meet Procurement Medical Fitness Standards (para. 5-10);
- Ch. 8, Separation of Enlisted Women-Pregnancy;
- Ch. 9, Alcohol or Other Drug Abuse Rehabilitation Failure;
- Ch. 11, Entry Level Performance and Conduct;
- Ch. 13, Separation for Unsatisfactory Performance (if notification procedure is used);
- Ch. 16, Selected Changes in Service Obligations (paras. 16-4 through 16-10); and

- Ch. 18, Failure to Meet Body Fat Standards.

6. Commander, Human Resources Command

May order the separation of enlisted Soldiers serving in an Individual Mobilization Augmentee, Individual Ready Reserve, Standby Reserve, or Ready Reserve status.

7. Headquarters, Department of the Army (HQDA)

Only HQDA may involuntarily discharge a Soldier with 18 or more years of active federal service. Only the SA or his designee may order the involuntary separation of a USAR Soldier with more than 18, but fewer than 20 years of qualifying service for retired pay.

8. Separation Authority's Determinations

In making their decision, the separation authority must consider (para. 2-3):

- Is there sufficient evidence? Government's burden, not the Soldier's (or "respondent"). Preponderance of evidence is the standard (i.e., a greater weight of evidence than that which supports a contrary conclusion).
- Retain or separate?
- If separate, what type of discharge (character of service) is appropriate?

9. Waivers of Boards

A Soldier entitled to an administrative board may submit a conditional waiver to a hearing by a board after a reasonable opportunity to consult with counsel (para. 2-5). The conditional waiver is a memorandum submitted by a Soldier waiving the right to a hearing by a board on the condition that characterization of service on separation will be more favorable than the least favorable characterization or description of service authorized for the basis of the separation reason listed in the notification memorandum. The separation authority will be the same as if the Soldier had not submitted the conditional waiver.

Under a circumstance where a Soldier offers to waive the right to a board hearing authorized to recommend an OTH discharge in exchange for a more favorable discharge, the separation authority remains the GCMCA or GO in command with a legal advisor. A SPCMCA or lower authority may not approve a waiver or discharge in a case where the chain of command initiated or recommended an OTH, or in a case where a board is appointed to consider a separation with a possible OTH discharge. When the Soldier waives his or her right to separation board, the separation will be processed under the Notification Procedure discussed below.

D. CHARACTERIZATION OF SERVICE OR TYPE OF DISCHARGE

Characterization at separation will be based upon the quality of the Soldier's service, including the reason for separation . . . subject to the limitation under the various reasons for separation. (1) The quality of service will be deter-

mined according to standards of acceptable personal conduct and performance of duty for military personnel. (2) These standards are found in the UCMJ, directives and regulations issued by the Army, and the time-honored customs and traditions of military service.

– AR 635-200, para. 3-5a

1. Honorable Discharge

“The honorable characterization is appropriate when the quality of the Soldier’s service generally has met the standards of acceptable conduct and performance of duty for Army personnel.” (AR 635-200, para. 3-7a).

- If the Soldier is separated for a reason where an honorable discharge is discretionary, conditions such as the extent and seriousness of infractions and whether the behavior is a pattern or isolated incident should be considered.
- Soldier receives DD Form 256A, Honorable Discharge Certificate.
- This discharge is usually required if the Government introduces limited use information during discharge proceedings.

2. General Discharge (Under Honorable Conditions)

A general discharge is “issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge” (AR 635-200, para. 3-7b(1)).

- Only permitted if the reasons for separation (chapter) specifically allow such characterization, and is not permitted for expiration of term of service (ETS).
- Soldier receives DD Form 257A, General Discharge Certificate.
- Impact on benefits:
 - No civil service retirement credit for time spent on active duty.
 - No education benefits. Money paid in to Montgomery GI Bill is forfeited (subject to vesting of the benefit due to previous honorable discharge).
 - Many states will not pay unemployment compensation.
 - “I understand that I may expect to encounter substantial prejudice in civilian life.” This statement is generally included in separation counseling to inform the Soldier that there may be negative impacts resulting from a general discharge.
- Upgrading requires application to the Army Board for Correction of Military Records (ABCMR) or the Army Discharge Review Board (ADRB) and this is not automatic.

3. Under Other Than Honorable (OTH) Conditions Discharge

Authorized under certain chapters for a pattern of behavior, or one or more acts or omissions, “that constitutes a significant departure from the conduct expected of Soldiers” (para. 3-7c(1)).

- Board hearing is generally required, unless waived by the Soldier or the separation is voluntary (i.e., Ch. 10).
- No discharge certificate is issued, but Soldier still receives DD Form 214 with characterization of service annotated.
- When approved by a separation authority, automatically reduces an enlisted Soldier to Private, E-1, by operation of law.
- There are additional impacts on benefits beyond that of a general discharge. Again, there is no automatic upgrading of the discharge; upgrading requires application to the ABCMR or the ADRB.

4. Entry-Level Status (Uncharacterized) Separation

- Service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry-level status.
- For AD Soldiers, entry-level status is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.
- Counseling and rehabilitation are essential before separation.
- Not a per se bar to veteran’s benefits but has the effect of disqualifying the Soldier for most federal benefits, since most require service of over 180 days to qualify.

5. Order of Release from Custody and Control of the Army

- Usually, no characterization of service because the person never acquired military status. There is an exception for constructive enlistment.
- Very rare, used only for void enlistments.
- Since no “service,” no veteran’s benefits.

6. Punitive Discharges

Dishonorable and Bad Conduct discharges may only result from an approved court-martial sentence, not an administrative separation. A common mistake by leaders conducting counseling for misconduct or unsatisfactory performance is the threat of a punitive discharge if the behavior continues. Such counseling is ineffective and fails to meet the counseling requirements of AR 635-200, Chapter 17. The servicing judge advocate or paralegal can provide a template for counseling that includes the lawful characterizations of service a Soldier could receive for various misconduct or unsatisfactory performance.

E. PROCEDURAL REQUIREMENTS AND ADMINISTRATIVE CONSIDERATIONS

1. Counseling

Counseling and rehabilitative transfer requirements apply to many separations. Commanders must make reasonable efforts to identify Soldiers who may be candidates for separation as early as possible, in order to improve their chances for retention. In accordance with AR 635-200, paragraph 1-17, counseling is always required for:

- Involuntary separation due to parenthood,
- Other designated physical or mental conditions,
- Entry-level performance and conduct,
- Unsatisfactory performance,
- Minor disciplinary infractions or a pattern of misconduct, and
- Failure to meet Army body composition standards

Additionally, a rehabilitative transfer is generally required under Chapters 11 (entry-level performance and conduct), 13 (unsatisfactory performance), 14-12a (minor disciplinary infractions), and 14-12b (a pattern of misconduct). Trainees should be recycled between companies or platoons at least once. Soldiers other than trainees should be recycled between battalion-sized units or larger at least once, with at least 3 months at each unit. Permanent Change of Station (PCS) is only for “meritorious cases” where the Soldier is a “distinct asset” to the Army. Waiver is authorized if transfer would serve no useful purpose, would not produce a quality Soldier, or is not in the best interest of the Army.

2. Medical Examination

Commanders will ensure that Soldiers initiated for separation who are required to obtain a physical examination per 10 U.S.C. § 1145 obtain such. Among others, this applies to all AD involuntary separations. Physical examinations and mental health evaluations will comply with AR 40-501 and other policy guidance issued by the Surgeon General and U.S. Army Medical Command. In addition to medical examinations, mental status evaluations conducted by a psychologist, or master-level, licensed clinical social worker, are required for Soldiers being processed for separation under Chapters 13 or 14.

3. Medical Examination for Soldiers Processed with an OTH

Commanders will ensure that Soldiers pending separation under conditions other than honorable (to include cases under Chapter 10, In Lieu of Trial by Court-Martial) obtain a medical examination to determine whether post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) was a factor in the Soldier’s misconduct per 10 U.S.C. § 1177 under the following conditions:

- Any Soldier who has been deployed overseas in support of a contingency operation within the previous 24 months and has been diagnosed with, or reasonably alleges, influence of PTSD/TBI based on such deployment; or
- Any Soldier who reported having been sexually assaulted within the previous 24 months and has been diagnosed with, or reasonably alleges, influence of PTSD/TBI based on such sexual assault.

4. Written Notification

The Commander notifies the Soldier in writing that separation is recommended. The Soldier must sign acknowledgment of receipt. Notice will include: specific allegations and provisions of regulation that authorize separation; least favorable characterization of service the Soldier could receive; the type of discharge recommended by the initiating commander; the right to consult with counsel; the right to submit statements; the right to obtain copies of all matters going to separation authority; and the right to a hearing if the Soldier has 6 years or more of combined active and reserve service on date separation is initiated (para. 2-2) or if the notice states the Soldier could receive an OTH characterization of service.

5. Soldier May Consult with Counsel

Soldiers may consult with counsel from the Trial Defense Service within a reasonable time and are entitled to representation if electing a board. Soldiers may also consult with civilian counsel at their own expense. Soldiers may submit matters within 7 duty days (or request an extension justified with good cause). Different timelines apply to USAR and ARNG Soldiers not on active duty. For example, these Soldiers must submit matters within 30 calendar days rather than 7 duty days. See AR 135-178 and NGR 600-200 and consult your servicing judge advocate for specific timelines.

6. Separation Authority Action

Once the Soldier's matters are submitted (notification procedure or in cases of board waiver) or board action and legal review are complete (board procedure), the action is forwarded through command channels to the separation authority for final action.

7. Legal review

Legal reviews are required for all board actions prior to separation authority decision under AR 15-6, para. 2-7a and AR 635-200, para. 2-12a. Additionally, OTH board recommendations, introduction of limited use evidence, and allegations by the Respondent of substantial error require review by a judge advocate in the grade of O4 or above.

F. NOTIFICATION PROCEDURE

1. Notification Procedure Alone May be Used When:

- The Soldier has fewer than 6 years of combined active and reserve service on date separation is initiated, and

- The command does not seek to impose an OTH discharge.

2. The Regulation Permits Notification Procedure Under, Among Others:

- Some provisions of Ch. 5, Convenience of the Government;
- Ch. 7, Defective Enlistments/Reenlistments and Extensions;
- Ch. 9, Alcohol or Other Drug Abuse Rehabilitation Failure;
- Ch. 11, Entry Level Performance and Conduct;
- Ch. 13, Unsatisfactory Performance;
- Ch. 14, Misconduct (unless an OTH is warranted); and
- Ch. 18, Failure to Meet Body Fat Standards.

G. BOARD HEARING CASES

An administrative board hearing is used if required by the governing chapter of the regulation, if the Soldier has 6 or more years of total active and reserve military service and elects a board, or if the command is contemplating discharge with an OTH discharge and the Soldier elects a board.

The Board must be composed of at least three commissioned, warrant, or noncommissioned officers; at least one of the voting commissioned officers must be a reserve officer if the Soldier being separated is in the Reserve Component. Enlisted members of the board must be a SFC or above and senior to the respondent. At least one member of the board must be a MAJ or above, and a majority of the members must be commissioned or warrant officers. See AR 135-178 and NGR 600-200 and consult your servicing judge advocate for the board composition for Soldiers not on active duty, which have additional requirements when an OTH is recommended.

The board is conducted under the provisions of AR 15-6, with the government and respondent (Soldier and/or counsel) presenting evidence, witnesses, and arguments to the board for deliberation. A verbatim record of findings and recommendations is made, as is a summary of the proceedings and testimony for the separation authority's review.

The respondent's rights include testifying on their own behalf to the board, submission of a written or recorded matter, obtaining military counsel to represent them at the board, questioning witnesses at the board, and personal appearance at the board. Failure to invoke these rights, including failure to appear at the board, does not bar the board from meeting and making findings and recommendations.

The board must make a finding as to each allegation mentioned in the notification of separation, as well as a recommendation to either retain or separate the Soldier. If separation is recommended, the board must also recommend a characterization of service. Finally, the board may also recommend suspension of the separation for a period not to exceed 12 months. The

separation authority may take action no less favorable than recommended by the board. However, a board recommendation to suspend separation is not binding on the separation authority.

H. UNSATISFACTORY PARTICIPATION (RESERVE COMPONENT SOLDIERS)

One of the most vexing problems facing Reserve Component commanders is the issue of Soldiers failing to meet their Reserve obligations. Under AR 135-91, a Soldier may be deemed an “unsatisfactory participant” if they accrue within a 12-month period a total of nine unexcused absences from scheduled inactive duty training (IDT) periods or fail to attend or complete annual training (AT). When absence involves a multiple unit training assembly (MUTA), or any portion of a MUTA, the charge will be one unexcused absence for each 4-hour period not attended, but not to exceed four unexcused absences. Thus, while a Soldier missing three two-day battle assemblies would accrue twelve unexcused absences, any combination of nine MUTAs in a 12-month period, beginning the date of the first absence, could justify separation.

Commanders must ensure every IDT period missed by their Soldiers is documented by their servicing unit administrator or S/G-1. Paragraph 4-15 of AR 135-91 details documentation requirements to substantiate separation, including delivery of a notice of unexcused absence either in person or by first-class mail (with the first notice commencing with the fourth absence required to be sent by certified mail, return receipt requested) and the filing of such notices into the Soldier’s personnel file. When separation is based on failure to complete AT, no notices are required beyond notifying the Soldier via AT orders sent to their address on record. If the Soldier cannot be personally delivered the AT order, the order should be sent via certified mail, return receipt requested.

See the tables beginning on the next page for a summary of chapter actions and requirements.

TABLE 29-1: SUMMARY OF REQUIREMENTS FOR VARIOUS SEPARATIONS

	SECRETARIAL AUTHORITY	PARENTHOOD	PERSONALITY DISORDER
GROUND FOR ACTION	Best interest of the Army; may apply to reason not covered by other, more specific provision. See also Army Directive 2013-21 for Soldiers convicted of sex offenses.	Parental obligations interfere with military responsibilities, e.g., repeated absenteeism, late for work, unavailable for field exercises, CQ, SDO, worldwide deployment or assignment.	Long term, deeply ingrained, maladaptive pattern of behavior that interferes with duty performance, diagnosed by psychiatrist or licensed clinical psychologist.
COUNSELING AND REHAB REQUIRED?	No.	Yes.	Yes.
WHO INITIATES?	Soldier or any commander, including separation authority if board recommends retention.	Immediate or any higher commander.	Immediate or any higher commander.
BOARD HEARING?	No. If command initiated, use notification procedure only, even if Soldier has more than 6 years of service.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.
REGULATION	AR 635-200, Chapter 15.	AR 635-200, para. 5-7.	AR 635-200, para. 5-14.
SEPARATION AUTHORITY	Secretary of the Army.	SPCMCA.	SPCMCA or GCMCA if Soldier has been in imminent danger pay area.
CHARACTER OF SERVICE	Hon, Gen, or ELS.	Hon, Gen, or ELS.	Hon, Gen, or ELS. (See para. 5-13h for General)

**TABLE 29-1: SUMMARY OF REQUIREMENTS FOR VARIOUS SEPARATIONS
(CONT.)**

	PHYSICAL OR MENTAL CONDITION	FAILURE TO MEET BODY FAT STANDARDS	RELEASE FOR MINORITY (16 OR YOUNGER)
GROUND FOR ACTION	Conditions that potentially interfere with assignment or duty, but not disability or para. 5-10 conditions. Diagnosed by psychiatrist or licensed clinical psychologist.	Failure to meet body fat standards in AR 600-9. Overweight condition must be only basis for discharge.	Enlisted when under age 17 and still under age 17.
COUNSELING AND REHAB REQUIRED?	Yes.	Comply w/ AR 600-9.	No.
WHO INITIATES?	Immediate or any higher commander.	Immediate or any higher commander.	Immediate or any higher commander.
BOARD HEARING?	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	No.
REGULATION	AR 635-200, para. 5-14	AR 635-200, Chapter 18	AR 635-200, Ch. 7, Sec. II.
SEPARATION AUTHORITY	SPCMCA or GCMCA if Soldier has been in imminent danger pay area.	LTC Cdr (or MAJ(P) in LTC Cmd) if no board; SPCMCA if board used.	SPCMCA.
CHARACTER OF SERVICE	Hon, Gen, or ELS. See para. 5-1.	Hon or ELS.	Release from custody & control of the Army.

**TABLE 29-1: SUMMARY OF REQUIREMENTS FOR VARIOUS SEPARATIONS
(CONT.)**

	RELEASE FOR MINORITY (17 YEARS OLD)	ERRONEOUS ENLISTMENT	DEFECTIVE OR UNFULFILLED ENLISTMENT
GROUND FOR ACTION	Enlisted under age 18 w/o parental consent, and still under 18, not facing court-martial (CM) charges, serving CM sentence, or in military confinement.	Enlistment would not have occurred had government known the relevant facts or had appropriate directives been followed.	Eligible for enlistment but not option for which enlisted; or received promise that Army cannot fulfill. Soldier must identify w/in 30 days of discovery.
COUNSELING AND REHAB REQUIRED?	No.	No.	No.
WHO INITIATES?	Parents w/in 90 days of enlistment.	Immediate or higher commander.	Immediate or higher commander.
BOARD HEARING?	No.	Use notification procedure. Entitled to board if Soldier has 6 or more years of active and reserve service.	No.
REGULATION	AR 635-200, Ch. 7, Sec. II.	AR 635-200, Ch. 7, Sec. III.	AR 635-200, Ch. 7, Sec. III.
SEPARATION AUTHORITY	SPCMCA.	SPCMCA.	SPCMCA.
CHARACTER OF SERVICE	ELS.	Hon, ELS, or release from custody & control of Army.	Hon or ELS.

TABLE 29-1: SUMMARY OF REQUIREMENTS FOR VARIOUS SEPARATIONS (CONT.)

	FRAUDULENT ENTRY	ALCOHOL OR DRUG ABUSE REHABILITATION FAILURE	IN LIEU OF TRIAL BY COURT- MARTIAL
GROUND FOR ACTION	Material misrepresentation, omission, or concealment of information that if known by Army might have resulted in rejection.	Soldier enrolled in ASAP and (1) lacks potential for service and rehab is not practical or (2) long-term civilian rehab required.	Preferral of charges for which punitive discharge authorized OR referral to court-martial authorized to adjudge a punitive discharge.
COUNSELING AND REHAB REQUIRED?	No.	No.	No.
WHO INITIATES?	Immediate or higher commander.	Immediate or any higher commander.	Soldier.
BOARD HEARING?	Yes, but may be waived. No board if OTH not warranted and Soldier has fewer than 6 years of active and reserve service.	Use notification procedure. Entitled to board if Soldier has more than 6 years active and reserve service.	No.
REGULATION	AR 635-200, Ch. 7, Sec. IV.	AR 635-200, Ch. 9.	AR 635-200, Ch. 10.
SEPARATION AUTHORITY	GCMCA if OTH warranted; if OTH not warranted and notification procedure used, then SPCMCA.	LTC Cdr (or MAJ(P) in LTC Cmd) if no board; SPCMCA if board used.	GCMCA in most cases.
CHARACTER OF SERVICE	Hon, Gen, OTH, or ELS.	Hon, Gen, or ELS. Hon required if limited use evidence introduced.	Normally OTH. Hon or Gen possible.

TABLE 29-1: SUMMARY OF REQUIREMENTS FOR VARIOUS SEPARATIONS (CONT.)

	ENTRY LEVEL PERFORMANCE AND CONDUCT	UNSATISFACTORY PERFORMANCE	CONVICTION BY CIVILIAN COURT
GROUND'S FOR ACTION	Unsatisfactory performance or minor disciplinary infractions in first 180 days of service. Inability, lack of effort, failure to adapt, or pregnancy that prevents MOS training.	Unsatisfactory duty performance.	Civilian conviction for offense that authorizes punitive discharge under UCMJ, or any civilian sentence to confinement for more than 6 months.
COUNSELING AND REHAB REQUIRED?	Yes.	Yes.	No.
WHO INITIATES?	Immediate or any higher commander.	Immediate or any higher commander.	Immediate or any higher commander.
BOARD HEARING?	Use notification procedure.	Use notification procedure. Entitled to board if Soldier has more than 6 years active and reserve service.	Yes, , but may be waived. No board if OTH not warranted and Soldier has fewer than 6 years of active and reserve service. No appearance if in confinement.
REGULATION	AR 635-200, Ch. 11.	AR 635-200, Ch. 13.	AR 635-200, para. 14-5.
SEPARATION AUTHORITY	LTC Cdr (or MAJ(P) in LTC Cmd).	LTC Cdr (or MAJ(P) in LTC Cmd) if no board; SPCMCA if board used.	GCMCA if OTH warranted; if OTH not warranted and notification procedure used, then SPCMCA.
CHARACTER OF SERVICE	ELS.	Hon or Gen.	Hon, Gen, OTH, or ELS.

**TABLE 29-1: SUMMARY OF REQUIREMENTS FOR VARIOUS SEPARATIONS
(CONT.)**

	MINOR (MILITARY) DISCIPLINE INFRACTION	PATTERN OF MISCONDUCT	COMMISSION OF A SERIOUS OFFENSE
GROUND FOR ACTION	Pattern of misconduct consisting solely of minor military disciplinary infractions.	Discreditable involvement with civil or military authorities, or conduct prejudicial to good order and discipline.	Commission of any offense (military or civilian) for which punitive discharge authorized under the Manual for Courts-Martial.
COUNSELING AND REHAB REQUIRED?	Yes.	Yes.	No.
WHO INITIATES?	Immediate or any higher commander.	Immediate or any higher commander.	Immediate or any higher commander.
BOARD HEARING?	Yes, but may be waived. No board if OTH not warranted and Soldier has fewer than 6 years of active and reserve service.	Yes, but may be waived. No board if OTH not warranted and Soldier has fewer than 6 years of active and reserve service.	Yes, but may be waived. No board if OTH not warranted and Soldier has fewer than 6 years of active and reserve service.
REGULATION	AR 635-200, para. 14-12a.	AR 635-200, para. 14-12b.	AR 635-200, para. 14-12c.
SEPARATION AUTHORITY	GCMCA if OTH warranted; if OTH not warranted and notification procedure used, then SPCMCA.	GCMCA if OTH warranted; if OTH not warranted and notification procedure used, then SPCMCA	GCMCA if OTH warranted; if OTH not warranted and notification procedure used, then SPCMCA
CHARACTER OF SERVICE	Hon, Gen, OTH, or ELS.	Hon, Gen, OTH, or ELS.	Hon, Gen, OTH, or ELS.

Officer Separations

A. REFERENCES

- DoD Instruction 1332.30, Commissioned Officer Separations
- AR 600-8-24, Officer Transfers and Discharges
- AR 135-175, Separation of Officers

B. OVERVIEW

Numerous conditions may justify the initiation of an administrative separation or elimination action against an officer. The terms separation and elimination are often used interchangeably for officers eliminated from active duty. An “elimination” is a removal from commissioned or warrant officer status in the Army and removal from active duty and the active duty list. “Separation” is a general term that includes discharge, release from active duty, release from custody and control of the Military Services, transfer to the Individual Ready Reserve, dropped from roles, and similar changes in active or Reserve status. Elimination of “probationary” officers may be expeditious, while “non-probationary” officers are afforded more due process prior to final action. Troop Program Unit (TPU) and Individual Mobilization Augmentee (IMA) officers are separated under AR 135-175. Active Guard Reserve (AGR) officers must be separated under the provisions of AR 600-8-24, the same regulation applicable to active component officers. Army National Guard officers are subject to withdrawal of federal recognition.

C. REASONS FOR ELIMINATION

Officers may be eliminated for substandard performance of duty, misconduct, or the existence of adverse or derogatory information in their official records. AR 600-8-24, paragraph 4-2 contains a list of specific, but not all inclusive, reasons that may lead to elimination. See AR 135-175 and consult your servicing judge advocate for similar reasons justifying separation of U.S. Army Reserve officers.

1. Substandard Performance of Duty

An officer discharged solely for substandard performance of duty will receive an honorable or general under honorable conditions discharge. Given that the characterization of service is limited under this paragraph to the most favorable certificate given to officers leaving the service, commanders should carefully consider the reasons for separation cited in the officer’s notification memorandum. If evidence of misconduct or professional dereliction exists, consider separation under that basis.

- A downward trend in overall performance resulting in an unacceptable record of efficiency, or a consistent record of mediocre service.
- Failure to keep pace or to progress with contemporaries, as demonstrated by a low record of efficiency when compared with other officers in the same grade and competitive category.
- Failure to exercise necessary leadership or command expected of an officer of their grade.
- Failure to absorb technical proficiency required for grade and competitive category.
- Failure to properly perform assignments commensurate with an officer's grade and experience.
- Apathy, defective attitudes, or other character disorders, including inability or unwillingness to expend effort.
- Failure to respond to alcohol or drug problem rehabilitation efforts in a reasonable length of time.
- Failure to conform to prescribed standards of dress, personal appearance, or military deportment.
- Failure to achieve satisfactory progress after enrollment in the Army weight control program or failure to maintain the weight/body fat standards established under the provisions of AR 600-9 after removal from an established weight control program.
- When no medical problems exist, and an officer has two consecutive failures of the ACFT.
- Failure of a course at a service school for academic reasons.
- Failure to establish an adequate Family Care Plan in accordance with AR 600-20.

2. Misconduct, Moral or Professional Dereliction, or in the Interests of National Security

Officers discharged for one of the following or similar conditions may be issued an honorable, general (under honorable conditions), or other than honorable discharge.

- Discreditable, intentional failure to meet personal financial obligations.
- Mismanagement of personal affairs that are unfavorably affecting an officer's performance of duty.
- Mismanagement of personal affairs to the discredit of the service.
- Intentional omission or misstatement of facts in official statements or records for the purpose of misrepresentation.
- Acts of personal misconduct (including, but not limited to, acts committed while in a drunken or drug-intoxicated state).
- Intentional neglect or failure to perform assigned duties.
- Conduct unbecoming an officer.

- Conduct or actions that result in the loss of a professional status, such as withdrawal, suspension or abandonment of professional license, endorsement, or certification that is directly.
- The final denial or revocation of an officer's Secret security clearance by appropriate authorities. All active duty officers must hold a security clearance of at least secret, and reserve component officers must hold or be capable of holding a clearance of at least secret.
- Conviction by court martial that did not impose a punitive discharge for a sexually violent offense.

3. Derogatory Information

Officers discharged for one of the following conditions involving derogatory information may be issued an honorable, general (under honorable conditions), or other than honorable discharge.

- Punishment under Article 15, UCMJ.
- Conviction by court-martial.
- The final denial or revocation of an officer's Secret security clearance by appropriate authorities.
- A relief for cause officer evaluation report.
- Adverse information filed in the Army Military Human Resources Record (AMHRR) filed in accordance with AR 600-37.
- Failure of a course at a service school.
- Any substantiated adverse finding or conclusion from an officially documented investigation, proceeding, or inquiry (except minor traffic infractions).

D. OFFICER ELIMINATION PROCEDURES

Non-probationary officers have more time in service than probationary officers. Non-probationary officers are commissioned officers with more than 6 years of commissioned service (5 for reserve components), and warrant officers with more than 3 years of service since their original appointment. They therefore are entitled to more due process prior to final elimination. The specific procedures for eliminating non-probationary officers are contained in AR 600-8-24, Table 4-1.

Elimination actions may be initiated by the Secretary of the Army, the Chief of Staff of the Army, or those officials designated by them. Elimination actions may also be and are more commonly initiated by the Commander General, Human Resources Command (CG, HRC); Deputy Chief of Staff, G-1; or a General Officer Show Cause Authority (GOSCA). Commanders exercising general court-martial authority and all general or flag rank officers in command who have a judge advocate or legal advisor available are GOSCA's. While the above personnel may initiate an officer elimination, only the Secretary of the Army may direct discharge. This authority has been delegated to the Assistant Secretary of the Army (Manpower and Reserve

Affairs) and further delegated to the Deputy Assistant Secretary of the Army (Review Boards) (DASA-RB).

Commanders should be aware that officer eliminations, particularly eliminations of non-probationary officers, have significant processing times.

1. Non-Probationary Officers

Normally, a GOSCA or the CG, HRC notifies in writing the affected officer of the intent to eliminate him or her. This notification will identify, among other things, the provision under which the officer has been identified for separation, a contemplated characterization of service, and information on obtaining counsel.

The notification memorandum will inform the officer of the right to submit a written statement in his or her behalf, and to tender resignation in lieu of elimination, retire in lieu of elimination, or appear before a board of inquiry (also known as a “show cause” board) that will hear the case and decide whether to recommend separation or retention.

If the officer elects to have his case heard by a board of inquiry, a board consisting of at least two LTCs or above and one COL or above, all senior in grade to the respondent, will convene and recommend whether or not the officer should be separated. At this board, the officer will have the right to present matters in his or her behalf and to cross-examine witnesses with the aid of a military defense counsel or the assistance of a civilian attorney (at no cost to the Government). Boards must be completed no later than 90 calendar days from the date that the initiation directs them to convene.

If the board recommends retention, the officer will be advised and the action will be closed. If the board recommends the officer’s separation, the board’s report will be forwarded through command channels to HRC, which ultimately routes the action to the Army Review Boards Agency and to the DASA-RB for final approval authority regarding whether to retain or eliminate the officer.

Officers eliminated from the Army may receive an Honorable, General, or Other Than Honorable Discharge. Officers discharged solely on the basis of substandard duty performance will receive an honorable or general under honorable conditions discharge.

2. Probationary Officers

In addition to the other bases for elimination contained in paragraph 4-2 of AR 600-8-24, probationary officers may be eliminated for failing to resign for medical reasons existing at the time of their appointment, or the discovery of other conditions that would have precluded their original appointment if they had been known at the time of appointment, or the discovery of any other condition that indicates the officer’s retention in the Army would not be in the best interest of the United States.

Elimination procedures for probationary officers are contained in AR 600-8-24, Table 4-2. The procedures generally are the same as for non-probationary officers, except that probationary officers are not entitled to have their cases heard by a board of inquiry, unless an other than honorable discharge is recommended.

E. SUSPENSION OF FAVORABLE PERSONNEL ACTIONS

Officers pending involuntary separation or discharge must be flagged. The flag will be imposed on the officer. This includes initiation administrative separations, and the flag should not be lifted until there is a final determination of retention or the officer has been separated/assigned to a transition point for separation. AR 600-8-2 leaves no room for a commander's discretion on imposing a flag for elimination.



Bars to Continued Service

A. REFERENCES

- AR 601-280, Army Retention Program
- AR 140-111, U.S. Army Reserve Reenlistment Program
- NGR 600-200, Enlisted Personnel Management

B. OVERVIEW

Bars to continued service are an administrative tool available to commanders to deny a Soldier's reentry into service beyond ETS, or continued service when not in the best interest of the military service. Only Soldiers of high moral character, personal competence, and demonstrated adaptability to the requirements of the professional Soldier's moral code will be authorized continued service. Barred Soldiers are not eligible to reenlist or PCS and are not candidates for continued service in any Army component. Bars to continued service serve a useful purpose as a "probationary period," enabling a Soldier to show signs of rehabilitation following acts of misconduct or substandard performance that led to the bar. **This chapter addresses bars initiated by field commanders (as opposed to HQDA).**

C. DEFICIENCIES TRIGGERING A BAR

1. Discretionary Grounds for Imposing Bars

Generally, commanders should consider bars to continued service against Soldiers who are untrainable or unsuited for military service. Acts of misconduct or substandard performance may trigger a bar to continued service. A non-inclusive list of discretionary grounds to initiate bars to continued service can be found in AR 601-280, paragraph 8-4.

