

**DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY SIGNAL CENTER OF EXCELLENCE
AND FORT GORDON
Fort Gordon, Georgia 30905-5735**

**USASCoE&FG Regulation
No. 27-1**

26 July 2011

**Legal Services
MILITARY JUSTICE**

Summary. This regulation provides guidance to commanders and staff on the conduct of military justice at the United States Army Signal Center of Excellence and Fort Gordon (USASCoE&FG). It is intended to aid commanders in the fair and effective administration of military justice while also protecting the rights of Soldiers. The policies and limitations set forth herein are for local application, intended only for management purposes, and are not intended to be procedural prerequisites in cases involving nonjudicial punishment (NJP) or trial by court-martial, nor are they intended to provide separate substantive rights to an accused, which are judicially enforceable, nor should they be so construed.

Applicability. This regulation applies to all Army units, activities, or personnel attached, assigned, or detailed to the USASCoE&FG for courts-martial jurisdiction and the general administration of military justice. It also applies to all tenant units located on Fort Gordon, Georgia, and personnel in the Active Duty (AD) Army, the Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS), and the United States Army Reserve (USAR), attached, assigned, detailed to, or serving at Fort Gordon, Georgia, unless otherwise stated.

Proponent and Exception Authority. The proponent of this regulation is the Staff Judge Advocate (SJA). The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation.

Supplementation. Supplementation of this regulation by subordinate commanders is prohibited unless coordinated through the Office of the Staff Judge Advocate (OSJA) and approved by the Commanding General, USASCoE&FG.

Administrative Note. The word “his” and “her” in this publication is intended to include both the masculine and feminine genders.

Suggested Improvements. The proponent of this regulation is the OSJA. Users are invited to send comments and suggested improvements on Department of the Army (DA) Form 2028 (Recommended Changes to Publications and Blank Forms) to Commanding General, USASCoE&FG, ATTN: ATZH-JA, Fort Gordon, Georgia 30905-5280 and/or submit DA Form 1045 (Army Ideas for Excellence Program (AIEP) Proposal) to installation AIEP coordinator.

Availability. This regulation is available on the USASCoE&FG publications website at www.gordon.army.mil/dhr/docmgt.htm.

*This regulation will supersede USASCoE&FG Regulation 27-1, 15 July 2009

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Chapter 1

General

1-1. Purpose. This regulation outlines policies and procedures for the administration of military justice for USASCoE&FG. The policies and limitations set forth herein are for local application, intended only for management purposes, and are not intended to be procedural prerequisites in cases involving nonjudicial punishment (NJP) or trial by court-martial, nor are they intended to provide separate substantive rights to an accused, which are judicially enforceable, nor should they be so construed.

1-2. Scope.

a. This regulation applies to all Army units, activities, or personnel attached, assigned, or detailed to the USASCoE&FG for courts-martial jurisdiction and the general administration of military justice. It also applies to all tenant units located on Fort Gordon, Georgia, and personnel in the Active Duty (AD) Army, the Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS), and the United States Army Reserve (USAR), attached, assigned, or detailed to or serving at Fort Gordon, Georgia, unless otherwise stated.

b. Where previous regulations and documents refer to the United States Army Signal Center and Fort Gordon, they should be read to mean the United States Army Signal Center of Excellence and Fort Gordon for purposes of military justice.

1-3. References. Required and related publications and prescribed and referenced forms are listed in Appendix A

1-4. Abbreviations and Terms. See Glossary

1-5. Functions and Responsibilities within the Office of the Staff Judge Advocate.

a. The Staff Judge Advocate (SJA) is responsible for monitoring the administration of military justice on the installation and for providing legal advice on military criminal law to the Commanding General, USASCoE&FG and all Army units attached, assigned, or detailed to the USASCoE&FG, to include tenant units located on Fort Gordon, Georgia. The SJA will continue to exercise assignment authority, operational control, training responsibility, and technical supervision over all civilian and military legal personnel, to include Judge Advocate and Paralegal personnel, located at Fort Gordon, Georgia.

b. To ensure prompt and efficient processing of legal actions, personnel responsible for legal actions will not be assigned to unrelated duties that are inconsistent, or in conflict, with their principal duties, unless in the opinion of the SJA such additional duties will not unduly delay the processing of legal actions.

c. The Military Justice Division will operate under the control and supervision of the SJA and the Deputy Staff Judge Advocate (DSJA). The Chief, Military Justice Division, will process and coordinate all judicial and nonjudicial proceedings and punishments under the provisions of the

Uniform Code of Military Justice (UCMJ); supervise Trial Counsels as they provide legal advice on judicial, nonjudicial, and administrative actions and assist and advise commanders and law enforcement personnel regarding alleged violations of military law and related issues.

d. Paralegal Specialists/Noncommissioned Officers (NCOs) are responsible for information concerning regulatory requirements and administrative matters only; they are not qualified to provide legal opinions (which are reserved for attorneys) and will not be called upon to do so.

e. The Special Assistant United States Attorney, or other military attorney designated by the SJA, will perform the duties of the Traffic Hearing Officer (THO). (See paragraph 1-6h, above and USASCoE&FG Reg 210-3.)

f. The OSJA will maintain a duty roster of on-call judge advocates who will be available to provide legal counsel to commanders, leaders, and law enforcement personnel after normal duty hours. The duty roster will be provided to the Provost Marshal Office (PMO).

g. The SJA will coordinate with the Office of the Judge Advocate General and the US Army Trial Judiciary to ensure that an appropriate number of judge advocates in the OSJA are appointed to perform the duties of a military magistrate under the provisions (UP) of the Army Military Magistrate Program outlined in AR 27-10, chapter 9.

