

CHAPTER 17  
ADMINISTRATIVE SEPARATION OF ENLISTED SOLDIERS.

17-1. GENERAL. The governing regulation for administrative separation of enlisted soldiers is AR 635-200. Separation prior to completion of an obligated period of service can be wasteful because it results in a loss of investment in the soldier and generates a requirement for increased accessions. Reasonable efforts should be made to identify soldiers who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings other than for homosexual acts or fraudulent entry. Soldiers who do not demonstrate potential for further military service should, however, be separated to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance. Appendix A of this pamphlet is a quick reference guide which describes the spectrum of enlisted elimination actions along with the essential information necessary to determine applicability to a given situation.

17-2. ADAPCP FAILURE.

a. After enrollment in ADAPCP (see chapter 12, this pamphlet), a soldier may be separated if he continues to abuse drugs or alcohol, or refuses or fails to participate in treatment. Determination of ADAPCP failure is made by the soldier's commander, after consultation with the soldier's ADAPCP counselor. Initiation of separation proceedings is mandatory for rehabilitation failures. The soldier discharged under this procedure may receive an Honorable discharge, General discharge, or Uncharacterized (if in entry level status).

b. References:

- (1) AR 635-200, Chapter 9.
- (2) AR 600-85.

17-3. ENTRY LEVEL STATUS PERFORMANCE AND CONDUCT.

a. Soldiers in an entry level status (generally, those who have completed less than 180 days of their first enlistment at the time the separation action is initiated) may be separated for unsatisfactory conduct and/or performance, as evidenced by inability, lack of effort, failure to adapt to military environment and/or minor disciplinary infractions. Pregnancy while in entry level training is also grounds for separation under this chapter (if the pregnancy prevents the trainee from successfully completing training). Unless waived, and except in the case of pregnancy, before initiating separation action, the

soldier's commander must ensure that the soldier receives adequate counseling IAW paragraph 1-18, AR 635-200, and opportunity for rehabilitation (academic recycling). The soldier's consent is not required. An Uncharacterized discharge (i.e., neither honorable nor Other Than Honorable), is issued when this action is used. Commanders should be aware that a soldier in entry level status may still be separated under any other applicable provision of AR 635-200.

- b. Reference. AR 635-200, Chapter 11.

#### 17-4. INVOLUNTARY SEPARATION DUE TO PARENTHOOD.

a. Soldiers may be separated because of inability to perform prescribed duties, repeated absences, or non-availability for worldwide assignment because of parenthood. Unless waived, before initiating separation, the soldier's commander must ensure that the soldier receives adequate counseling IAW paragraph 1-18, AR 635-200. The soldier's consent is not required. A soldier discharged under this provision may be awarded an Honorable discharge, General discharge, or an Uncharacterized description of service if in entry level status.

- b. Reference. AR 635-200, paragraph 5-8

#### 17-5. UNSATISFACTORY PERFORMANCE

a. A soldier may be separated for unsatisfactory performance when it is clearly established that:

(1) In the commander's judgment, the soldier will not develop sufficiently to participate satisfactorily in further training, or become a satisfactory soldier, or

(2) the seriousness of the circumstances is such that the soldier's retention would have an adverse impact on military discipline, good order, and morale, and

(3) it is likely that the soldier will be a disruptive influence in present or future duty assignments; the circumstances forming the basis for initiating separation will continue or recur, and the soldier is unlikely to perform duties effectively in the future. Before separation is initiated, the command must ensure that the soldier has received adequate counseling and rehabilitation IAW paragraph 1-18, AR 635-200. Soldiers discharged under this provision may receive an Honorable or General discharge.

- b. Initiation of separation action is required for soldiers

who fail two consecutive Army Physical Fitness Trainings (APFTs), and initiation of separation action or imposition of a bar to reenlistment is required for soldiers who are eliminated for cause from an NCOES course.

c. Reference. AR 635-200, Chapter 13.

#### 17-6. HOMOSEXUAL ACTS.

a. New DOD Directives, effective Feb 94, implement the DOD Homosexual Conduct Policy in five specific areas outlined below. AR 635-200 has been amended to reflect the new policy.

b. Accession. No applicant will be asked about his sexual orientation as part of the accession process. However, homosexual conduct will continue to be a basis for barring entry into the Armed Forces.

c. Separations. Conduct, not sexual orientation, will determine suitability for service in the Armed Forces. The new DOD Directives and chapter 15, AR 635-200, set forth three bases for separation: Homosexual acts, homosexual statements, and homosexual marriages. Service may be characterized as under other than honorable conditions only when it is found the soldier attempted, solicited, or committed a homosexual act under aggravating circumstances, such as by using force, or committing the act with a minor or in public view.

d. Personnel security. No investigations or inquiries will be conducted solely to determine a subject's sexual orientation, and questions pertaining to an individual's sexual orientation will not be asked on personnel security questionnaires.

e. Investigations. No DOD criminal investigation organization or law enforcement organization will conduct an investigation solely to determine a service member's sexual orientation. Investigations into sexual misconduct will be conducted in an evenhanded manner, without regard to whether the alleged misconduct involves homosexual or heterosexual conduct. Before an investigation is initiated, there must be credible information that homosexual conduct has occurred. There must be a determination based upon articulated facts, not just a belief or suspicion. Note, however, that "homosexual acts" can include certain "homosexual statements."

