

**Fires Center of Excellence and  
Fort Sill Regulation 27-10**

**Legal Services**

# **Military Justice**

**Headquarters, U.S. Army Fires  
Center of Excellence and Fort Sill  
Fort Sill, OK**

**5 October 2020**

**UNCLASSIFIED**

Legal Services  
Military Justice

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**History.** This is the first edition of this regulation. This regulation supersedes Fort Sill Supplement to AR 27-10, dated 31 May 2019.

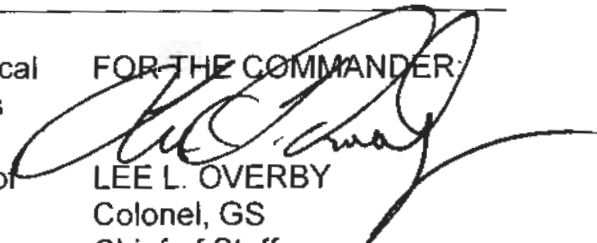
**Summary.** This regulation prescribes additional policies and procedures in compliance with AR 27-10, governing the administration of military justice for the general court-martial jurisdiction of the Commander, Fires Center of Excellence and Fort Sill (USAFCOEFS). This regulation also incorporates the Military Justice Redesign as directed by The Army Judge Advocate General.

**Applicability.** This regulation applies to all organizations, units, detachments, and personnel assigned or attached to the General Court-Martial Convening Authority (GCMCA) of the Commander, USAFCOEFS, for Uniform Code of Military Justice (UCMJ) jurisdiction and administrative actions.

**Supplementation.** Local supplementation of this regulation is prohibited without prior approval of the Commander, USAFCOEFS. All requests for exceptions or waivers to this publication will be staffed to the Commander, USAFCOEFS, thru the SJA, ATTN: ATZR-JB, Fort Sill, OK 73503.

**Suggested Improvements.** The proponent of this regulation is the Staff Judge Advocate. Users are invited to send comments and suggest improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the SJA, USAFCOEFS, ATTN: ATZR-JB, Fort Sill, OK 73503.

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## **Chapter 1 Overview**

### **1-1. Purpose**

The purpose of this regulation is to provide guidance and establish responsibilities for the administration of military justice for the general court-martial jurisdiction of the Commander, USAFCOEFS. The policies and limitations herein are not intended to impose jurisdictional requirements or procedural prerequisites on court-martial or nonjudicial punishment proceedings, and are not intended to confer rights upon any accused. Nothing in this regulation should be construed as an attempt to require a certain outcome in any particular case or class of cases. Each Commander must continue to exercise independent judgment in disposing of allegations of misconduct as he or she sees fit. AR 27-10 will take precedence over any provision of this regulation should there be a difference in policy.

### **1-2. References**

Appendix A lists required and related references.

### **1-3. Abbreviations and terms**

The glossary explains abbreviations and terms used in this regulation.

### **1-4. Effective Date**

This local regulation is effective immediately and will remain in effect until changed, revised, or rescinded by this Headquarters. Fort Sill Supplement to AR 27-10, dated 31 May 2019, is rescinded.

## **Chapter 2 Military Justice Redesign**

### **2-1. Overview**

The Fort Sill Military Justice Redesign (MJR) Model, directed pursuant to The Judge Advocate General (TJAG) Policy Memorandum 19-1, dated 18 July 2019, and approved by the Assistant Judge Advocate General for Military Law and Operations, establishes the Military Justice Division (MJD), Office of the Staff Judge Advocate (OSJA), as the enterprise center responsible for military justice operations within the USAFCOEFS GCMCA. The MJR directs that each brigade headquarters will have a consolidated legal section (BLS), whose military justice functions fall within the technical supervision of the MJD.

## 2-2. Responsibility

a. The USAFCOEFS Staff Judge Advocate (SJA) has primary responsibility for the assignment, place of duty, MOS-related training, technical supervision, management, education, professional development, and proper utilization of all legal personnel assigned within the USAFCOEFS GCMCA. Commanders remain responsible for the good order and discipline, accountability, safety and welfare of these personnel under their command. This applies to all:

- (1) Judge Advocates (27A).
- (2) Legal Administrators (270A).
- (3) Paralegal Specialists/NCOs (27D).
- (4) Court Reporters (27DC5).
- (5) Civilian Paralegals.
- (6) Civilian Legal Assistants.
- (7) Legal Paraprofessionals.
- (8) Other personnel performing legal functions as authorized by the SJA.

b. In accordance with AR 27–1, unless approved by a Supervisory JA or the Chief Paralegal NCO in the technical chain of supervision, paralegal specialists/NCOs, civilian legal paraprofessionals, court reporters, legal administrators, and judge advocates will perform only professional legal duties for which they are trained. They should not perform duties that would interfere with their primary legal duties.

c. In accordance with AR 27–1, the rating scheme for all 27D Paralegal NCOs will be in accordance with AR 623–3 and will include a Judge Advocate in the rating chain. In addition, all civilian legal paraprofessionals assigned outside of the servicing legal office will also have a Judge Advocate in the rating chain to ensure they perform their legal services related duties competently and with appropriate legal office supervision to avoid the unauthorized practice of law. Hiring actions of all civilian legal paraprofessionals will be done in coordination with the SJA and each hiring panel will consist of at least one member of the OSJA.

d. Battalion paralegal specialists/NCOs assigned to FORSCOM brigades will be assigned to their respective battalions and attached to the brigade headquarters for all functions to include, but not limited to, physical training, daily duties, and for administrative and UCMJ purposes. These paralegals will act under the direction and supervision of the Military Justice Advisor (MJA), Brigade Judge Advocate (BJA), and Paralegal NCO, and their duties are expressly restricted to those of a legal nature (to

include adverse administrative actions). Under no circumstances, shall a unit have non-legal personnel review or approve legal actions, including adverse administrative actions, before those actions are reviewed and approved by the paralegal's MJA or paralegal NCO.

e. Brigades with a BJA assigned serve as members of the Brigade Commanders' personal and special staffs, with a direct line of communication to the commanders. As prescribed in TJAG Policy Memorandum 17-07, the SJA will provide technical guidance to the BJA; however, supervision of the BJA's routine, day-to-day duties will be determined by the Brigade Commander. The SJA will provide intermediate rater input to the BJA's Officer Evaluation Rating.

f. In order to foster effective training and ensure consistency in the quality of legal services, MJAs will be assigned to their respective brigade headquarters and attached to Headquarters Detachment, FCOE, for all functions to include, but not limited to, physical training, daily duties, and for administrative and UCMJ purposes. The primary place of duty for each MJA will be the OSJA-MJD. As prescribed in TJAG Policy Memorandum 19-1, MJAs will be supervised and rated by the Chief of Military Justice (CoJ) and senior rated by the SJA.

g. During deployments, a BLS frequently requires augmentation to meet its mission requirements. Requests for augmentation will be made as soon as the requirement is identified, usually during the pre-deployment planning process. If augmented, the BLS may include an additional judge advocate, usually a captain. This captain's duties include, but are not limited to, operational law, administrative law, and legal assistance support to the brigade. When augmented by a third judge advocate, the BLS can avoid ethical conflicts when providing client services and administrative law support. For example, during client services, rules of professional responsibility prevent the same judge advocate from advising both the commander and a Soldier regarding the same adverse action. Additionally, a judge advocate is needed to serve as an advisor to an AR 15-6 investigating officer. When deployed, duties of the BLS may include foreign claims and detention operations. Ultimately, the BJA determines the duties and responsibilities of the third judge advocate in light of mission requirements (see Field Manual 1-04, Legal Support to the Operational Army, paragraph 4-8).

### **Chapter 3**

#### **Reservation of Uniform Code of Military Justice (UCMJ) Authority**

a. In accordance with the UCMJ, Article 16(c)(2)(A), SPCMCAs may refer charges to a judge alone special court-martial; this forum does not have the authority to issue a punitive discharge.

b. Domestic violence. Disposition of domestic violence related offenses is reserved to Commanders who are SPCMCAs. All allegations of misconduct involving domestic violence will be considered and disposed of fairly and impartially IAW applicable laws, regulations, and statutes.



c. Weapons violations. Fort Sill (FS) Regulation 190-1 prescribes the requirements for registration, transportation, and possession of weapons on Fort Sill. Commanders will post information on unit bulletin boards and ensure that all assigned and attached personnel are briefed on FS Regulation 190-1, any other applicable Army regulations, and state and local laws on weapons and ammunition.

(1) All Commanders are obligated to ensure the safety of our Soldiers. Commanders should regularly consider conducting inspections to ensure hazardous conditions and contraband, such as unregistered weapons, are not present in the barracks or on the installation.

(2) Pursuant to FS Reg 190-1, firearms can be stored in family housing, bachelor officer quarters, or bachelor enlisted quarters by authorized occupants. Commanders must be vigilant for signs that a Soldier may be at risk of harm to self or others.