1-6. Policy of Commanding General, USASCoE&FG.

a. Disciplinary action will be taken at the lowest level commensurate with the maintenance of discipline, the accomplishment of the mission, the needs of society and the accused, and the ends of justice.

b. The Commanding General, USASCoE&FG shall be notified of any misconduct involving officers and enlisted Soldiers in the grade of E-8 or higher assigned, attached or detailed to Fort Gordon. Further, the Commanding General, USASCoE&FG shall be notified before the initiation of any adverse action against officers and enlisted Soldiers in the grade of E-8 or higher assigned, attached, or detailed to Fort Gordon. Specific guidance on withholding of authority for certain actions involving officers and senior NCOs is set forth below.

c. Homosexual conduct. Commanders will not initiate any inquiry into homosexual conduct or initiate any adverse action based on homosexual conduct unless specifically authorized by the Commanding General, USASCoE&FG in coordination with the SJA. The governing law, 10 USC 654, and the Army's homosexual conduct policy, as captured in AR 635-200, Chapter 15, and AR 600-8-24, chapter 4, are subject to changes. These laws and regulations must be consulted and checked for updates before any action by the Commanding General, USASCoE&FG, or subordinate commanders. (See also DODI 1332.14, DODI 1332.20, AR 135-175, and AR 135-178.)

d. Unlawful command influence or even the appearance of unlawful command influence undermines public confidence in the Army and its commanders. The proper disposition of each case must be based solely on the facts and circumstances relevant to the particular situation, and

must result from the independent judgment of the commander possessing decision authority in the case. Commanders may not issue directives requiring that cases of a certain type, or involving a certain category of offenders, be recommended or referred for trial by court-martial, or prescribe specific punishments for particular offenses. These policies are equally applicable in all punitive actions, to include nonjudicial punishment.

e. Administrative hold of court-martial victims and witnesses. When military personnel become victims or potential witnesses in a court-martial, the unit commander must immediately review the victims' or potential witnesses' anticipated departure dates upon reassignment or completion of training. Any questions regarding the need to retain victims or witnesses will be directed to the Military Justice Division of the OSJA. After consulting personally with the Chief of the Military Justice Division or DSJA, the commander will determine on a case by case basis whether military personnel who are victims or potential witnesses will be allowed to depart the Fort Gordon local commuting area.

f. Publishing Courts-Martial and Nonjudicial Punishment Results.

(1) Courts-martial results may be published in publications at Fort Gordon, such as "The Signal." Courts-martial results of trial may be posted on the unit bulletin boards. Social security numbers will be deleted or masked on court-martial documents before posting. The name of the accused does not have to be redacted from court-martial documents. The personal information of all other individuals, such as witnesses or victims, will be redacted, including social security numbers, names and dates of birth.

(2) Nonjudicial punishment (Article 15 actions) results may be posted on unit bulletin boards only if all personal information is redacted, to include social security numbers, names, and dates of birth. Commanders will avoid inconsistent publication policies that may give an appearance of vindictiveness or favoritism, and will only publish punishments imposed against SGT/E-5s and above after considering the factors outlined in AR 27-10, paragraph 3-22.

g. Search and Seizure

(1) The law relating to search and seizure has its foundation in the Fourth Amendment to the United States Constitution and the Military Rules of Evidence. It is among the most complicated areas of the law. When a search, seizure, or apprehension authorization is desired and time permits, a Trial Counsel in the Military Justice Division should be consulted with in advance. During non-duty hours, the OSJA duty officer may be contacted through the Military Police Desk. Unit Commanders, executive officers, and NCOs in the rank/grade of MSG/E-8 or above will be provided the JAG duty phone number, with the understanding that it will not be disseminated to other individuals who do not have a need to know it, and that it will be used only for pressing non-duty hour legal matters.

(2) Stops and inspections of all vehicles at Fort Gordon's gates or entry points or in restricted areas may be conducted IAW USASCoE&FG Reg 210-3, chapter 1 and AR 190-5, paragraph 2-2.

(3) Stops and inspections of privately owned vehicles within Fort Gordon, other than at restricted areas or at an installation gate, are authorized IAW USASCoE&FG Reg 210-3, chapter 1 and AR-190-5, paragraph 2-2.

h. Traffic Regulation. Disposition of minor moving traffic violations committed by members of the Armed Forces on the Fort Gordon Military Installation will be accomplished in an administrative Military Traffic Hearing (MTH) presided over by a THO IAW USASCoE&FG Reg 210-3. [See additional guidance in Chapter 3, below, concerning disposition of traffic offenses.] Disposition of minor moving traffic violations at the MTH does not preclude nonjudicial or judicial action under the provisions of the UCMJ or other administrative actions.

i. Grants of immunity. The Commanding General, USASCoE&FG, is the only authority at Fort Gordon authorized to grant immunity to Soldiers. All requests for grants of immunity will be coordinated with the SJA or DSJA through the appropriate Trial Counsel.