f. Military training. Service members will be informed of the DOD policy on sexual conduct. The revised directive on military training includes a training plan designed for commanders

and personnel involved in recruiting, accession processing, criminal investigations, and administrative separations.

g. Commander's action upon discovery of homosexual allegation. The commander's first action upon discovery of an allegation of homosexual conduct should be to consult supporting trial counsel for legal advice. If it is necessary to question a suspect regarding an allegation of homosexual conduct, the suspect must be informed of the DOD Homosexual Policy and their rights under Article 31 (a DA Form 3881, Rights Warning Procedure/Waiver Certificate, should be used). The DOD Homosexual Policy is designed to ensure the suitability of persons to serve in the Armed Forces is judged on the basis of their conduct. Sexual orientation is considered a personal, and private matter. Homosexual orientation is not a bar to service entry or continued service. Homosexual conduct, however, is grounds for separation from the military service. Homosexual conduct is a homosexual act, a statement by the soldier that demonstrates a propensity, or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

h. References:

- (1) AR 635-200, Chapter 15
- (2) DODI 1304.26.
- (3) Title 10 U.S.C. Section 654(b)

17-7. CIVIL CONVICTIONS.

a. A soldier may be separated when he is convicted by civilian authorities, or action is taken which is tantamount to a finding of guilty (such as certain deferred adjudication programs), and

(1) a punitive discharge is authorized for the same or a closely related offense under the UCMJ, or

(2) the sentence by civil authorities includes confinement for six months or more. This includes confinement which is suspended or any form of probation.

b. Prior to initiation of separation action, reduction action IAW chapter 6, AR 600-8-19, should be accomplished when required.

c. The commander may initiate separation proceedings against any enlisted soldier who receives a civil conviction meeting the criteria stated above (a commander may, however, determine that retention is appropriate and close the matter). An order deferring adjudication is considered tantamount to a finding of

guilty for the purpose of this elimination action. Discharge under Other Than Honorable conditions is normally appropriate for a soldier separated on these grounds. A General or Honorable discharge may be given when merited by the soldier's overall record.

d. References:

- (1) AR 635-200, Chapter 14, Section II
- (2) AR 635-200, Chapter 2, Section IV.

17-8. ACTS OR PATTERNS OF MISCONDUCT.

a. Soldiers may be separated for:

- (1) Minor disciplinary infractions
- (2) A pattern of misconduct consisting of discreditable involvement with civil or military authorities.
- (3) Conduct prejudicial to good order and discipline, including conduct in violation of accepted standards of personal conduct found in the UCMJ, Army regulations, civil laws, or customs of the Army.

b. Unless waived by the approving authority, soldiers must be formally counseled in writing and rehabilitatively transferred IAW paragraph 1-18, AR 635-200, prior to initiation of separation for minor disciplinary infraction (14-12a), or pattern of misconduct (14-12b). Record of prior formal counseling or rehabilitative transfer is not required before initiation of separation action for commission of a serious offense (14-12c).

c. Commission of a serious offense, military or civil, if the specific circumstances of the offense warrant separation and a punitive discharge is authorized under the UCMJ for the same or a similar offense.

d. Abuse of illegal drugs is specifically listed as a serious offense

(1) Urine samples will be collected on a random basis established IAW AR 600-85, Alcohol and Drug Abuse Prevention and Control Program, by quotas established by the Installation Biochemical Testing Center (IBTC). Commanders will ensure that appropriate selection procedures are followed for sampling of soldiers in their commands. These samples will be field screened within 24 hours of collection and unit commanders will be notified of those soldiers whose initial urine sample tested positive. The

sample will be forwarded for laboratory analysis. Pending confirmation from the laboratory, commanders may begin assembling the papers necessary for disciplinary action under the UCMJ and will begin assembling chapter 14, AR 635-200, paperwork, if appropriate. Upon receipt of notification from IBTC confirming positive test results, commanders will follow procedures outlined in chapter 14, AR 635-200. Urine samples may also be collected as evidentiary searches or fitness for duty inspections. However, before such a search or inspection is authorized, the commander must consult and coordinate with the command's legal advisor.

(2) Soldiers against whom charges will not be referred to a court-martial authorized to impose a punitive discharge or against whom separation action will not be initiated under the provisions of chapters 9 or 13, AR 635-200, may be processed for separation under the provisions of chapter 14, paragraphs 14, 14-12b or c, AR 635-200. All soldiers must be processed for separation for two positive tests. Soldiers in grades SGT and above, and all soldiers with three or more years of total military service, must be processed for separation for one positive urinalysis test. All soldiers medically diagnosed as drug dependent must be processed for separation upon completion of any actions required by AR 600-85. "Processed for separation" means that separation action must be initiated and processed through the chain of command to the appropriate separation authority for a determination as to separation or retention. Although a commander may be required to initiate a separation action, he may recommend the soldier be retained in the Army.

e. Commanders will not take action under this provision instead of disciplinary action solely to spare a soldier who may have committed serious acts of misconduct the harsher penalties which may be imposed under the UCMJ. An Other Than Honorable discharge is normally appropriate for a soldier separated for misconduct. A General or Honorable discharge may be given when merited by the soldier's overall record.

