

FACT SHEET

SUBJECT: Separation of Soldiers Confined by Civil Authorities

1. PURPOSE. To provide commanders guidance on administrative separations of soldiers in civil confinement.

2. FACTS.

a. Upon receiving information that a soldier is under civilian criminal charges, commanders should ensure that the soldier is flagged under AR 600-8-2. The suspension of favorable personnel actions remains in effect until the commander takes final action.

b. Separation proceedings may be initiated against a soldier for commission of a serious military or civil offense under AR 635-200, para 14-12(c), if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ.

c. A soldier confined by civil authorities will receive notice under the Notification Procedure or the Administrative Board Procedure. Arrangements should be made with the civil authorities for personal delivery of the notice to the soldier or send the notice by certified mail, return receipt requested. When a soldier refuses to acknowledge receipt of notice, the individual who mails the notice will prepare an Affidavit of Service by Mail for insertion in the personnel files.

d. If delivered personally, receipt will be acknowledged in writing by the soldier. If the soldier refuses to acknowledge receipt, then notice will be sent by mail as provided above.

e. The notice will state that the action has been suspended until a specific date (not less than 30 days from the date of delivery) in order to give the soldier the opportunity to exercise the rights set forth in the notice. If the soldier does not respond, process the separation action as though the soldier had waived his rights. The name and address of the appointed military counsel for consultation will be specified in the notice.

f. When entitled to an administrative board, the soldier will be notified that the board hearing will proceed in his absence and that he will be represented by counsel.

g. In order to comply with the physical exam requirement of AR 635-200, arrangements should be made with the confining authorities to obtain a copy of the confinement facility's entry physical exam or arrange for the soldier to be escorted on post for a physical. Mental Hygiene should be contacted in order to make arrangements for the soldier's required mental evaluation.

h. The Commander cannot execute the separation of a Soldier from the Army based on his conviction in a civilian court under the provision of AR 635-200, *Active Duty Enlisted Administrative Separations*, chapter 14, paragraph 14-5a until certain conditions are met, or HQ, Human Resources Command approves the separation. The execution of an approved separation will be withheld until one of the following has occurred pursuant to AR 635-200, paragraph 14-6b:

a. The civilian court has taken formal action on the Soldier's appeal or the Soldier has waived his right to appeal;

b. The Soldier's term of service in the Army has expired; or

c. Approval from Army Headquarters is obtained. Request for such approval should be made to Headquarters, Department of the Army (AHRC-EPR-F), 200 Stovall Street, Alexandria, VA 22332-0478.

3. POC is the Military Law and Ethics Division.

Chief, Military Law and Ethics Division