2. Mandatory Grounds for Initiating Bars

Commanders must initiate bars to continued service for the following grounds:

- Failure to make satisfactory progress in the Army Body Composition Program (AR 600-9);
- Failing two consecutive ACFTs (AR 350-1);
- Removed for cause from Noncommissioned Officer Professional Development System courses;
- Loss of primary MOS qualification in accordance with DA Pam 611-21 due to fault of the Soldier;

- Commander denied automatic integration onto the sergeant or staff sergeant promotion standing list in accordance with AR 600-8-19;
- An incident involving the use of illegal drugs or alcohol within the current enlistment/reenlistment period resulting in an officially filed reprimand; a finding of guilty under Article 15, UCMJ; a civilian criminal conviction; or a conviction by court-martial;
- Two or more separate proceedings under Article 15, UCMJ, resulting in a finding of guilty by a field grade commander during the Soldier's current enlistment or period of service; and
- Absent without leave more than 96 hours during the current enlistment/reenlistment period.

In cases where a bar is no longer required, it may be removed in accordance with Smartbook DA Pam 601-280, paragraph 11-8 (available at <https://www.army.mil/g-1#org-g-1-pubs>). Additionally, while not listed in AR 601-280, AR 600-20, paragraph 4-19d requires initiation of a bar to continued service for Soldiers with qualifying convictions under the Lautenberg Amendment.

D. SPECIAL RULES

1. Guidelines

Bars to continued service may be initiated when separation action is pending in accordance with AR 635-200, and on Soldiers serving on indefinite reenlistments, now known as the career status program. Specific guidelines for using bars to continued service, including when bars may or must be initiated, are contained in AR 601-280 and AR 140-111.

2. Bars Should Not be Initiated

- Solely because a Soldier refuses to reenlist.
- For Soldiers with an approved retirement.
- For USAR Soldiers, during the last 90 days (30 days for an AGR Soldier) before the Soldier is discharged, transferred from the command, or released from active duty (REFRAD). If initiated during this period, the commander must provide a complete explanation as to why the action was not taken earlier. This explanation will be entered on DA Form 8028 (U.S. Army Reserve Bar to Continued Service Certificate).

E. PROCEDURES FOR INITIATING AND IMPOSING BARS ON AC SOLDIERS

Smartbook DA Pam 601-280, paragraph 11-4 details procedures for initiating a bar. Commanders should take special note of the following:

1. Initiating Commander

Any commander in the Soldier's chain of command may initiate a bar to continued service. Normally, the company-, battery-, troop-, or detachment-level commander will initiate the action by completing DA Form 4126.

Soldiers will be afforded an opportunity to respond to the proposed bar, in writing. They will be provided a copy of the commander's recommendation, and given at least 7 days to submit a response. Each commander in the chain of command up to the approval authority (see authorities below) must personally endorse the Soldier's DA Form 4126.

The commander's recommendation and the Soldier's rebuttal, if submitted, must be forwarded to the next higher commander in the normal chain, up to the proper Approval Authority.

2. Approval Authority

Final approval authority must be at least one approval level higher than the initiating commander.

- **Soldiers with Less than 10 Years Active Federal Service at Date of Bar Initiation.**

The approval authority is the first commander in the rank of LTC or above in the Soldier's chain of command, or the commander exercising Special Courts-Martial Convening Authority, whomever is in the most direct line to the Soldier; personal signature is required.

- **Soldiers with 10 or More Years Active Federal Service at Date of Bar Initiation.** The approval authority is the first brigade-level commander, COL or higher, in the Soldier's chain of command, or the commander exercising General Courts-Martial Convening Authority (GCMCA), whomever is in the most direct line to the Soldier; personal signature is required.

- Commanders do not have the authority to prevent a Soldier's retirement by barring the Soldier once the Soldier attains 18 years or more of active duty in order to prevent the Soldier from attaining retirement eligibility.

3. Continued Evaluation of Soldier

After placing an approved certificate in Soldier's local unit file, the unit commander will continue documented evaluation of the Soldier.

4. Reviews

Unit commanders will review bars to continued service at least every 3 months after the approval date, and 30 days before the Soldier's scheduled departure from the unit or separation from the Army. Commanders may recommend that the bar remain in effect, or that it be removed.

5. Mandatory Initiation of Separation

Commanders will initiate separation proceedings under AR 635-200 upon completion of the second 3-month review, unless a recommendation for removal is submitted and approved by proper authority. Initiation of separation action is not required for Soldiers who, at the time

of the second 3-month review, have more than 18 years of active federal service, but less than 20 years (these Soldiers will be required to retire on the last day of the month when retirement eligibility is attained); did not overcome the bar, but time does not permit processing the Soldiers for separation because of ETS (these Soldiers will ETS with the bar in place and be denied continued service in all Army components); or are eligible for retirement with more than 20 years of active Federal service (these Soldiers will be required to retire on the 1st day of the 7th month after the 6-month review).

F. PROCESSING APPEALS TO BARS TO CONTINUED SERVICE ON AC SOLDIERS

Soldiers may appeal approved bars to continued service within 7 days of notification of the bar. The commander initiating the bar may grant an extension on a case-by-case basis. Commanders should process Soldiers' appeals as follows:

1. Endorsements

Each commander (or acting commander) in the chain of command up to the Appeal Authority must personally endorse the appeal, and may include statements in the endorsement regarding whether they recommend approval or disapproval of the appeal.

2. Appeal Authorities

Final approval authority must be at least one approval level higher than the original bar approval authority.

- **Soldiers with Less than 10 Years Active Federal Service at Date of Bar Initiation.** The Appeal Authority is the first COL (brigade commander) or first general officer in the Soldier's chain of command, or the commander exercising GCMCA, whomever is in the most direct line to the Soldier. The personal signature of the approving or disapproving authority is required.
- **Soldiers with More than 10 Years Active Federal Service at Date of Bar Initiation.** The Appeal Authority is the first general officer in the Soldier's chain of command. Final disposition should be accomplished within 30 days after the Soldier submits the appeal. Commanders will counsel Soldiers in writing on the final disposition.

G. PROCEDURES FOR INITIATING AND IMPOSING BARS ON USAR TPU AND AGR SOLDIERS

AR 140-111, paragraphs 1-27 through 1-36, detail policies and procedures for initiating bars to continued service. The procedures are similar to those used for Regular Army bars to continued service with the following exceptions. A commander will initiate the action by completing a DA Form 8028 (U.S. Army Reserve Bar to Reenlistment Certificate). The enumerated reasons, both discretionary and mandatory, to bar are not identical to those contained in AR 601-280. Soldiers will be afforded an opportunity to respond to the proposed bar, in writing. If the Soldier is serving on AGR status, he or she will have 7 days to respond. All other Soldiers will have 30

days to respond. The initiating officer may extend the 7- or 30-day period on a case-by-case basis.

The proper unit commander will review approved bars to continued service in 3-month intervals, and 30 days before the Soldier's scheduled departure from the unit, release from active duty (REFRAD), discharge from the USAR for TPU or IMA Soldiers, or reassign to the IRR. The unit commander may submit a recommendation to remove a bar to continued service at any time if he or she believes the Soldier has proven worthy of retention in the USAR or on AGR status. Any time a bar is reviewed and not recommended for removal, the Soldier will be reevaluated for possible REFRAD, discharge, or reassignment to the IRR, as appropriate. Periodic reviews of bars imposed on Soldiers assigned to the IRR or Standby Reserve (Active Status List) are not required.

After the completion of the second 6-month review, unless a recommendation to remove the bar is submitted, the commander will initiate proceedings to discharge a TPU or IMA Soldier from the USAR under AR 135-178 or other appropriate chapters in the regulation; involuntary reassignment of a TPU or IMA Soldier to the IRR will be in accordance with AR 140-10 when discharge under AR 135-178 is not appropriate; or will initiate proceedings to REFRAD or discharge a Soldier serving in AGR status in accordance with the imposed provisions of the bar to continued service certificate and AR 635-200.

From the time he or she is informed that a bar to continued service was approved, a Soldier serving on AGR status will be allowed 7 days to submit an appeal. All other USAR Soldiers will be allowed 30 days to submit an appeal. The initiating officer may grant an extension of the 7- or 30-day appeal period on a case-by-case basis. For Soldiers with more than 10 years of qualifying service for retired pay at ETS, the appeal approval and/or disapproval authority is the Commander, Human Resources Command (HRC). Unless specifically directed by the proper commander, appeals will not be sent through major or area commanders en route to HRC. Bars to continued service approved by the Chief, Army Reserve (CAR) under AR 140-111 may not be appealed.



Qualitative Service Program (QSP)

A. REFERENCES

- AR 635-200, Active Duty Enlisted Administrative Separations
- 10 USC §1169 (RA) / 10 USC §12313 (RC)
- U.S. Army Human Resources Command (HRC) Qualitative Management Program (QMP) FAQs, https://www.hrc.army.mil/wcmt-api/sites/default/wcmtfiles/files/18007_0.pdf

B. OVERVIEW

The QSP and QMP consists of a series of centralized enlisted selection board processes designed to support the Army Leader Development Strategy and retain the highest quality non-commissioned officers (NCOs). The program is designed to enhance the quality of the career enlisted force, selectively retain the best qualified Soldiers, deny continued service to nonproductive Soldiers, and encourage Soldiers to maintain their eligibility for further service.

C. THE QUALITATIVE MANAGEMENT PROGRAM (QMP) BOARD

In accordance with AR 635-200, Chapter 16, the QMP board convenes under the construct of a Memorandum of Instruction (MOI) which outlines the board mission. The MOI provides guidelines to the board members to consider files of Soldiers identified for consideration. The board takes a holistic look at each Soldiers record and uses discriminators such as imposition of a field commander's bar to reenlistment, inability to meet physical fitness standards, and failure to comply with requirements of the Army Body Composition Program. They will also review any matters of mitigation or extenuation the Soldier supplies for consideration.

The board reviews the NCO's AMHRR, the board version of the NCO's record brief, official photograph, and matters of mitigation or extenuation submitted by the affected NCO. If any documents in the restricted folder of the NCO's AMHRR formed the basis for referral for QMP consideration, the board will also consider those documents. The board will not consider portions of the NCO's restricted folder that are not relevant to the basis for referral. The foregoing material, along with mitigating or extenuating matters the NCO submits to the president of the board, completes the file for board consideration.

D. THE PROCESSES

Monthly screenings are conducted on a Soldier's AMHRR which will generate a Notification of Restriction code transaction memorandum. The memorandum notifies the Soldier that HRC has placed a RET13 (under QMP consideration) on HRC's system of record. It also identifies which document made the Soldier eligible, and notifies the Soldier that his or her

record will be reviewed by a QMP board in conjunction with the NCO evaluation board for the Soldier's rank, provides matters of mitigation information, possibility of a debt repayment due to selection and provides guidance on the steps to take if the Soldier believes the document is unjust and needs to be removed.

The Soldier will also receive a notification memorandum with the results of the board. It announces Army Deputy Chief of Staff G1, Director, Military Personnel Management's (DMPM) decision of retention or denial of continued service. If the Soldier is denied continued service, the notification will identify the Soldier's post-board options.

HRC will forward all notification memorandums to the Soldier's ACOM/ASCC/DRU or Joint Command G1/J1, who will forward through the chain of command down to the LTC commander level to make personal notification to the Soldier. ACOM/ASCC/DRU or Joint Command G1/J1 will be responsible to ensure Soldiers are notified and have returned their acknowledgement of notification to HRC.

If selected for separation by the QMP board, the Soldier will also receive a DA Form 268, Suspension of Favorable Personnel Actions (Flag) form and a memorandum indicating that a flag has been placed on the Soldier's record due to selection by the QMP board. This nontransferable flag guards against the execution of any favorable actions for a QMP selected Soldier. AR 600-8-2 allows the flag to be removed at the point when the Soldier is reassigned to a transition point (active component), discharge orders are published (reserve component), or when the Soldier is retained. If separated under a temporary or permanent disability status, the flag will be removed once HRC receives a copy of the informal Physical Evaluation Board (PEB) Proceedings (DA FORM 199 section VII) indicating the completion of the Soldier's medical process. This will allow the transition center to generate medical separation or medical retirement orders as the situation warrants.

Commanders should keep in mind that these boards are not intended as a substitute, and do not relieve commanders of the responsibility, for initiation of separation proceedings under other chapters of AR 635-200 when required or appropriate.

Removal of Enlisted Soldiers from Promotion Lists

A. REFERENCE

- AR 600-8-19, Enlisted Promotions and Reductions.

B. OVERVIEW

Removal from a promotion list may be directed either by commanders in the field or at the HQDA level.

C. REMOVAL FROM PROMOTION-RECOMMENDED ROSTER (PRR)

1. Mandatory Removal (AR 600-8-19, Paragraph 3-20)

Soldiers must be notified, in writing, through their chain of command, of the removal action. Once the Soldier is removed from the PRR, the action is final unless reinstated in accordance with the procedures outlined in AR 600-8-19, para. 3-21. All Soldiers (including those integrated as a result of mandatory list integration) will be immediately removed from a recommended list for all conditions outlined below:

- Soldier is subject to certain adverse actions (as indicated by a flag).
- Soldier fails to qualify, for cause, for the security clearance required for the MOS in which recommended or competing.
- Soldier exceeds the requirements of the Army Body Composition Program (AR 600-9).
- Soldier signs a Declination of Continued Service Statement (DCSS) (RA only).
- Soldier receives a bar to reenlistment which is imposed after attaining recommended list status.
- Soldier was mandatorily reclassified due to inefficiency or misconduct.
- Soldier is on the promotion list and promoted to cadet (SGT/E-5) because of entering Warrant Officer Candidate Course, OCS, ROTC, and/or Simultaneous Membership Program.
- Soldier is dropped from rolls as a deserter.
- Soldier is denied a waiver to reenlist.
- Soldier fails to complete training required for MOS for cause or academic reasons (RA only).
- Soldier is flagged for failing to comply with a record PT test requirement.

- When promotion authority approves a removal board recommendation for the Soldier.
- Soldier is selected erroneously.
- Soldier is reduced in grade.
- For USAR TPU only: Soldier declines promotion to SGT or SSG and is within a reasonable commuting distance for the required vacancy.
- USAR only: Soldier is an unsatisfactory participant as defined in AR 135-91.

This list is not all-inclusive; other conditions requiring mandatory removal are contained in AR 600-8-19. After removal, Soldiers must reappear before a promotion board in order to be re-integrated into the PRR.

2. Procedures for Removal Board

Commanders may conduct removal boards against Soldiers who meet secondary or primary zone eligibility only when, in their determination, the Soldier's substandard performance or inefficiencies warrant. Removal boards will use the following procedures:

A removal board will be conducted in conjunction with a promotion selection board otherwise convened with a task to consider Soldiers for removal from a recommended list. Soldiers residing on the list who are otherwise eligible for mandatory list integration will not be removed under this provision. Commanders will give Soldiers written notification of the removal board at least 15 duty days (RA) or 30 calendar days (USAR) prior to the date of the board.

- The board will be composed of unbiased members (see AR 600-8-19, para. 3-10).
- The unit will provide any reasonably available witnesses (at no cost to the government) the Soldier wishes to call on his or her behalf.
- Copies of all written affidavits or depositions of witnesses who are unable to appear before the board will be furnished to the Soldier and board members.
- The Soldier has the following rights: 1) to decline, in writing, to appear before the board; 2) to challenge any board member for cause; 3) to request any reasonably available witness he or she believes to be pertinent to the case (but must state the type of information the witness will provide); 4) to present written affidavits and depositions of witnesses who are unable to appear; 5) to remain silent, make a sworn or unsworn statement, or be verbally examined by the board; to question any witness appearing before the board; to consult with counsel and to be informed of the right to do so.
- If a Soldier fails to exercise his or her rights, it will not negate the proceedings
- The board president will ensure that sufficient testimony and evidence is presented to enable the board members to: 1) fully and impartially evaluate each case and arrive at a recommendation; and 2) prepare a report, in writing, of the board proceedings and submit it to the promotion authority.
- The promotion authority will approve or disapprove the recommendation and notify the Soldier.
- The promotion authority may lessen, but not increase, the severity of the board's decision.

- AR 15-6 does not apply to removal boards.

3. Rules for Reinstating Soldiers Into the PRR

A Soldier promoted in error to the ranks of SGT or SSG will, when otherwise qualified in accordance with AR 600-8-19, para. 1-11, be reinstated to the list at the same time the order is revoked and treated as if never promoted.

A Soldier removed from the list and later exonerated of the basis that caused the removal will be reinstated. To be exonerated, the action that caused the initial removal must have been erroneous or should not have been imposed based on the facts as they are later known, so that the Soldier is free of any wrongdoing.

If the Soldier was eligible for promotion prior to reinstatement, the Grade Entry Date and effective date of promotion will be the date of original eligibility.



Removal of Commissioned & Warrant Officers from Promotion Lists

A. REFERENCES

- AR 600-8-29, Officer Promotions (9 Sep. 2020).
- AR 135-155, Promotion of Commissioned Officers and Warrant Officers (13 Dec. 2022).

B. OVERVIEW

The President may remove the name of a promotion-select commissioned or warrant officer from the promotion-select list, and this authority is delegated to the Secretary of the Army. Promotion Review Boards (PRB) are used to advise the Secretary of the Army in any case where there is probable cause to believe a promotion-select officer is mentally, physically, morally, or professionally unqualified or unsuited to perform the duties of the higher grade. The PRB is convened under the authority of a standing memorandum of instruction approved by SECARMY.

C. BASIS FOR REFERRAL TO A PRB

1. HQDA Review

HQDA will review promotion lists to ensure no officer is promoted where there is cause to believe that he or she is mentally, physically, morally, or professionally unqualified to perform the duties of the higher grade. An officer may be referred to a PRB for any of the following, non-exhaustive reasons:

- Officer receives a referred evaluation report.
- Officer receives punishment under UCMJ, Art. 15 (whether filed in the restricted or performance file of the AMHRR).
- Officer receives any court-martial conviction.
- Officer receives a memorandum of reprimand which is filed in the AMHRR.
- Officer receives adverse documentation filed in the AMHRR.
- Officer has an elimination action initiated against them under AR 600-8-24.
- Officer fails to make satisfactory progress in the ABCP IAW AR 600-9.
- HQDA receives other adverse information which is not filed in the AMHRR, if the referral authority finds that the information is substantiated, relevant, and might reasonably and materially affect a promotion recommendation.

2. Command Recommendations

Appropriate officials, including commanders (through command channels); the Surgeon General; the Chief of Chaplains; the Chief, General Officer Management Office; the Director, Officer Personnel Management; and the CG, HRC, may recommend at any time that an officer's name be removed from a promotion list.

D. PROCEDURES

AR 600-8-29, Chapter 7, governs the procedures for processing an officer's removal from a promotion list. Commanders should note the following provisions, in particular:

1. Submission Through Command Channels

Commanders should submit all recommendations and accompanying documents through command channels to the Commander, HRC.

2. Detailed Justification

Commanders must indicate whether an OER has been submitted regarding the justification for requesting removal and include detailed justification for the officer's removal from the promotion list.

3. Flag from Positive Personnel Actions

Upon referral of a case to a PRB for review, HQDA will flag the officer concerned, and lift the flag upon SA's determination whether or not to remove the officer from the promotion list.

4. Notice to Officer Concerned

Before the PRB convenes, the officer concerned will be informed of the reason for the action. The officer will be provided copies of all information that the PRB will consider, and be permitted to submit comments within 14 days.

E. RESULTS OF PRB

Officers will be notified in writing, through their chain of command, of the results of PRB determinations and after SA acts on the PRB's recommendation. This notice normally will be within 30 days after HQDA determines that a PRB will consider the officer's case.

Security Clearances - Suspension and Revocation

A. REFERENCES

- DoD Manual 5200.02, Procedures for the DoD Personnel Security Program
- AR 380-67, Personnel Security Program

B. OVERVIEW

When a commander learns of credible derogatory information about a member of their command who holds a security clearance or has access to classified information, the commander must: (a) report the derogatory information to the Defense Counterintelligence and Security Agency (DCSA) Adjudication and Vetting Services (AVS) either using a DA Form 5248-R or by memorandum, and (b) decide whether to suspend access to classified information in accordance with AR 380-67, paragraphs 8-2 and 8-3. A commander should coordinate suspension and revocation actions with their servicing S-2/security manager/senior intelligence officer.

C. DEROGATORY INFORMATION

Information that qualifies as derogatory is listed in paragraph 2-4 of AR 380-67 and includes, but is not limited to, incidents of criminal or dishonest conduct; unauthorized disclosure of classified information; and acts that indicate poor judgment, unreliability, or untrustworthiness.

D. PROCEDURES FOR SUSPENSION

1. Procedures

If the commander decides on suspension of access, the Soldier's certificate of clearance will be removed from his or her personnel file and attached to the documentation reporting the suspension to the AVS. Once this is done, the commander may not restore access until a final favorable determination by the AVS unless certain criteria listed in paragraph 8-3b of AR 380-67 are met. Suspension of Sensitive Compartmented Information

If the Soldier whose clearance has been suspended was indoctrinated for Sensitive Compartmented Information (SCI), the special security officer must be expeditiously notified. Under certain circumstances, a Soldier's access to SCI may be suspended while allowing a Soldier continued access to collateral information (confidential, secret, or top secret information for which compartmentation is not formally required).

E. PROCEDURES FOR REVOCATION

Chapter 8 of AR 380-67 governs revocation procedures and requires providing the subject individual due process before final action is taken to revoke his or her clearance. While commanders at any level may suspend, the AVS has authority to revoke a security clearance. With regards to revocation procedures, commanders should be aware of the following:

1. Written Statement of Reasons

The subject individual must receive a written statement of the reasons why the revocation is contemplated.

2. Opportunity to Respond

The subject individual must receive an opportunity to submit a written response regarding the proposed revocation. If the subject requests reconsideration of a revoked or denied clearance, at least one commander in the subject's chain of command must endorse the request and provide a recommendation and rationale as to whether clearance should be revoked or restored.

3. Written Explanation in Response to the Subject Individual's Rebuttal

The subject individual must receive a written response to his or her own response.

4. Opportunity to Appeal

The subject individual has the right to directly appeal unfavorable determinations to the Army Personnel Security Appeals Board (PSAB) or by first requesting personal appearance at the Defense Office of Hearings and Appeals.

Sexual Harassment

A. REFERENCES

- DoD Instruction 1020.03, change 2, Harassment Prevention and Response in the Armed Forces
- AR 600-52, Sexual Harassment/Assault Response and Prevention Program

B. SEXUAL HARASSMENT

1. Defined

Certain sexual harassment conduct is an offense under Article 134, UCMJ. Sexual harassment conduct that is defined by and punishable under Article 92, UCMJ includes the following definition: conduct that involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when (1) submission to such conduct is either explicitly or implicitly made a term or condition of a person's job, pay, or career; (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive environment.

Sexual harassment also includes (1) conduct that is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive; (2) any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the Armed Forces or a civilian employee of the DoD; or (3) any deliberate or repeated unwelcome verbal comments or gesture of a sexual nature by any member of the Armed Forces or civilian employee of the DoD.

There is no requirement for concrete psychological harm to the complainant for behavior to constitute sexual harassment. Behavior is sufficient to constitute sexual harassment if it is so severe or pervasive that a reasonable person would perceive, and the complainant does perceive, the environment as hostile or offensive. Sexual harassment can occur through electronic communications, including social media, other forms of communication, and in person.

The use of disrespectful and gender-biased language or behavior that targets any gender contributes to a hostile environment will not be tolerated. Leaders at all levels will protect their teams, Soldiers, DA Civilians, and Family members against sexual harassment and proactively ensure that their environments are free from all forms of sexual harassment.

Leaders who fail to properly process sexual harassment complaints policy may be subject to punitive or adverse administrative action under UCMJ.

2. Two Types of Sexual Harassment

- ***Quid Pro Quo*** (meaning “this for that”) sexual harassment occurs when conditions are placed on a person’s career or terms of employment in return for favors. Examples include demanding sexual favors in exchange for a promotion, award, or favorable assignment. An example would be a Soldier who is not recommended for promotion and who believes that his or her squad leader recommended another Soldier in his or her squad for promotion on the basis of provided or promised sexual favors, not upon merit or ability.
- ***Hostile environment***, to include the work environment, can occur when Soldiers or DA Civilians are subjected to offensive, unwanted, and unsolicited comments, or conduct of a sexual nature. An abusive or hostile environment need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive. A hostile environment brings the topic of sex or gender into the environment in any one of a number of forms. Conduct considered under the hostile environment definition generally includes nonviolent, gender-biased sexual behaviors (for example, the use of derogatory gender-biased terms, comments about body parts, suggestive pictures, and explicit jokes).

3. Mandatory Reporters

- Commanders at all levels.
- Anyone in the chain of command; they include, first sergeants, and senior enlisted advisors.
- TRADOC instructors
- Law enforcement, military police, and USACID
- Army Military Onesource providers.

4. Sexual Harassment Processing

a. Requests for direct intervention.

A Soldier may make a request for direct intervention, if the desired remedy for the aggrieving behavior can be achieved by peer intervention, counseling, or training. Requests for direct intervention will be made only to these individuals who are not in a supervisory or command position. If any commander becomes aware of a request for direct intervention, they are required to initiate an investigation. Direct intervention cannot be used to address harassment that involves physical contact or attempted physical contact, quid pro quo, or where the subject is a superior and is in a superior-subordinate relationship.

b. Types of Complainants: Anonymous, Formal, and DA Civilians.

- ***Anonymous complainants.*** A report of sexual harassment from an unknown or unidentified source received by a commanding officer or supervisor, regardless of the means of transmission. All anonymous complaints, even those that cannot be investigated, will be referred to the subject’s brigade commander for evaluation.

- **Formal complainants.** Upon the victim's election to file a formal complaint, the SARC or VA will assist the victim in completing the DA Form 7746. Formal complaints are subject to timelines and require specific action. In cases where the victim and subject are in different units, complaints may be elevated to the first commander in the chain of command at brigade level or echelon above who has command authority over both the victim and the subject. If sufficient information exists to initiate an investigation, brigade commanders will appoint an investigating officer pursuant to the requirements prescribed in AR 15-6. The investigation will be initiated within 72 hours of notification of the complaint, and a description will be forwarded to the first commander with GCMCA authority within 72 hours of receipt. The investigation will be completed within 14 calendar days of initiation. Within 20 days of initiation, the subject brigade commander will forward a progress report or final report of the investigation to the GCMCA.

- **DA Civilian complaints.** DA Civilians personnel may file complaints of sexual harassment IAW AR 690-600. SHARP professionals will assist in finding the appropriate support EEO office to facilitate filing a complaint.

c. Regulatory Protections:

- **Military Protective Orders (MPOs).** MPOs are necessary mechanisms to ensure the safety of Soldiers, Family Members, and DA Civilians. When warranted, NLT that 6 hours following the determination, Commanders will utilize a DD Form 2873 to effectuate the no contact order. The DD Form 2873 will be submitted to the installation Directorate of Emergency Services or PMO, and provide a copy to the victim. Commanders will inform victims of their ability to also seek a CPO issued by a judge, magistrate, or other authorized civilian official.

- **Retaliation and Reprisal Plan.** The victim's brigade commander, in coordination with the subject's commander, will establish and implement a retaliation and reprisal plan to protect the victim and any named witnesses.

- **Status updates.** The subject's brigade commander will provide written or verbal updates to the victim and the subject on the status of the investigation. Updates will be provided every 14 calendar days (next MUTA-4 and ever MUTA-4 thereafter for USAR) until the investigation is complete and actions to resolve the complaint are taken.

C. REHABILITATION, ELIMINATION, AND INVOLUNTARY SEPARATION

Commanders will initiate elimination proceedings for officers and involuntary administrative separation proceedings for enlisted Soldiers against whom there is a substantiated complaint of sexual harassment. Commanders must coordinate with the OSTC before initiating elimination or separation proceedings for substantiated formal complaints of sexual harassment occurring after 1 January 2025 that violate Article 134, UCMJ (Sexual Harassment). Elimination proceedings or involuntary administrative separation proceedings will be initiated after the officer's or enlisted Soldier's appellate rights have been exhausted as they relate to the sexual harassment complaint.

A commander may rehabilitate a Soldier against whom there is a minor substantiated complaint of sexual harassment, as determined by the approval authority in consultation with their supporting legal advisor. Rehabilitation will not be used to dispose of substantiated

complaints wherein the offender attempted or engaged in quid pro quo behavior, sexual touching offenses, where the offender was superior in a superior-subordinate relationship, or substantiated complaints involving repeat offenders.

Domestic Violence Amendment to the Gun Control Act (Lautenberg Amendment)

A. REFERENCES

- DOD Instruction 6400.06, DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel (16 May 2023).
- AR 600-20, Army Command Policy

B. OVERVIEW

The Domestic Violence Amendment to the Gun Control Act of 1968 (18 U.S.C. § 922), the Lautenberg Amendment, makes it unlawful for any person to transfer, issue, sell, or otherwise dispose of firearms or ammunition to any person whom he or she knows or has reasonable cause to believe has been convicted of a misdemeanor crime of domestic violence. It is also unlawful for any person who has been convicted of a misdemeanor crime of domestic violence to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce. The Lautenberg Amendment applies to all Soldiers throughout the world, including those in hostile fire areas.

Soldiers with a qualifying conviction will be denied favorable personnel action in accordance with AR 600–8–2. The flag may be removed if the qualifying conviction is expunged or set aside by competent authority.

C. GENERAL PROVISION AND DEFINITIONS

The Amendment bans the possession of firearms by any person who has been convicted of a misdemeanor crime of domestic violence. Therefore, it is unlawful for any person who has been convicted of a misdemeanor crime of domestic violence to ship, transport, possess, or receive firearms or ammunition. For the purposes of this provision, the following definitions apply:

1. Crime of Domestic Violence

An offense that involves the use or attempted use of physical force, or threatened use of force or violence against a person, or a violation of a lawful order issued for the protection of a person who is a current or former spouse, a person with whom the victim shares a child in common; a current or former intimate partner with whom the alleged abuser shares or has shared a common domicile, or a person who is or has been in a social relationship or a romantic or intimate nature with the accused and determined to be an intimate partner.

2. Qualifying Conviction

The Lautenberg Amendment itself applies only to misdemeanor crimes of domestic violence. However, it is DoD policy that felony crimes of domestic violence also qualify. The following constitute qualifying convictions:

- A state or federal conviction for a misdemeanor crime of domestic violence.
- A state or federal conviction for a felony crime of domestic violence adjudged after 27 November 2002.
- Any general or special court-martial for a UCMJ offense that is a crime of domestic violence, even though not classified as a misdemeanor or felony.
- Any general or special court-martial conviction for a violation of Article 128b of the UCMJ.
- Any general or special court-martial conviction for an attempt to violate Article 128b of the UCMJ tried under Article 80 of the UCMJ.
- A qualifying conviction does not include a summary court-martial conviction or the imposition of nonjudicial punishment under UCMJ, Article 15.

A person will not be considered to have a qualifying conviction unless the convicted offender was represented by counsel or knowingly and intelligently waived the right to counsel, and, if entitled to have the case tried by a jury, the case was actually tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury; and, the conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense, or had civil rights restored; unless the pardon, expungement, or restoration of civil rights provides that the person may not ship, transport, possess, or receive firearms.

3. Major Military Weapons Systems

The DoD does not construe the Lautenberg Amendment to apply to major military weapon systems or crew-served military weapons or ammunition (e.g., tanks, missiles, aircraft).

D. COMMAND RESPONSIBILITIES

Commanders will ensure that all Soldiers who have a qualifying conviction are notified that it is unlawful to possess, ship, transport, or receive firearms and ammunition. In coordination with HQDA, commanders will also implement a program of instruction to educate all Soldiers on the domestic violence amendment to the Gun Control Act and the policy stated in AR 600-20. In addition to formal instruction, an extract of the AR 600-20 chapter will be prominently displayed outside unit arms rooms and all facilities in which Government firearms or ammunition are stored, issued, disposed, or transported.

