



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
JOINT FORCES HEADQUARTERS KANSAS
2800 SOUTHWEST TOPEKA BOULEVARD
TOPEKA, KS 66611-1287

NGKS-Z

10 March 2010

MEMORANDUM FOR Kansas Adjutant General's Department Employees

SUBJECT: TAG Policy Letter #28, Hiring, Administrative Actions involving Felony Convictions

1. All member employees of the Kansas Adjutant General's Department with a past felony or a pending felony charge will be documented. The documentation will be forwarded through appropriate channels to determine appropriate action, if any, by the Kansas Adjutant General's Department. This includes a determination during the application and hiring process of the appropriateness of a person's prospective employment. The policy applies to all member employees of the Kansas Adjutant General's Department.
2. It is the intent of the Adjutant General to protect the member employee's rights until the case is adjudicated by civilian authority. However, the Adjutant General will take all reasonable and prudent steps to ensure the safety and security of other member employees and maintain public confidence in the Adjutant General's Department.
3. A member employee's status will be determined as expeditiously as possible.
4. The Office of the State Staff Judge Advocate will promulgate the procedures, rules, and definitions required to implement this policy.
5. This policy is new and takes precedence over any competing or contrary application of existing policies.


TOD M. BUNTING, Major General, KSNG
The Adjutant General

Attachment:
NGKS-JA Implementation of TAG Policy #28



DEPARTMENT OF THE ARMY AND THE AIR FORCE

KANSAS NATIONAL GUARD
JOINT FORCES HEADQUARTERS KANSAS
OFFICE OF THE STAFF JUDGE ADVOCATE
2800 SOUTHWEST TOPEKA BOULEVARD
TOPEKA, KANSAS 66611-1287

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MEMORANDUM FOR Kansas Adjutant General's Department Employees

SUBJECT: Implementation of TAG Policy Letter #28, Hiring, Administrative Actions involving Felony Convictions

1. Reference: SecDef Policy dated 2 April 2008, Self-Reporting by Officers and Senior Enlisted Members of Criminal Convictions; Army Regulation 135-178, Administrative Separation of Enlisted and Officers; Air Force Instruction 35-3206, Administrative Discharge Procedures; State of Kansas Statutes and Procedures as provided by the Kansas Adjutant General's Department, State Human Resources Office.

2. Definitions, for purposes of this policy:

a. The term "conviction" includes a plea or finding of guilty, a plea of *nolo contendere* (no contest), and all other actions tantamount to a finding of guilty, including adjudication withheld, deferred prosecution, diversion, entry into adult or juvenile pretrial intervention programs, and any similar disposition of charges. Expungements or other similar actions resulting in the removal of a felony from a criminal record or history are specifically included.

b. A criminal law includes any military or other Federal criminal law; any state, district, commonwealth, or territorial or equivalent criminal law or ordinance; any criminal law or ordinance of any county, parish, municipality, or local subdivision of any such authority. Motor vehicle violations that do not involve a court appearance are expressly not included.

c. "Member employee" means any and all full-time/temporary full-time, part-time/temporary part-time, and drill/traditional/M-day status military members; full-time, part-time, and temporary, contract civilian employees; contractors; full and part-time volunteers; and any other persons of the Kansas Adjutant General's Department and persons applying for employment with the Kansas Adjutant General's Department. This policy specifically excludes full and part-time prisoner/probationer/parolee employees working through various programs with municipal, county, state, and federal departments of corrections.

NGKS-JA

SUBJECT: Implementation of TAG Policy Letter #28, Hiring, Administrative Actions involving Felony Convictions

d. "Responsible authority" means the member employee's first-line supervisor, unless the authority has been withheld by a higher level supervisor or member of the chain of command. For dual/multiple status member employees, all responsible authorities will meet to determine which responsible authority will take the lead and to coordinate all actions.

e. "Flag" means to annotate, mark, designate, a member employee's personnel file or employment application when felony charges are verified pending or a felony conviction is verified adjudicated, each appropriate Personnel/Human Resources offices may define through their own regulations/instructions/policies the ramifications of a "Flag" on current and future personnel actions.