Chapter 2

Adverse Administrative Actions

2-1. Administrative Separations. When it becomes apparent that a Soldier is unfit or unsuitable for military service, a commander may initiate proceedings to separate the Soldier from the service.

a. Court-martial jurisdictions set forth in Chapter 4, paragraph 4-1, below, are applicable to all administrative separation actions described or referenced herein.

b. To ensure compliance with applicable law and regulations, commanders will forward all involuntary administrative elimination and separation packets through the OSJA for legal review prior to initiation. For Dwight D. Eisenhower Army Medical Center (DDEAMC), the Office of the Center Judge Advocate will also provide legal and administrative support for those actions requiring approval by the Commander, DDEAMC in support of, and in coordination with, the assigned OSJA Trial Counsel for DDEAMC. For the 7th Signal Command (hereafter, 7th Sig Cmd), its Office of the Command Judge Advocate will also provide legal and administrative support for those actions requiring approval by the Commander, 7th Sig Cmd, in support of, and in coordination with, the assigned OSJA Trial Counsel for 7th Sig Cmd.

c. After court-martial charges have been preferred, any request for discharge in lieu of courts-martial pursuant to AR 635-200, chapter 10, submitted by an enlisted accused, or a request for resignation in lieu of general courts-martial pursuant to AR 600-8-24, chapter 3, submitted by an officer accused, will be acted upon by the Commanding General, USASCoE&FG. The request should be in the format prescribed by the applicable Army Regulation and served on the Trial Counsel who will ensure its delivery to the accused's commander. Forwarding endorsements to the Commanding General, USASCoE&FG, will reflect each subordinate commander's evaluation of the request and recommendation on characterization of the discharge.

d. The Commanding General, USASCoE&FG has withheld authority to act on all administrative separation actions involving all officers attached, assigned, or detailed to the

USASCoE&FG, tenant units located on Fort Gordon, Georgia, and units attached, assigned, or detailed to the USASCoE&FG except for those officers assigned, attached, or detailed to DDEAMC and 7th Sig Cmd. The Commanding General, USASCoE&FG has withheld the administrative separation authority for all enlisted Soldiers in the grade/rank of E-8/MSG or higher attached, assigned, or detailed to the USASCoE&FG, tenant units located on Fort Gordon, Georgia, and units attached, assigned, or detailed to the USASCoE&FG except for those Soldiers assigned, attached, or detailed to DDEAMC and 7th Sig Cmd. The Commander, DDEAMC is authorized to act as a general officer show-cause authority (GOSCA) for officers, or the administrative separation authority for enlisted Soldiers, who are assigned, attached, or detailed to DDEAMC. The Commander, 7th Sig Cmd is also authorized to act as a GOSCA for officers or the administrative separation authority for enlisted Soldiers who are assigned, attached, or detailed to 7th Sig Cmd. See para. 1-6b, above, for the Commanding General, USASCoE&FG reporting requirements related to misconduct and adverse action involving officers and enlisted Soldiers in the grade/rank of E-8/MSG or higher.

e. Soldiers identified as illegal drug abusers, Soldiers involved in two serious incidents of alcohol-related misconduct within 12 months, and Soldiers involved in illegal trafficking, distribution, possession, use, or sale of illegal drugs, must be processed for administrative separation IAW AR 600-8-24 (for commissioned and warrant officers) and AR 635-200 (for enlisted personnel), subject to the Limited Use Policy found in AR 600-85, chapter 10, section III. Additionally, when a Soldier tests positive for illicit drugs a second time or is convicted of driving while intoxicated/driving under the influence a second time during his/her career, the separation authority shall administratively separate the Soldier unless the Soldier is recommended for retention by an administrative separation board or show cause board (if eligible), under the provision of AR 635-200, or is retained by the first general officer in the chain of command who has a judge advocate or legal advisor available or the initiation authority for an officer show cause board under the provisions of AR 600-8-24.

2-2. Administrative Reprimands.

a. Administrative reprimands are administered IAW AR 600-37.

b. Pursuant to AR 190-5, paragraph 2-7a, the Commanding General, USASCoE&FG (or, for those Soldiers assigned to DDEAMC or the 7th Signal Command, the Commanders of DDEAMC and 7th Signal Command, respectively) will issue a written reprimand, administrative in nature, to all active duty Soldiers, serving under these commands, in the following cases:

(1) Conviction by courts-martial or civilian court or imposition of nonjudicial punishment for an offense of drunk or impaired driving either on or off the installation.

(2) Refusal to take or failure to complete a lawfully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content (BAC) is .08 percent or higher, irrespective of other charges, or off-post when the BAC is in violation of the law of the state where the offense occurred.

(4) Driving, or being in physical control of a motor vehicle, either on or off the installation, when lawfully conducted chemical tests reflect the presence of illegal drugs in the driver.

2-3. Administrative Reductions.

- a. Consult AR 600-8-19, chapter 10 for correct procedures.
- b. A Soldier convicted by a civil court (domestic or foreign) or adjudged a juvenile offender by a civil court (domestic or foreign) will be reduced or considered for reduction. (See AR 600-8-19, paragraph 10-3a).
- c. Specific bases for reduction in grade or consideration for reduction in grade may be found at AR 600-8-19, chapter 10.

2-4. Report to Suspend Favorable Actions. FLAGS are to be initiated UP AR 600-8-2.

2-5. Bar to Reenlistment. Consult AR 601-280, Chapter 8 for procedures related to a bar to reenlistment.

2-6. Drop From Rolls (DRF) of AWOL. A Soldier will be dropped from rolls due to AWOL status UP AR 630-10, paragraphs 3-1 and 5-7.

Chapter 3 Nonjudicial Punishment

3-1. Introduction. The basic guidance for use of nonjudicial punishment is set forth in Article 15, UCMJ, and MCM, part V. Army Regulation (AR) 27-10, Chapter 3 and Appendix B, also provides a comprehensive reference outlining Article 15 processing.

- a. Summarized proceedings [DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, UCMJ)]. All procedures are contained in AR 27-10, paragraph 3-16.