Commanders will notify Soldiers that they have an affirmative, continuing obligation to inform commanders or supervisors if they have, or later obtain, a qualifying conviction and that the revised DD Form 2760 (Qualification to Possess Firearms or Ammunition) will be made available to those Soldiers who come forward to report a qualifying conviction in compliance with their obligation to do so. Soldiers will also be notified that neither the information nor evi-

dence gained by filling out the DD Form 2760 may be used against them in any criminal prosecutions for a violation of 18 U.S.C. § 922, including prosecutions under the UCMJ, based on a violation of 18 U.S.C. § 922 for conduct that occurred prior to the completion of the DD Form 2760. Company-level commanders will collect the completed DD Form 2760 and file it in the Soldier's local military personnel file in accordance with AR 600–8–104 and AR 25–400–2.

Commanders will ensure that procedures are implemented to track domestic violence arrests and convictions in the civilian community. This procedure should include regular coordination with local law enforcement and judicial agencies.

If a commander knows or has reasonable cause to believe that a Soldier has a qualifying conviction, the commander should take all reasonable action to investigate and refer the Soldier to Trial Defense Service (TDS). The commander will immediately retrieve all government-issued firearms and ammunition and advise the Soldier to consult with a legal assistance attorney for guidance on lawful disposal or sale of any privately owned firearms and ammunition. Soldiers with qualifying convictions are exempt from weapons qualification and will not be assigned individual weapons or ammunition.

E. ADVERSE ADMINISTRATIVE ACTION

Commanders may initiate separation for the conduct that led to the conviction or for the conviction itself or process enlisted Soldiers for involuntary separation. Additionally, commanders must flag Soldiers with qualifying convictions from favorable personnel actions and bar them from continued service. However, commanders may take reasonable steps to accommodate Soldiers with qualifying convictions, prior to initiating separation, such as granting a reasonable time (up to one year) to seek expungement or a pardon of the qualifying conviction. Accommodation is discretionary and may be denied based on the facts of the case as outlined in AR 600-20, paragraph 4-22c(8).

F. REPORTING TO HQDA

All Soldiers identified with qualifying convictions are required to be reported to HQDA using the assignment consideration code L9 (Lautenberg Amendment).



Article 138 Complaints

A. REFERENCES

- AR 27-10, Military Justice (20 Nov. 2020).
- Article 138, Uniform Code of Military Justice.

B. OVERVIEW

A member of the Armed Forces may submit a complaint under UCMJ, Art. 138, for any act or omission by the member's commanding officer that the member believes to be a wrong, and for which the member has requested redress and been refused. Commanders will not restrict the submission of such complaints or retaliate against a Soldier for submitting a complaint.

C. DEFINITIONS

Wrong – A discretionary act or omission by a commanding officer, under color of Federal military authority, that adversely affects the complainant personally and that is in violation of law or regulation, beyond the legitimate authority of that commander, arbitrary, capricious, an abuse of discretion, or materially unfair.

Redress – Any authorized action by an officer in the complainant's chain-of-command to effect the revocation of a previous official action or otherwise to restore the complainant any rights, privileges, property, or status lost as a result of the wrong.

D. PROCEDURES

1. Request for Redress

Before submitting a complaint under UCMJ, Art. 138, a member of the Armed Forces must make a written request for redress of the wrong (which may be made through email) to the commanding officer the member believes has wronged the member. The request for redress generally should be prepared in memorandum format and must clearly identify the commanding officer against whom it is made, the date and nature of the alleged wrong, and the specific redress desired.

2. Response by the Commanding Officer

A commanding officer receiving a request for redress submitted under this regulation will respond, in writing (which may be made through email as well), in a timely manner so that the complainant will receive the response within 15 days (or 60 days for reserve component commanders not on active duty). If a final response within 15 days is not possible, an interim

response will be provided that indicates the estimated date of a final response. The regulation defines a failure to respond as a refusal for redress.

3. Refusal of Redress and Submission of Article 138 Complaint

If the commander committing the alleged wrong responds with a refusal to redress, the complainant may now submit an Article 138 complaint. The complainant will deliver the complaint to the complainant's immediate superior commissioned officer within 90 days of the date of complainant's discovery of the wrong, excluding any period during which the request for redress was in the hands of the commander-respondent. A superior commissioned officer who receives a complaint under the provisions of Article 138 will promptly forward it to the General Courts-Martial Convening Authority (GCMCA) exercising jurisdiction over the officer against whom the complaint is made. Any other person receiving a complaint (except the appropriate GCMCA) will forward it to the complainant's immediate superior commissioned officer or to the appropriate GCMCA. The person receiving the complaint, or through whom it is forwarded, may add pertinent material to the file or grant any redress within that person's authority. If either action is taken, it will be noted in the transmittal. Commanders who receive an Article 138 complaint should consult with their servicing judge advocate as soon as possible.

Relief from Command

A. REFERENCES

- AR 600-20, Army Command Policy
- AR 623-3, Evaluation Reporting System
- DA Pam 623-3, Evaluation Reporting System

B. OVERVIEW

When a senior commander loses confidence in a subordinate commander's ability to command due to misconduct, poor judgment, the subordinate's inability to complete assigned duties, or for other similar reasons, the senior commander has the authority to relieve the subordinate commander.

C. PROCEDURES

1. Formal Counseling

Relief is preceded with formal counseling by the commander or supervisor unless such action is not deemed appropriate or practical under the circumstances.

2. General Officer Written Approval

Although any commander may temporarily suspend a subordinate from command, final action to relieve an officer from any command position will not be taken until after written approval by the first general officer (to include one frocked to the grade of brigadier general) in the chain of command of the officer being relieved is obtained. If a general officer (to include one frocked to the grade of brigadier general) is the relieving official, no further approval of the relief action is required; however, AR 623-3 concerning administrative review of relief reports remains applicable.

3. Basis for Relief Stems from an AR 15-6 Investigation

If a relief for cause is contemplated on the basis of an investigation under AR 15-6, the referral and comment procedures of that regulation must be followed before initiating or directing the relief. This does not preclude a temporary suspension from assigned duties pending completion of the procedural safeguards contained in AR 15-6.



Civilian



Personnel Law



Law of Federal Employment

A. REFERENCES

- 5 C.F.R. Part 432, Performance Based Reduction in Grade and Removal Actions
- 5 C.F.R. Part 630, Absence and Leave
- 5 C.F.R. Part 752, Adverse Actions
- 28 C.F.R. Part 36, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities
- 29 C.F.R. Part 1614, Federal Sector Equal Employment Opportunity
- DoD Instruction (DODI) 1400.25, Vol. 431, DOD Civilian Personnel Management System: Performance Management and Appraisal Program, 4 February 2016
- Army Regulation (AR) 690-12, Equal Employment Opportunity and Diversity, 12 December 2019
- AR 690-752, Disciplinary and Adverse Actions, 10 February 2022
- Equal Employment Opportunity Commission Management Directive 110, Federal Sector Complaints Processing Manual, 5 August 2015

B. OVERVIEW

More than seven hundred thousand civilians are employed by the Department of Defense (DOD); of which, approximately two hundred and fifty thousand civilians work for the Department of the Army (DA). It is critical that a commander understand the importance of managing civilian personnel. This requires a commander to understand (1) the performance management and appraisal program; (2) how to address performance and misconduct issues; (3) how to provide reasonable accommodation to a disabled employee; and (4) management responsibilities to labor unions that represent bargaining unit employees in the organization.

C. DEPARTMENT OF DEFENSE PERFORMANCE MANAGEMENT AND APPRAISAL PROGRAM (DPMAP)

1. Implementing New Requirements

In October 2018, the DOD Performance Management and Appraisal Program (DPMAP) became the required management and appraisal tool for most of the federal civilian workforce.

NOTE: For a full list of excepted personnel see *DODI 1400.25, Vol. 431, Appendix 3A*. There are five key aspects of DPMAP that commanders should be aware of:

- 1) DD Form 2906 is the multi-purpose management and appraisal document that should be used throughout the appraisal process to capture an employee's performance plan, progress review(s), and rating of record;
- 2) DA (not DOD) requires each employee be evaluated by both a supervisor and a higher-level reviewer (HLR);
- 3) A minimum 90-day rating period is required before a rating of record can be provided to evaluate an employee's performance during an appraisal period;
- 4) One appraisal cycle (1 April-31 March) is mandated for all employees subject to DP- MAP; and
- 5) A three-level numerical rating has been established to quantify an employee's performance. An employee receives a "5" for Outstanding performance (range: 4.3-5.0); a "3" for Fully Successful performance (range: 3.0-4.2); and a "1" for Unacceptable performance (range: 2.9 or lower). Any performance element that results in a "1" requires the employee to receive an overall rating of record of "1".

2. Four Phases of Performance Management

Under DP- MAP there are four phases that supervisors and employees must work through: (1) planning, (2) monitoring, (3) evaluating, and (4) rewarding.

a. Planning

An initial counseling is due within the first 30-days of an appraisal period. This counseling session is a supervisor's way to articulate their expectations of the employee during the appraisal period, and receive input from the employee. Collaboratively, the supervisor and employee should develop the employee's performance plan, which consists of (1) performance elements (major duties the employee is expected to perform during the appraisal period) and (2) performance standards (how well the employee is expected to perform each performance element). Note: Early on, supervisors should ensure an employee's duty hours are clearly defined, understood, and adhered to.

An employee's performance plan should contain between one and ten performance elements; since the intent of the performance plan is to capture major tasks that the employee is required to perform. The performance plan is directly linked to the day-to-day tasks the employee is required to perform (and evaluated on). Furthermore, the performance plan should clearly demonstrate how the tasks that the employee performs advances the mission. Note: Supervisors are strongly encouraged to review each employee's PD annually to ensure it accurately reflects their duties and responsibilities.

With performance elements established, performance standards must then be written for each corresponding performance element. Each performance standard must be written at a Fully Successful level ("3") to allow for outstanding performance; hence, no standard can require zero-defect, meaning there can be no absolute standards. Furthermore, each performance standard must be written **SMART**, meaning:

S – Specific (limited to one task)

M – Measurable (against an objective standard)

A – Achievable (employee has the requisite skill, education, training to complete)

R – Relevant (to the mission of the organization)

T – Timely (able to be reasonably completed during the appraisal period)

b. Monitoring

Once the employee's performance plan has been established (and the DD 2906 signed by the employee, the supervisor, and the HLR), the supervisor begins the process of assessing the employee's performance. One progress review (i.e., mid-term counseling) initiated by the supervisor is required under DPAMP, however performance discussions initiated by either the employee or the supervisor are strongly encouraged throughout the appraisal process. During this phase, the supervisor should evaluate how well the performance elements are written, and modify them if necessary.

c. Evaluating

Upon completion of the appraisal period (or at least 90-days of operating under an approved performance plan), a supervisor can finalize the performance appraisal and assign a rating of record. For any "1" or "5" given, the supervisor should provide a narrative justification. The employee, supervisor, and HLR will sign DD 2906, making the appraisal complete.

d. Rewarding

Recognizing and rewarding fully successful or outstanding performance should occur close in time to when an employee's performance or act is being rewarded. The supervisor should discuss with the employee what type of reward the employee would prefer to receive; although manage expectations in a way to remind the employee that a reward is not an entitlement.

D. ADDRESSING MISCONDUCT AND PERFORMANCE-BASED ADVERSE ACTIONS

Civilian employees can be disciplined for their actions and behavior both on and off-duty.

Note: In order to take adverse action against an employee for their off-duty misconduct, there must be a nexus between the conduct and the efficiency of the service (similar to a good order and discipline argument). Seek further guidance from the servicing Labor Counselor.

1. Determine if the Employee's Action/Behavior is Performance or Misconduct

Action can be taken against a civilian employee for their performance (failing to meet an established performance standard), for misconduct (behavior or actions that adversely affect the

efficiency of the service), or for both. How an action is labeled (performance or misconduct) has practical implications and depending on the election made, may require additional steps (such as a Performance Improvement Plan) be imposed before action can be taken. Regardless of the label that attaches, when a supervisor believes disciplinary action is appropriate, the supervisor should contact the servicing Labor Management-Employee Relations (LMER) Specialist.

2. Determine the Appropriate Penalty

There are two types of discipline available—(1) progressive discipline (a graduated scale starting with a counseling, warning or reprimand, and escalating to a suspension, reduction, or ultimately removal) and (2) punitive discipline (the most severe penalty warranted to deter future misconduct). The type of discipline should be tailored to the specific instance(s) and should be reasonable. Suspensions (which are unpaid) for 15 days or greater, a reduction in grade, and removal from federal service are known as adverse actions, which statutorily provides a right of appeal to the Merit Systems Protection Board (MSPB). MSPB appeal rights do not attach to counselings, warnings, reprimands, and suspensions for 14 days or less; however, civilian employees may utilize other avenues of redress (ie. filing a grievance with the command, filing an Equal Employment Opportunity (EEO) complaint of discrimination, filing a claim of a prohibited personnel practice with the Office of Special Counsel, etc.).

E. PROVIDING REASONABLE ACCOMMODATIONS

Federal civilian employees file over 25,000 claims of disability discrimination with the EEO offices annually. With an increase in the number of disabled employees serving in the federal workplace, commanders should be keenly aware of the Reasonable Accommodation (RA) process.

Reasonable accommodation is “any change to the work environment or the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunity.” Typically, a request for RA arises in one of three instances:

- 1) during the hiring process,
- 2) to assist in performing the essential functions of the job, or
- 3) to provide equal benefits and privileges of the job.

The RA process is triggered when an individual (current employee or applicant for employment) makes a request. ***Note: The request can be made at any time, orally or in writing, and does not need to include any specific “buzz words”.*** Typically, the request is made to the supervisor. Within two business days of receiving the request, the supervisor (or hiring official) must forward the request to the Disability Program Manager (DPM), generally an EEO Specialist located in the servicing EEO office. The RA request must be approved, modified, or denied within thirty business days of the date the request was received, absent extenuating circumstances. If the request is denied, a legal review must be prepared, maintained, and provided to the requestor, including their right to appeal the decision to the EEO.

Labor-Management Relations

A. REFERENCE

- 5 USC §§ 7101-7135, Labor Management and Employee Relations
- Executive Order 14251, March 27, 2025, Exclusions from Federal Labor-Management Relations Programs

B. DoD GENERALLY EXCLUDED FROM THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

On 27 March 2025, President Trump issued Executive Order (EO) 14251, “Exclusions from Federal Labor-Management Relations Programs.” The EO exempts multiple Federal agencies, including the Department of Defense (DoD) and the military departments, from the provisions of the Federal Service Labor-Management Relations Statute (the Statute).

Per the Office of Personnel Management, agencies covered by the EO, including the DOD, are no longer subject to collective bargaining requirements, and unions lose their status as “exclusively recognized” labor organizations for affected employees. Additionally, OPM has provided guidance that agencies should not terminate any Collective Bargaining Agreements until the conclusion of litigation or further guidance from OPM directing such termination.

The EO’s exclusions do not apply to local employing offices of any agency police officers, security guards, or firefighters. Consequently, employees in such positions on military installations may still have union representation.

Commanders, managers, or supervisors with questions regarding collective bargaining obligations are encouraged to contact their servicing labor counselor and/or Labor Management Employee Relations specialists.

C. TRADITIONAL MANAGEMENT RESPONSIBILITIES TO FEDERAL LABOR UNIONS

Commanders should identify how many unions (if any) represent civilian employees in their organizations. Not only should union leadership be identified, but commanders should also become familiar with any Collective Bargaining Agreement that their command is bound to, understand the relationship between the union(s) and the command, and work to establish and sustain positive relationships.

There are three instances where a management official (on behalf of the command) must notify the union (**not** bargaining unit members) of an act that the commander intends to take before implementation occurs:

1) *Change to an employee's condition of employment:* Management must provide notice to the union of the proposed change and allow union representatives an opportunity to negotiate implementation of the change. Generally, these consist of environmental changes (e.g., moving an office, parking space, soda machine) and administrative changes (e.g., implementing a new time and attendance policy).

2) *Formal discussion:* Management must provide notice to the union of the intended formal discussion and allow the union representative(s) an opportunity to attend and participate. Formal discussion is defined as a discussion that is formal in nature between at least one agency representative and at least one bargaining unit employee concerning a grievance, practice, personnel policy, or other general condition of employment.

3) *Investigative Inquiries:* Whenever an investigation requires an investigating officer (IO) to interview a civilian employee, civilian employees have a right to request union representation if the employee has a reasonable belief that the investigative inquiry by the agency could result in disciplinary action being taken against them. This is known as asserting "Weingarten Rights". An IO is not required to notify the civilian employee being interviewed of their Weingarten Rights prior to the questioning; rather, so long as management has provided an annual notification to all civilian employees of their right to assert Weingarten Rights, the duty has been met. ***Note: Notification generally occurs when the servicing HR or LMER Specialist provides an annual email or posting.***

Aside from these three statutory rights, management also has a duty to bargain in good faith. This duty is also required of federal labor unions when dealing with management.

Medical-Legal



Issues



Impact of Misconduct on the Integrated Disability Evaluation System Process

A. REFERENCES

- AR 635-40 (19 JAN 17), Physical Evaluation for Retention, Retirement, or Separation
- AR 635-200 (28 JUN 21), Active Duty Enlisted Administrative Separations
- AR 600-8-24 (08 FEB 20), Officer Transfers and Discharges
- AR 601-280 (14 APR 23), Army Retention Program
- AR 40-400 (08 JUL 14), Patient Administration
- AR 40-501 (27 JUN 19), Standards of Medical Fitness
- AR 40-502 (27 JUN 19), Medical Readiness
- AD 2021-05 (16 MAR 21), Integrated Disability Evaluation System
- AD 2024-01 (9 FEB 24), Army Fitness Determinations and Deployability
- AD 2024-06 (6 JUN 24), Soldier Appeal of The Formal Physical Evaluation Board Findings and Recommendations

B. OVERVIEW OF THE IDES PROCESS AND THE INTERACTION OF IDES WITH ADMINISTRATIVE SEPARATIONS AND MISCONDUCT

1. The MEB and Entering the IDES

The Disability Evaluation System (DES) consists of the entire process of a Soldier experiencing an injury or medical condition, undergoing treatment and rehabilitation, to being directed to the Integrated Disability Evaluation System (IDES), comprising the Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB). Ultimately, the process leads to a decision of medical retirement, medical separation, or retention with limitations. Any discussion of the DES throughout this chapter refers to the entire disability evaluation process. Reference to the IDES pertains only to the MEB and PEB. The integrated aspect of IDES was set into motion by the Acting Under Secretary of Defense for Personnel and Readiness on 19 December 2011. One goal of IDES is to integrate the VA into the disability evaluation process before a Soldier is separated from the service. Under this model, a Soldier undergoes a medical evaluation by a VA physician during the MEB phase and is assigned a single disability rating by the VA. Prior to IDES, the Army's PEB provided a disability rating, which required reconciliation with the VA's separation rating after the Soldier had left the service.

The IDES is comprised of both the MEB and the PEB. A Soldier does not enter the IDES until they have been referred to an MEB. An MEB is officially initiated when the following requirements are met:

- A Physical Profile is completed for the Soldier properly recording medical conditions and/or physical defects, the Soldier receives a permanent “3” or “4” profile, which is signed by a second physician (a Profiling Authority appointed by the Hospital Commander), AR 40-502, para. 3-3f;
- The Soldier must be found to not meet retention standards under Chapter 3 of AR 40-501, or not be able to complete an aerobic ACFT event, or not be able to perform any of the functional activities in section 4 in DA Form 3349, AR 40-502, para. 3-3f(1).

2. Impact of Misconduct on IDES

a. Absent Without Leave

A Soldier who is absent without leave (AWOL) is not eligible to be referred to or continue the MEB, PEB, or final disposition of the Disability Evaluation System (DES). AR 635-40, para. 4-3a.

b. Reserve Component Soldiers with Unexcused Absences

Reserve Component (RC) Soldiers who have nine or more unexcused absences from scheduled inactive duty training (IDT) during a one-year period will be considered unsatisfactory participants. They will not be referred to or continue DES processing unless the Soldier has a documented LOD medical condition which fails medical retention standards and which was the direct medical cause or a significant contributing factor to the unexcused absences. AR 635-40, para. 4-3b.

c. UCMJ Actions

Soldiers under investigation or charged with an offense under the UCMJ that could result in a punitive discharge (dismissal, dishonorable discharge (DD), or bad conduct discharge (BCD)), may be referred to and complete the MEB. These Soldiers are eligible for the PEB when one of the actions listed below occurs. AR 635-40, para. 4-3c.

- 1) The investigation ends without charges.
- 2) The officer exercising proper court-martial jurisdiction dismisses the charges.
- 3) An officer submits a resignation for the good of the Service under the provisions of AR 600-8-24 (this includes when the resignation is in lieu of referral to a General Court-Martial).
- 4) The officer exercising proper court-martial jurisdiction refers the charge for
- 5) trial by summary court-martial.
- 6) Court-martial conviction does not include confinement and discharge or Soldier completes confinement without discharge.

d. Civilian Confinement

Soldiers in the circumstances below because of civilian criminal offense are ineligible to continue any phase of the DES:

- 1) Under investigation for, or charged with, a civilian criminal offense (misdemeanor or felony), and
- 2) Incarcerated in civilian confinement (pre- or post-trial), or
- 3) Being held pending psychiatric evaluation or treatment.

However, a Soldier may complete the MEB phase if they are on bail and present for duty. The Soldier is eligible to enroll and complete the PEB when they are cleared of the offense and has a military status, or the command, after conviction, specifically declines in writing to separate the Soldier on the basis of the conviction. AR 635-40, para. 4-3d.

e. Suspended Military Sentences

Soldiers may not be referred to or continue in IDDES if under military sentence of dismissal or punitive discharge unless the sentence is suspended. The Soldier may not be discharged through IDDES (may not complete the PEB) until the period of suspension has ended and the punitive discharge or dismissal has been disapproved. AR 635-40, para. 4-3e.

f. Enlisted Soldiers Pending Administrative Separations

Priority of Administrative Separation or DES Processing:

1) Discharge in Lieu of Court-Martial Terminates IDDES.

Soldiers approved for Discharge in Lieu of Trial by Court-Martial under Chapter 10 of AR 635-200 are ineligible for referral to the MEB and PEB phases of IDDES. If the Soldier is already in IDDES, their medical separation will be terminated. AR 635-40, para. 4-3f(1). See also AR 635-200, para. 1-34de.

2) Dual Processing of Chapter 7 and Chapter 14 Administrative Separations with IDDES.

Soldiers being processed for administrative separation for fraudulent enlistment (Chapter 7 of AR 635-200) or misconduct (Chapter 14 of AR 635-200) are eligible for referral to the MEB. Prior to referral to the PEB, the Soldier's General Court Martial Convening Authority (GCMCA) must determine whether the Soldier will be referred to the PEB or administratively separated. In weighing whether to refer the Soldier to the PEB or administratively separate the Soldier, the GCMCA must consider if the Soldier's medical condition was a direct or substantial contributing cause of the conduct that led to the administrative separation action for fraudulent entry or misconduct, or the circumstances of the individual case must warrant disability processing instead of further processing for administrative separation. Soldiers continue to remain eligible for these administrative separation actions up until the day of their separation or retirement for disability. AR 635-40, para 4-3f(2) and AR 635-200, para. 1-34.

3) IDES Takes Priority over all Other Administrative Separations.

For all other administrative separation actions other than those described above, referral to and disposition under the DES takes precedence over the administrative separation action. AR 635-40, para. 4-3f(3).

TABLE 42-1: MISCONDUCT & SEPARATION ACTIONS AND THEIR EFFECT ON IDES PROCESSING

<i>MEB and PEB process continue uninterrupted and take precedence over all administrative separation actions except for fraudulent enlistment or misconduct actions.</i>	• AR 635-200, Chapter 6 Dependency or Hardship • AR 635-200, Chapter 9 Substance Use Disorder • AR 635-200, Chapter 11 Entry-level Performance or Conduct • AR 635-200, Chapter 12 Retirement for Length of Service • AR 635-200, Chapter 13 Unsatisfactory Performance • AR 635-200, Chapter 18 Failure to Meet Body Fat Standards
<i>Not eligible for PEB or PEB process stopped</i>	• Under criminal charges/investigation under the UCMJ that could result in dismissal, dishonorable discharge, or bad conduct discharge • Currently in civilian confinement • AWOL
<i>MEB case is completed, however GCMCA approval is needed for PEB processing</i>	• AR 635-200, Chapter 7 Fraudulent Enlistment • AR 635-200, Chapter 14 Misconduct
<i>IDES processing terminated</i>	• Approved Chapter 10 Discharge in Lieu of Trial by Court-Martial

4) Processing Administrative Separations when Soldiers are Enrolled in DES

Once the MEB has been initiated, the separation authority may not take final action on the administrative separation action until after the MEB makes a final medical retention determination of whether the Soldier either meets retention standards or not. If the MEB determines the Soldier does not meet retention standards, the MEB will recommend referral of the Soldier to the PEB. The MTF Commander will notify the unit commander of the planned referral of a Soldier to a PEB and obtain from the commander a written statement confirming whether any adverse personnel action is being considered against the Soldier and describing the Soldier's current duty performance. If the MEB determines the Soldier meets retention standards, then the IDES pro-

cess for that Soldier is complete – thereby allowing final action to be taken with regard to that Soldier’s administrative separation action.

When the MEB recommends referral to the PEB and the Soldier is pending separation for Fraudulent Entry or Misconduct under the provisions of AR 635-200, Chapters 7 or 14, respectively, the General Court-Martial Convening Authority (GCMCA) must direct, in writing, whether to proceed with the IDES process (i.e. the PEB) or administrative separation. In such cases, it is the duty of the MTF Commander to furnish copies of the approved MEB proceedings to the Soldier’s unit commander and GCMCA prior to initiation of the PEB so that the GCMCA can make its determination.

- The authority of the GCMCA to determine whether a case is to be processed through the IDES or under administrative separation provisions will not be delegated.
- For the GCMCA to choose IDES processing rather than administrative separation, the Soldier’s medical condition must be a direct or substantial contributing cause of the conduct that led to the administrative separation action for fraudulent entry or misconduct, or the circumstances of the individual case must warrant disability processing instead of further processing for administrative separation.
- If the GCMCA decides to proceed with administrative separation, the IDES processing is halted.
- For those Soldiers who proceed to the PEB, the PEB will make a determination that the Soldier is either physically fit or physically unfit for service. AR 635-40, para. 4-19.
- If the Soldier is found physically fit by the PEB, the pending administrative separation action may be resumed.
- If the Soldier is found physically unfit by the PEB, the pending administrative separation action will be abated and the Soldier will be processed out of the Army under the IDES.

g. Officers Pending Administrative Separations

Officers approved to resign for the good of the Service in lieu of trial by court-martial are ineligible for referral to the MEB or PEB. However, if the officer was referred to the MEB prior to approval of the resignation, the disability evaluation and administrative separation action continue in a dual-processing manner. In these situations, the MEB and PEB must be completed, and both the results of the administrative separation and the MEB and PEB proceed through the GCMCA for recommendation and sent to HQDA for determination of whether the officer will be administratively separated or complete disability processing through the DES. AR 635-40, para. 4-3g.

- In the case of officers going through the DES and an administrative separation listed below, both processes will continue until the action is processed through the GCMCA and HRC and a final decision is made by the Secretary of the Army.
 - 1) Referral to the Department of the Army Active-Duty Board (DAADB) except when the DAADB is convened as a result of an imposed reduction in force
 - 2) Involuntary REFRAD due to civil conviction or moral turpitude

3) Referral for elimination under AR 600-8-24, Chap. 4.

If such officers are found unfit because of physical disability by the PEB, they will be processed “simultaneously” for both administrative separation and physical disability (i.e. a physically unfit determination by the PEB does not stop the administrative separation).

C. CIRCUMVENTION OF THE IDES PROCESS NOT ALLOWED

Intentional circumvention of the IDES process is never acceptable. A command attempting to separate a Soldier without allowing the Soldier to complete the IDES process will likely face the scrutiny of Congress, the Inspector General, or a higher command. The IDES process already provides the command an opportunity to separate a Soldier under Chapter 7 or Chapter 14 of AR 635-200 in lieu of completing the PEB. Additionally, for Soldiers facing a separation action under AR 635-200 other than Chapter 7 or 14, the command may resume the separation action if the Soldier is found to meet retention standards by the MEB or retained by the PEB.

Commanders should base their decision on the specific circumstances of the individual case and sound legal advice provided by the Staff Judge Advocate. The decision to administratively separate or to refer a Soldier under the UCMJ should not to be made lightly. Commanders must review the considerations described above when electing to pursue the IDES or the administrative/punitive action. When faced with this decision, obtaining legal advice is essential. The servicing judge advocate will take into consideration Congressional and regulatory intent, as well as any additional factors, to include the potential scrutiny and criticism that may result. They will also ensure that the command has all relevant facts and policies that impact the command’s decision, ensuring the ultimate determination is supportable and is in the best position to withstand higher level review.

D. PRACTICAL EXAMPLES

1. Is the Soldier eligible for the IDES?

a. An enlisted Soldier is pending separation under AR 635-200, Chapter 13 (Unsatisfactory Duty Performance).

YES. Once enrolled in the MEB, the Chapter 13 separation action is suspended pending the results of the IDES.

b. Enlisted Soldier is pending separation for misconduct (AR 635-200, Chapter 14) with a general characterization of service.

YES, but only through the MEB. The Soldier completes the MEB, and the command completes the separation action including a separation board, if necessary. The results of both the MEB and the separation action are presented to the GCMCA who decides if the Soldier will proceed to the PEB or be administratively separated. The GCMCA must consider whether the Soldier’s medical condition was a direct or substantial contributing cause of the conduct that led to the administrative separation action, or the circumstances of the medical condition must warrant disability processing instead of further processing for administrative separation. If the

GCMCA allows the Soldier to proceed to the PEB, the separation action is suspended pending the results of the PEB. The misconduct separation will resume if the PEB retains the Soldier.

c. Soldier assaults his First Sergeant.

YES, but only through the MEB. The Soldier would be under investigation for an offense that could result in a punitive discharge (Bad Conduct Discharge or Dishonorable Discharge). In accordance with AR 635-40, para 4-3c, the Soldier may be referred to and complete the MEB. The Soldier may proceed to the PEB if the investigation ends without charges, the charges are dismissed, the charges are referred to a Summary Court-Martial, or the Soldier is convicted but the Soldier's sentence does not include a punitive discharge.

d. An enlisted Soldier completed the MEB/PEB process and was issued disability retirement orders. While awaiting the retirement date, he commits an action that results in his command initiating Chapter 14 action.

YES, the command may initiate this type of administrative separation. Although the Soldier completed the DES process, the Soldier continues to be eligible for administrative separation or UCMJ actions until the day of their separation or retirement. AR 635-40, para. 4-3f.

E. LEGAL REPRESENTATION FOR SOLDIERS

1. Trial Defense Service and Legal Assistance

A Soldier pending court-martial charges, non-judicial punishment (Article 15), or administrative separation is entitled to free, confidential legal advice or representation from a Trial Defense Service (TDS) attorney. If a Soldier asks to see a TDS attorney, the command must honor that request. Commanders should consult their legal advisor prior to taking any action on a misconduct issue.

Similarly, if a Soldier is facing an administrative reprimand or any other form of adverse administrative action, he or she is entitled to free, confidential legal advice or representation from a TDS attorney or a Legal Assistance attorney. If a Soldier asks to see a TDS or Legal Assistance attorney, the command must honor that request.