3. Purpose: The purpose of this policy is to document all member employees with felonies and to determine appropriate action, if any, by the Kansas Adjutant General's Department and to determine during the application and hiring process the appropriateness of a person's prospective employment. The policy applies to all member employees of the Kansas Adjutant General's Department. When a member employee is charged with a felony in a civilian court or when the responsible authority becomes aware of a member employee being charged with a felony or having a past felony conviction, the following actions will be taken:

a. When the responsible authority receives verification of a felony charge or conviction, it will immediately flag the member employee's personnel file. The flag will not be lifted until the civilian criminal charges are resolved and appropriate legal, administrative, and/or, personnel action, if any, is completed.

b. The responsible authority will determine, after consultation with Legal and the appropriate Personnel/Human Resources offices, if the member employee's presence will create a work distraction for others or is a threat to other member employees. This determination will be in writing with written endorsement from Legal and the appropriate Personnel/Human Resources offices. Conflicts will be resolved by the applicable responsible authority chain. The Adjutant General is the Department's final authority.

c. The responsible authority will consult with the Legal office on the nature of the civilian criminal charge and make a determination on appropriate legal, administrative, and/or, personnel action, if any. The Legal office will track and monitor the case until final resolution. The responsible authority will be, in cooperation with Legal and appropriate Personnel/Human Resources offices, informed and, when required, engaged in all facets of the case.

NGKS-JA

SUBJECT: Implementation of TAG Policy Letter #28, Hiring, Administrative Actions involving Felony Convictions

d. The responsible authority will consult with the J6 on suspending the member employee's computer access.

e. The responsible authority will consult with the J2 in suspending the member employee's security clearance.

f. The responsible authority will immediately suspend the member employee's access to weapons and ammunition.

g. The responsible authority will not place the member employee on State Active Duty, pre-mobilization, or mobilization orders without specific approval of the Adjutant General or the Adjutant General's designee.

4. All member employees have an affirmative obligation to self report a pending felony charge or felony conviction to their first-line responsible authority or the Legal office. Full and part-time member employees must report the first working day following their charge or conviction. Drill status military members must report their charge or conviction no later than their next scheduled drill date, orders date, or 30 days, whichever comes first. This obligation applies even if sentence has not been imposed or the member employee intends to appeal the conviction. Failure to comply can, in itself, be ground for appropriate legal, administrative, and/or personnel action.

5. Upon notification of a member employee's felony charge or conviction, the responsible authority will determine, after consultation with Legal and the appropriate Personnel/Human Resources offices, whether to initiate separation or termination action. Within ten (10) days, the responsible authority will forward, in writing, their recommendation and refer the case to the next level of authority. Each level of authority has ten (10) to add their recommendation and refer the case forward. The Adjutant General is the Department's final authority.

6. When determining appropriate action, if any, the responsible authority, Legal and appropriate Personnel/Human Resources offices will:

a. Apply a rebuttal presumption to separate or terminate a member employee charged or convicted of a Person Felony, as defined by Kansas Statutes.

b. Apply no presumption on appropriate action, if any, for a member employee charged or convicted of a felony involving dishonesty, as defined by Kansas Statute and consultation with Legal. This is a case by case analysis. However, the member employee's duties and responsibilities will be scrutinized to determine whether the member employee can

NGKS-JA

SUBJECT: Implementation of TAG Policy Letter #28, Hiring, Administrative Actions involving Felony Convictions

continue in their current position. The responsible authority, Legal, and appropriate Personnel/Human Resources offices will pay particular attention to, but not limited to, the member employee's access to personal identifiable information, Federal or State funds, Government credit cards, Federal and State computer and communication systems, and overall danger (physical, material, and financial) to the workforce and Kansas Adjutant General's Department.

c. Apply no presumption on appropriate action, if any, for member employees charged or convicted of all other Felonies including expungements or other similar actions resulting in removal of a felony from a criminal record or history, of any type of felony. This is a case by case analysis.

7. It is the intent of the Adjutant General to protect the member employee's rights until the case is adjudicated by civilian authority. However, the Adjutant General will take all reasonable and prudent steps to ensure the safety and security of other member employees and maintain public confidence in the Adjutant General's Department.

8. Member employee's status will be determined as expeditiously as possible.

9. This policy is new and takes precedence over any competing or contrary application of existing policies.

FOR THE ADJUTANT GENERAL:

A handwritten signature in black ink, appearing to read 'S. Dold', written in a cursive style.

SCOTT A. DOLD, Col, KSANG
Senior Legal Advisor to the Adjutant General