- b. Formal proceedings [DA Form 2627 (Record of Proceedings Under Article 15, UCMJ)]. All procedures are contained in AR 27-10, Chapter 3 and Appendix B. After the Article 15 hearing is conducted, the DA Form 2627 will be forwarded back to the battalion legal clerk for review and distribution IAW AR 27-10.

3-2. Alternatives. Punitive action under the UCMJ will be used only when administrative corrective measures have failed or would be inappropriate. Unnecessary use of nonjudicial punishment and courts-martial results in decreased efficiency, lowered morale and discipline, and an unjustified loss of vitally needed manpower. Alternatives to punitive action under the UCMJ should always be considered. These include:

- a. Corrective training, which may be administered during normal duty hours or during non-duty hours, must be directly related to the deficiency noted in the Soldier (AR 600-20).
- b. Counseling (AR 635-200, paragraph 1-16).
- c. Verbal or written reprimand (AR 600-37).
- d. Reduction in grade (AR 600-8-19, Chapter 10).
- e. Bar to reenlistment (AR 601-280, Chapter 8).
- f. Administrative separation (AR 635-200 and AR 600-8-24).

3-3. Authority to Impose Nonjudicial Punishment UP Article 15, UCMJ.

a. Concurrent Jurisdiction with Civilian Authorities. Commanders exercising jurisdiction over a Soldier being prosecuted by civilian authorities will not impose nonjudicial punishment under Article 15, UCMJ, or prefer court-martial charges, for the same act over which the civilian authorities are exercising jurisdiction over the Soldier except with the written authorization of the Commanding General, USASCoE&FG, IAW AR 27-10, Chapter 4.

b. The Commanding General, USASCoE&FG, has withheld the authority from subordinate commanders to impose nonjudicial punishment for on-post minor moving traffic violations listed in USASCoE&FG Regulation 210-3, Table 5-1. This policy does not prohibit subordinate commanders (including, but not limited to, the Commander, DDEAMC, and his subordinate commanders and the Commander, 7th Signal Command, and her subordinate commanders, or tenant unit commanders) from exercising UCMJ authority or other appropriate adverse administrative action for on-post DUI incidents, reckless driving offenses, any other offense worth 6 points IAW AR 190-5, Table 5-2, and non-moving violations (i.e. offenses involving vehicle registration or driver's licenses), or violations of policy letters addressing vehicle use and possession by trainees.

c. As an exception to the policy in paragraph 3-3b, above, commanders who wish to exercise UCMJ authority or other appropriate adverse administrative action for on-post minor moving traffic violations listed in USASCoE&FG Regulation 210-3, Table 5-1, will submit a written request through the SJA (ATZH-JA-MJ), USASCoE&FG to the Commanding General, USASCoE&FG. Approval of these requests is at the discretion of the Commanding General, USASCoE&FG.

(1) The request will identify the Soldier, list the offense(s), and provide detailed reasons that justify the exception to policy.

(2) The request and any subsequent approval must be completed prior to arraignment in U.S. Magistrate Court.

d. The Commanding General, USASCoE&FG withholds jurisdiction to exercise Article 15, UCMJ authority over all officers and NCOs in the grade of E-8 or higher who are assigned, attached, or detailed to Fort Gordon except that the Commander, DDEAMC, and the Commander, 7th Sig Cmd, are authorized to exercise Article 15 authority over all personnel assigned, attached, or detailed to their respective commands. See para. 1-6b, above, for the Commanding General, USASCoE&FG reporting requirements related to misconduct and adverse action involving officers and enlisted Soldiers in the grade/rank of E-8/MSG or higher.

(1) The Commander, DDEAMC has withheld Article 15, UCMJ jurisdiction to exercise authority over all officers and NCOs in the grade of E-8 or higher who are assigned, attached, or detailed to DDEAMC to include all summary court-martial convening authorities (SCMCAs) listed in paragraph 4-1d, below.

(2) The Commander 7th Sig Cmd has withheld Article 15, UCMJ jurisdiction to exercise authority over all officers and NCOs in the grade of E-8 or higher who are assigned, attached, or detailed to 7th Sig Cmd.

e. All commanders (including the Commander, DDEAMC and Commander, 7th Sig Cmd) may withhold authority from their subordinate commanders to impose nonjudicial punishment under Article 15, UCMJ over categories of personnel and/or offenses designated by that commander.

f. When authority to impose nonjudicial punishment upon the Soldier or the offense is withheld by a higher authority, subordinate commanders will:

(1) Immediately notify the first higher UCMJ authority of the allegation(s) of misconduct;

(2) Determine whether there is probable cause to support a charge; and

(3) If there is probable cause to support a charge, forward a packet with all reports of investigation, statements, and other relevant information, through the chain of command to the first commander who has authority to impose an Article 15 with a recommendation as to disposition.

(4) All intermediate commanders in the chain of command will endorse the packet with recommendations as to the appropriate disposition. This may include a request to return the packet for a lower level of disposition without recommendation.

g. Upon receipt of the packet, the first commander having authority to impose Article 15 punishment may:

(1) Take no action;

(2) Take adverse administrative or nonpunitive action in lieu of Article 15 proceedings;

(3) Initiate the Article 15 proceedings;

(4) Return the case to the subordinate commander for any authorized action deemed appropriate by the subordinate commander; or

(5) Prefer court-martial charges in lieu of Article 15 proceedings.

h. Withholding authority to impose nonjudicial punishment under Article 15 over certain categories of personnel and offenses does not affect subordinate commanders' authority to initiate and process administrative separation actions or to prefer court-martial charges against any officer or Soldier for any offense.