(3) Commanders will familiarize themselves with the “Prohibition on Infringing on the Individual Right to Lawfully Acquire, Possess, Own, Carry, and Otherwise Use Privately Owned Firearms, Ammunition, and Other Weapons” found at 10 U.S.C. Ch. 53. Commanders should consult their servicing Judge Advocate for more information.

(4) Disposition of weapons-related offenses, other than failure to properly register a weapon, is reserved to Commanders who are SPCMCA. All allegations of misconduct involving weapons will be considered and disposed of fairly and impartially IAW applicable laws, regulations and statutes.

d. Senior Leader-Key Duty Position. Authority to impose punishment or take any disciplinary action (including adverse administrative actions) on an officer, warrant officer, or CSM/SGM (E-9), including any NCO, regardless of grade, assigned or performing the position of 1SG or CSM, or any Soldier serving as a SHARP representative, within their command is reserved to the Commander, USAFCOEFS.

(1) The SPCMCA, typically the Brigade Commander, must inform the Commander, USAFCOEFS and the SJA via email within 24 hours of receiving any allegation of suspected misconduct committed by commissioned officers, warrant officers, or CSM/SGM (E-9), including any NCO, regardless of grade, assigned or performing the position of First Sergeant or Command Sergeant Major, or any Soldier serving as a SHARP representative, within their command.

(2) Email notification shall include the Soldier's full name, rank, a brief description of the allegation, the measures being taken by the immediate commander, and, if possible, the type of investigation(s) likely to be started (e.g., safety, AR 15-6, LoD, CID, local law enforcement). This notification is in addition to, not in lieu of, a Serious Incident Report (SIR) submitted through standard reporting procedure.

e. For sexual misconduct offenses in violation of Article 93a, Article 120, Article 120a, Article 120b, Article 120c, Article 125, or Article 134, UCMJ, or any attempts of any of these offenses, the SPCMCA in the grade of O-6 reserves initial disposition authority. This means the O-6 has the "right of first refusal" to initiate adverse action. This does not preclude a battery commander from taking appropriate and timely administrative measures, such as counseling and issuing a FLAG, or from preferring charges under the UCMJ.

(1) This withholding applies to all other alleged misconduct arising from or related to the same incident, including any potential collateral misconduct by the purported victim. Any disposition decision must be made after review of all investigative materials and consultation with the servicing MJA. Subordinate commanders may make recommendations as to disposition to the O-6 SPCMCA and may only take action on such offenses when the SPCMCA delegates the case back to their level in writing.

(2) Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (e.g., underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders). Commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns. Under no circumstances shall a commander offer or suggest to an alleged sexual assault victim that his or her cooperation and participation as a victim or witness may or will affect a future disposition decision for that alleged victim's suspected collateral misconduct.

(3) Authority to impose punishment or take any disciplinary action in cases of alleged misconduct committed by victims of sexual misconduct offenses (including Article 93a, Article 120, Article 120a, Article 120b, Article 120c, Article 125, or 134, UCMJ, offenses, or any attempts of any of these offenses) who have filed an unrestricted report is reserved to the O-6 (unless the alleged victim is subject to the withholding policy in para. 3-7d(l) above). This reservation only applies when the victim's alleged misconduct arises from or relates to the alleged sexual assault (e.g., underage drinking, violation of barracks visitation policies or other lawful orders, adultery, fraternization, etc.).

(4) In addition to immediately contacting CID, all commanders may take the following immediate actions in response to an unrestricted sexual misconduct report: process victim requests for expedited transfer in accordance with Army Directive 2011-19; provide for victim support; issue military protective orders; approve search authorizations; provide investigative coordination; and order pretrial restraint.

Commanders will consult with their servicing MJA before, during, and after taking such actions.

(5) In accordance with Directive-Type Memorandum (DTM) 14-007, "Sexual Assault Incident Response Oversight (SAIRO) Report," immediate commanders, assisted by the unit SARC, will prepare a Sexual Assault Incident Response Oversight (SAIRO) report within eight (8) calendar days of the unrestricted report of an adult sexual assault involving a victim or subject who is a Soldier. The SAIRO report will be prepared in accordance with Army Directive 2015-10 and will include input from:

- (a) Sexual Assault Response Coordinator (SARC)
- (b) U.S. Army Criminal Investigation Command

(c) Legal, medical, and any other appropriate agencies. The SAIRO report will be provided to the Garrison Commander, the first officer in the grade of O-6 and the first general officer in the victim's chain of command (if the victim is a Soldier), the first officer in the grade of O-6 and the first general officer in the subject's chain of command (if the subject is a Soldier), and/or the next higher commander if the first officer in the grade of O-6 or first general officer in the chain of command designated to receive the SAIRO report is the alleged subject. The SAIRO report will not include the victim's personally identifiable information (PII), photographs of the victim, or additional incident information that could reasonably lead to personal identification of the victim or subject. There is no follow-up report required. The SAIRO report is a one-time reporting requirement.

<b>Victim and Subject identity</b>	<b>Who submits the SAIRO?</b>
Victim in Unit A; Subject in Unit B	Victim's immediate Commander
Subject is a civilian	Victim's immediate Commander
Victim is a civilian and Subject is Service-member	Subject's immediate Commander

In accordance with Directive-Type Memorandum (DTM) 14-007, filing the SAIRO report will not delay the immediate operational reporting of serious incidents through operational reporting channels. Therefore, commanders of FORSCOM units on Fort Sill must submit the SAIRO report in accordance with these procedures through the chain-of-command, but shall also send appropriate and required SIRs through their operational chain-of-command.

f. Upon completion of the investigation or inquiry, and consultation with the MJA or BJA, the SPCMCA will submit a recommendation for appropriate disposition through the OSJA to the GCMCA.

(1) The recommendation will include the following: the investigative file or information concerning the alleged misconduct; the Service Record Brief (SRB); a

FLAG for adverse action; record of previous disciplinary action, if any; and if warranted, a request for release of authority to dispose of the offense.

(2) "Disciplinary action" is defined as administrative, nonjudicial, or judicial action of a punitive nature, including, but not limited to, memoranda of reprimand, relief for cause, Article 15 nonjudicial punishment, and courts-martial. Developmental counseling and letters of concern are specifically excluded from this requirement.

g. Notwithstanding the abovementioned limitations on the exercise of disciplinary authority, subordinate commanders are encouraged to request releases of jurisdiction when they feel the situation warrants such a request. All requests for release of jurisdiction from the GCMCA should be made through the OSJA-MJD, to the Commander, USAFCOEFS. Subordinate commanders are still required to conduct proper investigations as the circumstances require and to report senior leader misconduct as it arises.

## **Chapter 4 General Policies**

### **4-1. Disciplinary Proceedings Subsequent to Exercise of Jurisdiction by Civilian Authorities**

a. Limitations on Dual-Prosecution. Soldiers who have been tried in a Federal court of the United States will not be subject to the UCMJ for the same offense. Soldiers who have been tried in a State court generally will not be subject to the UCMJ for the same offense. These rules do not prohibit a command from taking administrative measures, e.g. letters of concern, letters of reprimand, and/or administrative separations for offenses adjudicated in Federal and State courts. Commanders desiring to pursue UCMJ action for an offense being prosecuted in a civilian court must coordinate first through their servicing MJA.

b. Procedure. Prior to preferral of court-martial charges for misconduct that occurred off-post (in any civilian jurisdiction), the servicing MJA and CoJ will coordinate with local jurisdiction law enforcement organizations and/or U.S. Attorneys/district attorneys to determine whether the appropriate non-military authorities will exercise jurisdiction in the matter. If the service-member is prosecuted in a civilian jurisdiction, the servicing MJA shall act as a liaison between the chain-of-command and the relevant prosecutor and will keep the chain-of-command apprised of the case's procedural status to the fullest extent possible. Any request or offer for a release of jurisdiction made by civilian authorities to military authorities will be detailed in writing to the Special Agent-in-Charge of the Fort Sill CID office and the OSJA.

### **4-2. Military Justice Coordination**

All commanders and their representatives are advised to maintain direct communication with the OSJA and their BJA. Before commanders initiate disciplinary action, to include

administrative corrective action, they should consult with the servicing MJA to ensure the contemplated action is legal, in proper form, and substantiated by the evidence.