f. Officers will be processed for elimination for acts of personal misconduct involving drugs.

g. References:

- (1) AR 600-85, Chapter 3.
- (2) AR 635-200, Chapter 14.
- (3) AR 600-8-24

#### 17-9. PERSONALITY DISORDER.

a. Soldiers may be separated for personality disorder, not amounting to a disability, that interferes with assignment to or

performance of duty, when properly diagnosed. This condition must be deeply-ingrained maladaptive pattern of behavior of long duration which interferes with the soldier's performance of duty. It must be diagnosed as such by a physician trained in psychiatry and psychiatric diagnosis or a licensed clinical psychologist. Unless waived, the soldier must be formally counseled IAW paragraph 1-18, AR 635-200, concerning deficiencies and be afforded ample opportunity to overcome those deficiencies. Separation under this provision is not appropriate when separation is warranted under other chapters. Soldiers discharged for personality disorders may receive an Honorable, General, or Uncharacterized (if in entry level status) discharge.

b. Reference. AR 635-200, paragraph 5-13.

#### 17-10. ERRONEOUS ENLISTMENT, REENLISTMENT, OR EXTENSION.

a. Soldiers may be separated based on an erroneous enlistment, reenlistment, or extension. An enlistment, induction, or extension of enlistment is erroneous if:

(1) It would not have occurred had the relevant facts been known by the Army or had appropriate directives been followed, and

(2) it was not the result of fraudulent conduct on the part of the soldier, and

(3) the defect is unchanged in material respects

b. When it is discovered that a soldier's enlistment or extension was erroneous because the soldier failed to meet the qualifications for enlistment, AR 601-210, Regular Army and Army Reserves Enlistment Program or Reenlistment; AR 601-280, Total Army Retention Program, the unit commander must initiate action to obtain authority to retain, discharge or release the soldier. When the defect is waivable, the soldier may be retained with proper approval. Soldiers separated under this provision will be awarded, depending on the circumstances of the particular case, either an Honorable, General or an Uncharacterized discharge, or an order of release from custody and control of the Army.

c. Reference. AR 635-200, paragraph 7-15.

#### 17-11. FRAUDULENT ENTRY.

a. Fraudulent entry is the procurement of an enlistment, reenlistment, or extension through any deliberate material misrepresentation, omission, or concealment of information that, if it had been known and considered by the Army, rejection might

have resulted. Commanders must determine if the previously concealed information amounts to a waivable or nonwaivable disqualification. If so, the concealment was a fraudulent entry. If, however, the newly revealed information does not amount to a disqualification under the appropriate regulation, then there is no fraudulent enlistment or reenlistment, and separation may not be directed. Commanders must also verify the existence of the apparently disqualifying information.

b. Examples of fraudulent entry include:

- (1) Concealment of prior service
- (2) Concealment of true citizenship status
- Concealment of felony conviction by civil court
- Concealment of felony record as a juvenile offender
- (5) Concealment of medical defects.
- (6) Concealment of AWOL or desertion from prior service from the Army or one of the other services.
- (7) Misrepresentation of intent with regard to legal custody of children.
- (8) Concealment of other disqualifications such as identity.
- (9) Concealment of preservice homosexual conduct.

c. When the soldier enlisted or reenlisted with a waivable disqualification retention will be considered in meritorious cases. Soldiers separated under this chapter may be furnished an Honorable discharge, General discharge, or Other Than Honorable discharge.

d. A soldier who fraudulently enlists is subject to prosecution under Article 83, UCMJ.

e. References:

- (1) AR 635-200, Chapter 7, Section V
- (2) Article 83, UCMJ.

**17-12. OTHER SEPARATION ACTIONS.** Soldiers may also be administratively separated based on the following grounds:

a. AR 635-200, Chapter 8 (Separation of Enlisted Women Pregnancy).

b. AR 635-200, paragraph 7-16 (Defective or Unfulfilled Enlistment or Reenlistment Agreements).

c. AR 635-200, paragraph 5-14 (Concealment of Arrest Record).

d. AR 635-200, paragraph 5-4 (Surviving Sons or Daughters).

e. AR 635-200, Chapter 6 (Separation Because of Dependency or Hardship).

f. AR 635-200, paragraph 5-9 (Lack of Jurisdiction). Upon the final determination of a military judge, a president of a SCM or military appellate agency that an individual is not currently a member of the Army, the soldier may be released from military service by the GCMCA.

g. AR 635-200, Chapter 7, Section II (Minority). If a soldier enlisted while under 17 years of age and has not yet reached that age, the soldier will be released from custody and control of the Army. Soldiers who are under 18 years of age, and enlisted without parental consent, will be discharged upon application of the parent or guardian.

h. AR 635-200, Chapter 10 (Discharge in Lieu of Trial by Court-Martial). A soldier who has committed an offense punishable by a Bad Conduct discharge or a Dishonorable discharge under the UCMJ may submit a request for discharge in lieu of trial by court-martial. It may be submitted any time until final action on the case is taken by the GCMCA. An Other Than Honorable discharge is normally appropriate for soldiers discharged in lieu of trial by court-martial, though an Honorable or General discharge is authorized. Paragraph 4-6 of this pamphlet provides further details on the processing of this discharge.

i. AR 635-200, Chapter 18 (Failure to Meet Body Fat Standards).