2. Soldiers' MEB Counsel (SMEBC)

Commanders should encourage all Soldiers enrolled or potentially facing MEB proceedings to contact a Soldiers' MEB Counsel (SMEBC), regardless of whether or not they are potentially facing disciplinary action. Soldiers going through the IDES process are entitled to free, confidential legal advice and representation through the entire IDES process from a SMEBC and other professionals within the Office of Soldiers' Counsel. In virtually every case, Soldiers who are advised by SMEBCs proceed through the IDES system more efficiently and accurately when compared to those who do not.

If a Soldier already has a TDS attorney or Legal Assistance attorney advising him or her, the SMEBC may provide dual-representation to ensure that the Soldier receives accurate and timely advice in this intersection of two complex areas of the law.

SMEBCs are physically located at most installations. If your installation does not have a SMEBC, one from another installation will be detailed to represent or consult with your Soldier. Your legal advisor will be able to provide you with the SMEBC's name and contact information.

3. Soldiers' PEB Counsel (SPEBC)

Soldiers may request a formal hearing at the PEB. In those situations, the command should advise the Soldier to seek the counsel of the Soldiers' PEB Counsel (SPEBC). SPEBCs provide advocacy and legal guidance to Soldiers who choose to appear in person or virtually at the PEB.

Mental Health Evaluations

A. REFERENCES

- DOD Instruction 6490.04, Requirements for Mental Health Evaluations of Members of the Armed Forces, dtd March 4, 2013

B. OVERVIEW

DoD Instruction 6490.04 establishes policy, assigns responsibilities, and prescribes procedures for the referral, evaluation, treatment, and medical and command management of Service members who may require assessment for mental health issues, psychiatric hospitalization, and risk of imminent or potential danger to self or others.

C. APPLICABILITY

DoD Instruction 6490.04, upon which the guidance in this chapter is based, applies to the OSD, the Military Departments (including the Coast Guard at all times), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

When the Directive does NOT apply:

- Voluntary self-referrals.
- Required periodic pre- and post-deployment mental health assessments for Service members deployed in connection with a contingency operation in accordance with DoD Instruction 6490.12.
- Responsibility and competency inquiries conducted in accordance with the guidelines established in the Rule for Courts Martial (RCM) 706 of the Manual for Courts-Martial (MCM).
- Interviews conducted in accordance with guidelines established for the Family Advocacy Program in DoD Directive 6400.01.
- Interviews conducted in accordance with guidelines established for drug or alcohol abuse rehabilitation programs in DoD Instruction 1010.04.
- Clinical referrals requested by other healthcare providers as a matter of clinical judgment and when the Service member consents to the evaluation.
- Evaluations under authorized law enforcement or corrections system procedures.

- Evaluations for special duties or occupational classifications and other evaluations expressly required by applicable DoD issuance or Service regulation that are not subject to commanders' discretion.

D. POLICY (SEE PARAGRAPH E BELOW FOR PROCEDURES)

1. Removing Stigma

It is the responsibility of the DoD to ensure that policy and procedures are implemented in a manner that removes the stigma associated with Service members seeking and receiving mental health services. The use of mental health services is considered, whenever possible, to be comparable to the use of other medical and health services. This extends to policy directed at ensuring fitness for duty, returning injured or ill Service members to full duty status after appropriate treatment, and managing medical conditions that may endanger the Service member, others, or mission accomplishment.

2. Authority to Order Evaluation

Commanders and supervisors who in good faith believe a subordinate Service member may require a mental health evaluation are authorized to direct an evaluation under this instruction or take other actions consistent with DoD Instruction 6490.04, Enclosure 3. In these circumstances, a command directed mental health evaluation (MHE) has the same status as any other military order.

3. Non-Emergency MHE Referral

Referral for a command directed evaluation (CDE) of a Service member to a mental health-care provider (MHP) for non-emergency MHE may be initiated only by a commander or supervisor (as defined in the subparagraphs below). Such evaluations may be for a variety of concerns, including fitness for duty, occupational requirements, safety issues, significant changes in performance, or behavior changes that may be attributable to possible mental status changes.

a. Commander

Any commissioned officer who exercises command authority over a Service member. The term includes a military member designated in accordance with DoD Instruction 6490.04 to carry out any activity of a commander under DoD Instruction 6490.04.

b. Supervisor

A commissioned officer within or out of a Service member's official chain of command, or civilian employee in a grade level comparable to a commissioned officer, who:

- Exercises supervisory authority over the Service member owing to the Service member's current or temporary duty assignment or other circumstances of the Service member's duty assignment; and
- Is authorized due to the impracticality of involving an actual commanding officer in the member's chain of command to direct an MHE.

c. Designees:

1) Senior Enlisted Member.

A senior enlisted Service member may be designated by the commander or supervisor for ordering an emergency CDE for enlisted Service members.

2) Commissioned Officer Senior to Referred Officer.

In cases involving a commissioned officer, a commissioned officer of rank senior to the officer to be referred may be designated.

4. Emergency MHE Referral

A commander or supervisor will refer a Service member for an emergency MHE as soon as it is practicable whenever:

- Service member, by actions or words, such as actual, attempted, or threatened violence, intends or is likely to cause serious injury to him or herself or others; and
- When the facts and circumstances indicate that the Service member's intent to cause such injury is likely; and
- When the commanding officer believes that the Service member may be suffering from a severe mental disorder.

5. Reprisals

No one may refer a Service member for an MHE as a reprisal for making or preparing a lawful communication of the type described in 10 U.S.C. §§ 1034 and in DoD Directive 7050.06.

6. Voluntary Self-Referrals

A Service member may initiate a voluntary self-referral for mental health care. When self-initiated, the MHP will follow the policy and procedures of DoD Instruction 6490.08 with regard to both the presumption of non-notification, required notifications, and the extent of disclosure.

7. Training

Training must be provided annually to all Service members by the Military Departments regarding the recognition of personnel who may require MHE for imminent dangerousness, based on the individual's behavior or apparent mental state.

8. Non-CDE Assessments of Contingency Operation-Deployed Service Members

Mental health assessments of Service members deployed in connection with a contingency operation will be conducted, for purposes other than CDEs, in accordance with DoD Instruction 6490.12, "Mental Health Assessments for Service Members Deployed in Connection with a Contingency Operation."

E. PROCEDURES

1. Training

Commanders must ensure that all members of their unit receive instruction on how to recognize Service members who may require mental health evaluation for dangerousness to self, others, or mission based on the Service member's behavior or apparent mental state. Training must be specific to the needs, rank, and level of responsibility and assignment of each Service member. Such training must include:

- The recognition of potentially dangerous behavior.
- Appropriate use of security or civilian police authorities.
- Management of emergencies pending the arrival of security or civilian police.
- Administrative management of such cases.

2. Referral of Service Member for Commander or Supervisor Directed MHE

a. Responsibility

The responsibility for determining whether or not referral for MHE should be made rests with the Service member's commander or supervisor at the time of referral.

- A senior enlisted Service member may be designated by the commander or supervisor for ordering an emergency CDE for enlisted Service members.
- In cases involving a commissioned officer, a commissioned officer of rank senior to the officer to be referred may be designated.

b. Non-emergency MHE

When a commander or supervisor, in good faith, believes that a Service member may require a non-emergency MHE, he or she will:

- Advise the Service member that there is no stigma associated with obtaining mental health services.
- Refer the Service member to an MHP, providing both name and contact information.
- Tell the Service member the date, time, and place of the scheduled MHE.

c. Emergency MHE

When a commander or supervisor refers a Service member for an emergency MHE owing to concern about potential or imminent danger to self or others, the following principles should be observed:

- **Safety.** When a Service member is exhibiting dangerous behavior, the first priority of the commander or supervisor is to ensure that precautions are taken to protect the safety of the

Service member and others, pending arrangements for the transportation of the Service member to the location of the emergency evaluation.

- **Communication.** The commander or supervisor will report to the MHP the circumstances and observations regarding the Service member that led to the emergency referral either prior to or while the Service member is en route to emergency evaluation.

3. Command Promotion of Care Seeking for the Maintenance of Total Well-Being.

Commanders or supervisors may make informal, non-mandatory recommendations for Service members under their authority to seek care from an MHP when circumstances do not require a CDE based on safety or mission concerns. Under such circumstances, the commander or supervisor will inform the Service member that he or she is providing a recommendation for voluntary self-referral and not ordering the care.

Commanders and supervisors will demonstrate leadership and direct involvement in development of a culture of total well-being of Service members by providing consistent and ongoing messaging and support for the benefits and value of seeking mental health care and voluntarily-sought substance abuse education.

Commanders and supervisors may educate Service members with respect to additional options for assistance, including confidential counseling from family support, Military OneSource resources, consultation from chaplains, and options for obtaining assistance with financial, legal, childcare, housing, or educational issues.

Commanders and supervisors will not substitute alternative approaches to CDE when there is significant concern regarding a Service member's safety or performance of duty or concern for the safety of others.

4. Hospitalization for Psychiatric Evaluation and Treatment

Pursuant to a referral, only a psychiatrist, or when a psychiatrist is not available, a physician or another MHP with admitting privileges may admit a service member for an inpatient MHE. A Service member may consent to a voluntary inpatient admission, or a qualified MHP may direct an involuntary inpatient admission after following the applicable laws, regulations, and procedures.

If involuntarily admitted as an inpatient, the Service member will be re-evaluated within 72 hours of admission by an independent privileged psychiatrist or other medical officer if a psychiatrist is not available. The independent medical reviewer will determine whether, based on clear and convincing evidence, continued involuntary hospitalization is clinically appropriate. The Service member will be notified of the results.

The Service member has the right to contact a relative, friend, chaplain, attorney, any office of Inspector General (IG), and anyone else the member chooses, as soon as the Service member's condition permits, after admission to the hospital.

5. Fitness and Suitability for Service

MHPs will report to commanders or supervisors who make CDEs, but in doing so will make the minimum necessary disclosure and, when applicable, will advise on how the commander or supervisor can assist the Service member's treatment. Additional information may be disclosed consistent with DoD Instruction 6490.08, "Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members," August 17, 2011.

The providers will advise the commander or supervisor of any duty limitations or recommendations for monitoring or additional evaluation, recommendations for treatment, referral of the service member to a Medical Evaluation Board for processing through the Disability Evaluation System in accordance with DoD Instruction 1332.18, "Disability Evaluation system (DES)," May 17, 2018 as amended, or administrative separation of the Service member for personality disorder or unsuitability for continued military service under DoD Instruction 1332.14, "Enlisted Administrative Separations," April 12, 2019. Any referral for consideration of potential separation from Military Service will be in accordance with Military Department procedures.

6. Duty to Take Precautions to Protect Others from Harm

In any case in which a Service member has communicated to a privileged healthcare provider an explicit threat to kill or seriously injure a clearly identified or reasonably identifiable person, or to destroy property under circumstances likely to lead to serious bodily injury or death, and the Service member has the apparent intent and ability to carry out the threat, the responsible healthcare provider will make a good faith effort to take precautions against the threatened injury. Such precautions include, but are not limited to:

a. Notifications

Privileged healthcare providers will notify:

- The Service member's commander or supervisor that the Service member is imminently or potentially dangerous.
- Military or civilian law enforcement authorities where the threatened injury may occur.
- Law enforcement of specifically named or identified potential victim(s).
- The service member's commander or supervisor and any identifiable individuals who had been harmed or threatened harm by the Service member immediately before hospitalization about the Service member's pending discharge from inpatient status.

b. Recommendations and Referrals

The MHP will recommend as appropriate:

- Appropriate precautions to the Service member's commander or supervisor.
- Referral of the Service member's case to the Service's physical evaluation board.
- Admission of the Service member to an inpatient psychiatric or medical unit for evaluation and treatment.

- Administrative separation of the Service member to the commander or supervisor. The provider will inform the Service member and document in the medical record that precautions have been taken.

7. Complaints of Reprisal for Protected Communication

Any service member who believes a CDE is a reprisal for the Service member having made a protected communication may file a complaint with the DoD IG Hotline or a Military Department IG in accordance with the applicable rules and regulations, to include DoD Directive 7050.06, “Military Whistleblower Protection,” April 17, 2015



Command Access to Soldiers' Protected Health Information (HIPAA)

A. REFERENCES

- DoD Instruction 6025.18, Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs, 13 March 2019
- DoD Instruction 6490.04, Mental Health Evaluations of Members of the Military Services, 4 March 2013
- DoD Instruction 6490.08, Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members, 06 September 2023
- DoD Instruction 6490.10, Continuity of Behavioral Health Care for Transferring and Transitioning Service Members, 26 March 2012
- Army Regulation 40-66, Medical Record Administration and Health Care Documentation, RAR 4 January 2010

B. OVERVIEW

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its Privacy Rule requires everyone in the Military Health System to safeguard and keep confidential a patient's health information. Healthcare information is confidential and will not be released to third parties without either an authorization from the patient or an exception to HIPAA. However, HIPAA provides a limited exception for access to Protected Health Information (PHI) for command officials when the patient is a Soldier.

C. COMMAND ACCESS TO PROTECTED HEALTH INFORMATION (PHI) – “THE MILITARY COMMAND EXCEPTION”

1. Communication is Key

The key to success with HIPAA and medical information-related issues is good communication between the command, the healthcare provider, the military treatment facility (MTF), and the servicing judge advocates.

a. Military Healthcare Providers and Military Treatment Facilities (MTFs)

Commanders and their designees have a specific exception to receive a Soldier's PHI in certain situations to assure the proper execution of the military mission. Healthcare providers may provide information to the command pursuant to this exception without the Soldier's con-

sent. If a commander believes that he or she needs to know about a Soldier's PHI, the commander should immediately contact the healthcare provider. Commanders must understand, however, that this exception is limited. Commanders do not have unrestricted access to a Soldier's PHI. When serving as division, brigade, or battalion surgeons, AMEDD officers will provide timely and accurate information to support unit commanders' decision-making pertaining to the health risks, medical fitness, and readiness of their Soldiers. To access a Soldier's PHI, a commander (or the commander's proper designee) must have a need to access the Soldier's PHI in order to carry out an activity under the authority of the commander.

b. Civilian Medical Facilities

In circumstances where a Soldier's treatment was provided by a civilian healthcare provider, and if the commander needs the PHI for an official purpose, a commander may request the Soldier's PHI from the civilian healthcare provider. However, HIPAA provides that it is within the civilian healthcare provider's discretion whether to disclose the relevant PHI since disclosure is generally permissible but not required. Commanders having difficulty obtaining PHI from civilian healthcare providers should seek the assistance of the MTF's Patient Administration Division (PAD) and their servicing judge advocate.

2. The Minimum Necessary Rule

The HIPAA Privacy Rule requires covered entities, such as MTFs and unit surgeons, to take reasonable steps to limit the use or disclosure of, and requests for, PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure. In most cases, commanders who request PHI pursuant to the military exception will typically not receive all the Soldier's PHI, because all the Soldier's PHI is not necessary to accomplish the specific intended purpose. Disclosure may include: the Soldier's diagnosis; a description of the treatment prescribed or planned; impact on duty or mission; recommended/applicable duty restrictions; the prognosis; and implications for the safety of self or others.

3. Common Uses of the Request by DoD Personnel Exception to HIPAA

a. Determine a Member's Fitness for Duty.

DoD Personnel may obtain PHI to determine a member's fitness for duty, including but not limited to the member's compliance with standards and all other activities carried out under the authority of AR 40–501, AR 50–5, AR 635–40, and similar requirements.

b. Determine a Soldier's Fitness to Perform a Particular Mission

DoD Personnel may obtain PHI to determine a Soldier's fitness to perform any particular mission, assignment, order, or duty, including compliance with any actions required as a precondition to performance of such mission, assignment, order, or duty. Common examples are profiles and notice that a Soldier is taking a particular medication that interferes with the performance of duty, such as driving or carrying a weapon.

c. Report on Casualties in Any Military Operation or Activity.

d. Carry Out Any Other Activity Necessary to the Proper Execution of the Mission of the Armed Forces.

Common examples include:

- To coordinate sick call, routine and emergency care, quarters, hospitalization, and care from civilian providers using DD Form 689 (Individual Sick Slip) in accordance with AR 40-66 and AR 40-400;
- To report results of physical examinations and profiling according to AR 40-501;
- To initiate line of duty (LOD) determinations and to assist investigating officers according to AR 600-8-4;
- To report a Soldier's dental classification according to AR 40-3 and HA Policy 02-011;
- To carry out the Soldier Readiness Program and mobilization processing requirements;
- To provide initial and follow-up reports IAW the Army Family Advocacy Program (AR 608-18);
- To complete records IAW the Exceptional Family Member Program (AR 608-75);
- To carry out any other activity necessary to the proper execution of the Army's mission.

4. Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members (DoDI 6490.08, 6 September 2023).

a. General Information

There is guidance related to the release of information pertaining to a Soldier's involvement in mental health care and substance abuse education (distinguished from substance abuse treatment). Healthcare providers follow a presumption that they are not to notify a Soldier's commander when the Soldier obtains mental health care or substance abuse education services. However, this presumption can be overcome through one of the following notification standards.

b. Notification Standards

Command notification by healthcare providers will not be required when a Service member voluntarily requests mental health care unless one of the reasons listed below apply. Healthcare providers shall notify the commander concerned when a Soldier meets the criteria for one of the following mental health and/or substance misuse conditions or related circumstances:

- **Harm to Self.** The provider believes there is a serious risk of self-harm by the Service member.
- **Harm to Others.** The provider believes there is a serious risk of harm to others. This includes any disclosures concerning child abuse or domestic violence consistent with DoDI 6400.06.

- **Harm to Mission.** The provider believes there is a serious risk of harm to a specific military operational mission. Serious risk may include disorders that significantly impact impulse control, insight, reliability, and judgment.
- **Special Personnel.** The Service member is in the Nuclear Weapons Personnel Reliability Program as described in DoDI 5210.42, is in a position that has been pre-identified by Service regulation, or the command as having mission responsibilities of such potential sensitivity or urgency that normal notification standards would significantly risk mission accomplishment.
- **Inpatient Care.** The Service member is admitted or discharged from any in-patient mental health or substance use disorder treatment facility, as these are considered critical points in treatment and support nationally recognized patient safety standards.
- **Acute Medical Conditions Interfering With Duty.** The Service member is experiencing an acute mental health condition, a substance misuse induced condition, or is engaged in an acute medical treatment regimen that impairs the Service member's ability to perform assigned duties.
- **Problematic Substance Use Treatment Program.** The provider has determined the Service member requires treatment for a substance misuse disorder.
- **Command-Directed Mental Health Evaluation.** The mental health services are obtained as a result of a command-directed mental health evaluation IAW DoDI 6490.04, Mental Health Evaluations of Members of the Military Services.
- **Other Special Circumstances.** The notification is based on other special circumstances in which proper execution of the military mission outweighs the interests served by avoiding notification, as determined on a case-by-case basis by a healthcare provider (or other authorized official of the MTF involved) at the O-6 or GS-15 civilian equivalent level or above, or a military medical treatment facility commanding officer at the O-6 level or above.

D. BEHAVIORAL HEALTH EVALUATIONS

1. Command-Directed

While a commander may inquire into the general nature of a Soldier's status, if a commander has a question about a Soldier's mental ability to perform his or her duty, the commander should immediately initiate a command-directed mental status evaluation. Commanders will be provided a copy of the command-directed mental health evaluation.

2. Self-Referral

If a Soldier initiates the mental health evaluation (self-referral), the PHI regarding the medical conditions that do not affect the Soldier's fitness for duty or fitness to perform a particular mission will not be provided to the unit. Due to the unique nature of the military mission, there are instances when an MTF commander will proactively inform a commander of a Soldier's minimum necessary PHI or medical/behavioral health condition. Examples include: to avert a serious and imminent threat to health or safety of a person, such as suicide or homicide; if a high

risk Soldier receives multiple behavioral health services and requires high risk multi-disciplinary treatment plans; or medications could impair the Soldier's duty performance.

E. MECHANICS OF A REQUEST FOR PHI

1. General Information

A commander or their proper designee can typically obtain information regarding a Soldier's general health status, adherence to scheduled appointments, profile status, and medical readiness requirements. Commanders can ask for this type of information over the phone after the commander's identity is authenticated and they may also submit these requests in writing. The requests should clearly state the purpose for which specific medical information is sought.

2. Medical Records

Requests for medical records should be in writing through a DA Form 4254, Request for Private Medical Information. The servicing judge advocate can assist with such requests.

3. Authorized Designees

If anyone other than the commander is to use the PHI, the commander must designate the authorized command official in writing. Commanders must use such delegations judiciously and instruct each authorized designee about the importance of not further releasing the information without appropriate justification.

4. Disagreements

Contact your servicing judge advocate immediately if there is a disagreement regarding the release of PHI. Servicing judge advocates can serve as intermediaries between commanders and the military treatment providers in such situations.

F. WARRIOR TRANSITION UNITS

Due to the unique nature of a Warrior Transition Unit, WTU commanders typically have access to a Soldier's PHI without requiring patient authorization. Warrior Transition Unit commanders should contact their servicing judge advocate regarding HIPAA-related questions.

G. ADDITIONAL COMMANDER RESPONSIBILITIES

1. Safeguarding PHI

Once medical information is released from the MTF to a commander, it is no longer covered by HIPAA. However, commanders have an important responsibility to safeguard the information received and limit any further disclosure in accordance with the Privacy Act and other applicable rules and regulations. Under such provisions, commanders have the same duty as healthcare providers to safeguard PHI. Information provided shall be restricted to personnel with a specific need to know; that is, access to the information must be necessary for the conduct of official duties. Unauthorized release of PHI not only potentially increases stigma and

creates barriers to care, but also exposes the commander, the command, and the Department of the Army to the consequences of a Privacy Act violation. Commanders with questions about the further use of PHI should contact their servicing judge advocate.

2. Reduce the Stigma of Mental Health Treatment

It is DoD policy that the DoD shall foster a culture of support in the provisions of mental health care and voluntarily sought substance abuse and education to military personnel to dispel the stigma of seeking mental health care and/or substance misuse education services. Commanders must reduce stigma through positive regard for those who seek mental health assistance in order to restore and maintain their mission readiness, just as they would view someone seeking treatment for any other medical issue.

3. Transferring and Transitioning Service Members

In conjunction with healthcare providers, commanders shall notify gaining commanders when adherence to an ongoing treatment plan is deemed necessary to ensure mission readiness and/or safety. In all situations, to include Soldiers transitioning out of the military service, commanders and healthcare providers should ensure that Soldiers who require continued behavioral health care, medical addiction treatment, or follow-up care are properly transferred to prevent a break in care or treatment.

H. OTHER HIPAA EXCEPTIONS

There are numerous other exceptions to HIPAA that are not covered in this section. Additionally, laws, regulations, and guidance frequently changes. Commanders should contact their servicing judge advocates with any questions or concerns regarding medical information.

Individual



Soldier Rights



Tattoo, Branding, Body Mutilation, & Jewelry Policy

A. REFERENCE

- AR 670-1, Wear and Appearance of Army Uniforms and Insignia (26 January 2021)
- Army Directive 2022-09, Soldier Tattoos (22 June 2022)

B. TATTOO POLICY

1. Overview

AR 670-1 requires Soldiers to wear their uniforms in a fashion that does not detract from overall military appearance. Generally, Soldiers are prohibited from having tattoos or brands on the head, face, neck, or below the wrists. However, the following are allowed pursuant to Army Directive 2022-09.

- one visible tattoo on each hand (including the palm), not to exceed one inch in measurement in all directions; an unlimited number of tattoos between the fingers as long as they are not visible when the fingers are closed; and one ring tattoo on each hand.
- one tattoo on the back of the neck, not to exceed two inches in measurement in all directions (Tattoos are still prohibited on the head and face (except for permanent makeup) and inside the eyelids, mouth, and ears. Previously documented tattoos on the neck or hands, for which Soldiers have a tattoo validation memorandum, remain authorized.).
- one tattoo behind each ear, not to exceed one inch in measurement in all directions, not to extend forward of the ear lobe.

Tattoos or brands that violate DA policy, regardless of their location on the body, are those that are extremist, indecent, sexist, or racist. Such tattoos are prejudicial to good order and are prohibited.

- **Extremist:** Affiliated with, depicting, or symbolizing extremist philosophies, organizations, or activities.
- **Indecent:** Are grossly offensive to modesty, decency, propriety, or professionalism.
- **Sexist:** Advocate a philosophy that degrades or demeans a person based on gender.
- **Racist:** Advocate a philosophy that degrades or demeans a person based on race, ethnicity, or national origin.

2. Command Responses to Violations of Tattoo Policy

Commanders will ensure that Soldiers understand and comply (including annual checks IAW AR 670-1, para. 3-3e) with the tattoo policy. If a Soldier has any tattoo or brand that is

prohibited, has any tattoo or brand that is not grandfathered, or acquires any new tattoo or brand in violation of policy, his/her Commander will:

a. Counsel

The Soldier will be counseled in writing. The DA Form 4856 (Developmental Counseling Form) will state that the Soldier is not in compliance with AR 670–1, paragraph 3–3, and will explain how the tattoo or brand violates the specific prohibition in the policy (for example, the tattoo is extremist because it is a known symbol for a specific hate group; or the new tattoo is in a prohibited location).

b. Provide Time

The Soldier will receive no less than 15 calendar days to seek medical and/or legal advice, fully consider all available options, and respond to the counseling, in writing, by informing the commander that he/she will appeal the finding that the tattoo or brand is in violation of policy, pursue medical procedure(s) to have the tattoo or brand removed, or not have the tattoo or brand removed.

c. Soldier Decides

If the Soldier elects to appeal the finding that the tattoo or brand is in violation of policy, the Commander will forward the matter to the first O–6 commander in the chain of command for a final determination.

If the Soldier elects to have the tattoo or brand removed, the Commander will counsel the Soldier on a plan for scheduling the medical procedure(s). Soldiers will receive a reasonable amount of time to schedule the necessary medical procedure(s) and pay for such procedure(s) (if not available at a military treatment facility). Commanders must also determine if operational requirements will delay the medical procedure(s).

If the Soldier declines to have the tattoo or brand removed, the Commander will counsel the Soldier in writing. The DA Form 4856 will state that the Soldier’s refusal to remove extremist, indecent, sexist, or racist tattoos or brands anywhere on the body, or refusal to remove any unauthorized tattoo or brand that was not grandfathered, constitutes a violation of a lawful order and will result in adverse action. The Commander will then initiate administrative separation proceedings.

C. MUTILATION POLICY

Soldiers are prohibited from willful unauthorized mutilation of the body or any body parts in any manner. Examples include, but are not limited to, tongue bifurcation (splitting of the tongue) or ear gauging (enlarged holes in the lobe of the ear, which are greater than 1.6mm), unnatural shaping of teeth, ear pointing (or “elfing”), scarification (cutting to create intentional scarring), or body modifications for the purpose of suspension (hanging by body hooks). Soldiers who entered the Army before 31 March 2014 with approved body mutilation may request an exception from Deputy Chief of Staff, G1.

D. JEWELRY POLICY

AR 670-1 requires Soldiers to uphold a certain military appearance on and off duty. This is a punitive paragraph of the regulation.

1. Soldierly Appearance

Attaching, affixing or displaying objects, articles, jewelry, or ornamentation to, through, or under their skin, tongue, or any other body part is prohibited, except for earrings for females (see below). Soldiers may wear a wristwatch, a wrist religious or ID bracelet, and a total of two rings in uniform (unless prohibited by the commander for safety or health reasons). One activity tracker, pedometer, or heart rate monitor is also authorized (must be conservative). Females may wear earrings that comply with AR 670-1 with the service, dress, mess, and evening mess uniforms (not with Class C uniforms).

When male and female Soldiers are not in uniform and off duty, earring wear is not restricted as long as the earring wear does not create or support gauging.

2. Tooth Ornamentation

The use of gold caps, platinum caps, or caps of any unnatural color or texture (permanent or removable) for purposes of dental ornamentation is prohibited. Teeth, whether natural, capped, or veneered, will not be decorated with designs, jewels, initials, or similar ornamentation. Unnatural shaping of teeth for nonmedical reasons is prohibited.

Commanders may consider waivers for permanent caps that were applied prior to the effective date of this regulation. Such waivers must be approved by the first O-5 commander in the chain of command and documented in an official memorandum, which must be uploaded to the Soldier's AMHRR. A picture of the permanent caps must be appended as an enclosure to the memorandum.



Conscientious Objection

A. REFERENCES

- DoD Instruction 1300.06, Conscientious Objectors, dated 1 July 2017
- AR 600-43, Conscientious Objection, dated 22 March 2023
- DA Pam 600-46, Processing Applicants for Conscientious Objection, dated 22 February 2023

B. OVERVIEW

Any Soldier with a firm, fixed, sincere, and deeply held objection to participation in any form of war, or to the bearing of arms because of religious training or belief may apply for separation from the Army as a conscientious objector. Applicants must establish by clear and convincing evidence that the objection is firm, fixed, sincere, and deeply held and based on beliefs that either did not exist, or did not become fixed until after entry into the service.

C. CLASSES OF CONSCIENTIOUS OBJECTORS

The two classes of conscientious objectors are detailed below:

1. Class 1-A-O:

This class includes Soldiers who, by reason of conscientious objection, sincerely opposes participation in combatant and non-combatant military training and service in war in any form and for whom such beliefs play a significant role in his or her other life.

2. Class 1-O:

These Soldiers, by reason of conscientious objection, sincerely opposes participation only in combatant military training and service and for whom such beliefs play a significant role in his or her other life.

D. PROCEDURES FOR PROCESSING APPLICATIONS

AR 600-43 governs the procedures for processing conscientious objection claims. Before processing the application of the individual, the Service will ensure that the applicant is:

- Advised of the specific provisions of Section 5303 of Title 38, U.S.C., regarding the possible effects of discharge as a conscientious objector who refuses to perform military duty, wear the military uniform, or comply with lawful orders of competent military authority. Applicants must sign a statement acknowledging that they have been so informed.
- Interviewed by a chaplain and evaluated by appropriately credentialed mental health professional.

Commanders should be aware of the additional provisions detailed below:

- The Special Court-Martial Convening Authority (normally, the Soldier's brigade commander) must appoint an officer to investigate the claim.
- The Record of Investigation will be forwarded to the General Court-Martial Convening Authority (GCMCA) and his Staff Judge Advocate for review.

Soldiers may withdraw their application at any time prior to final action on the case and the mandatory procedures for withdrawal are prescribed in DA Pam 600-46.

E. APPROVAL AUTHORITIES

1. Category 1-A-0:

Approval authority for applications submitted by Active component and Reserve component Soldiers on active duty or ADT, is the Active Army commander having GCMCA over the Soldier concerned. If the GCMCA does not approve the application, HQDA acts as the approval authority.

2. Category 1-0:

Approval authority is HQDA (Conscientious Objector Review Board).

F. USE AND ASSIGNMENT OF APPLICANTS

Applicants pending final action on their cases must be retained in their unit and assigned duties providing minimum practicable conflict with their asserted beliefs. Applicants remain subject to all military orders, discipline, and regulations to include those on training. Some training exceptions exist for trainees IAW AR 600-43.

G. ADMINISTRATIVE SEPARATION OF CONSCIENTIOUS OBJECTORS

Soldiers separated from the Army for conscientious objection are entitled to receive either an Honorable or a General Discharge. Eligibility for VA benefits will typically depend on whether the Soldier refused to perform military duties, refused to wear the uniform, or refused to comply with lawful orders. Applying for conscientious objector status alone is not a refusal to perform military duties. If a Soldier performs all duties, wears the uniform, and obeys all orders while his or her conscientious objection application is pending, he or she may maintain eligibility for VA benefits. While an administrative separation for conscientious objection is pending, consult with your legal advisor about the applicant's eligibility for VA benefits, and what steps you can take to preserve those benefits, if appropriate.