#### **4-3. Good Order and Discipline**

It is the intent of this command that appropriate disciplinary action be taken at the lowest level consistent with law and military policy to maintain good order and discipline, the accomplishment of the mission, and in the interests of justice in each case. To achieve these goals, commanders must be proactive, detail-oriented, and situationally-aware of the myriad factors and circumstances that serve as warning signs of dangerous, risky, or self-destructive behavior across the full spectrum of a Soldier's daily life, both at home and on duty. Brigade Commanders are highly encouraged to develop cross-disciplinary working groups or staff cells that focus on risk-reduction or risk-mitigation policies and activities, including subject matter experts from the BLS, the Command Financial Advisor, surgeon or physician assistant, Behavioral Health Officer, chaplain, safety officer, and Equal Opportunity Advisor, and with routine command guidance from the Commander, Deputy Commander, and Command Sergeant Major. With a goal of prevention and "early warning," these working groups or cells can regularly collaborate to identify trends and design programs that holistically address recurring undesirable behaviors that typically manifest as, or evolve into, self-destructive or illegal conduct (such as drinking under age or while driving, fraternization, poor financial management, or family and relationship challenges). Commanders are encouraged to consult with their servicing BJA or MJA to design and implement such risk-reduction strategies, periodically assess their contributions, and to share their findings and recommendations with other units on Fort Sill.

#### **4-4. Serious Incident Reporting**

Commanders must immediately inform the Commander, USAFCOEFS, in accordance with USAFCOEFS Regulation 1-8, Reporting Procedures (1 Oct 2018), and their respective BJA, MJA, Deputy SJA, SJA, and CoJ regarding any serious incidents. Serious incidents are any incidents pertaining to Soldiers, Family members, or civilian employees that may be of concern to the Commander, USAFCOEFS, based on their severity, for potential for negative publicity, and the potential consequences of the event.

#### **4-5. Senior Leader or SHARP Representative Misconduct Reporting**

Commanders must report any credible information that suggests misconduct or an offense has been committed by an officer, warrant officer, or senior NCO (E-9), including any NCO regardless of grade filling the position of 1SG or CSM, or any Soldier serving as a SHARP representative, within their command. Such behavior shall be construed as potential "senior leader misconduct" and this reporting requirement is consistent with the Commanding General's withholding policy, as outlined in paragraph 3 above. Misconduct is conduct that could constitute a violation of the UCMJ or other criminal statute, or could result in adverse administrative action. Commanders should

err on the side of caution and report serious incidents and senior leader misconduct quickly. When in doubt whether there is “credible information” to trigger this reporting requirement, consult the servicing judge advocate as soon as practicable under the circumstances. At a minimum, be prepared to initiate an informal commander’s inquiry or investigation under AR 15–6, unless a law enforcement investigation has been initiated or is reasonably likely to be initiated.

#### **4-6. Bars from the Installation**

Appendix D to this regulation describes the policy for issuing a “bar from post” letter to Soldiers who are administratively separated from the U.S. Army under AR 635-200, Chapter 10 or 14, (unless with an Honorable characterization of service) or receive a punitive discharge following a court-martial conviction.

#### **4-7. Searches, Seizures, and Inspections**

Under the UCMJ, Commanders and Military Magistrates have limited authority to authorize searches and seizures. Commanders should inspect their units to ensure the security, military fitness, and good order and discipline of his or her unit or organization. Before authorizing a probable cause search, seizure, and/or inspection, commanders will first consult their assigned MJA except in exigent circumstances.

a. Commander Authorized Searches and Seizures. Upon a finding of probable cause – which is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched – commanders can authorize the search of people or places they control **on Fort Sill. This excludes privatized on-post housing**. Commanders can authorize probable cause urinalyses of Soldiers.

b. Inspections. Commanders should conduct regular inspections of their personnel and the places they control. Before conducting an inspection, other than an inspection urinalysis, commanders will consult with their assigned MJA. **Commanders may not inspect on-post, privatized housing.**

#### **4-8. Health and Welfare and Courtesy Checks**

Commanders, Leaders and Directors of all Fort Sill tenant and assigned units and organizations will conduct regular Courtesy Checks, Health and Welfare Inspections, and Leader In-Home Visits, as appropriate, in order to assess and ensure the safety, welfare, and discipline of our Soldiers, Families, and property. Brigade-level Commanders will ensure that subordinate leaders conduct Courtesy Checks quarterly, Health and Welfare Inspections at least semi-annually, and Leader In-Home Visits as needed. These missions will be planned and conducted according to the definitions and best practice protocols outlined in the enclosures. For a list of definitions and more specific details describing policy and guidance, see CG Policy Memorandum 18-13 (18 Jan 2018).

#### **4-9. Adverse Administrative Discharge Processing with Medical Evaluation Board**

In accordance with AR 635-200, paragraph 1-33b: In circumstances where a Soldier has been referred by a medical provider to the Medical Evaluation Board (MEB) process and UCMJ proceedings have not started, adverse administrative separation action under Chapter 14, AR 635-200, may be initiated by the chain-of-command and processed simultaneously. However, if the MEB results in a recommendation to send the Soldier into the Physical Evaluation Board process, the GCMCA (here, the Commander, USAFCOEFS) must, prior to the approval of the administrative separation, address (a) whether the medical or mental condition is the direct or substantial contributing cause of the conduct forming the basis for the administrative separation or (b) whether other circumstances in the individual case warrant disability processing in lieu of administrative separation based on misconduct. In such cases, the OSJA will coordinate with the Medical Treatment Facility leadership to designate an independent medical provider to review both the MEB findings and its supporting documents and the administrative separation packet. The review will follow the process outlined in the Memorandum in Appendix E to this regulation.

#### **4-10. Grants of Immunity**

The authority to issue grants or promises of immunity pursuant to Rule for Courts-Martial (R.C.M.) 704 is limited to the GCMCA, USAFCOEFS. No subordinate commander will solicit evidence or information during investigation of any offense under the UCMJ in exchange for any promise not to prosecute, or promise or inducement of favorable consideration on sentence. Any request for a grant of immunity will be forwarded by the Special Court-Martial Convening Authority's (SPCMCA) servicing judge advocate to the Chief of Military Justice, OSJA, USAFCOEFS for processing to the GCMCA.

### **Chapter 5**

#### **Nonjudicial Punishment**

##### **5-1. Use of Nonjudicial Punishment for On-Post Traffic Offenses**

a. Traffic offenses occurring on Fort Sill Military Reservation will be disposed of in the United States Magistrate Court and prosecuted by a judge advocate serving as a Special Assistant U.S. Attorney (located at FCOE OSJA). The Commander, USAFCOEFS, has the authority to impose nonjudicial punishment for on-post traffic offenses in privately-owned vehicles. This authority is withheld from subordinate commanders, unless otherwise delegated as detailed below.

b. Commanders who wish to impose nonjudicial punishment or prefer court-martial charges for on-post traffic offenses will submit a written request for an exception to policy, prior to the accused's arraignment in U.S. Magistrate Court, through SJA, ATTN: Military Justice, to Commander, USAFCOEFS. Approval of these requests is at the discretion of Commander, USAFCOEFS. This exception to policy is not needed, and commanders are free to impose nonjudicial punishment, when the on-post traffic

offense results in the issuance of a DD Form 1408 (Armed Forces Traffic Ticket) and the violation is not referred to the relevant federal U.S. Magistrate Court. DD Form 1408 tickets are issued to operators of government vehicles for all traffic violations on the installation, as well as for operating a POV for violations that are specific to Fort Sill. Commanders and civilian supervisors are the deciding authority on DD Form 1408, not a Federal Magistrate. Traffic points from DD Form 1408 are assessed by the Soldier's commander, commander of the military Family member's sponsor, or civilian supervisor and may result in suspended driving privileges on Fort Sill, or other adverse action taken against a Soldier under the UCMJ.

c. In the event that a Soldier commits an on-post traffic offense while on deployment R&R Leave, the MJA assigned to advise that Soldier's SPCMCA shall coordinate with the Special Assistant U.S. Attorney to ensure the appropriate and expeditious handling of the matter in U.S. Federal Magistrate Court in Lawton, Oklahoma. The MJA shall notify the Soldier's deployed chain-of-command and rear-detachment leadership as soon as possible after receiving the initial notice of the offense.

## **5-2. Statute of Limitations**

Nonjudicial punishment "imposition" under this Chapter means the date on which the Commander notifies the Soldier that he or she is considering whether to punish the Soldier under Article 15, UCMJ, as listed before Paragraph 3 on DA Form 2627.

## **5-3. Preliminary Inquiry**

When investigating an allegation of improper or illegal behavior by any Soldier, the immediate commander will promptly initiate a suspension of favorable personnel actions ("FLAG") in accordance with AR 600-8-2. If the flagging action will result in the Soldier being flagged beyond the Soldier's ETS date, the immediate commander will notify the unit's servicing MJA to determine whether the Soldier can be retained beyond the ETS date.

## **5-4. Formal Proceedings**

All offenses entered on DA Form 2627 will be reviewed by a judge advocate before the Soldier is notified of the commander's intent to dispose of the matter under the provisions of Article 15, UCMJ.

