



DEPARTMENT OF THE ARMY AND THE AIR FORCE
LAND COMPONENT, JOINT FORCE HEADQUARTERS KANSAS
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JFHQ-LC-CDR

13 September 2009

MEMORANDUM FOR Kansas Army National Guard

SUBJECT: ATAG Policy Letter #3, Administrative Actions in Felony Charges

1. Reference: SecDef policy dated 2 April 2008, Self-Reporting by Officers and Senior Enlisted Members of Criminal Convictions; Army Regulation 135-178, Enlisted Administrative Separation of Officers, chapter 2.
2. Definitions:
 - a. For purposes of this policy, the term "conviction" includes a plea or finding of guilty, a plea of *nolo contendere*, and all other actions tantamount to a finding of guilty, including adjudication withheld, deferred prosecution, entry into adult or juvenile pretrial intervention programs, and any similar disposition of charges.
 - b. For purposes of this policy a criminal law of the United States includes any military or other Federal criminal law; any state, district, commonwealth, or territorial or equivalent criminal law or ordinance; and any criminal law or ordinance of any county, parish, municipality, or local subdivision of any such authority, other than motor vehicle violations that do not involve a court appearance.
 - c. For purposes of this policy, "owning command" means the Soldier's first-line military supervisor, unless that authority has been withheld by commander higher in the chain of command.
3. Purpose: The following guidance is provided for actions to be taken against Soldiers who are charged with a felony offense or serious Class A or B misdemeanors in civilian court. When a Soldier is charged with a felony or serious Class A or B misdemeanor in civilian court, the following actions will be taken.
 - a. When the owning command receives verification of the charge, it will immediately flag the Soldier's file with DA Form 268 for Adverse Actions. The flag will not be lifted until the civilian court case is resolved and the command initiates and completes adverse action against the Soldier, if any.
 - b. The owning command will determine, after consultation with JAG, if the Soldier will be allowed to continue drilling with the unit, be allowed to SUTA with his/her base unit if determined that his or her presence will create a training distracter, or his or her ability to drill may be suspended if his or her presence is considered a threat to the members of the organization.
 - c. The owning command will consult with JAG on the nature of the offense and make a determination of what admin or military justice actions should be taken regarding the Soldier. A JAG will be assigned the case to track and monitor it until resolution. The assigned JAG will immediately provide a weekly report to the SJA regarding the case and the Soldiers. The owning command will actively participate and cooperate in all facets of this case.

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d. The command will immediately suspend the Soldier's computer and security clearance, as well as access to weapons and ammunition.

e. Soldiers who are flagged for felony or serious Class A or B misdemeanor charges will not be placed on State Active Duty without the specific approval of the Commander, KSARNG, or his designee.

4. All commissioned officers, warrant officers, and enlisted members above the pay grade of E-6 who are on active duty or in an active National Guard status shall report in writing any conviction of such member for a violation of a criminal law of the United States – whether or not the member is in a Title 32 or State Active Duty status at the time of the conduct that provides the basis for the conviction – to the member's first-line military supervisor or the JFHQ SJA office. Active National Guard members not in a Title 32 or State Active Duty status at the time of the conviction shall submit reports under this policy at the first drill period after the date the conviction is announced, or within 30 days of the date the conviction is announced, whichever is earlier, even if sentence has not been imposed or the member intends to appeal the conviction. All members who must submit evidence of their conviction must maintain evidence of compliance with this requirement.

5. Upon conviction of a felony or serious Class A or B misdemeanor, the owning command immediately shall determine whether to initiate separation of the Soldier for misconduct, pursuant to the requirements of Army Regulation 135-178, Enlisted Administrative Separations, chapter 12, or pursuant to the requirement of Army Regulation 135-175, Separation of Officers, chapter 2. The owning command shall forward a recommendation and refer the issue to the next higher level of command within ten (10) days after receiving notice in writing of the conviction. Each level of command shall add its recommendation and refer the issue to the next higher level of command within ten (10) days of receipt of the next lower commander's recommendation. The Adjutant General shall determine whether initiation of separation proceedings is warranted.

6. While the intent is to protect the Soldier's rights until his or her case is adjudicated by civilian authority, the KSARNG will take all reasonable and prudent steps to ensure the safety and security of other Soldiers and maintain public confidence in the KSARNG.

7. Each Soldier's status will be determined as expeditiously as possible on case by case basis after consultation with appropriate command authorities, assigned JAG, and the SJA Office.

8. This policy supersedes ATAG Policy Letter #3, Administrative Actions in Felony Charges, dated 30 May 2008.


JOHN E. DAVOREN
Brigadier General, KSARNG
Commanding

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