Chapter 4 Courts-Martial

4-1. Court-Martial Jurisdiction.

a. General court-martial jurisdiction. The Commanding General, USASCoE&FG, has general court-martial jurisdiction over all Army units, activities, or personnel attached, assigned, or detailed to the USASCoE&FG and tenant units located on Fort Gordon, Georgia.

b. Only the General Court-Martial Convening Authority (GCMCA) may convene a Special Court-Martial empowered to adjudge a Bad-Conduct Discharge (BCD Special Court-Martial).

c. Pursuant to the authority contained in Article 23, UCMJ, and RCM 504(b)(2), MCM, authority to convene Special Courts-Martial, not empowered to adjudge a bad-conduct discharge, is limited to the commanders of the following organizations:

- (1) U.S. Army Signal Center of Excellence and Fort Gordon
- (2) DDEAMC
- (3) 15th Regimental Signal Brigade
- (4) 35th Theater Tactical Signal Brigade
- (5) 513th Military Intelligence Brigade
- (6) 706th Military Intelligence Group
- (7) U.S. Army Garrison Fort Gordon
- (8) 7th Signal Command

d. All battalion commanders, to include the DDEAMC Troop and Warrior Transition Battalion Commanders, under the activities listed in paragraph 4-1c, are summary court-martial convening authorities (SCMCA) empowered to convene Summary Courts-Martial. The Commander, Southern Regional Dental Command, the Commander, U.S. Army Dental Activity,

Fort Gordon; the Commander, Southeast Regional Veterinary Command; and the Commander, U.S. Army Dental Laboratory, Fort Gordon are also designated SCMCAs. The Commander, DDEAMC will serve as special courts-martial convening authority (SPCMCA) for any special courts-martial requested by the commanders of those units. The Commander, DDEAMC will also serve as the appellate authority for any nonjudicial punishment under Article 15, UCMJ imposed by the Army Medical Department commanders listed in this paragraph and is also authorized to dispose of cases involving E-8s and above arising from those units, and act on all reprimands, administrative actions and requests arising from those units (e.g., approve administrative separations or serve as intermediate commander, serve as GOSCA, issue and file GOMORs, etc.).

4-2. Expeditious Handling of Court-Martial Matters. Commanders must give personal and continued attention to the prompt and expeditious handling of court-martial matters to reduce the time between preferral of charges or pretrial restraint and final disposition of the case. Commanders are encouraged to coordinate with their Trial Counsel or the Chief of the Military Justice Division before preferring court-martial charges. The following processing times (noted in calendar days) are the Fort Gordon guidelines:

a. Summary Courts-Martial (SCM).

- (1) Preferral of charges to referral of charges: 5 days
- (2) Referral of charges to end of trial: 10 days
- (3) End of trial to date of action: 10 days

b. Special Courts-Martial (SPCM), including those empowered to adjudge a Bad-Conduct Discharge.

- (1) Preferral of charges to referral of charges: 15 days
- (2) Referral to end of trial: 45 days
- (3) End of trial to date of action: 90 days

c. General Courts-Martial.

- (1) Preferral of charges to appointment of an Article 32 Investigative Officer: 2 days
- (2) Appointment of Article 32 Investigative Officer to initiation of investigation: 10 days
- (3) Receipt of Article 32 Report of Investigation to referral of charges: 14 days
- (4) Referral of charges to trial date: 45 days
- (5) End of trial to final action: 90 days

4-3. Pretrial Restraint. Pretrial restraint is moral or physical restraint on a person's liberty which is imposed before and during disposition of charges. Ordinarily, restraint will not be imposed on an accused before trial. If there is reason to believe that the accused will be absent without leave, or will commit additional serious criminal misconduct, commanders may consider pretrial restraint or conditions on liberty. The restraint imposed will be the minimum necessary to assure the accused's presence for trial or to prevent additional misconduct. Commanders will discuss any proposed pretrial restraint or conditions on a Soldier's liberty with their Trial Counsel prior to imposition. Required legal coordination is discussed below.

a. Conditions on liberty. When a commander seeks to impose conditions on liberty (not restriction imposed as punishment by a court-martial or under the provisions of Article 15, UCMJ), the commander will notify a Trial Counsel in the Military Justice Division of the grounds and duration of the restraint, prior to imposition. Conditions on liberty may start the speedy trial clock, UP RCM 707, and/or result in illegal pretrial punishment against an accused.

b. Pretrial confinement. Pretrial confinement is authorized only if there is probable cause to believe the accused committed an offense triable by courts-martial and confinement is required by the circumstances; such as when lesser forms of restraint are inadequate to assure the accused's presence for trial or pretrial confinement is necessary to ensure the prevention of additional serious criminal misconduct.

(1) The authority to order the pretrial confinement of any commissioned officer, warrant officer, or E-8 and above, assigned, attached, or detailed to any unit over which the Commanding General, USASCoE&FG exercises general court-martial jurisdiction, is reserved to those commanders in the rank of Colonel or above. When any subordinate commander believes that a Commissioned Officer, Warrant Officer, or E-8 and above should be ordered into pretrial confinement, that commander will forward a request through the chain of command, and through the SJA, to the appropriate commander in the rank of Colonel or above. The servicing Trial Counsel should be consulted and will assist with processing all requests. Such requests will be processed expeditiously. The Commander ordering pretrial confinement and the SJA will ensure that the Commanding General, USASCoE&FG is informed.

(2) Pretrial confinement may be imposed for all others only with the concurrence of the accused's battalion commander and the SJA or his representative. The SJA has designated the DSJA and the Chief, Military Justice Division (when the DSJA is not reasonably available) as his representatives in this area.