## **5-5. Right to Counsel**

a. No commander or any other person shall prevent or discourage a Soldier from consulting with legal counsel, whether that counsel is civilian or military assigned from the Trial Defense Service or is Special Victim Counsel. A Soldier must be given adequate time to consult with counsel, usually a minimum of 48 hours from notice of intent to pursue nonjudicial punishment under Article 15, UCMJ, or after the referral of



charges, regardless of training or other duty imposed by the Soldier's chain-of-command.

b. If a Soldier elects to consult with legal counsel, the commander shall ensure that the Soldier is provided a copy of the relevant DA Form 2627 and copies of all existing statements or documentary evidence upon which the allegation is based. If those documents contain PHI or PII of other individuals, the command shall coordinate with the servicing MJA to redact this information on the copies given to the Soldier.

## **5-6. Who May Act on Appeal**

The Commander, USAFCOEFS, as the GCMCA, retains authority to act on an appeal of an Article 15 nonjudicial punishment imposed by a subordinate SPCMCA (typically the Brigade Commander).

## **Chapter 6 Procedures for Courts-Martial**

### **Section I Pretrial**

#### **6-1. Court-Martial Convening Authorities**

a. USAFCOEFS GCMCA Jurisdiction. Appendix C to this regulation lists all the units and their respective court-martial convening authority and alignment under the USAFCOE GCMCA. The Commander, USAFCOEFS, is the authority for the administrative transfer of UCMJ jurisdictional authority across the SPCMCA's. Therefore, a deploying SPCMCA desiring to relinquish jurisdiction over subordinate commands remaining at Fort Sill will coordinate with the OSJA, which will arrange for the transfer of such authority across the SPCMCA's.

b. Rear Provisional Units. Because most deploying units will leave behind pending courts-martial and administrative separation cases, it is critical to fair and efficient good order and discipline that rear commanders have the proper authority to exercise military justice seamlessly. Unless a rear provisional unit is properly established in accordance with AR 220-5, a unit's "rear detachment" will not have authority to administer actions or dispose of offenses under the UCMJ.

(1) The Commander, USAFCOEFS, as the GCMCA, per FORSCOM Commander Memorandum, Subject: Guidance for Rear Provisional Unit Status, dated 8 October 2019, has approval authority for establishing a rear provisional unit. Such a request must be submitted through the OSJA-MJD no later than 90 days prior to that unit's deployment.

(2) Unless otherwise designated at the time a rear provisional unit is established, all rear detachment personnel will fall under their respective Headquarters

Company/Troop/Battery, within their Rear Provisional Brigade for the purposes of UCMJ and administrative actions.

c. Provisional Units (TRADOC). To create a Provisional unit for a TRADOC organization, the Commander, USAFCOEFS, must request this designation from Commander, TRADOC, in accordance with AR 220–5, paragraph 2–5a. Such a request, per AR 27–10, paragraph 5–2b(1), and Articles 22, 23, and 24 of the UCMJ, must be in order to maintain continuity of operations and the proper administration of military justice within the chain-of-command. If granted, provisional status shall not exceed two years.

## **6-2. Detailing of Counsel and Reporters**

In accordance with TJAG Policy Memorandum 17-05 (1 Dec 2017), the Special Victim Prosecutor (SVP) supporting the USAFCOEFS will be detailed by the CoJ to assist in the investigation and litigation of offenses in violation of Article 120, Article 120a, Article 120b, Article 120c, Article 125, or Article 134, all family violence cases, or cases involving attempts to commit any of these offenses. The SVP leads the SV Litigation Team as part of an Army-wide effort to enhance the investigation and disposition process for allegations of sexual assault, domestic violence, and child abuse.

## **6-3. Reports of Offenses**

Any commander who receives a report of sexual misconduct offenses in violation of Article 93a, Article 117a, Article 120, Article 120a, Article 120b, Article 120c, Article 125, or 134, UCMJ, or any attempts of any of these offenses (regardless of the commander's assessment of credibility), will immediately refer this report to the supporting Trial Counsel, MJA, or BJA, and to the military criminal investigation organization with investigative responsibility over the offense (as specified in AR 195-2, Appendix B). Commanders will not conduct an AR 15-6 investigation or a R.C.M. 303 preliminary inquiry prior to referring the report to the appropriate military criminal investigation organization or during the pendency of any criminal investigation. This rule does not prohibit a command-initiated investigation or inquiry into collateral misconduct or disciplinary, safety, morale, command climate, or other issues that are raised by the initial report. Proper and timely coordination between the command and the law enforcement investigatory is crucial under these circumstances, and commanders should consult with their servicing MJA prior to beginning any such concurrent investigation or inquiry.

## **6-4. Investigation with a View Toward Trial by Court-Martial**

Commanders will direct special attention to a Soldier's ETS date when pending an investigation being viewed toward trial by court-martial. Depending on the circumstances of the investigation (i.e., seriousness/gravity of the alleged offenses, stage of investigation or charging) the Soldier may need to be retained past the ETS date. Authority to retain a Soldier past ETS when charges have not yet been preferred

is the GCMCA, USAFCOEFS, upon request staffed thru the SPCMCA and SJA. Per AR 635-200, paragraph 1-22, a Soldier with preferred court-martial charges will be retained past ETS. In either situation above, the MJA, Trial Counsel detailed to the case, or the CoJ is the point of contact to initiate processing of proper documents for retention past an ETS.

## **6-5. Pretrial Confinement**

a. No person subject to the general court-martial jurisdiction of the Commander, USAFCOEFS, may be placed into pretrial confinement without the concurrence of the SJA, Deputy SJA (DSJA), or CoJ. This coordination will be accomplished by the servicing MJA or BJA, or the CoJ. A Soldier charged with an "offense normally tried by a summary court-martial" or normally disposed of with nonjudicial punishment "shall not ordinarily be placed in confinement" (see Article 10, UCMJ, and R.C.M. 305(d)). Therefore, pretrial confinement will usually not be approved where the commander has a view toward disposition of the charge(s) with less than a special court-martial.

b. Commanders ordering pretrial confinement in accordance with R.C.M. 305 will provide the servicing MJA or BJA with all evidence of the alleged offenses. The servicing MJA will provide advice and guidance to the commander on pretrial confinement procedures and will assist the commander in completing the required pretrial confinement documents, including a DA Form 5112, Checklist for Pretrial Confinement.

c. Unit commanders are responsible for the safety, welfare, and morale of any Soldier under their command who is in pretrial confinement. Accordingly, commanders must maintain contact with Soldiers in pretrial confinement (see Misc. Pub 27-8, 2019 Commander's Legal Handbook, available at <https://www.jagcnet.army.mil/CdrsLegalHandbook>).

(1) Military Pretrial Confinement. Unit commanders must personally visit Soldiers placed in a military pretrial confinement facility during the first thirty (30) days of confinement. Commanders, First Sergeants, Executive Officers, or other members of the unit leadership, must personally visit the Soldier at least once per month thereafter. Commanders should contact the Soldier by telephone at least once per month for the entire period of pretrial confinement.

(2) Civilian (local) Pretrial Confinement. Unit commanders with Soldiers placed in local, civilian pretrial confinement (anywhere within 150 miles of Fort Sill) must visit the Soldier at least once during the first thirty (30) days of confinement. Commanders, First Sergeants, Executive Officers, or other members of the unit leadership, must personally visit the Soldier at least once per month thereafter. Commanders should contact the Soldier by telephone at least once per month for the entire period of pretrial confinement.

(3) Civilian (nonlocal) Confinement. Unit commanders with Soldiers placed in non-local civilian pretrial confinement (more than 150 miles from Fort Sill) should telephonically contact the Soldier at least once during the first thirty (30) days of confinement. Thereafter, the Commander, First Sergeant or Executive Officer, or other members of the unit leadership, must continue to telephonically contact the Soldier at least once per month. Commanders should contact the Soldier by telephone at least once per month for the entire period of pretrial confinement.

#### **6-6. Investigative Subpoenas**

The authority to issue investigative subpoenas has been delegated by the Commander, USAFCOEFS to the SJA. The delegation of authority to the SJA does not supplant the authority of a military judge to issue an investigative subpoena under UCMJ, Article 46(d)(2). The SJA shall maintain a written investigative subpoena standard operating procedure. The TC assigned to the case shall route requests for investigative subpoenas through the CoJ. Defense Counsel shall route all requests through the TC assigned to the case.