Army policy further states that during conscription, when an applicant has served less than 180 days in the Armed Forces, the applicant must provide a statement whether they are willing to perform work under the Selective Service Alternative Service Program for Conscientious Objectors, and whether they consent to the issuance of an order for such work by the local Selective Service board. Soldiers classified 1-A-O are not eligible for discharge under AR 600-43. Mandatory procedures for processing persons classified as 1-A-O are prescribed in DA Pam 600-46.

Extremist Organizations and Activities

A. REFERENCES

- U.S. Dep't of Def., Instr. 1325.06, Handling Dissident and Protest Activities Among Members of the Armed Forces (27 Nov 09, incorporating Change 2, 20 Dec 21)
- AR 600-20, Army Command Policy (8 February 2025)
- Army Directive 2024-07 (Handling Protest, Extremist, and Criminal Gang Activities) (14 Jun 24)
- Army Directive 2024-08 (Reporting Prohibited Activities (RPA)) (14 Jun 24)

B. OVERVIEW

Participation in extremist organizations and activities by Army personnel is inconsistent with the responsibilities of military service. Commanders must enforce the Army's policy of providing equal opportunity and treatment for all Soldiers without regard to race, color, sex (including gender identity), national origin, religion, or sexual orientation. The references above provide guidance on prohibited extremist activities. While the following basic principles apply in all cases, commanders should seek the advice and counsel of their legal advisor when taking actions pursuant to the Army's extremism policy.

C. EXTREMIST ORGANIZATIONS AND ACTIVITIES

Military personnel must not actively advocate supremacist, extremist, or criminal gang doctrine, ideology, or causes, including those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin or those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights.

1. Extremist Organizations and Activities Defined

Extremist organizations and activities are ones that advocate:

- Racial, sex (including gender identity), sexual orientation, or ethnic hatred or intolerance.
- Creating or engaging in discrimination based on race, color, sex (including gender identity), national origin, religion, or sexual orientation.
- Use of force, violence, or unlawful means to deprive individuals of their rights under the U.S. Constitution or the laws of the United States or any State, or to achieve political, religious, discriminatory, or ideological goals.
- Support for terrorist organizations or objectives.

- Expressing a duty to engage in violence against the DoD or United States in support of a terrorist or extremist cause.
- Support for persons or organizations that promote or threaten the unlawful use of force or violence or criminal activity.
- Encouraging military or civilian personnel to violate laws or disobey lawful orders or regulations for the purpose of disrupting military activities (subversion).
- Participating in activities that advocate or teach the overthrow of the U.S. Government by force or violence or seek to alter the form of government by unconstitutional means (sedition).

2. Prohibitions

Soldiers are prohibited from engaging in the following actions in support of extremist organizations:

- Participating in public demonstrations or rallies.
- Attending a meeting or activity with the knowledge that it involves an extremist cause order, is likely to result in violence, or is in violation of off-limits sanctions or a commander's order.
- whether on or off duty, in or out of uniform, or in a foreign country, is in breach of law and Fundraising activities.
- Recruiting or training members (including encouraging Soldiers to join).
- Creating, organizing, or taking a visible leadership role in such an organization or activity.
- Distributing literature on or off a military installation where the primary purpose and content concern advocacy or support of extremist causes, organizations, or activities; and it appears that the literature presents a clear danger to the loyalty, discipline, or morale of military personnel or the distribution would materially interfere with mission accomplishment.
- Receiving financial assistance from a person or organization that advocates terrorism, the unlawful use of force or violence to undermine or disrupt U.S. military operations, subversion, or sedition.
- Browsing or visiting websites when on duty, without official sanction, that promote or advocate violence directed against the United States or DoD, or that promote international terrorism or terrorism themes.

3. Social Media Guidance

Participation in internet sites sponsored by extremist organizations and activities is inconsistent with the responsibilities of military service. Because Army personnel who maintain a presence on the internet could be perceived as representatives of the Army, they are responsible for content they publish on all personal and public internet domains, to include social media

platforms, blogs, and other websites. As such, all above-listed prohibitions apply to both in-person and online activities.

Commanders and Soldiers should keep in mind AR 600-20's "Think, Type, and Post" strategy: "Think" about the message being communicated and who could potentially view it; "Type" a communication that is consistent with the Army Values; and "Post" only those messages that demonstrate dignity and respect for self and others.

D. COMMAND RESPONSIBILITIES

Commanders should remain alert for signs of future prohibited activities. They should take positive action to intervene early, primarily through counseling, when observing such signs. This is true even though the signs may not rise to active advocacy or active participation or may not threaten good order and discipline, but only suggest such potential. The goal of early intervention is to minimize the risk of future prohibited activities.

In any case of apparent Soldier involvement with extremist organizations or activities, commanders must take positive action to educate Soldiers of the potential adverse effects that participation in violation of Army policy may have upon good order and discipline. Actions include, but are not limited to, the following.

1. Educate Soldiers

Commanders will advise Soldiers that extremist organizations' goals are inconsistent with Army goals, beliefs, and values concerning equal opportunity.

2. Advise Soldiers

Commanders will advise Soldiers that participation in extremist organizations or activities:

- Will be considered in evaluating overall duty performance, to include appropriate remarks on evaluation reports.
- Will be considered in selections for positions of leadership and responsibility.
- May result in the suspension or revocation of security clearances or access to Government-owned IT systems, as appropriate.
- May result in reclassification actions or bars to reenlistment, as appropriate.
- Will result in being reported to law enforcement authorities.
- The identification of extremist organizations is the responsibility of the U.S. Army Criminal Investigation Division.

3. Report

Commanders will report all incidents pertaining to extremist activities to the U.S. Army Criminal Investigation Division and their servicing legal advisor. Commanders will also notify the supporting counterintelligence organization in cases where they know or suspect that Soldiers are engaging in the activities specified in prohibited activities or when they become aware of any of the activities or behaviors defined in AR 381-12. If a Soldier possesses a security

clearance, commanders will ensure the security manager records the derogatory information as an incident report in the JPAS (or subsequent system) in accordance with AR 380-67.

4. Seek Legal Advice

Commanders should seek the advice and counsel of their legal advisor when taking actions pursuant to the Army's extremism policy.

E. COMMAND AUTHORITY AND OPTIONS

Commanders have inherent authority to prohibit military personnel from engaging in or participating in any other activities that will adversely affect good order and discipline or morale within the command. This includes, but is not limited to, the authority to order the removal of symbols, flags, posters, or other displays from barracks, to place areas or activities off-limits (when done IAW AR 190-24), or to order Soldiers not to participate in those activities. Commanders' options for addressing a Soldier's violation of prohibited activities include:

- UCMJ action, including non-judicial punishment, which could arise for a violation of the following punitive articles:
 - Article 92, UCMJ: failure to obey a lawful general order or regulation.
 - Article 116, UCMJ: riot or breach of peace.
 - Article 117, UCMJ: provoking speeches or gestures.
 - Article 133, UCMJ: conduct unbecoming an officer.
 - Article 134, UCMJ: general article, specifically, conduct that is prejudicial to good order and discipline or service discrediting.
- Administrative action, which could include the following:
 - Administrative separation (with general or other than honorable discharge).
 - Administrative reprimand (GOMOR).
 - Reclassification action.
 - Bar to reenlistment.
 - Loss of security clearance.
 - Counseling.
 - Order to remove flags and symbols.

Political Activities by Members of the Armed Forces

A. REFERENCES

- Joint Ethics Regulation, 15 May 2024.
- DoD Directive 1344.10, Political Activities by Members of the Armed Forces on Active Duty, dtd 19 February 2008.
- DoD Instruction 1325.06, Handling Protest, Extremist, and Criminal Gang Activities Among Members of the Armed Forces, dtd 27 November 2009 (C2, 20 December 2021).
- DoD Instruction 5400.18, Public Affairs Procedures and Operations for Political Campaigns and Elections, dtd 30 November 2023.
- DoD Instruction 5400.17, Official Use of Social Media for Public Affairs Purposes, dtd 12 August 2022.
- AR 600-20, Army Command Policy, 8 February 2025.

B. OVERVIEW

Soldiers are expected to fulfill their obligations as citizens, but are prohibited, while on active duty, from engaging in certain political activities. The above-cited references provide guidance on participation in both partisan political and non-partisan political activities. Reserve Soldiers not on active duty can participate in political activities in their personal capacity with some limitations. The following basic principles apply in all cases.

C. PERMISSIBLE ACTIVITIES

The following are examples of permissible activities:

- Registering, voting, and expressing opinions on political candidates and issues – but not as representatives of the Army.
- Providing monetary contributions to political organizations or parties, but not fundraising for those organizations or parties.
- Attending partisan or nonpartisan political meetings or rallies as spectators is allowed; however Soldiers will **NOT** wear their uniform to attend and Soldiers may only attend when they are off duty.
- Writing letters to the editor of a newspaper in a personal capacity, expressing personal views on public issues or political candidates, as long as this is not part of an organized letter-writing campaign or concerted solicitation of votes for or against a political party, partisan political cause, or candidate.

D. PROHIBITED ACTIVITIES

The following are examples of prohibited activities for Soldiers on active duty:

- Be a candidate for civil office in federal, state, or local government, except as authorize by AR 600-20 and DoDD 1344.10.
- Participation in partisan political management, campaigns, conventions, or fundraising duty.
- Marching or riding in a partisan political campaign (in or out of uniform).
- Speaking before a partisan political gathering
- Wearing a uniform or using government property or facilities while participating in local nonpartisan political activities. This also applies to Reserve Soldiers not on active duty.
- Engaging in conduct that may imply that the Army has taken an official position on, or is otherwise involved in, a local political campaign or issue. This also applies to Reserve Soldiers not on active duty.
- Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on a private vehicle.
- Display a partisan political sign, poster, banner, or similar device visible to the public at one's residence on a military installation, even if that residence is part of a privatized housing development.

E. RALLIES AND DEMONSTRATIONS

Soldiers may participate in non-partisan rallies and demonstrations, provided that they are **NOT** on duty and they are **NOT** wearing a uniform. However, Service members must **NOT** participate in any type of rally or demonstration if they are in another country, if violence is likely to occur, or if it will constitute a breach of law and order.

F. SOCIAL MEDIA

Service member's political activities on personal social media is further restricted. *See Chapter 26 for a details of political activities restrictions on personal social media.*

Whistleblower Protection

A. REFERENCES

- Whistleblower Protection Act of 1989 (5 USC § 2302(b)(8)).
- Military Whistleblower Protection Act (10 USC § 1034).
- DoDD 7050.06, Military Whistleblower Protection, dtd 17 April 2015 (C1, 12 October 2021).
- Army Regulation 600-20, Army Command Policy, 24 July 2020.

B. OVERVIEW

The Whistleblower Protection Acts protect both civilian employees and military service-members from reprisal for having disclosed certain information evidencing wrongdoing.

C. CIVIL SERVANT PROTECTIONS

The Whistleblower Protection Act of 1989 (WPA) protects civilian employees from reprisal for having disclosed certain information evidencing wrongdoing in Agency operations.

1. What is Whistleblowing?

“Whistleblowing” is when an employee lawfully discloses information to a Member of Congress, an Inspector General, or agency officials that he or she reasonably believes evidences:

- a violation of any law, rule, or regulation,
- gross mismanagement,
- gross waste of funds,
- an abuse of authority, or
- a substantial and specific danger to public health or safety; or
- a threat that indicates an intent to kill or cause serious bodily injury.

The WPA prohibits retaliation against whistleblowers. It is unlawful for agencies to take an unfavorable personnel action against an employee because he or she lawfully disclosed information in one of the above categories.

2. Protections

Under the Civil Service Reform Act, federal agency heads, supervisors, and personnel officials are responsible for preventing prohibited personnel practices, to include reprisal for whistleblowing.

A federal agency violates the WPA if any employee who can take, direct others to take, recommend or approve any personnel action, takes or fails to take (or threatens to take or fail to take) an unfavorable personnel action with respect to any employee or applicant because of the exercise of any appeal right granted by law, rule, or regulation, or for testifying for or assisting another employee in the exercise of an appeal right.

The WPA provides for an individual right of action before the Merit Systems Protection Board for federal employees and applicants who allege that they were subjected to any personnel action because of whistleblowing.

D. MILITARY MEMBERS' PROTECTIONS

Cannot restrict Service members from making a protected communication with a Member of Congress or an IG; a member of a DOD audit, inspection, investigation, or law enforcement organization. A protected communication is—

(1) Any lawful communication with a Member of Congress or an IG.

(2) A communication described in (4) below made to a Member of Congress; an IG; a member of a DoD audit, inspection, investigation, or law-enforcement organization; any person in the chain of command; a court-martial proceeding; or any other person or organization designated by regulation or other procedure to receive such communications.

(3) Testimony, or other participation or assistance in an investigation or other proceedings related to a protected communication or filing an action brought under the Military Whistleblower Reprisal Act.

(4) A communication in which a Service member communicates information that they reasonably believes evidences a violation of law or regulation (including those prohibiting rape, sexual assault, certain other sexual misconduct, sexual harassment or unlawful discrimination), gross mismanagement, a gross waste of funds, an abuse of authority, a substantial and specific danger to public health or safety, or a threat by another member of the Armed Forces or employee of the federal government that indicates an intent to kill or cause serious bodily injury to service members, civilians, or damage to military, federal, or civilian property. AR 600-20, para. 5-12.

The “Military Whistleblower Protection Act” (MWPA), 10 USC § 1034, protects Soldiers from reprisal for certain lawful communications.

The MWPA prohibits taking (or threatening) an unfavorable personnel action or withholding (or threatening to) a favorable personnel action, as a reprisal against a Service member for making or preparing or being perceived as making or preparing any lawful communication to a Member of Congress or an Inspector General.

The MWPA also prohibits taking (or threatening) an unfavorable personnel action, or withholding (or threatening to) a favorable personnel action, as a reprisal against a Service member for making or preparing a communication to a Member of Congress, an Inspector General, a member of a Department of Defense audit, inspection, investigation, or law enforcement organization, a court-martial proceeding, or any other person or organization (including any person

or organization in the chain of command) a Soldier complains of, or discloses information that the member reasonably believes constitutes evidence of:

- a violation of law or regulation (including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct, sexual harassment, or unlawful discrimination),
- gross mismanagement,
- gross waste of funds,
- an abuse of authority,
- a substantial and specific danger to public health or safety, or
- a threat by another Service member or employee of the federal government that indicates an intent to kill or cause serious bodily injury to Service members or civilians or damage to military, Federal, or civilian property.

A Soldier subject to reprisal must make a complaint to their supporting IG within one year of becoming aware of the personnel action taken or threatened that they allege to be in reprisal, or the complaint may be dismissed as untimely. AR 600-20, para. 5-12(f). Commanders will ensure Soldiers are protected from reprisal or retaliation for protected communications, and if a complainant brings their complaint to the commander, the commander will refer the complaint to the supporting IG. AR 600-20, para. 5-12(g).

When a Soldier alleges that his or her military record has suffered as the result of reprisal for whistleblowing, the member can apply to the Army Board for the Correction of Military Records (ABCMR) for redress. If the ABCMR finds that the Soldier was reprised against for whistleblowing, it may recommend to the Secretary of the Army appropriate disciplinary action be taken against the person who committed the prohibited personnel practice.



Service Member's Civil Relief Act (SCRA)

A. OVERVIEW

The SCRA (50 U.S.C. §§ 3901-4043) is a federal law that provides economic and civil rights protections to Service members. The purpose of the law is to assist Service members in meeting non-military obligations so that they can devote their entire energy to the Nation's defense.

B. CATEGORIES OF ECONOMIC PROTECTIONS

Primary economic protections include:

1. Six Percent Interest Rate Cap on Pre-Active Service Debts

Service member must request and provide a copy of their orders. The creditor may not accelerate principal owed to keep payment amount the same.

2. Termination of Residential and Motor Vehicle Leases

Service members may terminate residential and business leases: (1) after entering active service; (2) after receiving PCS or deployment orders of least 90 days; or (3) if the Secretary of Defense issues a stop movement order in response to a local, national or global emergency effective for an indefinite period, or a period not less than 30 days, which prevents Service member or dependents from occupying premises.

Service members may terminate an existing motor vehicle lease of a vehicle used, or intended to be used, by a Service member or dependent when the Service member: (1) enters military service under orders for 180 days or more; (2) is in military service and later receives PCS orders from CONUS to OCONUS; (3) is in military service and later receives orders from a State that is OCONUS (AK, HI, or US Territory) to any location outside that State; (4) receives deployment orders for at least 180 days. Service members may also terminate a motor vehicle lease when the Secretary of Defense issues a stop movement order in response to a local, national or global emergency effective for an indefinite period, or a period not less than 30 days, IF the order prevents the Service member or dependent from using the vehicle for transportation.

3. Tax Protection

Service members and their spouses may elect any of the following for purposes of taxation: a) the residence or domicile of the Service member; b) the residence or domicile of the spouse; or c) the permanent duty station of the Service member.

4. Life and Health Insurance Protection

Several Service member protections exist for life insurance, including limits on an insurer's ability to limit coverage for activities required by military service and federal guarantees of premium payments in some cases. Health insurance protections include reinstatement after service, usually without a waiting period or exclusions.

5. Termination of Certain Consumer Contracts

A Service member may terminate cell phone, telephone exchange service, internet access service, multichannel video programming, gym membership, and home security services contracts after receiving military orders to relocate for at least 90 days to an area that does not support the contract. Additional considerations apply in cases of family members.

6. Portability of Licenses

Jurisdictions must allow Service members and their spouses to use any covered professional license provided they relocated to the jurisdiction due to military orders and comply with the requirements of 50 U.S.C. §4025a.

C. CATEGORIES OF CIVIL RIGHTS PROTECTIONS

Primary civil rights protections include:

1. Sale, Foreclosure, or Seizure of Property Secured by a Pre-Active Duty Mortgage During or Within One Year after Active Service

The proposed action generally requires a court order; the court may stay the proposed action and adjust the Service member's obligation.

2. Eviction of a Service member or Dependent Who is Renting

Eviction requires a court order; the court may stay the eviction and adjust the Service member's obligation.

3. Stays of Proceedings in Other Civil Cases

Civil and administrative cases may be stayed for an unavailable Service member. The Service member must show why duty requirements materially affect their ability to appear, state when the Service member is available, and provide the commander's written verification that there is no leave available to the Soldier.

4. Stays or Vacations of Judgments and Garnishments.

If a Service member is materially affected by military service in complying with a court order or judgment, the court may stay the execution of the judgment, or vacate or stay a garnishment.

D. APPLICABILITY

The SCRA provides protections to those in the military service for civil matters. There are no SCRA protections for criminal matters. Military service is defined under the SCRA as including the following:

- Army, Navy, Air Force, Marine Corps, Coast Guard, or Space Force on active duty under Title 10
- Reserve Soldiers when on active duty in Title 10 status
- National Guard on active duty in Title 10 status OR when called to active service by SecDef or POTUS for national emergency purposes under 32 U.S.C. §502(f) for more than 30 days.

However, some protections have specific timing requirements, such as:

- The date the Service member enters active duty
- Receipt of mobilization orders for Reserve Soldiers
- Most protections end if the Service member leaves the military, but certain provision extend protections for 1 year after military service ends.



Religious Accommodation

A. REFERENCES

- DoDI 1300.17, Accommodation of Religious Practices Within the Military Services (1 September 2020)
- AR 600-20, Army Command Policy, 8 February 2025
- Army Directive 2016-34, Processing Religious Accommodation Requests Requiring a Waiver to Army Uniform or Grooming Policies, 6 October 2016
- Army Directive 2018-19, Approval, Disapproval, and Elevation of Requests for Religious Accommodation, 8 November 2018

B. ACCOMMODATION OF RELIGIOUS PRACTICES WITHIN THE MILITARY

The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all. It protects the civil liberties of its personnel to the greatest extent possible, consistent with its military requirements. Therefore, unless it could have an adverse impact on military readiness, unit cohesion, or good order and discipline, commanders will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Soldiers.

Requests for religious accommodation of wear and appearance of the uniform and personal grooming practices are not typically entertained by unit commanders. The provisions of AR 670-1 apply regarding the uniform and grooming standards and requests for exceptions to policy.

1. Four Major Areas

a. Worship

Worship services, holy days, and Sabbath observances should be accommodated, except when precluded by military necessity.

b. Diet

Some faith groups have religious tenets that prohibit the eating of specific foods, or prescribe a certain manner in which food must be prepared. A Soldier with a conflict between the diet provided by the Army and that required by religious practice may request an exception to policy to ration separately. Religious belief is grounds for granting such an exception.

c. Wear and Appearance of the Uniform

Generally, religious jewelry, apparel or articles may be worn while in uniform if they are neat, conservative and discreet. Wear of religious items that are not visible or apparent when in duty uniform is authorized, unless precluded by specific mission related reasons. Wear of religious items that are visible and apparent must be neat, conservative, and discrete. Some Soldiers have religious or cultural practices that encourage greater body coverage than is provided in certain uniform variations; commanders may informally allow alternate uniform items, as long as they are authorized items. Some uniform and grooming requests for religious accommodation may be approved or disapproved by the GCMCA, but requests requiring a waiver of Army policy may only be approved by the Secretary of the Army or designee.

d. Medical Practices

A Soldier whose religious tenets involve self-care may request accommodation for non-emergency or non-life-threatening illness or injury. However, the unit and MTF commanders will consider the time constraints for the Soldier to recuperate without military medical care when determining whether or not to grant the request for accommodation. Soldiers who refuse to submit to recommended medical treatment because of religious objections will be referred to an ad hoc committee established by the medical commander. In emergency situations the MTF may order, or the attending physician may take, immediate steps in accordance with local MTF policy to save a Soldier's life regardless of religious practices or objections. Soldiers may request temporary waivers of immunization requirements through command channels.

2. Common Examples

- Soldiers may request relief from routine assigned duties (e.g., staff duty) to attend or observe religious ceremonies or holidays.
- Religious jewelry worn under the duty uniform or copies of religious symbols or writing carried by the individual in wallets or pockets is authorized, unless precluded by specific mission-related reasons.
- Religious items may be worn by Soldiers in uniform while they are present at a worship service, rite, or other ritual distinct to a faith or denominational group. Commanders may, for operational or safety reasons, limit the wear of non-subdued items of religious apparel during services conducted in the field based on military necessity. Unless the mission is affected by such, the Jewish yarmulke may be worn with the uniform whenever a military cap, hat, or other headgear is not prescribed. A yarmulke may also be worn underneath military headgear as long as it does not interfere with the proper wearing, functioning, or appearance of the prescribed headgear

3. Process

Approved accommodations pertaining to worship practices, dietary practices, medical care, and modesty concerns are temporary and subject to commander modification/revocation. Approved accommodations pertaining to following faith practices continue throughout a Soldier's

career: wear of hijab, beard, and turban/under-turban/patka with uncut beard and hair; only the Secretary of the Army or designee may permanently revoke or modify these.

Unit commanders will approve/disapprove requests for accommodation of other religious practices. When an accommodated Soldier's GCMCA identifies a specific and concrete threat to health and safety based on the accommodation, the GCMCA (after consulting the SJA) will notify the Soldier of the need to suspend the accommodation, the basis of the suspension, the date the suspension will likely go in effect, and the Soldier's right to appeal. If the Soldier requests an appeal, the Soldier will have 10 days to submit matters to the Deputy Chief of Staff, G-1, Command Policy Division, at usarmy.pentagon.hqda-dcs-g-1.mbx.command-policy@mail.mil (see AR 600-20, para 5-6 for complete details).

Commanders exercising GCMCA or the first general officer in the chain of command may approve, disapprove, or elevate religious accommodation requests for beards, hijabs, and turbans worn in accordance with the standards provided in AR 670 – 1. Requests must be approved or forwarded to the DCS, G – 1 with a recommendation for disapproval within 30 calendar days of initial submission for pre-accession requests and RA requests. The time limit for action is within 60 calendar days of initial submission for ARNG and USAR requests. Commanders must consider every religious accommodation request on a case-by-case basis.

When evaluating sincerity, commanders may consider the credibility and demeanor of the applicant and the circumstances of the request. Although a religious practice does not have to be compelled by, or central to, a religious belief system, commanders may evaluate the Soldier's ability to articulate the religious basis and religious importance of the request.

Before acting on a RA request, the GCMCA or GO will direct their staff to:

- a) Obtain a legal review conducted in consultation with the Office of the Judge Advocate General (OTJAG);
- b) Consult the DCS, G – 1 Command Policy Division to ask for a review of the preliminary request materials and approval or disapproval memorandum to ensure consistent standards in processing requests for religious accommodations;
- c) Consult with the Office of the Chief of Chaplains to evaluate the religious basis and sincerity of the request and to ensure consistency and fairness across the force; or
- d) Consult with U.S. Army Corrections Command when the requestor is a prisoner confined in an Army correctional facility.



Claims and



Client Services



Article 139 Claims

A. REFERENCES

- Article 139, Uniform Code of Military Justice
- U.S. Dep't of Army, Reg. 27-20, *Claims* (8 Feb. 2008)
- U.S. Dep't of Army, Pam. 27-162, *Claims Procedures* (21 Mar. 2008)

B. OVERVIEW

Under Article 139, UCMJ, any individual (civilian or military), business, charity, or state or local government may file a claim against any Soldier(s) who wrongfully take or willfully destroy personal or real property in violation of one or more punitive articles of the UCMJ. Subject to certain limitations, any individual whose property was taken or destroyed by a Soldier may file an Article 139, UCMJ, claim.

C. LIMITATIONS ON TYPES OF ARTICLE 139 CLAIMS

Claims for the following losses or destruction are improper under Article 139, UCMJ:

- Breach of contract not involving larceny, forgery, embezzlement, fraud, or misappropriation.
- Property damaged through negligence.
- Personal injury or death.
- Actions or omissions of military personnel acting within the scope of their employment.

D. LIMITATIONS ON FINANCIAL AMOUNTS OF ARTICLE 139 CLAIMS

Special court-martial convening authorities (SPCMCAs) (normally, brigade or group commanders) may approve claims up to \$5,000. General court-martial convening authorities (GCMCAs) may approve claims up to \$10,000. Only TJAG, DJAG, or the U.S. Army Claims Service (USARCS) commander (or his or her designee) may approve claims in excess of \$10,000.

E. PROCESSING ARTICLE 139 CLAIMS

Chapter 9 of AR 27-20 governs the procedures for initiating and processing Article 139, UCMJ, claims. Commanders should be aware of the following provisions.

1. Suspense for Filing

Claimants must file claims within 90 days of the incident causing the loss or destruction of property, unless the SPCMCA acting on the claim determines that there is good cause for delay.

2. Place for Filing

Claimants should file claims with their servicing installation's Claims Office. Claimants may do so either verbally or in writing. If presented orally, the claim must be reduced to writing, signed, and seek a definite sum in U.S. dollars within 10 days after oral presentment.

3. Forwarding of Claim

Properly filed claims will be forwarded within two working days to the suspected Soldier's SPCMCA. If the SPCMCA determines the claim is cognizable, he or she will assign, within 4 working days of receiving the claim, an investigating officer (IO) to examine the allegations and surrounding facts and circumstances.

4. Investigation

The IO's investigation must comply with chapter 9 of AR 27-20, as supplemented by AR 15-6. In particular, the IO must take the following steps:

a. Notify the Soldier and Provide Soldier Opportunity to Make Restitution

The IO must notify the Soldier against whom a claim is filed, and if the Soldier wishes to make voluntary restitution, the IO may, with the SPCMCA's approval, delay the proceedings until the end of the next pay period. If the Soldier makes payment to the claimant's full satisfaction, the SPCMCA will dismiss the claim.

b. Continue the Investigation

If the Soldier refuses to (or cannot) make full restitution, the IO will determine whether the claim is cognizable under AR 27-20 and supported by the evidence. The IO likely will have to obtain written statements and other supporting paperwork, diagrams, or pictures during his investigation.

c. Determination of Meritorious Claim

If the IO determines that a Soldier should be held financially liable, the IO must submit his or her written findings and recommendations to the SPCMCA. The SPCMCA must then forward the IO's findings and recommendations to the servicing legal office for a legal review prior to assessment of liability. In cases where the SPCMCA has determined that the claim is not cognizable, the SPCMCA must also forward the claim to the servicing legal office for a legal review.

d. Notification to Liable Soldier

Soldiers against whom financial liability has been assessed must be notified of the determination and of their right to seek reconsideration. A copy of the IO's findings and recommendations must be enclosed with the notice. Unless the approval authority determines that substantial injustice will result, action to recoup money from the liable Soldier must be suspended for 10 working days to afford the Soldier an opportunity to respond to the assessment of liability.

5. Disposition of Meritorious Claims

Following this 10-day period, if the approving authority determines that assessment is still warranted, the approval authority will direct the appropriate Defense Accounting Office to withhold such amount from the Soldier's pay and award it to the claimant. The Soldier may choose to make voluntary and full restitution at any stage during the claim process, allowing the approval authority to terminate the process.

F. RELATED ADMINISTRATIVE AND UCMJ ACTIONS

Commanders may determine, in appropriate circumstances, that a Soldier's actions resulting in the loss or damage of private property warrant other UCMJ or adverse administrative action. Commanders are advised, however, that findings of liability under Article 139, UCMJ, are separate and distinct from findings that may result during other adverse actions. Each type of action requires independent findings.



Foreign and Deployment Claims

A. REFERENCES

- U.S. Dep't of Army, Reg. 27-20, *Claims* (8 Feb. 2008)
- U.S. Dep't of Army, Pam. 27-162, *Claims Procedures* (21 Mar. 2008)
- U.S. Dep't of Def., Instr. 5515.08, *Assignment of Claims Responsibility* (30 Aug. 2016)
- Army Techniques Pub. 1.06.2, *The Commander's Emergency Response Program* (May 2017)
- TJAGLCS Operational Law Handbook, Foreign and Deployment Claims, Ch. 16, 333-358 (2024), available at <https://tjaglcs.army.mil/publications> under the "National Security Law Deskbooks" link.

B. TYPES OF CLAIMS APPLICABLE DURING A DEPLOYMENT

1. Claims Cognizable Under the Personnel Claims Act (PCA)

The PCA applies worldwide. It is limited to claims for loss, damage, or destruction of personal property of military personnel and DoD civilian employees that occur incident to service. Valid PCA claims commonly arising in deployment situations include loss of equipment and personal items during transportation; certain losses while in garrison quarters; losses suffered in an emergency evacuation; losses due to terrorism directed against the United States; and the loss of clothing and articles worn while performing military duties. No claim may be approved under the PCA when the claimant's negligence caused the loss. Prompt payment of Soldiers' and Civilians' PCA claims is essential to maintaining positive morale in the unit and easing the burdens of military service.

2. Claims Cognizable Under the Military Claims Act (MCA)

The MCA applies worldwide; however only U.S. resident may make claims. Overseas, the MCA will apply only when the claim cannot be paid under the PCA or the Foreign Claims Act (FCA). In some circumstances, the MCA may be used to reimburse U.S. contractors and reporters for loss of personal items while serving alongside Service members in deployed environments.

3. Claims Cognizable Under the Foreign Claims Act (FCA)

The FCA is the most widely used claims statute in foreign deployments. Under the FCA, meritorious claims for property losses, injury, or death caused by Service members or the civilian component of the U.S. Forces may be settled "[t]o promote and maintain friendly relations" with the receiving state. Only claims resulting from "noncombat activities" or negligent or wrongful acts or omissions are compensable. Categories of claims that may not be allowed

include losses from combat; contractual matters; domestic obligations; and claims that either are not in the best interest of the United States to pay or contrary to public policy.