(3) Under no circumstances will pretrial confinement be authorized to ensure an accused's presence at administrative elimination proceedings, or to relieve the command of implementing lesser adequate restrictions.

c. Procedures. The commander seeking to impose pretrial confinement for E7/SFC and below will:

(1) Obtain the concurrence of the first commander in the chain of command in the rank of LTC or higher.

(2) Obtain the concurrence of the DSJA or the Chief, Military Justice Division, if the DSJA is not reasonably available.

(3) Collect and inventory the individual's uniforms, clothing, and personal effects.

(4) Obtain and complete Department of Defense (DD) Form 497 (Confinement Order).

(5) Complete DA Form 5112-R (Checklist for Pretrial Confinement) with assistance from the unit's Trial Counsel.

(6) Draft Confinement Memorandum. The commander who ordered pretrial confinement shall within 24 hours after the imposition of the confinement prepare a memorandum that contains the name of the prisoner, the offenses charged against the prisoner, and the name of the person who ordered or authorized confinement UP RCM 305.

(7) Contact the Provost Marshal at the Directorate of Emergency Services (DES) to coordinate processing the Soldier into confinement.

(8) Transport the accused to the appropriate confinement facility UP AR 190-47, paragraph 10-19. The noncommissioned officer in charge (NCOIC), Military Justice Division, a designated paralegal NCO, or the unit's Trial Counsel will brief guards/escorts on their duties and responsibilities (ensuring, as necessary, instruction from military police on correct use of restraints).

(9) Obtain a neutral and detached officer (and Military Magistrate) review of the confinement. The Chief, Military Justice Division will schedule a Magistrate's hearing as soon as reasonably possible, and make every effort to set the hearing date no later than 48 hours after the imposition of confinement. If a Magistrate hearing cannot be scheduled within 48 hours after the imposition of confinement, the Chief, Military Justice Division will arrange for probable cause review by a neutral and detached officer as soon as reasonably possible and no later than 48 hours after the imposition of confinement. If the neutral and detached officer orders pretrial confinement to continue, the Chief, Military Justice Division will schedule a Magistrate's hearing as soon as reasonably possible, and no later than seven days after the accused is ordered into pretrial confinement.

d. Preferring charges. A draft charge sheet will be prepared before a Soldier is placed in pretrial confinement. Unless the DSJA or SJA authorize delay, charges will be preferred before the Military Magistrate conducts a review to determine whether continued pretrial confinement is warranted.

4-4. Preferral of Charges. Any person subject to the UCMJ may prefer charges.

a. Preliminary inquiry. The immediate commander of the accused has primary responsibility for investigating an alleged offense and preferring charges when appropriate. In cases involving serious incidents, the commander will defer to the Provost Marshal, DES or Criminal Investigation Division (CID) for investigating the alleged offense. The commander will notify the Provost Marshal, DES immediately of alleged serious offenses (e.g., domestic violence, drug abuse and AWOL).

b. Reporting charges. The commander of the accused will submit DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) and take action UP AR 600-8-2 when any military member is pending charges or under investigation. This is a critical step, particularly when the accused is a member of the ARNG or USAR, or if the accused is pending retirement, permanent change of station, release from active duty or expiration of term of service. Commanders will also promptly notify the appropriate ARNG or USAR liaison of all misconduct committed by Reserve Component (RC) AIT Soldiers under their command which may result in some form of adverse administrative or punitive action UP TRADOC Regulation 350-6.

c. Preferring charges. The commander will seek the advice of the Trial Counsel in investigating, preparing, and preferring charge(s).

d. Recommendation as to disposition. Unless disposition authority has been withheld, the recommendation as to disposition of the charges will be signed personally by the immediate commander of the accused and by each intermediate commander in the chain of command forwarding the charges. Superior commanders will not make recommendations as to the disposition of charges, or otherwise unlawfully influence subordinate commanders in disposing of charges. Each commander will exercise independent discretion in arriving at a decision and recommendation.

e. Mental responsibility or capacity. If, during the investigation or disposition of charges, any question arises concerning the mental responsibility or capacity (i.e., sanity) of the accused, the officer exercising summary court-martial jurisdiction over the accused will promptly confer with the Trial Counsel to determine if an inquiry in accordance with RCM 706 is necessary or commitment is required.

4-5. Article 32 Investigations.

a. Appointment. If it appears that trial by general court-martial may be warranted, the officer exercising special court-martial jurisdiction will appoint a mature and responsible field grade officer, or an officer with legal training, to conduct an investigation under the provisions of Article 32, UCMJ, and R.C.M. 405, MCM. An officer with legal training includes those officers who have successfully completed at least one year of law school. No Judge Advocate (JA) will be selected to serve as an investigating officer without the permission of the SJA or DSJA. Once appointed, conducting the investigation is the principal duty of the investigating officer and takes priority over all other duties until the investigation is completed.

b. Investigating officer's duties. The officer appointed to conduct the Article 32 Investigation will consult a legal advisor from the Administrative Law Division of the OSJA for a briefing. The investigating officer will be furnished DA Pamphlet 27-17 to assist in the investigation.

c. Submission of report. The Article 32 Investigating Officer will submit the report to the Military Justice Division for typing. Decisions to grant or deny (partially or in total) defense or government requested delays during the investigation must be specifically documented. If a delay is granted at the government's or defense's request, the document granting the delay will specifically attribute the delay to the requesting party. In other cases, the delay will be specifically attributed to the Investigating Officer.

d. Civilian Witnesses at Article 32 Investigations. Pursuant to AR 27-10, paragraph 5-12(b), the authority to approve the payment of transportation expenses and allowances to civilian witnesses appearing at Article 32 Investigations is withheld to the SJA. The OSJA will coordinate with the Chief of Staff, USASCoE&FG, as necessary to ensure that sufficient funds are available.