#### **6-7. Preliminary Hearing Under Article 32, UCMJ**

a. If it appears that trial by general court-martial is warranted, the SPCMCA over the accused will appoint, in writing, a qualified commissioned officer to serve as a preliminary hearing officer (PHO) under the provisions of Article 32, UCMJ, and R.C.M. 405. The PHO, whenever practicable, will be a judge advocate equal to or greater in grade to the counsel representing the parties in the case. The PHO is appointed to conduct the preliminary hearing, as their principal duty until it is completed. The CoJ will be responsible for designating judge advocates to serve as a PHO, but the convening authority will maintain the authority to appoint the PHO for each case. When appointing a PHO, commanders should ensure that the appointed officer is available and able to complete the hearing as expeditiously as required by regulation.

b. When the appointment of a judge advocate as the PHO is not practicable, or in exceptional circumstances in which the interest of justice warrants, the convening authority directing the hearing may detail an impartial commissioned officer, who is not the accuser and who is equal to or greater in grade to the counsel representing the parties in the case, to serve as the PHO. If the PHO is not a judge advocate, an impartial judge advocate will be available to provide legal advice to the preliminary hearing officer. In this circumstance the PHO must contact their servicing BJA (for applicable units) or the Administrative Law Division of the OSJA for advice concerning their duties within 24 hours after appointment.

c. If it appears that trial by general court-martial is warranted in any case involving sexual misconduct offenses in violation of Article 120, Article 120b, Article 120c, Article 125, or 134, UCMJ, or any attempts of any of these offenses, the Article 32, UCMJ preliminary hearing officer must be a judge advocate.

## **6-8. Garrison Commander Authority to Approve Discharges in-Lieu of Court-Martial**

a. To properly advise the Garrison Commander on the authority delegated by the Commander, USAFCOEFS, to approve a Request for Discharge in-Lieu of Court-Martial under AR 635-200, Chapter 10, for Soldiers assigned to the Personnel Control Facility (PCF), the following actions are required:

(1) Soldiers returning from AWOL or Deserter status and under the administrative control of the PCF, will be interviewed at the earliest possible opportunity by law enforcement investigators assigned to the Fort Sill Directorate of Emergency Services (DES) or CID. The Commander, PCF, or authorized designee shall arrange the interview. Under no circumstances, shall the PCF cause the returning Soldier to provide possibly incriminating statements (orally or in writing) regarding their alleged AWOL, Desertion, or other suspected criminal conduct without first advising that Soldier of their rights under Article 31, UCMJ. See DA Form 3881 ("Rights Warning Procedure/Waiver Certificate"). If, before the Garrison Commander approves such a request, credible evidence of other misconduct surfaces for which a trial by at least a special court-martial may be warranted, the MJA will advise the chain-of-command, and will notify Trial Defense Counsel.

(2) Request must receive a legal review by the servicing MJA before being submitted to the approval authority. With the assistance of DES or CID, this review will help ensure that no other misconduct (before, during, or after the AWOL/Desertion period) is unaccounted for by the chain-of-command, and that the circumstances of that AWOL/Desertion (including the amount of time) are properly considered and weighed by the chain-of-command, before approving the request.

(3) Request must include records or statements from relevant witnesses indicating that the Soldier went from Present for Duty to AWOL and from AWOL to Dropped from the Roles on the nature of that case-include the Soldier's enlistment contract, DA Form 61 (an officer candidate's pre-commissioning Application for Appointment), Enlisted or Officer Record Brief, DA Form 31 (Request for Leave), and/or properly sworn statements from the Soldier's former chain-of-command detailing the date, circumstances, and unit from which the Soldier allegedly left without proper authorization.

b. Soldiers discharged under this delegation of authority will be barred from entering the Fort Sill installation.

## **6-9. Referrals to Special Courts-Martial**

The authority to refer cases to a special court-martial empowered to adjudge a bad-conduct discharge is withheld to the GCMCA.

## 6-10. Excusal of Courts-Martial Panel Members

Panel members desiring temporary or permanent excusal from court-martial duty must request excusal from the Commander, USAFCOEFS. All requests must indicate the inclusive dates and reason for the request, including the panel member's role in the training exercise or TDY, if applicable. Individual requests for excusal should be forwarded in writing through the OSJA, MJD-NCOIC, immediately after the member becomes aware of the unavailability, but no later than 2 weeks prior to the requested excusal start date. Use of electronic means to forward requests is encouraged. Emergency requests for excusals will be made directly to the CoJ.

## 6-11. Unit Support for Courts-Martial Proceedings

a. Bailiff. The accused's Company/Troop/Battery commander will provide a bailiff for each day that the trial is in session to include all Article 39(a) sessions. Bailiffs will not be witnesses to the court-martial, or a unit escort or guard for the accused. A bailiff should neither have an interest in the case nor a close association with the accused or a victim of a charged offense. Unless otherwise directed by the court, bailiffs will be in ASU while actively performing their duties. In cases of an enlisted accused, the bailiff will ordinarily be a NCO senior to the accused. In cases of an officer accused, the bailiff will ordinarily be an officer senior to the accused, if reasonably available. If not reasonably available, the bailiff will be a NCO in the grade of E-7 or above. The MJD-NCOIC or the detailed Special Victim or General Crimes NCO will brief the bailiff as to their duties in accordance with Appendix C of the Rules of Practice Before Army Courts-Martial.

b. Escorts. The accused's unit commander is responsible for ensuring that the accused is present at all court-martial proceedings (including arraignments and Article 39a sessions). For the date(s) of trial as prescribed by the Special Victim or General Crimes Trial Counsel detailed to the case, the commander will provide:

(1) Two NCO escorts senior to the enlisted accused. In cases of an officer accused, two officers senior to the accused, if reasonably available - if not reasonably available, the escorts will be NCOs of the grade of E-7 or above. At least one escort will be in the courtroom during all sessions of court prescribed by the detailed Trial Counsel. At no time will shackles or any other restraint devices be brought into the courtroom. If confinement is imposed, escorts will be responsible for safely and securely transporting the accused to the contracted local confinement facility upon the signing of the confinement order and, unless replaced by the unit commander, to the long-term confinement facility on the date reassignment is effective. Both escorts must be trained by DES certified law enforcement personnel prior to the prescribed trial dates.

(2) A licensed driver with a dispatched non-tactical government vehicle dedicated for use by the escorts.

c. Military Clothing and Personal Property of the Accused. In preparation for the possibility of confinement being adjudged, the accused's unit commander, in advance of the date of trial, is responsible for ensuring that the accused has all military clothing items required by the military confinement facility and are available to the escorts upon transfer of the Soldier from the local civilian contracted confinement facility to a military confinement facility. Additionally, the unit commander will ensure that the Soldier arrives at the local civilian contracted confinement facility with a basic supply of undergarments and toiletries. The accused's unit commander is also responsible for ensuring that the accused's personal property is inventoried and secured during any period of confinement.

d. Uniform and Meals. The accused's unit commander is responsible for ensuring that the accused is at all court-martial proceedings (including arraignments and Article 39a sessions) on time and in the appropriate uniform. Commanders should seek guidance from the Special Victim or General Crimes Trial Counsel or Paralegal NCO detailed to the case regarding uniform requirements. The accused's commander is also responsible for ensuring that arrangements are made for the accused's meals during any court proceedings.

## **6-12. Directorate of Emergency Service Support for Courts-Martial**

Two (2) DES law enforcement personnel will be assigned to perform security detail for each court-martial proceeding (including arraignment and Article 39a sessions). The Special Victim or General Crimes NCO will be responsible for coordinating this detail with DES.

## **6-13. Release of Information Pertaining to the Administration of Military Justice and Accused Persons**

a. General. Public information and access to military justice proceedings promotes public awareness and confidence in the military justice system. Those responsible for administering military justice and those providing information to the public and the media must exercise sound judgment to strike a fair balance by considering the following: protection of individuals accused of offenses, improper and unwarranted publicity, public understanding and transparency of the military justice system, and the state of discipline in the military. No statements or other information shall be furnished to the news media or any other source for the purpose of prejudicing the outcome of an accused's trial, or which could reasonably be expected to have such an effect (AR 27-26, Rule 3.6).

b. Release and dissemination of Information. In accordance with AR 27-10, Chapter 5-64, the release and dissemination of information pertaining to military justice matters, including accused persons, shall be accomplished via the convening authority's public affairs officer. Requests for information received from representatives of the news media shall be referred to the appropriate public affairs officer for action. When an individual is suspected of an offense, care should be taken to indicate that the individual

is alleged to have committed an offense, as distinguished from stating or implying that the accused has actually committed an offense. As a general rule, a copy of the charge sheet, redacted IAW AR 27-10, paragraph 5-56, should not be released until after arraignment unless public interest significantly outweighs the privacy interest of the accused. The following factors should be considered when releasing charge sheets:

(1) After Preferral: Generally, the grade of the accused and the general nature of the offenses may be released but the charge sheet should not be released because specifications can easily be amended.

(2) Cases Pending Article 32: Generally, the name and grade of the accused and the general nature of the offenses may be released but the charge sheet should not be released because specifications can easily be amended.

(3) After Referral: Generally, the name, grade, age, unit, duty station, and gender of the accused and the general nature of the charges may be released. A copy of the charge sheet generally will not be released.

(4) After arraignment: Because arraignment signifies greater finality of the charges (R.C.M. 601(e)(2)), an appropriately redacted copy of the charge sheet may be released. Any release of the charge sheet should be accompanied by a statement that charges are merely accusations and that the accused is presumed innocent until proven guilty.