CHAPTER 18  
ADMINISTRATIVE SEPARATION OF OFFICERS.

18-1. GENERAL.

a. No person has an inherent right to continue military service as an officer. The privilege to serve as an officer exists only as long as the soldier performs in a satisfactory manner. Responsibility for leadership requires that an officer accomplish his duties effectively and conduct himself in an exemplary manner at all times.

b. The responsibility for dealing with a deficient officer originates with the commander. In discharging this responsibility, the commander must document performance and conduct to ensure that the OMPF accurately portrays an officer's character of service. It is also the commander's responsibility to take the appropriate action to separate those officers who do not meet the ethical and professional standards expected of an Army officer.

c. The Army has a variety of categories of officers serving on active duty. These include:

Regular Army (RA).

United States Army Reserve (USAR) officers

(3) Army National Guard of the United States (ARNGUS) officers.

(4) Army National Guard officers in the service of the United States

d. The distinction between categories is important in determining which separation actions are available to the command and the rights of the officer involved. The distinction between probationary and non-probationary officers is also significant. In some instances, the distinction between commissioned and uncommissioned warrant officers is also significant.

18-2. ADMINISTRATIVE ELIMINATION ACTIONS.

a. Army policy is to retain only those officers who demonstrate an acceptable level of proficiency and conduct. This standard of evaluation and conduct is applicable to all officers, commissioned and warrant, regardless of component. Existence of

one of the following conditions, or similar conditions, authorizes elimination:

(1) Downward trend in overall performance, resulting in an unacceptable level of performance,

(2) failure to keep pace or to progress with contemporaries,

(3) failure to exercise appropriate leadership,

4) failure to assimilate required technical proficiency,

(5) failure to properly perform assignments commensurate with grade and experience,

(6) apathy, defective attitude, or other character disorders,

(7) failure to respond to drug or alcohol rehabilitation,

(8) failure to conform to prescribed standards of dress, personal appearance, and military deportment,

(9) failure to achieve satisfactory progress after participation in a medically established weight control program, or failure to comply with the weight/body fat standards established by AR 600-9, The Army Weight Control Program, after removal from an established weight control program,

(10) discreditable or intentional failure to meet personal financial obligations,

(11) mismanagement of personal affairs detrimentally affecting the duty performance of the officer or to the discredit of the service,

(12) intentional omission or misstatement of fact in official statements or records, for the purpose of misrepresentation,

(13) acts of personal misconduct,

(14) homosexual conduct,

(15) intentional neglect of, or failure to perform duties,

16) conduct unbecoming an officer.

(17) loss of professional status or accreditation necessary for the performance of one's military duties,

(18) acts or behavior inconsistent with national security interests,

(19) failure to respond to rehabilitation efforts regarding acts of child or spouse maltreatment or abuse or other acts of family violence,

consecutive APFT failures

b. The procedures required for elimination of officers are time-consuming, but are designed to provide full due process to the officer concerned. "Probationary" officers may be eliminated using an expedited procedure described in paragraph 3 of this chapter.

(1) Elimination proceedings may be initiated by either a general officer show cause authority or CG, PERSCOM. The officer is notified in writing of the initiation of the action, the reasons for the action, and the factual allegations supporting a recommendation of elimination. The officer may, with the assistance of a judge advocate, or civilian attorney at no expense to the government, prepare a written statement indicating pertinent facts or rebutting the recommendations. The officer is advised that he has the following options:

Resign or request discharge in lieu of elimination.

Retire in lieu of elimination (if eligible)

Appear before board of inquiry.

(2) The action is then forwarded to the General Officer Show Cause Authority (GOSCA).

(3) The CG, PERSCOM or GOSCA may return the case to the officer's unit with instructions for other appropriate disposition of the case. He may disapprove the recommendation and close the case. Finally, he may elect to have the officer appear before a board of inquiry. The CG, PERSCOM may direct the appropriate GOSCA to appoint a board of inquiry for CG, PERSCOM, cases.

(4) After the board of inquiry, the officer may still elect one of the following options at anytime prior to final elimination action:

Tender his resignation.

(b) Request discharge if an RA officer.

(c) Apply for retirement in lieu of elimination, if otherwise eligible for voluntary retirement.

(5) After the board of inquiry, the proceedings will be referred to an appropriate board of review. The Secretary of the Army will appoint the boards of review. Action by the Secretary of the Army on a board of review recommendation is final and conclusive.

c. Officers eliminated from the Army may receive an Honorable, General, or Other Than Honorable discharge. Officers discharged solely for substandard duty performance, however, will receive an Honorable discharge.

d. Reference: AR 600-8-24, Chapter 4.

### 18-3. ELIMINATION OF PROBATIONARY OFFICERS

a. The officer elimination procedures outlined in paragraph 18-2 of this chapter are detailed and time consuming. Those procedures ensure that officers who have dedicated much time and effort in a military career will not be eliminated without full review of their cases. Before an officer is entitled to this extensive protection, however, he must serve a probationary period. During this time, the officer may be eliminated for more reasons than the non-probationary officer.

b. Probationary officers include

(1) Regular Army commissioned officers with less than five years of active commissioned service.