4-6. Membership of Courts-Martial. Selection of court members for general courts-martial and special courts-martial empowered to adjudge a bad-conduct discharge will be made by the Commanding General, USASCoE&FG. Selection of court members for special courts-martial not empowered to adjudge a bad-conduct discharge may be made by the appropriate special court-martial convening authority as designated in Chapter 4-1, above.

a. Upon request, subordinate commanders will provide a list of nominees for court-martial duty to the Commanding General, USASCoE&FG.

b. Court-martial duty is one of the most important duties for which a Soldier may be selected. Accordingly, under Article 25, UCMJ, only those officers, warrant officers, and enlisted Soldiers who are best qualified by reason of age, education, training, experience, length of service, and judicial temperament will be nominated or selected.

c. Because of the importance of court-martial duty, excusal from it is inappropriate except under exceptional circumstances. Personnel detailed as members of a court-martial will attend all sessions unless excused by the Military Judge or the convening authority. Requests for excusal from a court-martial should be forwarded through the Chief, Military Justice Division, to the Commanding General, USASCoE&FG at least two weeks prior to the requested excusal date, and no later than is reasonably possible if notice of the court-martial is issued less than two weeks before the requested excusal date.

(1) Once a Soldier has been identified as a panel member, the Soldier will contact the Chief, Military Justice Division to discuss all planned leave and temporary duties to determine whether a request for excusal must be submitted.

(2) Emergency requests for excusal will be submitted directly to the Chief, Military Justice Division.

(3) Unless otherwise delegated, the Commanding General, USASCoE&FG personally reviews requests for excusal from court-martial duty and either approves or disapproves them. All requests must indicate the inclusive dates and the specific reasons for excusal including the panel member's role in the training exercise or temporary duty if applicable.

(4) Nothing in this paragraph prohibits the Commanding General, USASCoE&FG from delegating this authority pursuant to RCM 505, MCM.

4-7. Speedy Trial. Commanders at all echelons will promptly and expeditiously handle disciplinary matters to ensure that the elapsed time between the offense and final disposition of the case is minimized consistent with the interests of justice. Absent the circumstances outlined in RCM 707, the accused will be brought to trial within the earlier of 120 days after preferral of charges or 90 days after the imposition of pretrial restraint. Commanders and military justice personnel will adhere to the requirement to bring a Soldier in pretrial confinement to trial expeditiously or dismiss charges and release him, UP Article 10, UCMJ.

4-8. Unit Responsibility for Courts-Martial. Once personnel from the OSJA notify the accused's commander of the date and time of trial, the commander will ensure the following:

a. The accused and all witnesses in the accused's unit have a properly fitting green or blue Army service uniform, with all appropriate awards, decorations, and patches, and that they present a neat military appearance;

b. The accused reports, under escort/guard, to the accused's defense counsel at least 60 minutes before trial, or earlier if the accused defense counsel or the military judge designates an earlier report time;

c. Witnesses report to the Trial Counsel at the appointed time and date in the appropriate uniform; and

d. At least ten duty days prior to trial, two Soldiers are appointed to serve as guard/escort and two Soldiers are appointed to serve as bailiffs (SGT/E-5 or above). The two Soldiers designated as guards/escorts and the two Soldiers designated as bailiffs will be the same or higher grade than the accused, and at least one will be the same gender as the accused. At least five duty days prior to trial, all previously identified Soldiers will report to the NCOIC, Military Justice Division for a briefing on their respective duties.

e. Attendance of witnesses and the accused at trial. An OSJA representative will notify each witness's commander (for military personnel) or supervisor (for civilian employees) of the time and place of the trial in a timely manner. The commander or supervisor will ensure all witnesses under their control are present at the designated time and place and are in the proper attire. The accused's immediate commander will have the accused at the place of trial at least one hour before the scheduled start time, dressed in a clean, neat and complete blue or green Army Service

Uniform with all authorized insignia, badges, and decorations. If the accused is in pretrial confinement, the commander will provide necessary transportation and guard personnel to escort the accused to and from the place of trial. The accused may be picked up the day before court-martial and kept overnight in a local civilian confinement facility designated by the Provost Marshal.-+ Commanders who desire to exercise this option are responsible for ensuring compliance with the local rules regarding civilian confinement facility use. Commanders are responsible for providing escorts and transportation while the accused is in pretrial confinement, during trial, and after trial if a sentence includes confinement.

f. Bailiffs. The accused's company commander will ensure that two NCOs are detailed to perform the duties of bailiff IAW the local rules of court. The NCOIC, Military Justice Division, a designated paralegal NCO, or the unit's Trial Counsel will brief the bailiffs on their duties and responsibilities. The bailiffs must be prepared to appear for duty at the place of trial before the scheduled start time, dressed in a clean, neat and complete blue or green Army Service Uniform with all authorized insignia, badges, and decorations.

OFFICIAL:

/original signed/
ALAN R. LYNN
Major General, USA
Commanding

/original signed/
JOHN MCINTYRE
Director of Human Resources
/Adjutant General

Appendix A
References

AR 10–87

Army Commands, Army Service Component Commands, and Direct Reporting Units.

AR 15–130

Army Clemency and Parole Board

AR 15–180

Army Discharge Review Board

AR 25–55

The Department of the Army Freedom of Information Act Program

AR 27–1

Judge Advocate Legal Services

AR 27-10

Military Justice

AR 27–20

Claims.