(5) Prohibited Information: Subjective opinions, observations, or comments concerning the accused or any witness's character, demeanor, credibility, or expected testimony will not be released. Nor will any other information be released when there is a reasonable likelihood that the dissemination of such information will affect the deliberations of an investigative body or the findings or sentence of a court-martial, or otherwise prejudice the due administration or military justice before, during or after trial. Trial Counsel are prohibited from commenting to the media without prior coordination with the Office of the Judge Advocate General, Criminal Law Division (OTJAG-CLD), through the SJA.

c. Personnel assigned to the U.S. Army Trial Defense Service (USATDS) are expected to handle responses to the news media in accordance with USATDS policy.

#### **6-14. Personnel of Other Services**

Offenses by member of other armed services will normally be referred to the armed service concerned for appropriate action.

#### **6-15. Persons not Subject to Court-Martial Jurisdiction**

Persons not subject to court-martial jurisdiction (i.e., Civilian employees, Civilians, and Family members) are subject to adverse administrative action and the criminal



jurisdiction of the United States and the State of Oklahoma. A Commander considering adverse action against Civilians or Family members shall consult with their servicing SJA.

## **Section II Post-Trial**

### **6-16. Ordering Post-Trial Confinement**

Personnel serving in the following capacities has the authority to sign the DD Form 2707 (Confinement Order) directing post-trial confinement of a Soldier: any commander in the Soldier's chain of command, MJA, BJA, the presiding Summary Court-Martial Officer, detailed Trial Counsel, CoJ, DSJA, or SJA. Only the Special Victim or General Crimes Prosecutor, CoJ, DSJA, or SJA, may conduct the required legal review and approval in block 8 of the DD Form 2707.

### **6-17. Assignment of Soldiers based on Court-Martial Action**

a. When the sentence includes a punitive discharge or dismissal but no sentence to confinement, prior to reassigning the Soldier to the PCF the Soldier will be processed for voluntary excess leave pending appellate review in accordance with AR 600-8-10, paragraph 5-21. If the Soldier declines voluntary excess leave processing, the reassignment order will require the physical reporting of the Soldier to the PCF (including reporting date and travel funding cite). Personnel accountability for Soldiers on voluntary and involuntary excess leave pending appellate review belongs to the PCF Commander effective the date of reassignment.

b. Administrative reassignment of personnel will NOT affect the authority of the convening authority who referred the case to take action on the findings and sentence.

c. All documents reflecting a change in the Soldier's duty status or unit assignment, including voluntary or involuntary excess leave documents, will be included with the allied papers in the record of trial.

d. All adverse administrative or legal actions involving Soldiers assigned to the PCF that require visibility by, recommendation from, or approval of, the Garrison Commander (as SPCMCA) or Commander, USAFCOEFS, will receive a legal review from the OSJA prior to action.

## **Chapter 7 Victim and Witness Services**

### **7-1. Victim and Witness Rights**

All persons must ensure that victims and witnesses of crime are treated courteously and with respect for their privacy. Interference with personal privacy and property rights will

be kept to an absolute minimum. In those cases in which a victim has been subjected to attempted or actual violence, every reasonable effort will be made to minimize further trauma. Victims will be treated with care and compassion, particularly in circumstances involving children, domestic violence, or sexual misconduct. Effective victim and witness programs are multidisciplinary and utilize all related military and civilian agencies.

## **7-2. Victim-Witness Liaison**

The Victim-Witness Liaison (VWL) provides services required by AR 27-10, Chapter 17. A VWL provides services to all victims, defined as: a person who has suffered direct physical, emotional or pecuniary harm as the result of a commission of a crime in violation of the UCMJ (or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DoD components). A VWL does not form a privileged relationship with victims and witnesses.

## **7-3. Special Victims' Counsel**

Victims of sex-related offenses, defined as potential violations of Articles 120, 120a, 120b, 120c, and 125 of the UCMJ, who are entitled to legal assistance services under 10 U.S. Code § 1044, are entitled to receive Special Victim Counsel services. See TJAG Policy Memorandum 17-06 (1 Dec 2017).

## **Chapter 8**

### **General Officer Memorandum of Reprimand**

A general officer memorandum of reprimand (GOMOR) will be initiated for all DUI and DWI offenses and refusals to take a blood alcohol content (BAC) test involving Soldiers assigned or attached to units at Fort Sill. The SJA is responsible for preparing and processing these GOMORs. Unless jurisdiction is otherwise delegated, the Commander, USAFCOEFS, retains the authority to issue and determine filing of GOMORs.

a. Within 72 hours of initiation, a copy of the GOMOR imposed by the Commander, USAFCOEFS will be sent through the chain of command to the Soldier for acknowledgment and the opportunity to respond IAW AR 600-37. The Soldier will be afforded the opportunity to consult with counsel provided by the government and will return the acknowledgement and additional matters, if any, within seven (7) calendar days to the unit commander. Any request for additional days to submit matters will be staffed through the MJD-NCOIC for action by the SJA. The chain of command will recommend that the GOMOR be filed in either the unit file, the Soldier's Army Military Human Resource Record (AMHRR), or that the GOMOR be rescinded. The Soldier's matters and the command recommendations will be submitted through the MJD, to the Commander, USAFCOEFS for a filing determination.

b. The command will ensure the Soldier is flagged IAW AR 600-8-2.

c. When a Soldier leaves the chain of command or supervision after a Commander or supervisor has announced the intent to impose a reprimand, but before the reprimand has been imposed, the action may be processed to completion by the losing command.

d. When a former Commander or supervisor discovers misconduct warranting a reprimand, an admonition, or censure, he or she may:

(1) Send pertinent information to the individual's current Commander for action.

(2) Personally initiate and process a letter of reprimand, admonition, or censure as if the former command or supervisory relationship continued. In such cases, further review (if needed) will be accomplished in the recipient's current chain of command. Officials should consider the timeliness and relevance of the adverse information before taking administrative action at the later date.

## **Chapter 9 Military Justice Online**

The use of MJO throughout the court-martial process is mandatory. Military Justice Advisors are responsible for ensuring data is inputted in MJO at the beginning of an investigation. Trial Counsel are responsible for ensuring MJO is updated throughout the trial process. Additionally, Court Reporters are responsible for ensuring MJO is updated throughout the post-trial process. All reports will be generated through MJO. Accuracy of information in MJO is paramount.

## **Chapter 10 Military Magistrates**

Fort Sill maintains a Military Magistrate program. Military magistrates are experienced legal officers who are directly supervised by a military judge. Military Judges may also perform military magistrate duties. All military magistrates are permitted to issue search and seizure or apprehension authorizations based upon probable cause. There are no geographic or branch of service restrictions as to which military magistrates may authorize a search, seizure or apprehension, but CONUS based Fort Sill personnel would rarely have a necessity to solicit the services of military magistrates stationed at other installations. In addition to this authority, military magistrates review the propriety of holding military personnel in continued pretrial confinement.

a. Military magistrates cannot authorize searches or seizures other than on a military installation except in certain circumstances. They can authorize the search or seizure of any Government property (building, military aircraft, vehicle, vessel, privatized on-post housing, etc.) regardless of its location. They may also authorize the search or arrest of any member of the U.S. Armed Forces, regardless of the location of such personnel.

b. Probable cause determinations authorizing a search and/or seizure will be based on the military magistrate's reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A military magistrate may issue apprehension authorizations for persons subject to the UCMJ, when reasonable grounds exist to believe that a particular subject is suspected of having committed or is committing an offense triable by courts-martial.

c. Law enforcement agents and each unit's legal representative will be provided an on-call military magistrate schedule on at least a quarterly basis by the managing military magistrate. This roster will provide the scheduled times and contact information of the designated magistrate, ensuring law enforcement agents and Fort Sill units have 24/7 access to a military magistrate. If the detailed on-call military magistrate is not available or cannot act impartially under the circumstances, the managing magistrate will arrange for another military magistrate to review the unit's matters. Military magistrates will only recuse themselves when their impartiality might be reasonably questioned. Further, command personnel are not permitted to engage in "forum shopping" by contacting other military magistrates in the event any previous attempt at securing authorization to conduct the same search, with the same evidence, was denied.

## **Chapter 11**

### **Extending Reserve Component Soldiers on Active Duty**

National Guard and Reserve Component Soldiers serving on Active Duty (AD), Active Duty for Training (ADT), Annual Training (AT), Inactive Duty Training (IDT) or Inactive Duty for Training (IADT) in Title 10 status may be extended on AD involuntarily only if there is a view towards courts-martial (i.e., contemplated action is a preferral of charges at the Special or General Court-Martial level) that is taken before the expiration of the AD, ADT, AT, IDT, or IADT period. All administrative measures and nonjudicial punishment will be completed before the expiration of the AD, ADT, AT, IDT, or IADT period; a Soldier may not be extended on AD to initiate or complete adverse administrative action or non-judicial punishment. For National Guard and Reserve Component Soldiers whose orders termination date states "until complete," until complete means graduation from their respective course.