(2) United States Army reserve officers who have less than three years commissioned service.

(3) Warrant officers who have less than three years service since original appointment in their present component

c. Probationary officers may be eliminated for the same reasons as other officers. The following additional grounds, however, may also justify a probationary officer's elimination:

(1) Failure of a service school.

(2) Failure of an officer to resign for medical reasons existing at the time of appointment when his commander determines

the best interest of the government and the individual can be served by discharge.

(3) The discovery of other conditions which, if they had been known at the time of appointment, would have precluded appointment.

(4) The discovery of any other condition which evidences that the officer's retention in the Army is not in the best interest of the United States.

(5) Confirmation as HIV positive within 180 days of appointment (RA) or reporting for non-ADT AD (USAR and ARNG)

d. The following procedures are to be followed:

(1) The GOSCA, or CG, PERSCOM, notifies the officer in writing of the reasons for the action, the character of the discharge, and that if an honorable discharge is recommended, there will be no selection board or board of inquiry held before the officer's case is forwarded to the Army Security Agency (ASA) (M&RA).

(2) The officer is provided the opportunity to prepare a written statement. The officer is entitled to a military lawyer, or civilian counsel at no expense to the government, in preparing this statement.

(3) Upon receiving the recommendation and officer's statement, if any, the GOSCA, or CG, PERSCOM may disapprove the action or return the case to the originator with recommendations as to appropriate action (e.g., reprimand, further investigation, etc).

(4) If the GOSCA recommends elimination, and an Honorable or General discharge is recommended, the case is forwarded to CG, PERSCOM for decision.

(5) If an Under Other Than Honorable discharge is recommended, use the board of inquiry procedures applicable to non-probationary officers.

e. Reference: AR 600-8-24, Chapter 4, section IV.

#### 18-4. INVOLUNTARY RELEASE FROM ACTIVE DUTY.

a. Other than regular Army officers may be relieved from active duty for qualitative or quantitative reasons. Officers relieved from active duty may revert to inactive reserve status

unless concurrent action is taken to also separate the officer from those components as well.

b. Officers may be involuntarily separated from active duty based on:

Misconduct

Moral or professional dereliction.

Inefficiency and poor performance.

(4) Civil convictions, or equivalent court actions, when the offense is punishable by death or confinement for one year or more under the UCMJ, or the offense involves moral turpitude.

(5) Reduction of officer strength as a result of budgetary or authorization limitations.

c. Commanders at all levels are required to recommend elimination action for those officers whose performance or conduct indicates a lack of justification for retention on active duty. This recommendation is forwarded through channels to CG, PERSCOM, for consideration by the DA Active Duty Board. Officers recommended to the Active Duty Board for release from active duty will be afforded an opportunity to review the action, along with supporting evidence, and provide comments or rebuttal.

d. Reference: AR 600-8-24, Chapter 2, Section XV.

#### 18-5. RESIGNATIONS

a. AR 600-8-24, Chapter 3, Section II (Unqualified Resignations). Any officer on active duty may tender an unqualified resignation except when action which could result in resignation for the good of the service is pending. Normally, such resignations will not be accepted unless, on the requested date of separation, the officer has fulfilled all applicable service obligations. If the officer's resignation is accepted, a Honorable or General discharge will be issued, depending on the soldier's military record.

b. AR 600-8-24, Chapter 4, Section VI (Resignation in Lieu of Elimination). An officer who has been formally recommended for elimination from the service may tender a resignation in lieu of elimination. A tender of resignation or request for discharge in lieu of elimination automatically suspends the elimination action until HQDA makes a final determination on the tender. Officers

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who tender resignation under this chapter may receive an Honorable, General, or Other Than Honorable discharge.

c. AR 600-8-24 (Resignation for the Good of the Service). An officer may submit a resignation for the good of the service when:

(1) Court-martial charges have been preferred against the officer with a view toward trial by GCM; or,

(2) the officer is under a suspended sentence of dismissal; or

(3) the officer elects to tender his resignation because of homosexual conduct prior to GCM charges being preferred under the UCMJ and prior to a recommendation for elimination.

d. Resignations for the good of the service will be forwarded by the GOSCA or GCMCA directly to CG, PERSCOM. The tender of a resignation for the good of the service does not preclude preferral of charges and trial by court-martial.

e. Reference: AR 600-8-24, Chapters 3 and 4.

#### 18-6. FAILURE TO BE SELECTED FOR PROMOTION.

a. Active Duty List (ADL) commissioned officers and chief warrant officers who are twice passed over for ADL promotion to captain, major, or lieutenant colonel, and CW3, CW4, or CW5 will be involuntarily released from active duty, unless they are selectively continued or are within two years of retirement.

b. Reference: AR 600-8-24, Chapter 5, Section V.