4. Claims Cognizable Under International Agreements (SOFA Claims)

As a general rule, the FCA will not apply in foreign countries where the United States has an agreement that “provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States.” For example, if a unit deploys to Korea, Japan, or any NATO or Partnership for Peace country, claims matters will be managed by a command claims service under the applicable status of forces agreement (SOFA).

5. Article 139 Claims

Claims initiated and processed under Article 139, UCMJ, permit individuals to file claims against Soldiers who willfully take or wrongfully destroy personal or real property. Subject to certain limitations, any individual whose property was taken or destroyed by a Soldier may file a claim under Article 139, UCMJ. (See Chapter 52 of this publication.)

6. Alternatives to Claims

In addition to the claims provisions listed above, deployed units must also be aware of other sources for payments. Primarily, solatia and Commander’s Emergency Response Program (CERP) funds may be used to make payments under certain circumstances in which a claim is not cognizable. Although these payment sources are not parts of the claims program, they may be a suitable alternative to claims in certain circumstances.

7. Solatia Payments

If a unit deploys to parts of the world where payments in sympathy or recognition of loss are common, commanders should explore the possibility of making solatia payments to accident victims. Solatia payments are not claims payments. They are payments in money or in-kind to a victim or to a victim’s family as an expression of sympathy or condolence for loss. These payments are immediate and, generally, nominal. The individual or unit involved in the damage has no legal obligation to pay; compensation is offered simply as an expression of sympathy in accordance with local custom. Solatia payments are not paid from claims funds but, rather, from unit operation and maintenance (O&M) budgets. Prompt payment of solatia ensures the goodwill of local national populations, thus allowing the United States to maintain positive relations with the host nation. Solatia payments should not be made without prior coordination with the highest levels of command for the deployment area.

Family Support Obligations

A. REFERENCES

- AR 608-99 (13 NOV 2020), Family Support, Child Custody, and Parentage

B. APPLICABILITY

- All members of the Active Army, including cadets at the U.S. Military Academy.
- All members of the U.S. Army Reserve on active duty pursuant to orders for thirty days or more. This includes Active Guard/Reserve Soldiers (AGR).
- All members of the Army National Guard of the United States on active duty for thirty days or more.
- Members of the Army National Guard on active duty for thirty days or more pursuant to orders under Title 32, United States Code, except for the punitive provisions.
- Soldiers receiving full or partial pay and allowances while confined at the U.S. Disciplinary Barracks or other confinement facilities.

C. COMMAND DRIVEN PROGRAM

- The enforcement authority is the military commander.
- The commander must become involved when the parties are unable to agree on a proper method to provide financial support to the Family members. The commander's obligation does not arise until a Family member or an authorized representative of the Family member complains to the command that the Soldier is failing to provide proper support. AR 608-99, para. 2-1(b).
- The commander can take punitive action under the UCMJ, as well as adverse administrative action against a Soldier for failing to comply with certain obligations imposed by the regulation. AR 608-99, para. 1-8.

D. TYPES OF FINANCIAL SUPPORT (AR 608-99, PARA. 2-3, 2-4)

1. Financial Support by Agreement

a. Oral Agreement.

Where an oral agreement exists and is being followed, the Army will not interfere. However, it is not the Army's policy to become involved in disputes over the terms or enforcement of oral financial agreements. When a dispute arises over the terms of an oral agreement, the parties

are not in agreement, and therefore there is no agreement for the purposes of Army financial support obligations.

b. Written Agreement.

If a signed, written financial support agreement exists, the amount of financial support specified in the agreement controls. A written support agreement is any written document (such as a separation agreement or property settlement agreement, a letter, or an email) evidencing an intent to create a binding financial support agreement. Commanders will apply the terms of the agreement as written and will avoid making interpretations that depart from the clear meaning of the agreement. However, if portions of the agreement are so ambiguous that the intent of the parties cannot be determined, or if it is clearly apparent that there was no meeting of the minds, the commander is not required to enforce the contested or ambiguous provisions.

2. Financial Support by Court Order

Soldiers will comply with financial support provisions of all state court or child support enforcement agency orders.

3. Interim Financial Support by Army Regulation

E. INTERIM FINANCIAL SUPPORT (AR 608-99, PARA. 2-6.)

In the absence of a financial support agreement or court order, Soldiers are required by AR 608-99 to provide interim financial support (paras 2-6d and 2-6e) and enhanced interim financial support for spouses (para 2-6f). The amount of interim financial support owed is based on the non-locality BAH RC/T-WITH amount for the Soldier's pay grade. Note: A Soldier's actual receipt of BAH is not a prerequisite to the obligation to pay interim support to Family members. AR 608-99, para. 1-9.

Army Regulation 608-99 creates an interim support requirement that applies ONLY when the parties do not have a court order or an agreement concerning support. The purpose of interim support is to provide some family support while the parties seek an agreement or settlement by a court.

Family members or Soldiers who believe the interim amount is deficient or excessive must obtain a court order or enter an agreement with their Spouse to eliminate command involvement in the Soldier's support obligation.

Allegations or proof of desertion, adultery, or other martial misconduct, or criminal acts on the part of the spouse will not excuse a Soldier's obligation to comply with the provisions of this regulation unless a battalion-level commander, or higher, has released the Soldier from his obligation to provide interim financial support.

1. Single-family units

If the Family is not residing in government Family housing, the Soldier will provide financial support in an amount equal to the Soldier's BAH RC-T-WITH to the Family unit.

When the Soldier's Family members are residing in government Family housing, the Soldier is not required to provide additional financial support unless required to provide enhanced interim financial support for spouses (EIFS).

2. Multi-Family units, or Family Members Residing at Different Locations

The Soldier will provide a pro-rata share of BAH RC/T-WITH to each Family member not residing in government Family housing. Soldiers are required to adhere to all court orders and financial support agreements concerning any eligible Family members.

3. Dual-Military Families

A Soldier is not required to provide financial support to a spouse on active duty. Regarding a Soldier's child with an active-duty Service member, the Soldier is required to provide the following financial support in the absence of a written financial support agreement or court order:

If the Soldier has no custody of children and they do not reside in government housing, the Soldier will provide BAH-DIFF to the military member with custody of the children. If the children reside in government quarters, the Soldier is not required to provide financial support for a child in the custody of the other military member.

If the Soldier has custody of one or more children, the Soldier is not required to provide financial support for a child or children in the custody of the other military member.

4. Enhanced Interim Financial Support for Spouses.

Enhanced interim financial support is temporary and designed to provide for sustenance and additional necessary expenses that initially arise when the Soldier and spouse separate, or when the time to obtain a court order is prolonged because of a lack of access to appropriate courts of competent jurisdiction. Enhanced interim financial support for spouses will be provided by the Soldier in addition to the interim support amount. Enhanced interim financial support payments will be made in an amount equal to 25% of the BAH RC/T-WITH amount. The time that enhanced interim financial support applies depends on different jurisdictional factors.

Enhanced interim financial support payments will not be made to spouses who are active-duty Service members.

Interim support is not intended to provide adequate support in all cases and should not be used as a guideline for civilian agencies or courts in establishing support requirements.

5. Relief From Interim Financial Support

There are several situations warranting release from interim, regulatory spousal support requirements.

- A battalion-level commander, or higher, must be satisfied by a preponderance of the evidence that the underlying intent of this regulation would be furthered before that commander releases a Soldier from the requirements of the regulation.
- Commanders should consult the assigned legal advisor for specific situations.

- A written legal opinion is required prior to granting release.

F. FAMILY MEMBERS

Family members, for purposes of AR 608-99, include:

- A Soldier's present spouse.
- Any minor children for whom the Soldier is a legal parent, so long as the Soldier's duty to provide financial support has not been terminated by court order or written financial support agreement.
- Any adult for whom the Soldier is a court-appointed legal guardian.

G. ARREARAGES

- Soldiers cannot fall into arrears without violating AR 608-99.
- Collection of arrearages through court procedures is only possible for violations of a court order or a written support agreement. There is no legal means to collect arrearages based on failure to pay interim support.
- Army policy is to encourage—but not order—payment of arrearages regarding interim support. Punishment for failure to pay interim support is based on failure to pay support when due, not for failure to pay arrearages.

Consumer Protection Law

A. IMPORTANCE OF CONSUMER PROTECTION LAW FOR COMMANDERS

Financial readiness is a cornerstone of mission success and unit cohesion. A Soldier's financial health directly impacts their ability to focus on their duties and maintain operational effectiveness. Excessive debt, financial difficulties, and unexplained affluence can also affect security clearances and eligibility for sensitive assignments as outlined in Army Regulation 380-67, Personnel Security Program.

To support Soldiers and their Families, leaders at all levels must actively engage with their Soldiers on financial literacy, planning, and available support resources to prevent financial instability from affecting mission readiness.

Under Army Regulation 27-3, The Legal Assistance Program, consumer law is a mandatory practice area for legal assistance attorneys. Any Soldier facing consumer law issues should be promptly referred to legal assistance, and commanders should consult their legal advisors for guidance.

B. KEY CONSUMER PROTECTION LAWS AND RESOURCES

1. Credit Reports and Military Service

Maintaining a strong credit history is essential for Soldiers. Service members are entitled to one free credit report every 12 months from each of the three nationwide credit reporting agencies (Equifax, Experian, Transunion). Various businesses, including lenders, employers, landlords, banks, insurance companies, and the DoD (for security clearance monitoring) can access consumer reports. Regular monitoring of credit reports helps prevent and mitigate identity theft. Soldiers have the legal right to:

- Request their consumer reports.
- Dispute suspected inaccuracies in their reports.
- Block certain third-party access to their credit reports through a security freeze.

2. Fair Debt Collection Practices Act (FDCPA)

The FDCPA regulates how debt collectors can operate, ensuring fair treatment of consumers. Protections under the FDCPA include:

- Debt collectors cannot contact Soldiers at inconvenient times or locations (before 0800 or after 2100)
- Debt collectors cannot disclose a Soldier's debt to their chain of command.

- Upon written request, debt collectors must provide specific information about a debt.

3. Servicemembers Civil Relief Act (SCRA)

The SCRA provides active-duty Service members with financial protections if all pre-requisites of the statute are met, including:

- Interest Rate Caps. Pre-service loans are capped at 6% interest during active duty.
- Contract Terminations. Allows early termination of certain consumer contracts, including commercial mobile service, telephone and internet service, multichannel video programming service, gym or fitness program memberships, and home security services if a Soldier receives military orders to relocate for a period of not less than 90 days to a location that does not support the contract
- Legal Protections. Prevents foreclosures, repossessions, and evictions without a court order.

4. Military Lending Act (MLA)

The MLA is a federal law that provides special protections for active-duty Soldiers, Spouses, and certain dependents entering consumer loans. Protections under the MLA include the following:

- Limits interest rates at 36% Military Annual Percentage Rate (MAPR) on many types of consumer loans.
- Prohibits lenders from requiring military allotments for loan approval.
- Bans forced arbitration clauses that waive Service member's rights.
- Prohibits prepayment penalties.

These protections include, but are not limited to, payday loans, overdraft lines of credit, installment loans, and credit cards. Loans that are secured by the property being purchased, including residential mortgages and a loan to buy a car, are NOT covered under the MLA.

5. Prohibition on Allotments

Since 2015, Soldiers are prohibited from using allotments for the lease, purchase, or rental of personal property items such as vehicles, household goods, or electronics. Prior to starting an allotment, Soldiers must certify their allotments comply with legal requirements. See Financial Management Regulation Volume 7A, Chapter 40.

6. Army Emergency Relief (AER)

AER is a non-profit organization providing financial aid to active-duty Soldiers and their Families who experience financial emergencies. AER offers zero-interest loans and grants to alleviate financial distress. Examples of funds provided to help Soldiers meet emergency financial situations include emergency travel, natural disaster preparation, mortgage, rent, and initial deposit, temporary lodging, food, and vehicle costs. AER does not provide funds for non-essentials, such as financing ordinary leave or vacations.

7. Additional Financial Support Resources

Soldiers should be aware of financial counseling and legal assistance services, including:

- Army Community Service (ACS)
- Military OneSource
- Legal Assistance

Commanders play a critical role in ensuring their Soldiers understand and utilize these resources to maintain financial readiness.

C. CONCLUSION.

Financial readiness is a key component of military preparedness. By having a general understanding of consumer protection laws, Soldiers can safeguard themselves against financial fraud, predatory lending, and debt-related stress that can impact their careers. This is a non-exhaustive list of benefits, and commanders with specific questions should consult their legal advisors.



Government



Information Practices



Freedom of Information Act (FOIA) Program

A. REFERENCES

- Title 5, United States Code, Section 552 (5 U.S.C. § 552), *The Freedom of Information Act*, as amended.
- Title 32, Code of Federal Regulations, Part 286 (32 CFR Part 286), *DoD Freedom of Information Act (FOIA) Program*, 17 January 2025
- DoD Manual 5400.07, *DoD Freedom of Information Act Program*, 25 January 2017
- DoD Directive 5400.07, *DoD Freedom of Information Act (FOIA) Program*, 5 April 2019
- AR 25-55, *The Department of the Army Freedom of Information Act Program*, 19 October 2020

B. OVERVIEW

The basic purpose of the Freedom of Information Act (FOIA) is to provide all persons a statutory right of access to “agency records” that shed light on the operations or activities of the federal government. Information responsive to a proper FOIA request will be withheld only if the agency reasonably foresees that disclosure would harm an interest protected by one or more of the FOIA exemptions, or disclosure is prohibited by law. For purposes of the FOIA, the Department of Defense (DoD) is the agency, and each military department (e.g. Department of the Army) is a component of the agency. If properly requested and not exempt from release, the agency has 20 working days to respond to a FOIA request. Only an Initial Denial Authority (IDA) can deny a request.

C. AGENCY RECORDS

“Agency records” include all documents or records created or obtained by a U.S. government agency that are in the agency’s possession and control at the time a FOIA request is received. Four factors determine an agency’s control:

- The intent of the creator of the document to retain control over the record;
- The ability of the agency to use and dispose of the record as it sees fit;
- The extent to which agency personnel have read or relied upon the document; and
- The degree to which the document was integrated into the agency’s record systems or files.

D. INITIAL DENIAL AUTHORITY (IDA)

Only an IDA can deny a FOIA request for DA records. Reasons for denial, other than exemptions, include: no records responsive to the request; records not reasonably described; and not an agency record within the meaning of the FOIA. The IDAs are specifically designated in AR 25-55. The IDAs are authorized to act on records within their area of functional responsibility.

E. PROPER REQUEST

A proper request is a request that is in writing, received by the proper official designated to answer the request, reasonably describes an agency record(s) requested, includes the requester's contact information, and indicates a willingness to pay fees or why a waiver of fees is appropriate.

F. EXEMPTIONS

It is the DoD policy to make records publicly available. There are certain types of records that may be withheld if the IDA determines that an exemption applies. There are nine exemptions to the FOIA. Some specific exemptions include: classified information (properly classified, substantively and procedurally); purely internal rules and procedures; privileged communications (including internal advice and recommendations, such as attorney-client privileged information); personnel, medical, and similar files (that contain personal and private information, release of which would constitute a clearly unwarranted invasion of privacy); and law enforcement records.

G. FEES

Requestors may be charged fees for search, review, and reproduction in accordance with AR 25-55. However, there are restrictions on charging fees, including no charge of certain fees where the agency fails to comply with time limits in responding to a request. Under certain requirements, requesters may seek a waiver of fees.

H. APPEALS

Requestors may appeal any adverse determination or denial of requests to the DoD component's appellate authority within 90 calendar days after the date of the response. For the Department of the Army, the appellate authority is the Secretary of the Army, delegated to the Department of the Army Office of the General Counsel (OGC).

Privacy Act Program

A. REFERENCES

- Title 5, United States Code, section 552a (5 USC 552a), *The Privacy Act of 1974*
- DoD 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007
- AR 25-22, *The Army Privacy and Civil Liberties Program*, 30 September 2022

B. OVERVIEW

The Privacy Act pertains to three aspects of Government practices regarding personally identifiable information (PII): collection & maintenance, disclosure, and access and amendment of records. The Privacy Act applies to information that is collected and stored in a “system of records,” limits the Government’s use, and provides the individual access to their records, unless specifically exempted from disclosure.

C. COLLECTION, MAINTENANCE, AND USE

An agency can only collect personal information for a valid purpose in accordance with the applicable “system of records” and cannot disclose the information to any person, or another agency, without an applicable exception or the written consent of the individual to whom the record pertains. There are twelve exceptions to the consent requirement; the four most relevant to the military are: (1) release to agency (DoD) officials with a “need to know” for the performance of official duties; (2) when required by the Freedom of Information Act (FOIA); (3) for routine use; and (4) for law enforcement purposes.

D. SYSTEM OF RECORDS

A Privacy Act (PA) “system of records” (SOR) is a group of records, whatever the storage media (paper or electronic), under the control of an Army activity from which personal information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other identifying particular assigned/unique to the individual. The PA requires agencies to publish a systems of record notice (SORN) in the Federal Register (FR) describing the existence and character of a new or modified SOR.

E. ROUTINE USES

In addition to routine uses listed in SORNs, there are blanket routine uses applicable to all records from systems of records maintained by the Army. Blanket routine uses (Appendix 3) have been adopted that apply to all Component system notices. The blanket routine uses appear at the beginning of each Component’s compilation of its system notices. Examples of blanket

routine uses include but are not limited to: law enforcement; disclosure when requesting information; congressional inquiries disclosure; and disclosure to Office of Personnel Management.

F. INDIVIDUAL ACCESS AND AMENDMENT OF RECORDS

The PA permits individuals to gain access to or amend his or her record or to any information pertaining to him or her that is contained in a PA SOR. An individual may request access to information pertaining to him or her from a SOR, except when subject to an exemption or compiled in reasonable anticipation of a civil action or proceeding. Exemptions to the access requirement are covered in AR 25-22, Chapter 4. An individual may also request to amend personal information contained in a SOR unless the system is exempted from the amendment provisions of the PA. The standard for amendment is that the records are factually inaccurate and not matters of official judgment (for example, performance ratings, promotion potential, and job performance appraisals). The burden of proof is on the requester.

G. DENIAL AUTHORITIES

Only “Denial Authorities” can deny a request for records or a request to amend in a PA SOR. Denial authorities are authorized to deny requests, either in whole or in part, for access and amendment of PA records contained in their respective areas of responsibility. The individuals designated as denial authorities under this regulation are often the same individuals designated as initial denial authorities under AR 25 – 55.

H. PRIVACY ACT STATEMENTS

When asking an individual for PII that will be maintained in a PA SOR, the individual must be provided with a Privacy Act Statement. Most DoD and DA Forms contain a Privacy Act Statement.

I. BREACHES OF INFORMATION/UNAUTHORIZED DISCLOSURE

A “breach” is the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses PII or (2) an authorized user accesses or potentially accesses PII for an other-than-authorized purpose. Army activities should report all incidents involving PII and should not distinguish between suspected and confirmed breaches. Report the details on suspected and actual PII breaches—including breaches in any medium or form, e.g., paper, oral, or electronic—to the Army Privacy and Civil Liberties Officer (APCLO) within 24 hours of breach discovery. Report breaches by entering data into the Privacy Act Tracking System (PATS), which populates DD Form 2959 (Breach of Personally Identifiable Information (PII) Report) for processing. Specific guidance on reporting actual or suspected breaches is contained in AR 25-22, Chapter 9.

Environmental



Law



Environmental Law

A. REFERENCES

- 16 U.S.C. § 703 et seq. – Migratory Bird Treaty Act
- 16 U.S.C. § 1531 et seq. – Endangered Species Act
- 33 U.S.C. § 1251 et seq. – Clean Water Act
- 42 U.S.C. § 7401 et seq. – Clean Air Act
- 42 U.S.C. § 6901 et seq. – Resource Conservation and Recovery Act
- 42 U.S.C. § 4321 et seq. – National Environmental Policy Act
- 42 U.S.C. § 9601 et seq. – Comprehensive Environmental Response, Compensation, and Liability Act
- 54 U.S.C. § 300101 et seq. – National Historic Preservation Act
- Department of Defense Manual (DoDM) 4715.05, Overseas Environmental Baseline Guidance Documents (OEBGD), 1 November 2013
- Department of Defense Directive (DoDD) 4715.21, Climate Change Adaptation and Resilience, 15 January 2025
- Department of Defense Instruction (DoDI) 4715.03, Natural Resources Management, 22 July 2024
- DoDI 4715.06, Environmental Compliance in the United States, 31 August 2018
- Army Regulation (AR) 27-1, Judge Advocate Legal Services, 24 January 2017
- AR 200-1, Environmental Protection and Enhancement, 13 December 2007

B. OVERVIEW

Army environmental programs contribute to mission readiness by maintaining access to training areas and protecting the health and safety of Soldiers. The U.S. Army owns over 13.6 million acres of land, varying widely in climate, ecosystems, wildlife, and cultural resources. 4,162 installations are located on U.S. Army land, as are 12,000 historic structures, 254 threatened or endangered species, and 91,605 archaeological sites. Army installations and operations account for over 2,500 environmental permits from federal and state agencies. Army commanders are responsible for maintaining the resources entrusted to them by the nation, ensuring that training opportunities available to Soldiers today will be available to Soldiers and the joint force in the future.

Compliance with applicable environmental laws and regulations matters because it affects readiness and effectuates Congressional direction, Department of Defense guidance, and

Department of the Army regulations (e.g., see AR 200-1). Non-compliance can lead to negative consequences including payment of fines and penalties out of installation and tenant unit operating funds, such as Operation and Maintenance-Army, or Research, Development, Testing and Evaluation funds. As required by AR 200-1, Garrison commanders should enter into support agreements with all tenant units that stipulate the tenant units will pay for their violations of environmental laws and regulations.

Senior commanders should ensure subordinate units comply with environmental laws and regulations because non-compliance may also result in a court ordering the Army to stop performing an action, such as engaging in training activities, or order the Army to redo environmental-based analysis under the Endangered Species Act or the National Environmental Policy Act, all of which result in delay and additional expense.

C. COMMANDER RESPONSIBILITIES

1. Installation Commanders

Installation Commanders are responsible for overseeing environmental programs at their installation and ensuring that the installation remains in compliance with all applicable environmental requirements. The installation environmental staff support commanders in meeting their responsibilities. Supporting staff members include the Directorate of Public Works, the installation's Chief of Environmental Division within the directorate, and the installation Office of the Staff Judge Advocate's (OSJA) environmental or administrative law attorney.

2. Tenant Organization Commanders

Commanders of tenant organizations operating on Army or Joint installations are responsible for participating in the installation commander's environmental programs. Tenant commanders are also responsible for ensuring compliance with all environmental requirements. The installation environmental staff and servicing OSJA are available to assist tenant organization commanders.

3. Commanders of Overseas Units and Activities

Unlike installations on U.S. soil, Army activities in foreign nations are generally not subject to U.S. federal or state environmental requirements. However, many Department of Defense and Army policy requirements apply to Army activities regardless of location. Commanders of Soldiers assigned to installations overseas must comply with the Department of Defense Overseas Environmental Baseline Guidance Documents and country-specific standards established for the host country. The overseas installation environmental staff and servicing legal office are available to assist commanders of overseas units and activities.

D. ARMY ENVIRONMENTAL PROGRAM KEY PLAYERS

1. The Assistant Secretary of the Army for Installations, Energy, and Environment (ASA(IE&E))

The ASA(IE&E) is the principal adviser to the Secretary of the Army on matters related to Army installations and their impact on the environment. The ASA(IE&E) develops policies and programs for all Army environmental efforts.

2. The United States Army Environmental Command (USAEC)

USAEC executes environmental programs (cleanup, conservation, compliance, pollution prevention) to enable Department of Defense readiness and Army environmental stewardship. As part of their mission, USAEC assesses installations' environmental performance and evaluates best management practices to enhance environmental stewardship. USAEC is a subordinate command to the Installation Management Command.

3. The U.S. Army Legal Services Agency's Environmental Law Division (ELD)

ELD advises Army leadership on all environmental matters, defends the Army in environmental litigation, recovers costs of environmental restoration from responsible parties, and guides the Army's field of environmental and regulatory law practitioners.

4. Installation Office of the Staff Judge Advocate (OSJA)

Installations generally have an OSJA, consisting of uniformed and civilian attorneys, warrant officers, and paralegal Soldiers. The OSJA provides a full range of legal services to all units, commanders, Soldiers, Families, and retirees in and near the installation. As part of this mission, the OSJA provides environmental law advice and guidance to garrison and tenant organization commanders and their staff.

E. ENVIRONMENTAL PLANNING

1. The Environmental Quality Control Committee (EQCC)

Garrison Commanders have the regulatory responsibility to organize and chair the Commander's EQCC, which consists of senior staff members of an installation's units and tenant organizations. The EQCC meets quarterly to set goals, plan, and execute activities and programs with environmental impacts. Likewise, the EQCC identifies environmental funding requirements. Finally, the EQCC assists the Garrison Commander in communicating with external audiences (e.g., noise complaints stemming from field artillery training or nighttime operations).

2. The Integrated Natural Resources Management Plan (INRMP)

The Sikes Act requires most military installations within the U.S. to develop and implement a comprehensive plan for natural resource conservation and management. The conservation plan, known as the INRMP focuses on ecosystem-based management with a goal of man-

aging the installations natural resources and meeting stewardship requirements while supporting, and even enhancing, military operations. Installations prepare INRMPs in cooperation with the U.S. Fish and Wildlife Services and appropriate state-level agencies. The Sikes Act requires an in-depth review of each INRMP every five years.

3. The National Environmental Policy Act (NEPA)

NEPA was signed into law with the intent to promote efforts that prevent or eliminate environmental damage. NEPA requires federal agencies, including the Department of Defense, to consider the environmental impacts of major actions and undertakings, such as facilities construction, individual and unit training, use of Army land, and installation policies and regulations. The NEPA process includes the systematic examination of possible and probable environmental consequences of implementing a proposed action. Nearly every proposed DoD action that uses federal funding will implicate NEPA's requirements. Failure to adequately describe possible environmental consequences of an action can result in a court-ordered halt to the action. Real-world consequences of a successful legal challenge to environmental planning include a court preventing the Army from using ranges in Hawaii and construction projects delayed for years. NEPA is sometimes referred to as an “umbrella” statute because it encourages the incorporation of other environmental and historic preservation requirements into a single decision-making process.

4. The Endangered Species Act (ESA)

The ESA establishes protections for fish, wildlife, and plants that are listed as threatened or endangered and provides for adding species to and removing them from the list of threatened and endangered species. The law requires federal agencies, including the Department of the Army and its subordinate organizations, to consult with the U.S. Fish and Wildlife Service and/or the National Fisheries Service to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species or result in the destruction of designated critical habitat of listed species. The law also prohibits any action that causes a “taking” of any listed species. Likewise, the import, export, interstate, and foreign commerce of listed species are all generally prohibited.

Over 85% of Army installations contain endangered and/or threatened species with 126 installations containing 254 endangered and/or threatened species. As development of undisturbed land in the U.S. continues, the large swaths of training land on installations are natural safe havens for all types of animal species. Examples of such species on installations include Ft. Bragg's Red-cockaded woodpecker, Ft. Irwin's desert tortoise, and Joint Base Lewis-McChord's Mazama pocket gopher. Commanders should work with the environmental professionals on their staff to understand what endangered and/or threatened species are on their installation.

5. The Migratory Bird Treaty Act (MBTA)

The MBTA is a federal law that protects migratory birds in the United States. As the name suggests, the law implements international treaties designed to provide legal protection to birds as they migrate across international borders. The MBTA prohibits the pursuit, hunting, capture, killing, possession, selling, purchase, import, export, or transport of any migratory bird, or any

part, nest, or egg of any such bird, unless authorized under a permit issued by the Secretary of the Interior. Historic violations of the MBTA include removing migratory bird nests from buildings while the nests contain protected birds and/or eggs.

6. The National Historic Preservation Act (NHPA)

The NHPA directs federal agencies to consider the effect federally funded or assisted projects will have on historic properties. If the federal action impacts historic properties, the NHPA requires federal agencies to coordinate with state and tribal Historic Preservation Offices and consider the input of interested parties and citizens before the project begins.

F. ENVIRONMENTAL COMPLIANCE

1. Clean Air Act (CAA)

The CAA is the primary federal air management statute, the purpose of which is to improve the nation's air quality. Under the CAA, the U.S. Environmental Protection Agency (EPA) determines the levels of pollutants that are allowed in the air throughout the country. EPA air emission rules establish maximum concentrations for harmful air pollutants and restrict new activities where air quality already exceeds those levels. Installations must prepare early and fully to meet all CAA requirements and obtain the required permits. The CAA commonly requires Army installations to take the following actions: obtain permits for new and existing air pollution sources, maintain permits, ensure that new construction meets requirements for permitting and frequently gather data from air pollution source operators as required in accordance with the permit. CAA also covers handling and managing of asbestos-containing materials.

Installation infrastructure requiring CAA permits:

- Boilers/heaters
- Emergency backup generators
- Peak shaving generators
- Waste incinerators
- Controlled burns (prescribed burning)
- Demolition and renovation expected to disturb asbestos
- New construction

2. Clean Water Act (CWA)

The CWA establishes the basic structure for regulating discharges of pollutants into certain U.S. waters and regulating quality standards for surface waters. Under the CWA, EPA has implemented pollution control programs, such as setting wastewater standards for various industrial categories. The CWA also made it unlawful to discharge any pollutant from a point source into navigable waters unless a permit was obtained. Examples of point sources include motor pools, wastewater treatment plants, and fabrication facilities.

3. Resource Conservation and Recovery Act (RCRA)

RCRA is the public law that creates the framework for management of hazardous and non-hazardous solid waste. RCRA is a “cradle-to-grave” statute. This means waste is regulated from the point of generation to the point of disposal. Common RCRA covered waste includes solvents used by motor pools or maintenance facilities, demolished building materials that may contain lead paint or asbestos, armament room waste, and some materials from hospital labs. State and local regulatory schemes controlled this area until the passage of RCRA in 1976. Now, the EPA is the lead federal agency. RCRA’s hazardous waste (HW) program is oriented on the timely, controlled, trackable management of HW and focuses on generators of HW, transporters of HW, and facilities that treat/store/dispose of HW. Generators of HW must move the waste off-site within certain times or get a permit. HW is moved subject to a manifest system that documents who generated the HW, what type of HW is being moved, how much HW is being moved, who is moving it, and where the HW went. Transporters accept the HW for transport and take the HW to a Treatment/Storage/Disposal (T/S/D) facility. The T/S/D facility checks the HW it receives against the manifest and sends a completed copy of the manifest to the generator. All parties are responsible for ensuring the manifest accurately accounts for the HW. Any discrepancies can result in enforcement actions (e.g., fines and orders to comply with applicable regulations).

4. Enforcement Actions

EPA and State regulators play lead roles in enforcing environmental requirements. Most States have been empowered by the EPA to enforce environmental requirements under the CAA, CWA, RCRA, and other statutes and use that authority to conduct routine inspections on Army and Joint installations. The EPA and State regulators respond to violations of environmental requirements by issuing a Notice of Violation (NOV) to the installation, usually via the Directorate of Public Works. NOVs threaten readiness and mission accomplishment. Delays or failure to respond to NOVs can increase the potential for costly fines or prohibitions on certain activities (training, motor pool operations, etc.).

