



DEPARTMENT OF THE ARMY
U.S. ARMY MILITARY DISTRICT OF WASHINGTON &
JOINT TASK FORCE – NATIONAL CAPITAL REGION
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ANCG

FEB 08 2023

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy Letter – Withholding and Notification of Misconduct – Memorandum #6

1. REFERENCES.

- a. Manual for Courts-Martial, United States.
- b. AR 15-6 (Procedures for Administrative Investigation and Board of Officers).
- c. AR 27-10 (Military Justice).
- d. AR 190-5 (Motor Vehicle Traffic Supervision).
- e. AR 600-20 (Army Command Policy).
- f. AR 600-37 (Unfavorable Information).
- g. Memorandum, HQ USAMDW, ANCG, Subject: Court-Martial Convening Authorities and Uniform Code of Military Justice (UCMJ) Command Authority for the U.S. Army Military District of Washington General Court-Martial Jurisdiction.
- h. Army Directive 2022-13 (Reforms to Counter Sexual Harassment/Sexual Assault in the Army).
- i. AR 600-8-2 (Suspension of Favorable Personnel Actions (Flag))

2. PURPOSE. To provide the U.S. Army Military District of Washington (USAMDW) Commander's policy on withholding disposition authority for officer, warrant officer, and senior noncommissioned officer misconduct and investigations; notification of misconduct and investigations; and administrative action against intoxicated drivers.

3. APPLICABILITY. This policy is applicable to all Servicemembers within the Senior Commander Jurisdiction of the Commanding General, USAMDW, and within the General Court-Martial Convening Authority (GCMCA) jurisdiction of the Commanding General, USAMDW, per references e and g. For purposes of this policy, personnel assigned to the GCMCA jurisdictions of the Garrison Commanders of Fort Belvoir, Virginia, and Fort Meade, Maryland, per reference g., are not subject to the GCMCA

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jurisdiction of the Commanding General, USAMDW. However, Fort Belvoir, Virginia, and Fort Meade, Maryland, are still subject to the Senior Commander jurisdiction of the Commanding General, USAMDW. Commanders on the distribution list will forward this policy to all organizations within their respective jurisdictions.

4. NOTIFICATION. Commanders, directors, and supervisors will, within 72 hours from receipt of information, report incidents or allegations meeting the below criteria, through command channels to the Commander, USAMDW, with a copy provided to the USAMDW SJA. Reports will include name, rank, gender, unit, duty assignment, brief description of the incident, and any immediate measures the command has taken in response to the incident. This notification requirement applies to all units within the USAMDW Senior Commander jurisdiction.

(1) Any report or investigation of misconduct alleged to have been committed by a senior leader or SHARP representative assigned within my Senior Commander jurisdiction or within the USAMDW GCMCA jurisdiction. Senior leaders are commissioned officers, warrant officers, sergeants major, master sergeants, and first sergeants in the grade of E-7 or E-8.

(2) Any report or investigation of misconduct that has actual or expected media interest within my Senior Commander jurisdiction or within the USAMDW GCMCA.

5. ADMINISTRATIVE ACTIONS AGAINST INTOXICATED DRIVERS.

(1) Reprimands for Soldiers within the Senior Commander jurisdiction and USAMDW GCMCA, and not assigned to a unit with a General Officer commander, who are cited for, convicted of, or reported to have engaged in an intoxicated driving offense, as defined in para. 2-7 of reference d., will be issued at my level.

(2) I withhold authority to take action under the UCMJ involving drunk or impaired driving offenses occurring both on and off the installation. This withholding also includes any collateral misconduct associated with drunk or impaired driving offenses (e.g., underage drinking, disorderly conduct). Commanders do not have the authority to exercise UCMJ action, to include non-judicial punishment (Article 15), for DUI and DWI offenses committed on-post or off-post unless I have returned this authority on a specific case.

(3) This policy does not affect the initiation or imposition of other administrative sanctions for DUI and DWI offenses, such as suspension and revocation of installation driving privileges, bars to continued service, administrative reductions, and administrative separation for misconduct. Commanders will coordinate with their servicing legal offices to ensure compliance with applicable laws and regulations.