#### 18-7. DROPPING OF OFFICERS FROM THE ROLLS OF THE ARMY.

a. An officer may be dropped from the rolls of the Army when the officer:

(1) Is not entitled to receive retired pay, has been found guilty by civil authorities of any offense and sentenced to confinement in a federal or state penitentiary or correctional institution, and the sentence has become final, or

(2) has been absent without leave (AWOL) for at least three months, or

(3) is deprived of retired pay under the authority of USC Title 5, Chapter 83, Subchapter II.

b. All commissioned and warrant officers of the Army, including members of the RA (active or retired list), RCs, active duty or active duty for training or in a retired status may be dropped from the rolls. An RA warrant officer who has not been commissioned may not, however, be dropped from the rolls as a result of civil confinement or AWOL.

c. Commanders who receive information which appears to support dropping an officer from the rolls will transmit the information through channels to CG, PERSCOM. All available documentary evidence will be included in the action.

d. Reference: AR 600-8-24, Chapter 5, Section VII

**CHAPTER 19**

**LIAISON WITH LOCAL CIVILIAN PROSECUTION AND INVESTIGATIVE AUTHORITIES.**

**19-1. INTRODUCTION.** The United States Supreme Court in Solorio v. United States, 107 S.Ct. 2924 (1987), approved prosecution by the military under the UCMJ for all off-post violations of the UCMJ. Additionally, the courts of the State of Texas and the U.S District Court in San Antonio, Texas, also have jurisdiction over many offenses involving soldiers.

**19-2. PROSECUTIONS BY SPECIAL ASSISTANT UNITED STATES ATTORNEYS (SAUSA).** The Department of Justice and the Judge Advocate General have approved appointment of several USAG SJA lawyers as SAUSAs IAW chapter 6, AR 27-40, Litigation; chapter 23, AR 27-10, and 28 USC Section 543. The SAUSAs act as liaisons with the Department of Justice, including the Federal Bureau of Investigation (FBI), on behalf of FSH. The SAUSAs prosecute military and civilian offenders in Magistrate and District Court for offenses that occur on FSH. Currently, the USAG SJA has one primary (and two alternate) SAUSA responsible for misdemeanor and petty offense cases.

a. Felony cases are tried in the United States District Court for the Western District of Texas, located at the United States Courthouse in San Antonio, Texas. Misdemeanors and petty offenses, including traffic violations, are tried in the United States Magistrate's Court, which is located at the United States Courthouse in San Antonio, Texas.

b. The decision to decline or initiate prosecutions cannot be directed by anyone outside the Department of Justice. The SAUSAs are primarily supervised by the U.S. Attorney. The SAUSAs have the authority to decline or initiate actions to prosecute on behalf of the Department of Justice, including cases where the GCMCA decides to grant immunity under paragraph 2-4, AR 27-10.

c. On-post traffic violations by soldiers. Because soldiers' offenses are normally adjudicated under the UCMJ, commanders usually have little direct interaction with cases handled by SAUSAs. Soldiers are, however, routinely handled through the United States Magistrate's Court for traffic violations committed on the installation.

(1) When a soldier is issued a traffic citation DD Form 1805, United States District Court Violation Notice, the citation will state the time, date, and location for the soldier's court appearance, if the soldier chooses to contest the citation. Of course, a soldier may pay the fine and avoid court altogether.

(2) If a soldier decides to dispute the traffic citation, the soldier must appear at the United States Magistrate's Court at the date and time indicated. Failure to do so will likely result in the court's issuing a federal warrant for the soldier's arrest.

(3) A soldier's absence because of field exercise, previously scheduled deployment, soldier's time, or regular leave will not excuse a soldier from having to appear at the United States Magistrate's Court. If a soldier cannot appear at court, the soldier must make arrangements with the Court well in advance to reschedule his court date.

d. Soldiers involved in federal criminal cases. Sometimes, a soldier may be involved as a witness in a federal criminal case. For example, a soldier may be a victim of a crime committed by a civilian or may be a witness to a crime. Normally, the United States District Court or United States Magistrate's Court will issue a subpoena to the soldier directing the soldier to appear at court at a certain date and time to testify. Failure to comply with a subpoena may result in the soldier's arrest. Alternatively, the SAUSA handling the case may personally arrange with the soldier and the chain of command to have the soldier appear at court on the pertinent date. Commanders should cooperate in every possible way in ensuring that soldiers who need to be at federal court appear there at the appropriate time.

e. Witnesses in federal court should wear appropriate civilian attire in lieu of his or her military uniform. Appropriate civilian attire is coat and tie for men and equivalent business dress (not pantsuits) for women.

f. Communication with the Department of Justice must be coordinated with the USAG SJA, IAW paragraph 1-5, AR 27-40.

**19-3. FEDERAL LAW ENFORCEMENT AGENCIES.** Although the MPs and/or CID are normally the lead investigative agencies for crimes occurring on the installation, other federal law enforcement agencies may become involved in investigations of serious federal crimes. Such agencies include, but are not limited to, the FBI; United States Secret Service; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, and Firearms, Defense Criminal Investigative Service (DCIS), and the United States Customs Service. Commanders should cooperate to the fullest extent with these agencies, as their investigative jurisdiction is commensurate or exceeds that of military law enforcement agencies.