Commanders can prevent potential violations by ensuring installation environmental personnel and the Directorate of Public Works stay up to date with all requirements for record keeping, documentation, and inspections that individual programs may require. Internal inspections followed by regular updates to installation leadership are key forcing functions in staying compliant and avoiding penalties. Most non-compliance allegations do not originate from HW spills or blatant misuse of training land. The overwhelming majority of allegations pertain to failure to conduct inspections, maintain records, or comply with permit conditions. For example, a recent \$233,000 RCRA fine against an installation was based on the installation’s failure to conduct inspections over a two-year period, maintain records, and label storage containers. Payment of these fines came from the installation’s current year O&M. When an NOV is received, commanders must ensure proper and timely reporting through the installation OSJA, official electronic Army reporting system, and appropriate command channels. Because installation responses to NOVs may set precedents for the Department of Defense and the Army, the installation command must coordinate with ELD. USAEC may provide technical and legal assistance on issues related to NOVs.

G. ENVIRONMENTAL RESTORATION

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

CERCLA, also known as “Superfund,” gives the federal government the authority to regulate hazardous substances, respond to the release or threatened release of hazardous substances into the environment, and develop long-term solutions for sites affected by hazardous substances. Parties responsible or partly responsible for releases of hazardous waste are subject to civil lawsuit under provisions of CERCLA. Installations must also immediately report a release of a hazardous substance into the environment when that release exceeds regulation-defined reportable quantities. Reporting requirements are stringent and should be done in consultation with legal and environmental personnel. EPA has the lead role in enforcement of environmental cleanups and may issue a Section 104(e) information request to the Army. Commanders must notify ELD upon receipt of a request. Additionally, the Army might issue a document preservation order regarding CERCLA matters in litigation. Such orders will require coordination between the installation records manager and OSJA to ensure compliance.

H. EMERGING TOPICS

1. Climate Change Policy

Scientists, lawmakers, and senior leaders within the DoD and Department of the Army have acknowledged climate change as a threat to readiness. Over the past several years, the DoD and Army have released several documents outlining their respective plans to adapt to and address climate change, including DoD Directive 4715.21, the DoD Climate Adaptation Plan, the DoD National Security Strategy, and the Army Climate Strategy. The DoD/Army may adjust such strategies and Congress may conduct oversight of the implementation of these plans. Congress could also consider examining possible climate risks and assessing possible implications for global security, military readiness and infrastructure, and DoD force structure when considering authorization, appropriations, and other legislation.

2. Per and Polyfluoroalkyl Substances

Per and Polyfluoroalkyl Substances, known as collectively as PFAS, are a series of widely used, long-lasting chemicals, components of which break down very slowly over time. PFAS are ubiquitous, found in everyday items such as nonstick cookware, microwave popcorn bags, fast-food wrappers, water-resistant clothing, shampoo, dental floss, nail polish and eye makeup. In defense applications, the chemicals are components of firefighting foam known as aqueous film-forming foam (AFFF). In May 2016, the EPA issued PFAS-related health advisories under the Safe Drinking Water Act. In April 2024, the EPA published a final PFAS-related drinking water regulation, which was applicable to public drinking water systems. The DoD is subject to the April 2024 rule and will have to create policies and programs to ensure compliance.

Also in April 2024, the EPA published its final rule designating two PFAS, perfluorooctanoic acid (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”), as hazardous substances under the CERCLA. This rule will make PFOA and PFOS contamination subject to reporting, investigation,

remediation, and monitoring requirements under CERCLA. Likewise, the new rule allows EPA and other parties, including the Army, to assert a claim for recovery of incurred costs related to cleanup of the specific PFAS compounds. Conversely, release of the PFAS compounds for which the Army is responsible could lead to lawsuits against the Army for cleanup costs.

Law and policy surrounding PFAS are evolving and will continue to do so in the years to come. The Army, like other federal agencies, will be subject to many such laws and policies. Impacts on installations and tenant units may be wide-ranging, from the prohibition on using certain equipment or materials, to the commencement of cleanup operations, to the delay of military construction projects. Commanders of all types and at all echelons are likely to be impacted by future PFAS policy.

National



Security Law



Rules of Engagement

A. REFERENCE

- Chairman of the Joint Chiefs of Staff Instr. 3121.01B, Standing Rules of Engagement/ Standing Rules for the Use of Force for U.S. Forces (13 June 2005) (Overall Classification Secret), unclassified excerpt accessible in Chapter 5 of the 2024 Operational Law Handbook available at: <https://tjagls.army.mil/publications> under the "National Security Law Deskbooks" link.

B. INTRODUCTION

Rules of Engagement (ROE) are the commander's tool for regulating the use of force. The legal sources that provide the foundation for ROE are varied and complex; however, they do not stand alone—non-legal issues, such as political objectives and military mission limitations, also are essential to the construction and application of ROE. Ultimately, ROE are the commander's rules that are implemented by the Soldier, Sailor, Airman, or Marine who executes the mission.

This chapter provides an overview of basic ROE concepts and surveys Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces.

NOTE: This chapter is NOT intended to be a substitute for the SROE. The SROE are classified SECRET, and important concepts within it may not be reproduced here.

C. OVERVIEW

1. Definition of ROE

"ROE are directives issued by competent military authority that delineate the circumstances and limitations under which U.S. [naval, ground, and air] forces will initiate and/or continue combat engagement with other forces encountered." *Department of Defense Dictionary of Military and Associated Terms*

2. Purposes of ROE

As a practical matter, ROE perform three functions: (1) provide guidance from the President and Secretary of Defense (SECDEF), as well as subordinate commanders, to deployed units on the use of force; (2) act as a control mechanism for the transition from peacetime to combat operations (war); and (3) provide a mechanism to facilitate planning. ROE provide a framework that encompasses national policy goals, mission requirements, and the Law of Armed Conflict (LOAC).

a. Political Purposes

ROE ensure that national policies and objectives are reflected in the actions of commanders in the field, particularly when communication with higher authority is not possible. For example, in reflecting national political and diplomatic purposes, ROE may restrict the engagement of certain targets or the use of particular weapons systems, out of a desire to tilt world opinion in a particular direction, place a positive limit on the escalation of hostilities, or avoid antagonizing the enemy. Falling within the array of political concerns are issues such as the influence of international public opinion (particularly how it is affected by media coverage of a specific operation), the effect of host country law, and the content of international agreements with the United States.

b. Military Purposes

ROE can serve both a permissive and restrictive purpose. ROE can provide positive authority for commanders to use force when conducting offensive operations, but also provide parameters within which the commander must operate to accomplish their assigned mission:

- ROE provide implementation guidance on the application of force to accomplish the mission. For example, ROE will often provide authority to conduct offensive operations, designate hostile forces for engagement, and provide other authorities to accomplish the mission.
- ROE also implement limits on operations and ensure that U.S. actions do not trigger undesired escalation, such as forcing a potential opponent into a “self-defense” response..
- ROE may regulate a commander’s capability to influence a military action by granting or withholding the authority to use particular weapons systems or tactics.
- ROE may also reemphasize the scope of a mission. Units deployed overseas for training exercises may be limited to use of force only in self-defense, reinforcing the training rather than combat nature of the mission.

c. Legal Purposes

ROE can authorize offensive lethal and non-lethal actions or provide restraints on a commander’s actions, consistent with both domestic and international law. Under certain circumstances, ROE may impose greater restrictions than those required by the law. Accordingly, commanders must be intimately familiar with the legal basis for their mission. Commanders also may issue ROE to reinforce certain principles of LOAC, such as prohibitions on (1) the destruction of religious or cultural property or (2) minimization of injury to civilians and civilian property.

D. CJCS STANDING RULES OF ENGAGEMENT

1. Overview

The current SROE went into effect on 13 June 2005, the result of a review and revision of the previous 2000 and 1994 editions. They provide implementation guidance on the inherent right of self-defense and the application of force for mission accomplishment. They are

designed to provide a common template for development and implementation of ROE for the full range of military operations.

2. Applicability

a. Standing Rules of Engagement.

The SROE establish fundamental policies and procedures governing the actions to be taken by U.S. commanders and their forces during all military operations and contingencies outside U.S. territory and outside U.S. territorial seas. SROE also apply to air and maritime homeland defense mission conducted within U.S. territory and territorial seas.

b. Standing Rules for the Use of Force

The Standing Rules for the Use of Force (SRUF) apply to actions taken by U.S. commanders and their forces during all DoD civil support and routine Military Department functions occurring inside U.S. territory or territorial seas. The SRUF also apply to land-based homeland defense missions occurring within U.S. territory and to DoD forces, civilians and contractors performing law enforcement and security duties at all DoD installations.

3. Responsibility

The SECDEF approves the SROE and, through the CJCS, may issue theater, mission, or operation specific ROE. The J3 is responsible for SROE maintenance. Subordinate commanders are free to issue theater, mission, or operation ROE, but must notify the SECDEF through command channels if SECDEF-approved ROE are restricted.

4. Purpose

The purpose of the SROE is twofold: (1) provide implementation guidance on the application of force for mission accomplishment, and (2) ensure the proper exercise of the inherent right of self-defense. The SROE outline the parameters of the inherent right of self-defense in Enclosure A. The rest of the document establishes rules and procedures for implementing supplemental ROE.

5. The SROE are divided as follows:

a. Standing Rules of Engagement

This unclassified enclosure details the general purpose, intent, and scope of the SROE, emphasizing a commander's right and obligation to use force in self-defense. Critical principles, such as unit, individual, national, and collective self-defense; hostile act and intent; and the determination to declare forces hostile are addressed as foundational elements of all ROE.

b. Key Definitions/Issues

The 2005 SROE refined the definitions section, combining the definitions of "unit" and "individual" self-defense into the more general definition of "Inherent right of self-defense" to make clear that individual self-defense is not absolute. Note, however, that if a subordinate

commander imposes more restrictive ROE, he or she must send notification through command channels, including the CJCS, to SECDEF.

- ***Self-Defense.*** The SROE do not limit a commander's inherent authority and obligation to take all appropriate action in self-defense of the commander's unit, including other U.S. forces in the vicinity.

- *Inherent Right of Self-Defense.* Unit commanders always retain the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. Unless otherwise directed by a unit commander as detailed below, military members may exercise individual self-defense in response to a hostile act or demonstrated hostile intent. When individuals are assigned and acting as part of a unit, individual self-defense should be considered a subset of unit self-defense. As such, unit commanders may limit individual self-defense by members of their unit. Both unit and individual self-defense includes defense of other U.S. military forces in the vicinity.

- *National Self-Defense.* The act of defending the United States, U.S. forces, U.S. citizens and their property (in certain circumstances), and U.S. commercial assets from a hostile act, demonstrated hostile intent, or declared hostile force.

- *Collective Self-Defense.* The act of defending designated non-U.S. citizens, forces, property, and interests from a hostile act or demonstrated hostile intent. Only the President or SECDEF may authorize the exercise of collective self-defense. Collective self-defense is generally implemented during combined operations.

- *Mission Accomplishment v. Self-Defense.* The SROE distinguish between the right and obligation of self-defense, and the use of force for the accomplishment of an assigned mission. Authority to use force in mission accomplishment may be limited in light of political, military, or legal concerns, but such limitations have NO impact on a commander's right and obligation of self-defense. Further, although commanders may limit individual self-defense, commanders will always retain the inherent right and obligation to exercise unit self-defense. Distinctions between mission accomplishment and self-defense, and between offensive and defensive operations, may vary based on the level of command, array of forces, and circumstances on the ground.

- ***Declared Hostile Force (DHF).*** Any civilian, paramilitary, military force, or terrorist that has been declared hostile by appropriate U.S. authority. Once a force is declared to be "hostile," U.S. units may engage that force without observing a hostile act or demonstration of hostile intent; i.e., the basis for engagement shifts from conduct to status. Once a force or individual is identified as a DHF, the force or individual may be engaged, unless surrendering (or already detained) or hors de combat due to sickness or wounds. The authority to declare a force hostile is limited and is found in the SROE.

- ***Hostile Act.*** An attack or other use of force against the United States, U.S. forces, or other designated persons or property. It also includes force used directly to preclude or

impede the mission and/or duties of U.S. forces, including the recovery of U.S. personnel or vital U.S. government property.

- ***Hostile Intent.*** The threat of imminent use of force against the United States, U.S. forces, or other designated persons or property. It also includes the threat of force to preclude or impede the mission and/or duties of U.S. forces, including the recovery of U.S. personnel or vital U.S. government property.
- ***Imminent Use of Force.*** The determination of whether the use of force against U.S. forces is imminent will be based on an assessment of all facts and circumstances known to U.S. forces at the time and may be made at any level. Imminent does not necessarily mean immediate or instantaneous.

c. Actions in Self-Defense

Upon commission of a hostile act or demonstration of hostile intent, U.S. forces may use all necessary means available and take all appropriate actions in self-defense. If time and circumstances permit, forces should attempt to deescalate the situation, although de-escalation is not required. When U.S. forces respond to a hostile act or demonstration of hostile intent, the force used in self-defense must be proportional. Force used may exceed that of the hostile act or hostile intent, but the nature, duration, and scope of force should not exceed what is required to respond decisively.

d. Enclosures B-H

These classified enclosures provide general guidance on specific types of operations: Maritime, Air, Land, Space, Information, and Noncombatant Evacuation Operations as well as Counterdrug Support Operations Outside U.S. Territory.

e. Supplemental Measures

Supplemental measures enable a commander to obtain or grant those additional authorities necessary to accomplish an assigned mission. Tables of supplemental measures are divided into those actions requiring President or SECDEF approval; those that require either President, SECDEF, or Combatant Commander approval; and those that are delegated to subordinate commanders (though the delegation may be withheld by higher authority). The current SROE recognizes a fundamental difference between the two sets of supplemental measures.

Measures that are reserved to the President or SECDEF or Combatant Commander are generally permissive; that is, the particular operation, tactic, or weapon is generally restricted, and the President, SECDEF, or Combatant Commander implements the supplemental measure to specifically permit the particular operation, tactic, or weapon. Contrast this with the remainder of the supplemental measures, those delegated to subordinate commanders. These measures are all restrictive in nature. Absent implementation of supplemental measures, commanders are generally allowed to use any weapon or tactic available and to employ reasonable force to accomplish his or her mission, without having to get permission first. Only when enacted will these supplemental measures restrict a particular operation, tactic, or

weapon. Finally, note that supplemental ROE relate to mission accomplishment, not self-defense, and never limit a Commander's inherent right and obligation of self-defense. However, as noted above, supplemental measures may be used to limit individual self-defense.

f. Rules of Engagement Process

The current, unclassified enclosure provides guidelines for incorporating ROE development into military planning processes. It introduces the ROE Planning Cell, which may be utilized during the development process.

g. Combatant Commanders' Theater-Specific ROE

Combatant Commanders may augment the SROE as necessary by implementing supplemental measures or by submitting supplemental measures for approval, as appropriate. Theater-specific ROE documents can be found on the Combatant Command's SIPR website, often within or linked to by the SJA portion of the site. If you anticipate an exercise or deployment into any Combatant Commander's AOR, check with the Combatant Commander's SJA for direction to the commander's ROE guidance.

h. SRUF

Much like the SROE, the SRUF sets out the basic self-defense posture under the SRUF. Enclosures M-O provide classified guidance on Maritime Operations Within U.S. Territory, Land Contingency and Security-Related Operations Within U.S. Territory, and Counterdrug Support Operations Within U.S. Territory. Enclosures P and Q provide a message process for RUF, as well as RUF references.

E. MULTINATIONAL ROE

U.S. forces will often conduct operations or exercises with coalition partners. When conducting operations as part of a multi-national force (MNF), the MNF ROE will apply for mission accomplishment if authorized by SECDEF order. If not authorized, the CJCS SROE apply. Apparent inconsistencies between the right of self-defense contained in U.S. ROE and multinational force ROE will be submitted through the U.S. chain of command for resolution. While final resolution is pending, U.S. forces will continue to operate under U.S. ROE. In all cases, U.S. forces retain the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent as defined in the SROE.

F. ROE TRAINING

Commanders are primarily responsible for ensuring that their Soldiers are trained on the ROE. While judge advocates can provide advice to commanders and staff as they develop ROE training, it is the commander and her staff that should provide the training to Soldiers, the staff, and subordinate leaders. ROE training is not a one-time event—it is a series of individual and collective training exercises. This training should provide realistic scenario or vignette driven exercises. Upon receipt of a mission-specific ROE, units should develop a training program to

provide individual training for unit leaders. These leaders will incorporate ROE training into the unit's collective training events like situational training exercises and mission readiness exercises. During a deployment to a contingency operation, commanders should continue to conduct refresher training to ensure compliance with the mission-specific ROE. Such refresher training can use realistic vignettes generated from the unit's experiences over the duration of the deployment.



Law of Armed Conflict

A. REFERENCES

- Department of Defense Law of War Manual, Jun. 2015, updated July 2023, <https://ogc.osd.mil/Law-of-War/Practice-Documents>.
- DoDD 2311.01, *DoD Law of War Program* (2 July 2020).
- FM 6-27, *The Commander's Handbook on the Law of Land Warfare* (August 2019).
- AR 600-20, *Army Command Policy* (8 February 2025).
- Office of the Judge Advocate General, Law of War Compliance—Administrative Investigations & Criminal Law Supplement (10 September 2018).
- Operational Law Handbook, National Security Law Department, The Judge Advocate General's Legal Center and School (TJAGLCS), U.S. Army, available at <https://tjagls.army.mil/publications> (expand the "National Security Law Deskbooks" button). This handbook is an extensive guide to the law of armed conflict and other operational law topics, published by TJAGLCS faculty.

B. INTRODUCTION

This Chapter summarizes for commanders and military personnel key law of armed conflict (LOAC) provisions related to the conduct of operations in both international and non-international armed conflicts. It defines the LOAC and discusses its purposes, sources, implementation, basic principles, obligations and enforcement. For more information on these and related topics, consult the Department of Defense Law of War Manual or a national security law judge advocate.

DoD policy is that Service members comply with the LOAC “during all armed conflicts, however characterized. In all other military operations, [Service] members . . . will continue to act consistent with the [LOAC]’s fundamental principles and rules, which include those in Common Article 3 of the 1949 Geneva Conventions and the principles of military necessity, humanity, distinction, proportionality, and honor.” (DoDD 2311.01, para. 1.2.a). Every Soldier, Sailor, Airman, Marine, and all others accompanying U.S. forces must comply with the LOAC.

C. OVERVIEW OF THE LAW OF ARMED CONFLICT

1. Definition

The DoD Law of War Manual defines the law of war (LOW) as “that part of international law that regulates the resort to armed force; the conduct of hostilities and the protection of war victims in both international and non-international armed conflict; belligerent occupation; and the relationships between belligerent, neutral, and non-belligerent States.” It is also referred to as the “law of armed conflict” (LOAC) or “international humanitarian law” (IHL). The LOAC

includes ratified treaties and applicable customary international law (CIL) binding on the United States or individual citizens.

2. Purposes

The purposes of the LOAC serve both military needs and humanitarian concerns. These purposes include:

- Protecting both combatants and noncombatants from unnecessary suffering
- Safeguarding persons who fall into the hands of the enemy
- Facilitating the restoration of peace
- Ensuring good order and discipline
- Fighting in a disciplined manner consistent with national values
- Maintaining domestic and international public support

3. Primary Sources

a. Ratified LOAC Treaties

When a ratified treaty becomes the law of the United States, it is equal in force to a statute passed by Congress. The U.S. always strives to follow such treaties, including these key LOAC documents:

- ***Hague Convention IV (1907)***: Ratified in 1909 by the U.S., this treaty contains regulations requiring belligerents to distinguish themselves from civilians; protect prisoners of war; and limit certain means and methods of attack. The U.S. follows many of Hague IV's basic restrictions in all types of conflicts.
- ***Geneva Convention I-IV (1949)***: Ratified in 1955 by the U.S., these treaties govern international armed conflict (between nations). GC I-IV currently bind all United Nations member nations. The four treaties protect (I) the wounded and sick on land; (II) the wounded/sick and ship-wrecked at sea; (III) prisoners of war; and (IV) civilians in the territory of a state which is a party to the conflict or in occupied territory. They define severe violations of their terms as "grave breaches," and require nations to train their forces on compliance. GC I-IV also require that in non-international armed conflicts, civilians and the wounded and sick be treated humanely.
- ***Convention on Prohibitions or Restrictions of the Use of Certain Conventional Weapons (1980)***: Ratified in 1995 by the U.S., this treaty provides the legal framework and dialogue for regulating particular weapons systems through "Protocols," or supplemental treaties. The U.S. is party to the CCW and all its Protocols: (I) banning non-detectable fragments; as well as regulating use of (II/II Amended) mines, booby-traps, and other remote/ timed devices; (III) incendiaries; (IV) lasers; and (V) explosive remnants of war. The U.S. actively promotes the CCW and its standards.

Many other ratified treaties provide additional protections, or prohibit/regulate the use of certain weapons systems. Examples include cultural property protections; recognition of a new "red crystal" symbol for medical personnel, vehicles, and hospitals; prohibitions on asphyxiat-

ing or poisonous gases, and biological or chemical weapons; and regulation of nuclear weapons. Consult a judge advocate to determine whether a specialized treaty or other restriction applies to a particular target, tactic, or weapon.

b. Customary International Law

Even absent a treaty, the United States always follows certain principles. Beyond policy or doctrine, these customs are established by state practice and are followed out of a sense of legal obligation in all operations or types of conflict. The LOAC includes two main types of customary international law principles:

- ***Basic LOAC Principles:*** These include Military Necessity, Distinction/Discrimination, Proportionality, Unnecessary Suffering/Humanity, and Honor. These principles provide the starting framework for analyzing the legality of military operations. Section D below defines these principles in greater detail.
- ***Fundamental Guarantees:*** Certain acts are always prohibited by international law. While there is no definitive U.S. list, the following acts are prohibited: genocide; slavery; murder or enforced disappearance; torture or other cruel, inhuman, or degrading treatment or punishment; prolonged arbitrary detention; systematic racial discrimination; rape; or a consistent pattern of gross violations of internationally recognized human rights. These are behaviors beyond the boundaries of honorable combat, and generally accepted as illegal.

4. Implementation

a. By U.S. Forces

A variety of statutes, regulations, doctrine, and directives implement LOAC for U.S. forces. Notable examples include the Uniform Code of Military Justice (UCMJ), 10 U.S. Code Section 2441 (the war crimes statute), FM 6-27 (LOAC generally), CJCSI 3121.01B (standing rules of engagement/rules for use of force), JP 3-60 and ATP 3-60 (targeting), AR 190-8 (detainee operations), and numerous other references.

Mission-specific rules of engagement (ROE), tactical directives, and standard operating procedures also implement and must comply with the LOAC. These documents authorize military action tailored to the overall mission. While ROE change with the mission, LOAC obligations apply in all operations. ROE serve as a Commander's tool to honor those obligations. Chapter 59 discusses ROE in more detail.

b. By Coalition Partners

Other nations may follow additional sources of the LOAC. Some are parties to treaties that establish international tribunals, like the International Criminal Court (war crimes) or European Court of Human Rights (regional human rights violations). Some are parties to additional treaties, like the Ottawa Convention (banning antipersonnel land mines) or Convention on Cluster Munitions (banning cluster munitions). Though the U.S. is not bound by these sources, Commanders should be familiar with host and allied nation LOAC commitments and national caveats.

Notably, over 166 nations, including most NATO and other U.S. allies (except Israel and Turkey) follow the 1977 Additional Protocols I and II (AP I and AP II). These treaties extensively supplement GC I-IV. While the U.S. considers many parts of AP I and AP II to reflect customary international law, it has not ratified either treaty. Given their wide acceptance, these treaties can impact operations conducted with or within other nations.

c. By Non-Governmental Entities

Non-Governmental Entities frequently take interest in U.S. operations. A few organizations, like the International Committee of the Red Cross (ICRC), or some United Nations (U.N.) bodies, perform essential oversight missions. They should always be assigned an escort (preferably a judge advocate) and permitted to carry out their duties, subject to essential security needs, mission requirements, and legitimate limitations. Treat other interested entities who lack a legal mandate with courtesy and even-handedness.

D. BASIC PRINCIPLES OF THE LAW OF ARMED CONFLICT

1. Military Necessity

This principle justifies those measures, not forbidden by international law, that are indispensable for securing the complete submission of the enemy as soon as possible. However, this principle is not applied in a vacuum. It must be applied in conjunction with other law of war principles. Military necessity generally prohibits the intentional targeting of protected persons (civilians, hostile personnel who have surrendered or are otherwise hors de combat or “out of the fight,” etc.) and protected places (objects or places used for purely civilian purposes, such as hospitals, schools, and cultural property that have not been converted to or for military/hostile use) because they do not constitute legitimate military objectives in furtherance of the accomplishment of the mission. Military necessity justifies certain actions, such as destroying and seizing persons and property. In addition to providing a justification for violence and destruction, military necessity may also justify certain alternative means of subduing the enemy, such as capturing enemy personnel, disseminating propaganda, or gathering intelligence. Military necessity also justifies certain incidental harms to civilians and the civilian environment that inevitably result from armed conflict. However, the extent to which military necessity justifies such harm is addressed by the principle of proportionality.

2. Distinction/Discrimination

This principle requires parties to a conflict to distinguish between combatants and the civilian population (i.e. protected persons), and to distinguish between military objectives and civilian objects (i.e. protected property and places). Parties to a conflict must direct their operations only against military objectives. In other words, persons using force must discriminate between legitimate and illegitimate objects of attack in good faith based on the information available to them at the time. They must also separate their personnel and equipment from civilians and civilian objects to the maximum extent feasible so that civilian casualties and damage to civilian objects incidental to attacks on military objectives will be minimized as much as possible. Military objectives are combatants and those objects which by their nature, location, purpose, or use

make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offer a definite military advantage.

3. Proportionality

Proportionality may be defined as the principle that even where one is justified in acting, one must not act in a way that is unreasonable or excessive. This principle prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage expected to be gained. This principle also requires commanders to take feasible precautions in planning and conducting attacks to reduce the risk of harm to civilians and other persons and objects protected from being made the object of attack. Feasible precautions are those that are practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations.

4. Unnecessary Suffering/Humanity

This principle forbids the infliction of suffering, injury, or destruction unnecessary to accomplish a legitimate military purpose. Additionally, this principle forbids the employment of means and methods of warfare calculated to cause unnecessary suffering. Although military necessity justifies certain actions necessary to defeat the enemy as quickly and efficiently as possible, military necessity cannot justify actions not necessary to achieve this purpose, such as cruelty or wanton violence. This principle acknowledges that combatants' necessary suffering, which may include severe injury and loss of life, is lawful. This principle largely applies to the legality of weapons and ammunition design, as well as their actual use or any field modifications. Weapons and ammunition issued by HQDA are reviewed by The Judge Advocate General or his representative for Army-wide use to ensure compliance with the LOAC. However, approved weapons and ammunition may not be used in a way that will cause unnecessary suffering or injury. A weapon or munition would be deemed to cause unnecessary suffering if, in its normal use, the injury caused by it is disproportionate to the military necessity for it, that is, the military advantage to be gained from its use.

E. OBLIGATIONS AND ENFORCEMENT

1. Always Follow the LOAC

As stated above, DoD policy is to comply with the LOAC “during all armed conflicts, however characterized. In all other military operations, [Service] members . . . will continue to act consistent with the [LOAC]’s fundamental principles and rules, which include those in those in Common Article 3 of the 1949 Geneva Conventions and the principles of military necessity, humanity, distinction, proportionality, and honor.” (DoDD 2311.01, para. 1.2.a). Many rules of the LOAC apply across the entire spectrum of conflict, particularly those requiring humane treatment of detainees and civilians.

In addition to every Service member’s duty to comply with the LOAC, Commanders have a special responsibility with respect to war crimes. “Commanders are legally responsible for war crimes they personally commit, order committed, or know or should have known about and

take no action to prevent, stop, or punish. In order to prevent law of war violations, commanders are required to take all feasible measures within their power to prevent or repress breaches of the [LOAC] from being committed by subordinates or other persons subject to their control. These measures include requirements to train their Soldiers on the law of land warfare, investigate suspected or alleged violations, report violations of the [LOAC], and take appropriate corrective actions when violations are substantiated.” (AR 600-20, para. 4-21.).

2. Training Soldiers to Follow the LOAC

a. Unit and Soldier Training Requirements in AR 350-1

Commanders are responsible for ensuring members of their command are sufficiently trained and do not violate the LOAC. DoDD 2311.01, paragraph 1.2c(1) requires all DoD components to implement effective programs to prevent violations of the law of war, including law of war dissemination and periodic training. Under AR 350-1, Appendix C-1, the commander determines the frequency, method of delivery, duration, tracking, and sufficiency of law of war training.

b. Factors Leading to War Crimes

Historically, the following factors sometimes contributed to the commission of war crimes. They should be monitored and openly addressed at all levels of command and supervision, and simulated in training scenarios or vignettes:

- High friendly losses.
- High turnover rate in the chain of command.
- Dehumanization of the enemy (derogatory names or epithets).
- Poorly trained or inexperienced troops.
- The lack of a clearly defined enemy.
- Unclear orders.
- High frustration level among the troops.

c. Unclear or Illegal Orders

Train Soldiers not only to follow the LOAC, but also how to respond to unclear or clearly illegal orders. Troops who receive unclear orders must insist, respectfully and tactfully, on clarification. The superior should clarify the order and ensure all understand there is no intent to order a LOAC violation.

If the superior insists on the illegal order, the Soldier has a duty to disobey that order and report the incident to the next superior commander, military police, CID, nearest judge advocate, or local inspector general. Obedience to orders is not a defense to war crimes. A Service member may still be prosecuted for committing a war crime even if they were only following orders.

3. Report and Address LOAC Violations

Violations or perceived violations of LOAC can cripple U.S. operations. From execution of civilian villagers (My Lai, Vietnam), to detainee mistreatment (Abu Ghraib prison, Iraq), to killing and cutting off body parts of random citizens (so-called “thrill kills,” Afghanistan), these incidents undermine every purpose for LOAC. Those who violate LOAC, or order or permit others to commit violations, must be held accountable.

War crimes are a narrow subset of LOAC violations that DoDD 2311.01 defines as “[s]erious violations of the [LOAC] that generally have been committed intentionally, such as murder, torture, rape pillage, extensive and wanton destruction of property without justification, and intentionally directing attacks against the civilian population or civilians protected as such. ‘War crimes’ may be defined differently in other contexts for other legal purposes.” It is important to know this definition in order to properly report and refer allegations of war crimes to your command’s supporting criminal investigation organization (e.g. U.S. Army Criminal Investigation Command (CID)). (DoDD 2311.01, para. 4.2.a.(3)).

a. Reportable Incidents

DoDD 2311.01 defines a “reportable incident” as “[a]n incident that a unit commander or other responsible official determines, based on credible information, potentially involves: a war crime; other violations of the [LOAC]; or conduct during military operations that would be a war crime if the military operations occurred in the context of an armed conflict. The unit commander or responsible official need not determine that a potential violation occurred, only that credible information merits further review of the incident.”

Reportable incidents include not only suspected violations committed by Service members of the U.S. armed forces, but also suspected violations committed by adversaries and partner forces. In the event of doubt or concern, commander and staff should immediately consult their servicing Judge Advocate.

b. Reporting and Investigation Requirements

When in doubt, report! Do not wait for the completion of an inquiry or investigation to report an incident. In addition, experience has shown that swift investigation immediately after hearing about an allegation best contributes to good order and discipline. However, DoD policy recognizes that operational considerations may limit commander’s opportunity to investigate but nonetheless, report and preserve evidence concerning the allegation.