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6. POLICY. The following withholdings apply to Servicemembers within the USAMDW GCMCA.

a. **GCMCA Withholdings.**

(1) Senior leader misconduct. Pursuant to Rule for Court-Martial (R.C.M.) 306, I withhold authority to dispose of misconduct allegedly committed by the following personnel assigned exclusively to the general courts-martial jurisdiction of this command: senior leaders and SHARP representatives. Senior leaders are commissioned officers, warrant officers, sergeants major, master sergeants, and first sergeants in the grade of E-7 or E-8. This reservation includes the authority to issue reprimands, administer non-judicial punishment under Article 15, UCMJ, and convene courts-martial.

(2) Delegation. Subordinate Commanders do not have the authority to take adverse action for misconduct allegedly committed by senior leaders or SHARP representatives unless I have returned this authority on a specific case.

(3) This policy does not withhold the authority of any level of commander to prefer charges in accordance with (IAW) RCM 307, nor does it limit a commander's authority to impose conditions on liberty IAW RCM 304. Commanders at any level may prefer charges IAW RCM 307, and forward them, with recommendations, to me for disposition.

(4) All commanders will ensure that allegations of misconduct are thoroughly investigated, and that the completed investigation of the case is forwarded through the MDW OSJA, to me, with recommendations as to final disposition. Once a case is submitted, I will determine whether to direct disposition or release jurisdiction to a subordinate commander for disposition.

(5) Unless a Soldier is otherwise punitively discharge or dismissed from the Army as part of a court-martial sentence, commanders will initiate involuntary administrative separation proceedings for all Soldiers against whom there is a substantiated investigation of sexual assault, domestic violence, or sexual harassment. Separation proceedings will be processed through the chain of command to the separation authority for appropriate action.

(6) Soldiers under investigation (law enforcement, AR 15-6, etc.) or facing adverse action (court-martial, non-judicial punishment, reprimand, etc.) will not be allowed to telework while the investigation is ongoing or they are facing adverse action. The command will ensure the Soldier's well-being, and the Soldier will continue to perform duties commensurate with their rank. The first General Officer or Senior Executive Service (SES) in the supervisory chain of command can grant telework

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exceptions. The exception must be in writing and shall address any risks and mitigations associated with allowing the Soldier to telework.

(7) Upon receipt of any report of alleged domestic violence, commanders will, at a minimum, order a “cooling off” period of not less than seven (7) days and will direct the subject Soldier into the unit barracks or appropriate temporary quarters. For good cause, the SPCMCA may reduce, in writing, the “cooling off” period to not less than 72 hours, after consultation with their servicing Judge Advocate. If there is insufficient space in unit barracks or temporary quarters, the SPCMCA may grant an exception, in writing, to the “cooling off” period.

(8) For all complaints of sexual assault or domestic violence, as soon as possible, but no later than 6 hours after determining a Military Protective Order (MPO) is warranted (such as the presence of a threat of physical harm), the first O-6 commander in the subject’s chain of command will ensure that the subject’s commander has issued and served a DD Form 2873 (MPO) to the subject Soldier, that it has been submitted to the appropriate installation Directorate of Emergency Service or Provost Marshal Office, and that a copy has been provided to the protected individual(s).

(9) Commanders are reminded that IAW reference i. (AR 600-8-2), a suspension of favorable actions (Flag) is mandatory when military or civilian authorities initiate any investigation or inquiry that may potentially result in disciplinary or adverse administrative action. Commanders should seek advice from their servicing Judge Advocate when initiating or removing Flags for investigations or allegations of misconduct.

b. SPCMCA Withholdings.

(1) Withholding of Misconduct Involving or Related to Sex Offenses.

(a) Initial disposition authority for all alleged offenses under UCMJ Articles 120(a) (Rape), 120(b) (Sexual Assault), 120(c) (Aggravated Sexual Contact), 120b (Rape, Sexual Assault, and Sexual Abuse of a Child), as well as all attempts to commit such offenses under Article 80, are withheld to commanders in the rank of Colonel or above who are a Special Court-Martial Convening Authority. This withholding applies to like offenses enumerated under a different UCMJ Article in prior Manuals for Courts-Martial.

(b) Additionally, this withholding applies to all other alleged collateral misconduct of any kind arising from or related to the alleged commission of the above listed offenses, whether committed by the alleged perpetrator or the alleged victim of the offense.