## **Chapter 12**

### **Adverse Information Program**

a. The Adverse Information Program (AIP) applies to officially documented command investigations or inquiries containing a substantiated adverse finding against a field grade officer made on or after 3 January 2014. The Army Adverse Information Portal (AAIP) is a database designed to log adverse personnel information. The approval authority of the investigation or inquiry is the final arbiter of whether the information is deemed adverse and therefore must be uploaded. The approval authority will have the advice of the SJA when making this determination. If the approval authority finds that the information is not adverse, it is best practice to have a specific written finding on that

point. Motor vehicle violations that did not require a court appearance, minor infractions that did not result in more than a non-punitive counseling and information attributed to an individual 10 or more years before the date of the personnel action do not fall under the AIP and should not be uploaded.

b. Adverse Information. Adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual.

c. OSJA Responsibility. The OSJA is the only legal office authorized to upload investigations into AAIP; the OSJA may only upload investigations that fall within their jurisdiction. In addition to uploading the information, the OSJA will prepare summaries of all qualifying investigations for the GCMCA, who will have the opportunity to provide comments to be added to the AAIP entry. Any questions regarding AIP or the reporting requirements may be directed to the OSJA, Chief of Administrative Law Division. OSJA MJD-NCOIC is designated as the point of contact for AAIP actions requiring upload.

d. The commander approving the AIP summary is the investigation approving authority. The commander providing comments for input into AIP is the commander who took action on the recommendations (i.e. counseling statements, issued a reprimand, NJP, etc.). Each SPCMCA is responsible for identifying qualifying adverse information from an investigation that was initiated by their respective commands.

## **Chapter 13**

### **Inclusion of Information on Sex-Related Offenses in the Army Military Human Resources Record**

In accordance with, AR 600-37, any courts-martial convictions, NJP, and punitive reprimands in a Soldier's record that are the result of a sex-related offense must be filed permanently in the AMHRR.

a. Sex-related offenses are defined as follows:

(1) Any violation of Article 120: Rape and sexual assault. This includes rape, sexual assault, aggravated sexual contact, and proof of threat.

(2) Any violation of Article 120a: Stalking.

(3) Any violation of Article 120b: Rape and sexual assault of a child. This includes rape, sexual assault, sexual abuse of a child, and proof of threat.

(4) Any violation of Article 120c: Other sexual misconduct. This includes indecent viewing, visual recording or broadcasting.

(5) Any violation of Article 125: Forcible sodomy; bestiality.

(6) Any violation of Article 80: Attempt (any attempt to commit the offenses (1)-(5) above).

b. Commanders at all levels are required to consult their servicing MJA or TC before taking any action with regards to the offenses listed in paragraph a above.

#### **Chapter 14**

#### **Complaints Pursuant to UCMJ, Article 138**

Any commissioned officer who receives an Article 138, UCMJ, complaint after the service-member has unsuccessfully requested redress from his or her commanding officer, shall contact the Administrative Law Division of the OSJA within 24 hours to receive a brief on the proper actions and procedures to respond to the complaint.

## **Appendix A References**

### **Section I Required Publications**

**AR 27-10**  
Military Justice

**AR 220-5**  
Designation, Classification, and Change of Status of Units

**AR 600-20**  
Army Command Policy

**AR 600-37**  
Unfavorable Information

**AR 623-3**  
Evaluation Reporting System

**Article 15, UCMJ**  
Non-judicial Punishment

**FS Reg 190-1**  
Weapons

**R.C.M. 306**  
Initial Disposition

### **Section II Related Publications**

**AR 190-5**  
Motor Vehicle Traffic Supervision

**AR 190-47**  
The Army Corrections System

**AR 600-8-2**  
Suspension of Favorable Personnel Actions (FLAGS)

**AR 600-8-10**  
Leaves and Passes

**AR 600-8-19**

Enlisted Promotions and Reductions

**AR 600-60**

Physical Performance Evaluation System

**DOD Directive 1030.1**

Victim and Witness Assistance

**DOD Directive 5525.4**

Enforcement of State Traffic Laws on DOD Installations

**DODI 1030.2**

Victim and Witness Assistance Procedures

**DODI 6055.4**

DOD Traffic Safety Program

**FS Reg 190-5** Motor Vehicle Traffic Supervision

**Manual for Courts-Martial, United States**

**Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes**

**18 USC Section 13**

Crimes and Criminal Procedures, Part I – Crimes Chapter

**18 USC Section 18**

Crimes and Criminal Procedures, Part II – Crimes Procedures

**Section III**

**Referenced Forms**

**DA Form 2028**

Recommended Changes to Publications and Blank Forms



## **Appendix B**

### **Glossary**

#### **AMHRR**

Army Military Human Resource Records

#### **AR**

Army Regulation

#### **ATTN**

Attention

#### **BAC**

Blood Alcohol Content

#### **CG**

Commanding General

#### **DA**

Department of the Army

#### **DD**

Department of Defense (Forms)

#### **DES**

Directorate of Emergency Services

#### **DOD**

Department of Defense

#### **DUI**

Driving Under the Influence

#### **DWI**

Driving While Intoxicated

#### **ETC.**

Et Cetera

#### **FORSCOM**

Forces Command

#### **GCM**

General Court-Martial

**GCMCA**

General Court-Martial Convening Authority

**GOMOR**

General Officer Memorandum of Reprimand

**IAW**

In Accordance With

**JAG**

Judge Advocate General

**MOS**

Military Occupational Specialty

**MP**

Military Police

**MTOE**

Military Table of Organization and Equipment

**NCO**

Noncommissioned Officer

**NCOER**

Noncommissioned Officer Evaluation Report

**NJP**

Non-Judicial Punishment

**NLT**

Not Later Than

**OER**

Officer Evaluation Report

**OSJA**

Office of the Staff Judge Advocate

**PAM**

Pamphlet

**PARA**

Paragraph

**PHO**

Preliminary Hearing Officer

**RC**

Reserve Component

**R.C.M.**

Rule for Court-Martial

**REG**

Regulation

**SAUSA**

Special Assistant United States Attorney

**SCM**

Summary Court-Martial

**SJA**

Staff Judge Advocate

**SPCMCA**

Special Court-Martial Convening Authority

**TDA**

Table of Distribution and Allowances

**TDS**

Trial Defense Service

**TDY**

Temporary Duty

**TOE**

Table of Organization and Equipment

**UCMJ**

Uniform Code of Military Justice

**US**

United States

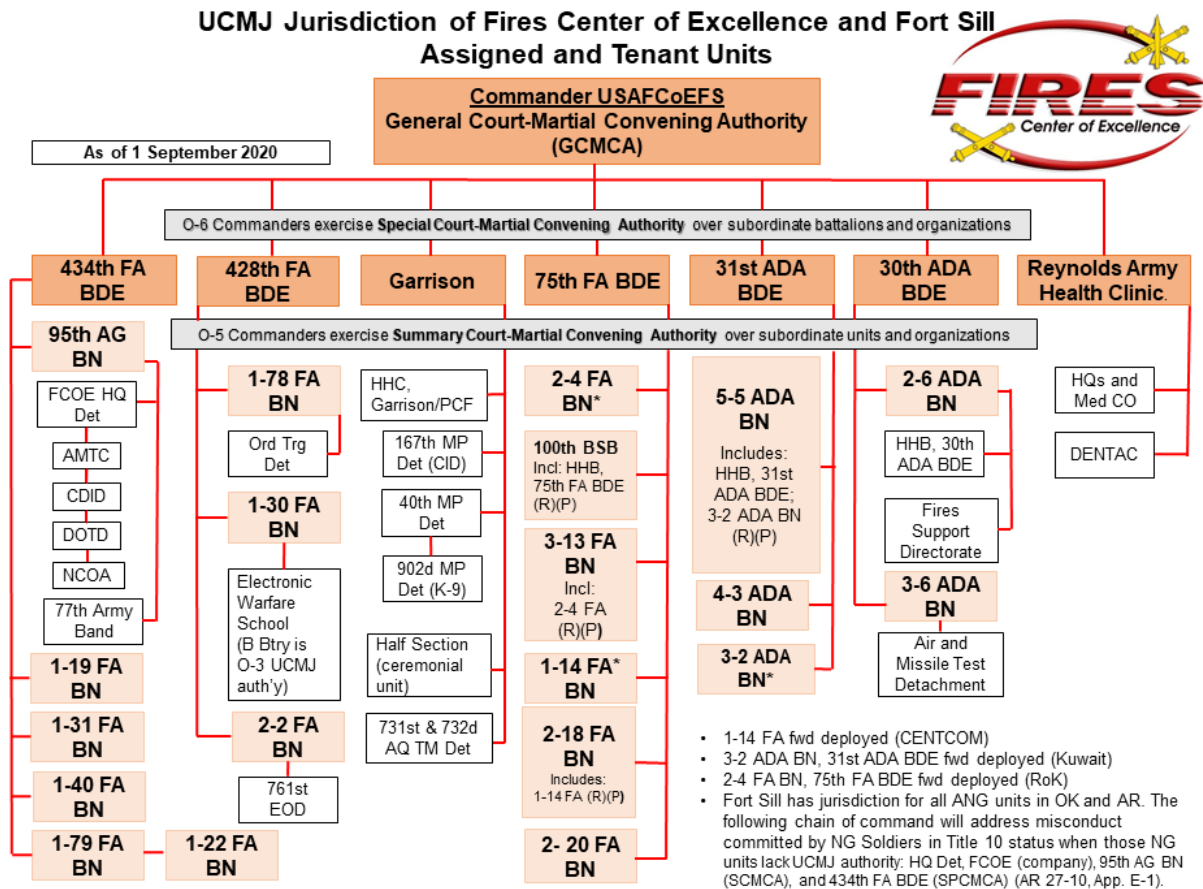
**USC**

United States Code

## Appendix C

### USAFCOEFS UCMJ Jurisdiction Diagram

This diagram of the USAFCOEFS UCMJ jurisdiction is subject to revision, for latest version, contact the Office of the Staff Judge Advocate, Chief of Military Justice, at (580) 442-1765.