**19-4. CONCURRENT INVESTIGATIVE JURISDICTION.** DOD Directive 5525.7, printed at Appendix 3, MCM, 1984, and chapter 2, AR 27-10 provide specific instructions concerning primary and concurrent

jurisdiction between the Departments of Justice and Defense. The CID will coordinate with the FBI or other federal investigative agency, in cases of concurrent investigative jurisdiction. As necessary, the SAUSA will ensure problems are resolved.

**19-5. LIAISON WITH CIVIL PROSECUTION AND INVESTIGATIVE AUTHORITIES FROM BEXAR AND SURROUNDING COUNTIES.** The Chief, Criminal Law, SJA, acts as the single liaison between FSH units through their supporting military legal offices, and the District Attorney Offices in Bexar and surrounding counties. Whenever the command seeks jurisdiction from the District or County Attorney of Bexar or surrounding counties, subject to the approval of the SJA, USAG, the SAUSA will make a written request to the District Attorney for military jurisdiction. The request for jurisdiction will indicate whether pretrial confinement will be sought by the command, the anticipated level of UCMJ disposition, e.g. under Article 15 or court-martial, and provide documentation to transfer evidence from the civilian police evidence custodian to the military evidence custodian. If the command later decides on a lower level of disposition, the reason for the change will be provided to the SAUSA and then to the District Attorney. The command should not dispose of the case at the lower level without advance agreement from the District Attorney. For example, charges may be dismissed because the command intends to dispose of the allegations under Article 15 or by a discharge in lieu of trial by court-martial. Prior to disposition at this lower level, approval by the District Attorney should be obtained. Otherwise, the District Attorney may choose to prosecute the soldier, resulting in a perception of double punishment. If the District Attorney offers jurisdiction to the military, the command will accept military jurisdiction over every case where guilt can be proven beyond reasonable doubt. Generally, the District Attorney offers jurisdiction to the military over all felony cases involving soldiers accused of crimes. Recent practice is for the District Attorney to retain jurisdiction for murder cases. The military may request jurisdiction for misdemeanor cases from the Bexar County Attorney's Office. Normally, the Bexar County Attorney will retain jurisdiction for DWI and bad check offenses, unless the command prefers charges.

**19-6. DISCIPLINARY PROCEEDINGS SUBSEQUENT TO EXERCISE OF JURISDICTION BY CIVILIAN AUTHORITIES.** After exercise of jurisdiction by civilian authorities, and prior to a court-martial or an Article 15 hearing, the GCMCA must give advance approval for UCMJ action. See chapter 4, AR 27-10. After exercise of jurisdiction by civilian authorities in Bexar or surrounding counties, and prior to a court-martial or an Article 15 hearing, the military liaison must coordinate with the relevant District Attorney and then such UCMJ action must be approved in advance by the Commander, USAG, FSH.

**19-7. EXECUTION OF CIVIL ARREST WARRANTS ON FORT SAM HOUSTON.** AR 600-40, Apprehension, Restraint, and Release to Civil Authorities, requires that military members be delivered to civil officers upon reasonable request for civil prosecution. In Texas, a warrant of arrest is a written order from a magistrate, directed to a peace officer or other person specifically named, commanding him to take the person accused of an offense to be "dealt with according to law." A summons is the same as a warrant, except a summons directs the defendant to appear at a particular time and place before a magistrate. If the defendant fails to comply with the summons then an arrest warrant is issued. See Texas Code of Criminal Procedure Sections 15.01 to 15.03. The peace officer delivers the arrest warrant to the MP. The military police bring the arrest warrant to the legal office for legal review. If legally sufficient, the arrest warrant is executed by the MPs, who ensure that the soldier is brought to the MP station for transfer to civilian authorities.

**19-8. REQUISITES OF WARRANT.** Arrest warrants issued in the name of "The State of Texas", must state the name of the person to be arrested (or provide a reasonably definite description of the person to be arrested), must name the alleged offense, and it must be signed by a magistrate. The office of the magistrate must be named on the warrant. See Texas Code of Criminal Procedure Section 15.02.

APPENDIX A

1. Required Publications:

Uniform Code of Military Justice.

Misc. Pub 27-7, The Manual for Courts-Martial, United States 1995 Edition.

FM 22-100, Military Leadership.

FM 27-1, Legal Guide for Commanders

AR 15-6, Procedures for Investigating Officers and Boards of Officers.

AR 27-10, Military Justice.

AR 27-40, Litigation

AR 135-178, Separation of Enlisted Personnel.

AR 135-200, Active Duty for Training, Annual Training and Active Duty for Special Work of Individual Soldiers.

AR 140-1, Mission, Organization and Training.

AR 140-158, Enlisted Personnel Classification, Promotion and Reduction.

AR 190-24, Armed Forces Disciplinary Control boards and Off-Installation Liaison and Operations.

AR 210-10, Administration.

AR 210-50, Housing Management.

AR 220-5, Designations, Classification and Change in Status of Units.

AR 350-2, Opposing Force Program.

AR 380-67, The Department of Army Personnel Security Program.

AR 600-9, The Army Weight Control Program

AR 600-85, Alcohol and Drug Abuse Prevention and Control Program.