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(c) Any sexual assault allegation reported as an unrestricted report will be forwarded immediately to the Criminal Investigation Command (CID) for investigation. Commanders will **not** initiate an AR 15-6 investigation into the allegation and will **not** make a credibility assessment as a pre-cursor to forwarding to CID. **All sexual assault allegations will be forwarded to CID.**

(d) Commanders are not precluded from appointing an appropriate AR 15-6 investigation into command climate, response, reporting procedures upon discovery, etc., but must consult with their servicing Judge Advocate to ensure such investigation will not interfere with any criminal investigation by CID.

(e) Disposition and Status Disclosure to Sexual Assault Victims. In addition to the requirement in AR 600-20, paragraph 7-5(t), to provide status updates to victims with 72 hours of each recurring Sexual Assault Review Board (SARB), brigade commanders (or brigade-equivalent commanders) will notify the Soldier-complainant within two (2) business days of receiving the final outcome of any judicial, non-judicial, or administrative proceedings. This duty is not delegable.

(2) Domestic Violence. Disposition of domestic violence offenses and assault consummated by a battery upon a child under 16 years of age, a spouse, intimate partner, or immediate family, as defined by Articles 128, 128a, and 128b, UCMJ, are withheld to commanders who are O-6 SPCMCAs. This authority may be delegated, in writing, to the first O-5 SCMCA in the Soldier's chain of command. It cannot be further delegated. This delegation only applies to a single, first-time offense of domestic violence.

c. SCMCA Withholdings.

(1) Withholding of Misconduct Involving or Related to Sex Offenses.

(a) Initial disposition authority for alleged offenses under Article 117a (Wrongful broadcast or distribution of intimate visual images), 120(d) (Abusive Sexual Contact), and 120c (other sexual misconduct), as well as all attempts to commit such offenses under Article 80, are withheld to commanders in the rank of Lieutenant Colonel who are a Summary Court-Martial Convening Authority. This withholding applies to like offenses enumerated under a different UCMJ Article in prior Manuals for Courts-Martial. This authority may not be delegated.

(b) Additionally, this withholding applies to all other alleged collateral misconduct of any kind arising from or related to the alleged commission of the above listed offenses, whether committed by the alleged perpetrator or the alleged victim of the offense.

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(2) Drug Related Offenses. The authority to take adverse administrative or other actions under the UCMJ is withheld to commanders who are SCMCA's for offenses involving controlled substances, controlled substance analogues (to include "spice" and "bath salts"), other intoxicating substances (excluding alcohol), and drug paraphernalia. This authority may not be delegated.

(3) Offenses Involving a Dangerous Weapon. Disposition of offenses involving a dangerous weapon is withheld to commanders who are SCMCA's, unless further withheld based on one of the offenses listed above. A weapon is dangerous when used in a manner capable of inflicting death or grievous bodily harm. "Grievous bodily harm" means serious bodily injury. It does not include minor injuries, such as a black eye or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other serious bodily injuries. This authority may not be delegated.

(4) Hazing and Bullying Offenses. For hazing and bullying offenses, as defined by AR 600-20, para. 4-19, the authority to take action under the UCMJ is withheld to commanders who are O-5 SCMCA's. This authority may not be delegated.

(5) Offenses involving Retaliation. Allegations of retaliation, as defined in UCMJ Article 132, are withheld to commanders who are O-5 SCMCA's. This authority may not be delegated.

7. ADMINISTRATIVE INVESTIGATIONS.

a. Appointment of an administrative investigation pursuant to Reference 1.b. for alleged senior leader misconduct assigned to USAMDW, GCMCA jurisdiction requires coordination with Commander, USAMDW prior to appointment. Coordination should be accomplished in concert with required notification.

b. For administrative investigations into sexual harassment, the investigating officer must be appointed from a brigade-sized element other than that of the subject. This coordination must be done with the USAMDW OSJA Administrative Law Section.

c. Appointment of administrative investigations of potential misconduct or violations of the UCMJ for all other Soldiers must be previously coordinated with the Soldier's immediate Commander prior to appointment.

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8. PROPONENT. The Office of the Staff Judge Advocate is the proponent for this policy letter. The POC is the Chief of Military Justice, OSJA, USAMDW, at 202-902-0099.



ALLAN M. PEPIN
Major General, USA
Commanding

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