For reporting, DoDD 2311.01 requires that:

- All reportable incidents be reported that are committed by or against U.S. Service members, U.S. civilian employees, contractor personnel and subcontractors assigned to or accompanying a DoD Component, enemy persons, or any other individual are reported promptly. (DoDD 2311.01, para. 4.1).
- All reportable incidents are reported through “operational incident reporting procedures or other expeditious means through the chain of command to the Combatant Commander.” (DoDD 2311.01, para. 4.2).

- All alleged war crimes must either be referred to or that a request for investigation is made to CID. (DoDD 2311.01, para 4.2.a.(3).

Additional details on reporting should be in the command's OPLAN or OPORD Legal Appendix, and the unit TACSOP or FSOP.

CID is responsible for investigating suspected war crimes. Minor violations may alternatively be investigated following AR 15-6 or a commander's inquiry under Rule for Courts-Martial 303. Commanders and staff should look to Combatant Command level and higher headquarters policy for additional instructions on conducting investigations. When conducting an investigation or when considering UCMJ action, consult The Judge Advocate General's "Law of War Compliance Administrative Investigations and Criminal Law Supplement." This publication is available through your servicing Judge Advocate, and discusses the legal standards that apply when responding to a battlefield incident.

c. Command Actions

Commanders have wide discretion in responding to the results of reports and findings of an investigation (except in the circumstance of the commission of a grave breach in an international armed conflict). If a training deficiency is noted, correct it immediately at the appropriate level. If misconduct is found, consult with your servicing Judge Advocate, and the chain of command in selecting administrative action and/or disciplinary measures, possibly including criminal prosecution. Consider also the overall impact to operations and local national sentiment. Finally, maintain a record of the report or investigation so that it can be referenced.

F. CONCLUSION

This chapter reviewed LOAC from a Commander's perspective. It defined LOAC and discussed its purposes, sources, implementation, basic principles, obligations, training, and enforcement. Our nation's experience proves that, although the enemy may act otherwise, compliance with LOAC is vital to mission success and discipline, offers the best chance of lasting peace and respect, and is a core command responsibility.

Contract and



Fiscal Law



Fiscal Law for Commanders

A. INTRODUCTION

1. Why Commanders Must Know Fiscal Law

Commanders must understand fiscal law to fulfill their responsibility of preventing Anti-Deficiency Act (ADA) violations through proper training, oversight, coordination, and internal controls within their organizations. Based on the foundational duty to support and defend the U.S. Constitution, Commanders are under the specific duties found in the Financial Management Regulation, Volume 14 (“Administrative Control of Funds and Antideficiency Act Violations”):

- To prevent wasteful spending of appropriated funds. Fiscal law training educates personnel on their fiduciary and legal responsibilities to avoid misusing taxpayer funds.
- To understand the types of ADA violations that can occur and their causes. This knowledge helps them take proactive measures to prevent violations within their organizations.
- To provide proper oversight, support, and training to their personnel who have responsibility for controlling and using funds. Inadequate supervisory involvement combined with lack of training is a common factor in ADA violations.
- To ensure their key fund control personnel receive recurring appropriations law training and coordinate with requiring officials to verify funding requests comply with fiscal laws before obligations are incurred.
- To perform regular reviews of fund status reports and take corrective actions if commitments and obligations exceed available funds, which could lead to ADA violations.

2. Source of Funding and Fund Limitations

The U.S. Constitution gives Congress the authority to raise revenue, borrow funds, and appropriate proceeds to federal agencies. This “power of the purse” includes the power to establish restrictions and conditions on the use of appropriated funds. Congress primarily exerts its “power of the purse” through three fiscal limitations: purpose, time and amount.

- An agency may obligate and expend appropriations only for a proper purpose;
- An agency may obligate only within the time limits applicable to the appropriation (e.g., Operations and Maintenance (O&M) funds are available for obligation for one fiscal year); and
- An agency may not obligate more than the amount appropriated by the Congress.

3. The Fiscal Law Philosophy

The expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress. Therefore, fiscal law requires positive authority (unlike criminal law, which permits actions unless they are specifically prohibited). Fiscal law requires the finding of a positive authority that states one can do something, rather than finding an authority that states one cannot do something.

B. AVAILABILITY AS TO PURPOSE

The Purpose Statute provides that agencies shall apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law. Where a particular expenditure is not specifically provided for in the appropriation act, it is permissible if it is necessary and incident to the proper execution of the general purpose of the appropriation. The Government Accountability Office (GAO) applies a three-part test to determine whether an expenditure is a “necessary expense” of a particular appropriation: 1) The expenditure must bear a logical relationship to the appropriation sought to be charged (i.e. it must make a direct contribution to carryout either a specific appropriation or an authorized agency function for which more general appropriations are available); 2) the expenditure must not be prohibited by law; and 3) the expenditure must not be otherwise provided for; that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme. Agencies have reasonable discretion to determine how to accomplish the purposes of appropriations. An agency’s determination that a given item is reasonably necessary to accomplishing an authorized purpose is given considerable deference when there is contemporaneous documentation for the determination. In reviewing an expenditure, the GAO examines “whether the expenditure falls within the agency’s legitimate range of discretion, or whether its relationship to an authorized purpose is so attenuated as to take it beyond that range.”

C. AVAILABILITY AS TO TIME

An appropriation is available for obligation for a definite period of time. With limited exceptions, an agency must obligate funds within their period of availability. For O&M funds, the period of availability is one fiscal year. If an agency fails to obligate funds before they expire, those funds are no longer available for new obligations. Further, funds may only be expended for a “bona fide need” of the current period of availability. In other words, with limited exception, funds may only be expended for needs of the current fiscal year and not for the needs of a future fiscal year. Expired funds retain their “fiscal year identity” for five years after the end of the period of availability. During this time, the funds are available to adjust existing obligations, or to liquidate prior valid obligations, but not to incur new obligations.

D. LIMITATIONS BASED UPON AMOUNT (THE ANTIDEFICIENCY ACT)

The ADA prohibits:

- making or authorizing an expenditure or obligation in advance of the amount available in an appropriation;

- making or authorizing expenditures or incurring obligations in excess of an apportionment or a formal subdivision of funds; or
- accepting voluntary services, unless otherwise authorized by law.
- DoD's Financial Management Regulation requires Commanders, supervisors, and managers to ensure that their personnel receive proper oversight, support, and training to prevent ADA violations.

1. Investigating Violations

Within two weeks of discovering a potential violation of the ADA, an initial review must be conducted and an initial report prepared by the activity holding the funds that were allegedly misused. The initial report is reviewed by the Office of the Assistant Secretary of the Army (Financial Management and Comptroller) and may require additional review or investigation. Substantiated violations must be reported to Congress through the Secretary of the Army. Violations are reported to the President, published in an annual publicly-available report, and could result in criminal and/or administrative sanctions.

2. Augmentation of Appropriations & Miscellaneous Receipts

Augmentation of appropriations is generally prohibited. Augmentation increases the effective amount of funds available in an agency's appropriation. This generally results in expenditures in excess of the amount originally appropriated by Congress. Augmentation often occurs by using one appropriation to pay costs associated with the purposes of another appropriation or by retaining funds received from another source.

3. Interagency Acquisitions

Interagency Acquisitions are a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency) by an assisted acquisition or a direct acquisition. Federal agencies may not incur costs to provide support (goods or services) to other federal entities unless an appropriate interagency transaction authority is applied. The reason for this is because an agency may not use its appropriations for the benefit of another agency, unless specifically authorized. When reimbursable support or an assisted acquisition is proposed between federal entities, a FS 7600A (the agreement) and FS 7600B (formerly, a Military Interdepartmental Purchase Request (MIPR)) must be used. These documents identify this "out-of-bounds" activity and the specific statutory authority for doing it.

E. TYPICAL QUESTIONABLE EXPENSES AND COMMON PROBLEMS

1. Clothing/Apparel

Buying clothing for individual employees is generally considered a personal expense, unless a statute provides otherwise, because doing so does not materially contribute to an agency's mission performance. Exceptions include the purchase of special clothing for personnel that protects against hazards in the performance of their duties.

2. Food

Buying food for individual employees – at least those who are not away from their official duty station on travel status – generally does not materially contribute to an agency’s mission performance and is prohibited. As a result, food is generally considered a personal expense. There are some limited exceptions to this rule that can include some training events. Because this area is complex, consultations with a Judge Advocate is recommended.

3. Bottled Water

Bottled water generally does not materially contribute to an agency’s mission accomplishment. It is generally a personal expense. The major exception to this rule is that appropriated funds may be used to buy bottled water when it has been determined that a building’s water supply is unpotable or unsafe and bottled water is determined to be the best economical way to provide water.

4. Workplace Food Storage and Preparation Equipment (i.e., refrigerators, microwave ovens)

Food preparation and storage equipment may be purchased with appropriated funds, so long as the primary benefit of its use accrues to the agency and the equipment is placed in common areas where it is available for use by all personnel. (Note: consult agency regulations and policies prior to purchasing such items.)

5. Personal Office Furniture and Equipment

Ordinary office equipment is reasonably necessary to carry out an agency’s mission, so appropriated funds may be used to purchase such items so long as they serve the needs of the majority of that agency’s employees. With limited exceptions, such as the requirement to make “reasonable accommodations” for qualified employees with disabilities, equipment that serves the needs of only a single individual or a specific group of individuals is considered a personal expense rather than a “necessary expense” of the agency. Purchases of office equipment in accordance with an established Ergonomics Program need not be processed as a reasonable accommodation and may be paid for with appropriated funds.

6. Entertainment

Entertaining people generally does not materially contribute to an agency’s mission performance. As a result, entertainment expenses are generally considered to be a personal expense.

7. Decorations

The use of appropriated funds to purchase decorations so long as they are modestly priced and consistent with work-related objectives, agency or other applicable regulations, and the agency mission rather than for personal convenience is generally permissible.

8. Business Cards

Printing business cards at Government expense is authorized when those cards are considered necessary to perform official duties and facilitate mission-related business. Only a brigadier general or SES equivalent can approve commercial procurement of business cards. See AR 25-38, para. 3-6 for further restrictions. Units may use appropriated funds to purchase card stock and printer ink and use in-house computing resources to print their own business cards.

9. Awards (Including Unit or Regimental Coins and Similar Devices)

Agencies generally may not use their appropriated funds to purchase “mementos” or personal gifts. However, Congress has provided specific authority to “award medals, trophies, badges, and similar devices” to military members for “excellence in accomplishments or competitions,” but this authority is limited. Somewhat broader authority exists to provide awards to civilian employees. In both cases, consult the most recent Army Regulation for guidance. See the Commander’s Coin chapter for guidance on use of coins as awards.

10. Software Development

The determinative factor for funding software development is whether a new or expanded capability is being developed. Software development that creates a new capability will likely require Research, Development, Test and Evaluation (RDT&E) funding. This includes continuous and iteratively developed software. The level of effort, such as in the use of low code/no-code software development platforms, does not change the analysis—if a capability that does not exist is being developed, it is likely RDT&E funded. The design of prototypes and processes, and development of upgrades that increase the performance envelope of an existing system all likely require use of RDT&E funding. Additionally, an existing, commercially available capability that must be modified to meet Army requirements is considered a new capability.

In contrast, expenses incurred in continuous operations and current services are budgeted in O&M appropriations. Software releases categorized as iterations on the basic release, and not involving significant performance improvements or extensive testing are considered maintenance. Minor improvements in software functionality accomplished during routine maintenance may be O&M funded. Items purchased from a commercial source that can be used without modification are funded either by Procurement or O&M appropriations, depending on application of the system analysis and expense/investment threshold. If any of the aforementioned activities generates a new capability, RDT&E funds will likely be required.

F. MILITARY CONSTRUCTION

Congressional oversight of the Military Construction Program is extensive and pervasive. There are different categories of construction work with distinct funding requirements. Specified Military Construction (MILCON) Program projects generally cost over \$9 million. Unspecified Minor Military Construction (UMMC) Program construction projects generally cost between \$4 million and \$9 million. Minor Military Construction projects costing less than \$4 million are typically funded with Operations and Maintenance funds.

Construction includes not only building new structures, but also the alteration, conversion, addition, expansion, and replacement of existing facilities, plus site preparation and some installed equipment. Splitting a project into multiple projects in order to avoid a statutory threshold is prohibited. The rules for construction apply to permanent and temporary projects.

Maintenance and repair projects are not construction, and may therefore be funded entirely with Operations and Maintenance funds. However, the determination of what is maintenance and repair versus construction is a technical decision that should be made by public works, facilities management, or engineering personnel, in close coordination with resource managers and judge advocates.

G. USE OF APPROPRIATED FUNDS FOR EMERGENCY AND EXTRAORDINARY EXPENSES (INCLUDING FOR OFFICIAL REPRESENTATION)

1. Definition

Emergency and extraordinary expense (EEE) authority allows an agency to use appropriated funds for certain purposes normally not authorized to be paid with appropriated funds. If EEE is authorized and agency may use available O&M appropriations for “any emergency or extraordinary expense which cannot be anticipated or classified.” When authorized, expenditures made using these funds may be spent for any purpose deemed proper. Not all agencies receive EEE authority, and those that do typically receive it for a very small amount of funds. Agencies that do receive EEE authority and expend their funds must comply with Congressional notification and reporting requirements.

2. Regulatory Controls

Although extremely broad in purpose by statute, EEE authority has strict regulatory controls. This is largely due to its broad application and potential for abuse. DOD typically uses these funds in the following ways:

3. Official Representation Funds (ORF) (Protocol)

This subset of EEE authority makes an agency’s O&M available to extend official courtesies to authorized guests, including dignitaries and officials of foreign governments, senior U.S. Government officials, senior officials of state and local governments, and certain other distinguished and prominent citizens. In some limited cases, ORF authority may allow an organization’s O&M to be used to purchase gifts and mementos for specified guests.

4. Criminal Investigation Activities.

This subset of EEE authority is available for unusual expenditures incurred during criminal investigations or crime prevention.

5. Intelligence Activities.

This subset of EEE authority is available for unusual expenditures incurred during intelligence investigations.

H. OPERATIONAL FUNDING

In order for the DoD to fund any operation, mission, or task, i.e., operational activities, a command must have (1) mission authority, (2) funding authority, and (3) proper funds. Judge advocates work closely with commanders and staffs to help identify funding authorities (both temporary and permanent) and proper funds (appropriations) to support operations.

Additionally, the same congressionally imposed fiscal limitations regulating the obligation and expenditure of funds for U.S. military forces still applies to funding training and operating with foreign military forces (e.g., Purpose, Time, Amount). However, Congress requires commanders to only expend funding for foreign assistance when there is express authority to do so—even during contingency operations.

The Department of State has the executive responsibility, legal authority, and congressional funding to conduct Foreign Assistance on the U.S. Government's behalf. Foreign assistance includes security assistance to a foreign military or government, development assistance for the physical and governmental infrastructure projects benefiting a foreign nation, and humanitarian assistance benefiting a foreign population.

The DoD has the executive responsibility, legal authority and congressional funding to secure and defend U.S. interests at home and abroad with military forces. Absent express congressional authority, the Secretary of Defense may only obligate defense funding when it benefits U.S. military forces. DoD may conduct foreign assistance under the following two exceptions: (1) Interoperability, Safety, and Familiarization, and (2) specific appropriation or authorization from Congress for the DoD to conduct the assistance.



Government Contract Law for Commanders

A. INTRODUCTION

1. Why Commanders Must Know Contract Law

Commanders must understand contract law for several reasons:

- **Operational Necessity:** Military operations often rely heavily on contracted support services and supplies. Commanders need to understand contract law to properly oversee and dedicate resources to these critical contracts.
- **Legal Compliance:** Contracts involve binding legal agreements. Commanders must ensure appropriate command-level compliance with applicable laws and regulations governing contract formation, administration, and termination to mitigate risks and liabilities.
- **Ethical Standards:** Contracting has ethical implications when dealing with both current and potential contractors. Commanders must uphold these standards, such as ensuring full and open competition, avoiding conflicts of interest, and protecting contractor employee whistleblowers.
- **Requirements and Oversight Role:** As leaders, commanders oversee and are accountable for contracting actions within their units. Commanders of requiring activities are responsible for requirement development. Understanding contract law allows commanders to properly manage and provide oversight of contracting operations.
- **Managing Unauthorized Commitments:** If an unauthorized commitment occurs (e.g., someone obligated funds without proper authority), commanders have specific responsibilities. They must determine if ratification of the unauthorized act is possible and route up the ratification packet to the appropriate approval authority. Mostly, these authorities will be outside of the organization.

2. The Federal Acquisition Regulations System

The Government has many needs that cannot be fulfilled through internal Government labor and supplies and instead require the use of a contract with a non-Federal entity. The use of appropriated funds to fulfill a Government need via a procurement contract is governed by the Federal Acquisition Regulations System. The purpose of the Federal Acquisition Regulations System is to provide “uniform policies and procedures for acquisition.” The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary regulatory document, as well as agency acquisition supplements and regulations that implement or supplement the FAR. The vision for the FAR is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public

policy objectives. The guiding principles of the Federal Acquisition Regulations System serve to:

- Satisfy the customer in terms of cost, quality and timeliness of the delivered product or service by, for example, promoting maximum competition, using commercial end products or services, and using contractors who have a track record of successful past performance or otherwise demonstrate superior ability to perform;
- Minimize administrative operating costs;
- Conduct business with integrity, fairness and openness; and
- Fulfill public policy objectives.

Agency FAR supplements are generally intended to provide direction and guidance as to how statutory and regulatory requirements contained in the FAR are implemented within a particular agency.

3. The Contract

Under the FAR, a “contract” is a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. The FAR and its supplements apply to contracts funded with appropriated funds.

4. Engagement with Contractors

- **Impartial Treatment.** Avoid even the appearance of favoritism or endorsement of one vendor over others. If you elect to meet with one vendor’s representative, you should be available to meet with representatives of other vendors unless there is a rational reason not to.
- **Do Not Release Nonpublic Information.** Do not release “inside” information that is not otherwise available to the public (or to a relevant community of DoD contractors). Inside/nonpublic information includes: (a) information not available to the public under the Freedom of Information Act; (b) information protected under the Privacy Act, Trade Secrets Act, and classified material; (c) selective release of advance procurement information, Army requirements (work statements), or premature release of contract award decisions; and (d) acquisition information, cost information, source selection plans, ranking of bids or proposals, proprietary information (such as labor rates), reports of source selection boards, or other source selection sensitive information. Consult with your legal office before you release any information to a vendor as it could cause an Organizational Conflict of Interest.
- **Organizational Conflicts of Interest.** An Organizational Conflict of Interest (OCI) arises when, because of activities or relationships, a contractor is unable, or potentially unable, to render impartial assistance or advice to the Government, or a contractor has an unfair competitive advantage. An allegation of an OCI can lead to investigations, contract litigation that slows down procurements, or the exclusion of conflicted vendors from a contract competition.

B. AUTHORITY

1. General Authority to Contract

As a sovereign entity, the United States has inherent authority to enter into contracts to fulfill Government needs. This authority to contract, however, is not unlimited. A Government contract must be an appropriate exercise of governmental power or duties, and it must not be otherwise prohibited by law.

2. Contracting Officer Authority

In general, the Government is bound only by Government agents acting within the actual scope of their authority to contract; acts of Government agents that exceed their contracting authority do not bind the Government. Under the FAR, contracting authority is vested in the head of the agency. Within the Department of Defense, the heads of the agencies are the Secretaries of Defense, the Army, the Navy, and the Air Force. The head of the agency may establish subordinate contracting activities and delegate broad contracting authority to these activities. In turn, agency heads or their designees select and appoint “Contracting Officers,” who must be formally appointed in writing and provided a “warrant” that details the scope of their authority. Contracting Officers may bind the Government only to the extent of the authority delegated to them through their warrant. Thus, to lawfully bind the Government in contract, agency officials must have express statutory or regulatory authority, or they must have received a formal delegation and appointment (e.g., a warrant) consistent with this express statutory or regulatory authority.

3. Unauthorized Commitments and Ratification

A Government official attempting to bind the Government in contract without proper authority to do so will create an “unauthorized commitment.” An unauthorized commitment is an agreement that is nonbinding solely because the Government representative who made it lacked the authority to enter into that agreement. If an unauthorized commitment occurs, it can present significant fiscal and contract law concerns, as well as expose the individual to personal pecuniary liability. In certain circumstances, those with contracting authority may elect to “ratify” the unauthorized commitment after-the-fact. “Ratification” is the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment. Depending upon the dollar amount at issue, the ratification may require higher headquarters approval.

C. CONTRACT FORMATION

The process by which agencies assess and determine its needs—and the best way to fulfill those needs through the lawful award of a procurement contract appropriate to the circumstances is often referred to as the “contract formation” period.

1. Requirements Development

It is the commander and staff of the unit requesting the goods or services—i.e., the requiring activity—who are responsible for identifying, developing, validating, prioritizing, and approving requirement packages. These requirements packages must include a clear description of the requirements, terms, and conditions of contractor performance, market research information, appropriate command and staff approvals (to include funding), and points of contact for receipt of goods and services. Generally, this is referred to as an “acquisition ready” packet and contracting offices will not commence work on requirements without this “acquisition ready” packet.

2. Acquisition Planning

Acquisition Planning is the process of coordinating and integrating efforts of the agency’s acquisition personnel through a comprehensive plan that provides an overall strategy for managing the acquisition and fulfilling a Government need in a timely and cost effective manner. Acquisition Planning involves conducting “market research” appropriate to the circumstances to collect and analyze information about the ability of the market to satisfy Government needs. Under the FAR, agencies must perform acquisition planning and conduct market research for all acquisitions to promote: (1) the acquisition of commercial or non-developmental items to the maximum extent practicable; and (2) full and open competition (or competition to the maximum extent practicable).

3. The Competition in Contracting Act (CICA) of 1984

In 1984, Congress passed the Competition in Contracting Act (CICA) to increase competition in government contracting and to impose more stringent restrictions on the award of non-competitive sole source contracts. Under the CICA, and the FAR, Contracting Officers shall provide for “full and open competition” by using competitive procedures to solicit offers and award contracts, unless a lawful exception applies. In general, if full and open competition is not provided, the Contracting Officer must justify the decision to solicit offers and award non-competitive contracts. This justification must be approved at appropriate levels and is at the discretion of the contracting office.

4. Solicitation, Offer and Award

In general, the Government must provide notice of proposed contract actions, and this notice is usually transmitted through the authorized Government-wide point of entry (GPE), <https://www.SAM.gov/>. The intent behind the general requirement for broad publication of proposed contract actions is to promote maximum competition, broaden industry participation in meeting Government requirements, and to assist small business concerns with obtaining contracts and subcontracts. Once the agency publishes a “solicitation” to fulfill a particular Government need (and in this solicitation explains how the Government intends to evaluate bids, quotes, or proposals), potential contractors will have time to respond to this solicitation with a bid, quote or proposal that explains how the prospective contractor intends to meet the Government’s need. The Government then conducts an evaluation of the bids, quotes or propos-

als. Following the evaluation, the Government awards a contract to the contractor with the bid, quote or proposal that represents the best value to the Government.

5. Bid Protests

The laws and regulations that govern contracting with the Government are designed to ensure that each procurement is conducted fairly. On occasion, individuals or entities interested in Government procurements may have reason to believe that a contract has been—or is about to be—awarded improperly or illegally, or that they have been unfairly denied a contract or the opportunity to compete for a contract. In such an instance, the individual or entity is authorized to submit a formal protest. This “bid protest” may be submitted directly to the procuring agency, to the Government Accountability Office (GAO), or to the United States Court of Federal Claims (COFC) in Washington, DC.

D. CONTRACT ADMINISTRATION

Contract Administration involves those activities performed by Government officials after a contract has been awarded. Contract Administration encompasses all dealings between the Government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. The specific nature and extent of contract administration varies from contract to contract. It can range from the minimum acceptance of a delivery and payment to the contractor to extensive involvement by program, audit and procurement officials throughout the contract term. Factors influencing the degree of contract administration include the nature of the work, the type of contract, and the experience of the personnel involved. In addition to the statement of work or specifications that describe the requirement to be fulfilled, each contract will have numerous standard FAR clauses that articulate the Government’s rights, the contractor’s remedies, and govern the parties’ contractual relationship.

1. Contract Changes

Only a Contracting Officer acting within his or her proper authority can order changes to the contract. During performance, many changes may be required in order to fix inaccurate or defective specifications, react to newly encountered circumstances, or modify the work to ensure that the contract meets government requirements. Any changes made to a contract may force the contractor to perform more work, or to perform in a more costly manner, and may require additional funding through a modification to the contract. The Government is authorized to make these changes to the contract under the standard FAR “Changes clause,” which allows the Government to make substantive changes to a contract, so long as the changes are within the general scope of the contract. Under a commercial contract, both parties must enter into a bilateral change which requires the agreement of both the contracting officer and the contractor.

2. Inspection and Acceptance

The Government has the right to receive conforming goods and services. The particular inspection clauses in a contract, if any, determine the extent of the Government’s right to inspect a

contractor's performance. Inspection clauses may grant the Government right to inspect and test supplies, services, materials furnished, work required by the contract, facilities, and equipment at all places and times, and, in any event, before acceptance. In general, the Government is entitled to strict compliance with the specifications in its contract. If the contractor delivers nonconforming goods or services, the Government may take remedial action consistent with its inspection clauses to ensure that it receives the fair value of the goods and services for which it contracted.

3. Terminations

There are two general types of terminations: "Terminations for Convenience," and "Terminations for Default." Under a Termination for Convenience, the Government has the right to terminate a contract, in whole or in part, if the Contracting Officer determines that termination is in the Government's interest. The contractor may then be entitled to costs associated with the contract. Under a Termination for Default, however, the Government has the right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations. When a contract is terminated for default, the contractor may be liable to the Government for any excess costs incurred with acquiring the supplies or services similar to those terminated for default, and for any other damages, whether or not repurchase is occurs.

4. Disputes

The Contract Disputes Act (CDA) of 1978 established procedures and requirements for asserting and resolving contract claims against the Government. Unlike bid protests, which are generally submitted prior to the time a contract is awarded or shortly thereafter, contract claims are filed during contract performance or after contract performance. A claim is a written demand by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract. Claims arising under or relating to a contract include those supported by remedy granting clauses (such as the Changes clause), breach of contract claims, and mistakes alleged after award. In general, a claim must be properly certified and submitted to the Contracting Officer for a final decision on the claim. Once the Contracting Officer issues a final decision, the decision is binding on the parties unless appealed. Generally, to appeal a final decision by the Contracting Officer, a contractor must timely file its appeal at either the United States Court of Federal Claims (COFC) or with the Boards of Contract Appeals (i.e., the Armed Services Board of Contract Appeals (ASBCA) for DoD contracts or the Civilian Board of Contract Appeals (CBCA) for non-DoD contracts).

Appendix

Useful References for Commanders

The following references may be useful to the commander or new officer who is confronted with a problem in a specific area (*e.g.*, Article 15, Line of Duty Investigation, etc.).

Topic	Reference
Abbreviations	https://armypubs.army.mil/abca
Absentee and Deserter Apprehension	AR 190-9
Alcohol and Drug Problems	AR 600-85
Apprehension, Restraint, Release, and Release to Civil Authorities	AR 190-9
ARIMS System	AR 25-400-2
Armed Forces Disciplinary Control Boards And Off Installation Military Enforcement	AR 190-24
Army Command Policy and Procedures	AR 600-20
Army Community Service	AR 608-1
Army Emergency Relief	AR 930-4
Army Military Human Resources Record (OMPF)	AR 600-8-104
Article 15, UCMJ	AR 27-10
Assignments/Transfers (Enlisted)	AR 614-200
Assignments/Transfers (Officer)	AR 614-100
Awards (Military)	AR 600-8-22
Awards (Civilian)	AR 672-20
AWOL	AR 630-10
Bars to Reenlistment	AR 601-280
Casualty Assistance	AR 38-8
Change of Name, SSN	AR 600-8-104
Child Custody	AR 608-99
Claims	AR 27-20
Clothing, Issued, and Sale of Personal Items	AR 700-84
Commercial Solicitation	AR 210-7
Commissaries	DoDI 1330.17; DODD 5105.55
Correction of Military Records	AR 15-185

Topic	Reference
Dictionary of DoD/Military Terms	https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf
Distribution of Literature	AR 600-20
Dropped From Rolls (DFR)	AR 630-10
Drunk Driving	AR 190-5
Duty Roster	AR 220-45
Eliminations (Enlisted)	AR 635-200
Eliminations (Officers)	AR 600-8-24
Enlisted Personnel Separations	AR 635-200
Equal Opportunity	AR 600-20
Evaluation Reports (Officer, Enlisted, and Academic)	AR 623-3
Extremist Organizations	AR 600-20
Family Advocacy	AR 608-18
Family Care Plan	AR 600-20
Family Housing	DoDM 4165.63
Family Support	AR 608-99
Family Support Groups	DoDI 1342.22, Army Dir. 2019-17
Financial Liability Investigation of Property Loss (FLIPL)	AR 735-5
Flags (Suspension of Favorable Personnel Actions)	AR 600-8-2
Freedom of Information Act (FOIA)	AR 25-55
Fund Raising	AR 600-29; JER
Gambling	JER
ID Card and Privileges	AR 600-8-14
Indebtedness	AR 37-104-4
Inspector General	AR 20-1
Law of Land Warfare	DoD Law of War Manual; FM 27-10
Leave	AR 600-8-10
Legal Assistance	AR 27-3
Letter (Memorandum) of Reprimand	AR 600-37
Line of Duty Investigations	AR 600-8-4
Mail, Unit Operations	AR 600-8-3
Military Justice	AR 27-10
Military Police Investigations	AR 190-30
Military Whistle Blower Protection	DoDD 7050.6; AR 600-20

Topic	Reference
Morale, Welfare, & Recreation (MWR)	AR 215-1
Motor Vehicles (Registration)	AR 190-5
Official Military Personnel File (AMHRR)	AR 600-8-104
Overseas Service	AR 614-30
Orders, Military	AR 600-8-105
Passes	AR 600-8-10
Paternity	AR 608-99
Permissive TDY	AR 600-8-10
Physical Evaluation for Retention, Retirement or Separation	AR 635-40
Physical Fitness Program	FM 7-22
Physical Security	AR 190-11; AR 190-13
Political Activities	AR 600-20
Post Exchange	AR 215-8
Pregnancy	AR 40-501; Army Dir. 2019-05
Privacy Act Program	AR 25-22
Private Organizations	AR 210-22; JER
Promotions (Enlisted)	AR 600-8-19
Promotions (Officers)	AR 600-8-29
Publications	AR 25-30
Quarters & Commercial Activity	Army Dir. 2018-29; AR 210-7 & AR 210-22
Qualitative Service Program (QSP) (Enlisted)	AR 601-280, Army Dir. 2016-19
Reductions (Enlisted)	AR 600-8-19
Reenlistment Program	AR 601-280
Relief for Cause	AR 600-20
Religious Practices (Accommodation)	AR 600-20
Representation Funds of the Secretary of the Army	AR 37-47
Retirement, Voluntary (Enlisted)	AR 635-200; AR 600-8-7
Retirement (Officer)	AR 600-8-24; AR 600-8-7
Salutes, Honors, and Visits of Courtesy	AR 600-25
Security Clearance (Suspension/Revocation)	AR 380-67
Separation Processing and Document	AR 635-8
Separations (Enlisted)	AR 635-200
Separations (Officer)	AR 600-8-24

Topic	Reference
Serious Incident Report (SIR)	AR 190-45
Sexual Harassment/Assault Response And Prevention Program	AR 600-52
Soldier and Family Readiness Groups	DoDI 1342.22, Army Dir. 2019-17
Traffic Regulation	AR 190-5
Unfavorable Information	AR 600-37
Uniform Wear and Appearance	AR 670-1
Weight Control Program	AR 600-9





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