- AR 600-8-19, Enlisted Promotions and Reductions.
- AR 600-8-24, Officer Transfers and Discharges
- AR 600-20, Army Command Policy.
- AR 600-37, Unfavorable Information
- AR 600-40, Apprehension, Restraint, and Release to Civil Authorities.
- AR 600-200, Enlisted Personnel Management System.
- AR 601-210, Regular Army and Army Reserve Enlistment Program
- AR 601-280, Army Retention Program.
- AR 604-5, Personnel Security Clearance, Department of the Army Personnel Security Program Regulation.
- AR 623-105, Officer Evaluation System
- AR 623-205, Enlisted Evaluation Reporting System.
- AR 630-5, Leave and Passes.
- AR 635-200, Enlisted Personnel.
- AR 640-3, Identification Cards, Tags and Badges
- AR 700-84, Issue and Sale of Personal Clothing.
- DA Pam, 27-7, Guide to Summary Court-Martial Trial Procedure.
- DA Pam, 27-17, Procedural Guide for Article 32(b) Investigating Officer.
- DA Pam 600-8, Management and Administrative Procedures.
- FSH Reg 190-5, Motor Vehicle Traffic Code
- DOD 6490.1, Mental Health Evaluations of Members of the Armed Forces.
- DODI 1304.26, Qualification Standards for Enlistment, Appointment and Induction.
- DOD 5500.7-R, Standards of Conduct.

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2. Required Forms:

DA Form 873, Certificate of Clearance and/or Security Determination.

DA Form 2627, Record of Proceedings Under Article 15, UCMJ

DA Form 2627-1, Summarized Record of Proceedings under Article 15, UCMJ.

DA Form 2627-2, Record of Supplementary Action Under Article UCMJ.

DA Form 3744-R, Affidavit Supporting Request for Authorization to Search and Seize.

DA Form 3745-R, Search and Seizure Authorization.

DA Form 3745-1-R, Apprehension Authorization.

DA Form 3881, Rights Warning Procedure/Waiver Certificate

DA Form 4126-R, Bar to Reenlistment Certificate

DA Form 4187, Personnel Action.

DA Form 4856, General Counseling Form.

DA Form 5109-R, Request to Superior to Exercise Article 15, UCMJ, Jurisdiction.

DA Form 5111-R, Summary Court Martial Rights Notification/Waiver Statement.

DA Form 5112-R, Checklist for Pretrial Confinement.

DD Form 458, Charge Sheet

DD Form 1805, United States District Court Violation Notice.

DD Form 2329, Record of Trial by Summary Court-Martial.

GLOSSARY

**AC**  
Active Component

**ADAPCP**  
Alcohol and Drug Abuse Prevention and Control Program

**ADT**  
Active Duty for Training

**AGR**  
Active Guard Reserve

**ANG**  
Army National Guard

**ARNGUS**  
Army National Guard of the United States

**AT**  
Annual Training

**AWOL**  
Absent Without Leave

**BAMC**  
Brooke Army Medical Center

**BCD**  
Bad Conduct Discharge

**BEQ**  
Bachelor Enlisted Quarters

**BOQ**  
Bachelor Officer's Quarters

**CCF**  
Central Clearance Facility

**CG**  
Commanding General

**CID**  
Criminal Investigation Division

**CONUSA**  
Continental United States

**CSM**  
Command Sergeant Major

**CQ**  
Charge of Quarters

**DA**  
Department of the Army

**DCG**  
Deputy Commanding General

**DCIS**  
Defense Criminal Investigative Service

**DOD**  
Department of Defense

**DWI**  
Driving While Intoxicated

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**FORSCOM**

Forces Command

**GCM**

General Court-Martial

**GCMCA**

General Court-Martial Convening Authority

**IAW**

In Accordance With

**IBTC**

Installation Biochemical Testing Center

**IDT**

Inactive Duty for Training

**IMA**

Individual Mobilization Augmentee

**IRR**

Individual Ready Reserve

**MCM**

Manual for Courts-Martial

**MOR**

Memorandum of Reprimand

**MOS**

Military Occupational Specialty

**MP(s)**

Military Police

**MPI**

Military Police Investigations

**MPRJ**

Military Personnel Records Jacket

**MSG**

Master Sergeant

**NCO**

Noncommissioned Officer

**NCOIC**

Noncommissioned Officer in Charge

**OMPF**

Official Military Personnel File

**PERSCOM**

Personnel Command

**PMO**

Provost Marshal Office

**PMOS**

Primary Military Occupation Specialty

**POV**

Privately Owned Vehicle

**RC**

Reserve Component

**RSC**

Regional Support Command

**SAUSA**  
Special Assistant United States Attorney  
**SCM**  
Summary Court-Martial  
**SFC**  
Sergeant First Class  
**SGM**  
Sergeant Major  
**SJA**  
Staff Judge Advocate  
**SPCM**  
Special Court-Martial  
**SPCMCA**  
Special Court-Martial Convening Authority  
**TDY**  
Temporary Duty  
**TPU**  
Troop Program Unit  
**UCMJ**  
Uniform Code of Military Justice  
**USAR**  
United States Army Reserve  
**USC**  
United States Code  
**VOQ**  
Visiting Officer Quarters

The proponent of this pamphlet is the Staff Judge Advocate. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, U.S. Army Medical Department Center and School and Fort Sam Houston, ATTN: MCGA-JA, Fort Sam Houston, Texas 78234-5019.

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