AR 135-75

Separation of Officers

AR 135-178

Enlisted Administrative Separation

AR 190-5

Motor Vehicle Traffic Supervision

AR 190–9

Absentee, Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 190–45

Law Enforcement Reporting

AR 190–47

The Army Correction System

AR 195-5

Evidence Procedures

AR 195–6

Department of the Army Polygraph Activities

AR 350–1

Army Training and Leader Development

AR 600-8-2

Suspension of Favorable Personnel Actions (FLAGS)

AR 600-8-24

Officer Transfer and Discharges

AR 600-8-19

Enlisted Promotions and Reductions

AR 600-20

Army Command Policy

AR 600–37

Unfavorable Information

AR 600–43

Conscientious Objection

AR 600–85

Army Substance Abuse Program (ASAP)

AR 601-280

Army Retention Program

AR 608–18

The Army Family Advocacy Program

AR 623–3

Evaluation Reporting System

AR 630–10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 633–30

Military Sentences to Confinement

AR 635-200

Active Duty Enlisted Administrative Separations

AR 735–5

Policies and Procedures for Property Accountability

DA Form 268

Report to Suspend Favorable Personnel Actions (FLAG)

DA Form 497

Confinement Order

DA Form 2627

Record of Proceedings Under Article 15, UCMJ

DA Form 2627-1

Summarized Record of Proceedings Under Article 15, UCMJ

DA Pam 27-7

Guide for Summary Court-Martial Trial Procedure

DA Pam 27–17

Procedural Guide for Article 32(b) Investigating Officer

DA Pam 27–50

The Army Lawyer

DA Pam 27–100

Military Law Review

DA Pam 611–21

Military Occupational Classification and Structure

DODI 1332.14

Enlisted Administrative Separations, 25 March 2010

DODI 1332.20

Service in Grade for Non-Disability (Voluntary) Retirement, 12 February 2007

DODI 1332.30

Separation of Regular and Reserve Commissioned Officers, 25 March 2010

DODI 1342.24

Transitional Compensation for Abused Dependents. (Available at www.dtic.mil/whs/directives/)

DODI 5525.7

26 July 2011

USASCoE&FG Reg 27-1

Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes.
(Available at www.dtic.mil/whs/directives/)

Memorandum, Secretary of Defense, MAR 25 2010, subject: Revisions to Regulations Implementing 10 U.S.C. § 654

Memorandum, Assistant Secretary of the Army (Manpower and Reserve Affairs), SAMR-MP, APR 27 2010, subject: Revisions to the Army Homosexual Conduct Policy and Related Administrative Procedures

MCM United States (2008 Edition)

TRADOC Regulation 350-6

Enlisted Initial Entry Training (IET) Policies and Administration

TRADOC Regulation 600-15

Command Devolution

Uniform Code of Military Justice

10 USC 654 Policy concerning homosexuality in the armed forces

USASCoE&FG Regulation 210-3

Installation Motor Vehicle Traffic Code

Glossary

Section I

Abbreviations

7th Sig Cmd

7th Signal Command

AD

active duty

AIEP

Army Ideas for Excellence Program

AIT

Advanced Individual Training

AR

Army Regulation

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

AWOL

absent without leave

BCD

bad-conduct discharge

CID

Criminal Investigation Division

CJA

Center Judge Advocate (in the case of a JA assigned to an Army Medical Center) or Command Judge Advocate

DA

Department of the Army

DDEAMC

Dwight D. Eisenhower Army Medical Center

DOD

Department of Defense

DODD

Department of Defense directive

DODI

Department of Defense instruction

DSJA

Deputy Staff Judge Advocate

FG

Fort Gordon

FLAG

Report to Suspend Favorable Personnel Actions

GCM

General Court-Martial

GCMCA

General Court-Martial Convening Authority

IAW

In accordance with

JA

Judge Advocate

MCM

Manual for Courts-Martial

MRE

Military Rules of Evidence (found in the MCM)

NCO

Noncommissioned Officer

NCOIC

Noncommissioned Officer-in-Charge

OSJA

Office of the Staff Judge Advocate

PFC

Private First Class

RC

Reserve Component

RCM

Rules for Courts-Martial

SCM

Summary Court-Martial

SGT

Sergeant

SJA

Staff Judge Advocate

SPCM

Special Court-Martial

SPCMCA

Special Courts-Martial Convening Authority

TJAG

The Judge Advocate General

TRADOC

Training and Doctrine Command

UCMJ

Uniform Code of Military Justice

USAR

United States Army Reserve

USASCoE&FG

United States Army Signal Center of Excellence & Fort Gordon

Section II

Terms

Active duty

Full-time duty in the active military service of the United States including full time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Army.

Commanding General, USASCoE&FG

The Commanding General, USASCoE&FG is the senior commander of the USASCoE&FG. The Commanding General, USASCoE&FG is also the senior mission commander of the USASCoE&FG where that title is mentioned in Army regulations IAW AR 600-200. When temporarily absent from Fort Gordon the Commanding General, USASCoE&FG may remain in command of installations or may relinquish command and designate an acting commander IAW TRADOC Regulation 600-15 and supplemental TRADOC guidance. For purposes of this regulation, unless prohibited by contrary laws, regulation, or policy, the acting commander will exercise the same authority and have the same responsibilities as the Commanding General, USASCoE&FG.

Military Judge

A JA officer who has been certified by TJAG as qualified to preside over GCMs and/or special courts-martial (SPCMs).

Reserve Component

That part of the United States Army consisting of the Army National Guard of the United States (ARNGUS) and the United States Army Reserve (USAR).