## Appendix D

### Bars from Installation Policy

1. **PURPOSE:** To propose a system for implementing bars to this Installation, under 18 U.S.C. 182, 50 U.S.C. 797, 32 C.F.R. 809.a.5, Department of Defense Instruction 5200.8, and AR 190–45, paragraph 2–4a, for former Soldiers adversely discharged from the Service while stationed at Fort Sill.

2. **PROCESS:** Each time a Soldier is adversely discharged or separated from the Service while assigned to Fort Sill, the Soldier's O-6 Commander shall consider whether a "bar" from the installation is warranted under the circumstances. The affected population includes those discharged from the Army by a court-martial, acceptance of a discharge under AR 635–200, Chapter 10 (discharge in lieu of court martial), and those administratively separated under AR 635–200, with a Chapter 14 (separation for misconduct).

a. **Initiation of a bar to post request:** All punitive discharges resulting from a court-martial conviction (Dismissal, Dishonorable Discharge, Bad-Conduct Discharge) will trigger initiation of a bar from post. The Fort Sill OSJA will administer this action and submit to the Garrison Commander for signature approval. Similarly, when the Military Justice section processes an approved Chapter 10 request, a bar to post request will be initiated. The bar request would be packaged with the action as an additional item for the signature of the decision-making authority (the Brigade Commander for a Chapter 14 misconduct). Whenever a brigade level legal team finalizes a Chapter 14 separation, it also will initiate a bar request. The bar request will be packaged with the action as an additional item for the signature of the decision-making authority. When a brigade commander recommends that no bar from the installation be imposed in a given case, the SJA will notify the Commander, USAFCOEFS.

b. **Review of the bars to post request:** The bar request will be reviewed for legal sufficiency by the servicing MJA before being sent to the Garrison Commander for approval. The standard of review is whether the bar from the installation is, under the circumstances, arbitrary, discriminatory, or unpredictable. The bar must be based on reasonable grounds and be judiciously applied. The connection in time between the offense and the date of the bar request, the severity of the offense, and the potential impact on the ability maintain orderly administration of the installation, and the good order and safety of personnel on Fort Sill and all other military installations are considerations under this standard of review.

c. **A discharge or separation of less than Honorable:** Chapter 14–12c separations for serious misconduct normally authorizes a discharge characterization of General (under honorable conditions) or Under Other than Honorable Conditions and will usually merit a bar because of the nature of the underlying misconduct and the need to protect Fort Sill from the negative influence or actions of former Soldiers who were separated

for bad conduct. Other common types of separations for conditions unrelated to misconduct, such as height/weight or APFT failure, pregnancy or family care plans, would normally not justify a bar from the installation.

d. A discharge or separation of Honorable: Separation under Honorable conditions would indicate the Soldier is not a threat to Fort Sill. However, there are times when a bar to post is appropriate. These may include former Soldiers who were separated under the MEB/PEB process but were also being considered for a Ch. 14 separation.

e. Final determination by the Garrison Commander: Following a case-by-case legal review, the servicing MJA will forward the request, along with a recommendation, to the Garrison Commander for final determination. If the bar request is approved by the Garrison Commander, the Garrison Commander's office will forward the bar to the Fort Sill Department of Emergency Services for implementation. The Department of Emergency Services will maintain this bar in routine record-keeping of all personnel barred or expelled from the installation.

**Appendix E** (see paragraph 4-9 of this supplement)  
Independent Medical Assessments

ATZR-JA

1 September 2020

MEMORANDUM FOR RECORD

SUBJECT: Independent Medical Assessments under AR 635–200, paragraph 1–33b

1. **PURPOSE.** This memorandum revises the Memorandum for Record, Subject: Independent Medical Assessments (IMA) under AR 635–200, dated 15 April 2016. In addition to outlining coordination procedures between the Office of the Staff Judge Advocate (OSJA) and the Reynolds Army Health Clinic (RAHC), paragraph 2c adds the requirement to include an in-person consultation between the provider responsible for the IMA and the subject Soldier. The Commander of the Fires Center of Excellence and Fort Sill has authorized this coordination under circumstances warranting an IMA when Soldiers facing adverse administrative separation may also be referred to a Physical Evaluation Board (PEB).

2. **PROCESS.**

a. When a unit initiates administrative separation procedures against a Soldier for misconduct under AR 635–200, Chapter 14, that Soldier must undergo a medical and mental evaluation prior to separation. If that separation evaluation, or any prior medical evaluation, determines that the Soldier does not meet medical retention standards, the Soldier will be referred to a Medical Evaluation Board (MEB), per AR 635–200, paragraph 1–33b. Administrative separation processing, to include convening and holding an administrative separation board, may continue while the MEB process occurs. However, the Separation Authority will not make a final determination or approval of the separation action until the MEB evaluation is complete.

b. Upon the completion of the MEB, its findings are forwarded to the Separation Authority and the Soldier's chain of command. The MEB evaluation may recommend referral of the Soldier to a PEB. If the MEB makes this recommendation, the OSJA will request an IMA prior to the referral to a PEB, in order to ensure that the separation authority has sufficient information on which to make a fully-informed decision about whether adverse administrative action and its consequences are appropriate.

c. Under these circumstances, the OSJA will forward by email the administrative separation packet of supporting documentation to the RAHC Deputy Commander for Administration and Deputy Commander for Clinical Services, and the RAHC Executive Officer, and will inform the Soldier's chain of command. RAHC will assign one medical officer (in the grade of O-3 or higher) or other health care provider to conduct an

independent medical assessment within five business days. The medical officer or other health care provider will possess appropriate professional credentials (for example, a licensed physician or psychiatrist, or doctoral-level clinical psychologist or social worker). This assessment should be completed within five business days from that officer's receipt of the file, and will include an in-person consultation with the subject Soldier. If RAHC has more than one such assessment on-going or cannot schedule an appointment to meet with the Soldier within those five days, the OSJA and RAHC Deputy Commander for Administration will coordinate a reasonable timeline for completion and review of the assessment.

3. SCOPE OF THE INDEPENDENT MEDICAL ASSESSMENT. Under AR 635–200, paragraph 1–33b(1), the scope of the independent medical assessment is limited to the following: whether or not a preponderance of the evidence suggests that the Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination. Alternatively, whether or not other circumstances of the individual case warrant disability processing instead of further processing for administrative separation. That assessment is not intended to be an independent fact-finding investigation, a legal conclusion, or an inquiry into the quality of treatment or care the Soldier has received. It is not intended to be a second medical or mental evaluation of the Soldier in question.

4. RESULTS. The medical officer or health care provider assigned to conduct the IMA will forward, in writing, his or her assessment in MFR format to the OSJA. The OSJA shall provide that MFR to the Soldier (through his or her defense counsel). The Soldier is permitted seven calendar days to submit a reply, comment, or rebuttal to the MFR, at their discretion. Any reply will be sent directly to the OSJA.

5. SEPARATION AUTHORITY. Upon receipt of the IMA, the OSJA will forward the administrative separation packet, the MEB findings and recommendation, the IMA, and any rebuttal matters, reply, or comment the Soldier provides to the appropriate Separation Authority for a decision.

6. None of the coordination procedures, policies, or activities outlined in paragraphs 2, 3, 4, or 5 above create any additional rights or confer any benefits on any individual Soldier. Timelines outlined by, and medical assessments made in accordance with, this memorandum do not create any legal basis for relief, grounds for objection, or invalidate any decision made by the appropriate command or separation authority.

7. The point of contact for this legal review is the Chief, Military Justice, at (580) 442-1765.

//original signed//  
JOSHUA M. CARTER  
MAJ, JA  
Chief, Military Justice