

## CHAPTER 2

### SENIOR OFFICERS LEGAL ORIENTATION

# ADVERSE ADMINISTRATIVE ACTIONS

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## **Outline of Instruction**

### **I. CONSOLIDATED LIST OF REFERENCES.**

- A. AR 190-5, Motor Vehicle Traffic Supervision.
- B. AR 350-15, The Army Physical Fitness Program.
- C. AR 380-67, Personnel Security Program.
- D. AR 600-8-2, Suspension of Favorable Personnel Actions (FLAGS).
- E. AR 600-8-10, Leaves and Passes.
- F. AR 600-8-19, Enlisted Promotions and Reductions.
- G. AR 600-9, The Army Weight Control Program.
- H. AR 600-20, Army Command Policy and Procedures.
- I. AR 600-37, Unfavorable Information.
- J. AR 601-280, Total Army Retention Program, w/ IO3 (November 1993).
- K. AR 635-200, Personnel Separations - Enlisted Personnel.

### **II. INTRODUCTION.**

Commanders have a spectrum of administrative military personnel actions which they can use to motivate, improve, and rehabilitate soldiers whose performance is unsatisfactory or who exhibit other problems which interfere with duty performance or the unit's mission.

If soldiers fail to respond to motivation and rehabilitation, other administrative tools are available which commanders can use to take appropriate remedial or adverse action, or to separate soldiers from the Army.

This outline reviews the twelve administrative actions short of administrative separation that you can expect to see most often. Each section lists the appropriate references. The chart at Appendix A lists these actions in a tabular form. Enlisted separations are addressed in the next chapter.

This outline should be supplemented by reference to the applicable regulation, to appropriate local regulations and policies, and any guidance from senior commanders.

### **III. DUE PROCESS OF LAW - THE STARTING POINT.**

#### **A. The Constitution.**

1. Bill of Rights (e.g., Fourth, Fifth, and Sixth Amendments) generally inapplicable to military administrative proceedings.
2. When challenged in court on alleged denial of constitutional due process (fifth amendment), military position is "there is no constitutional life, liberty, or property interest affected by our administrative actions."

#### **B. Our Regulations.**

1. Must follow procedures in regulations -they are more than "guidelines." Although federal district courts are very hesitant to second guess armed forces on substance of decisions, they will grant relief if we fail to follow our own regulations.
2. "Minimum" due process: notice of allegations and an opportunity to be heard.

#### **IV. SUSPENSION OF FAVORABLE PERSONNEL ACTIONS (FLAGS).**

- A. Reference. AR 600-8-2, Suspension of Favorable Personnel Actions (FLAGS), 30 Oct 87. I01, Apr 94.
  
- B. Purpose.
  - 1. A suspension of favorable personnel actions (or “flag”) is an administrative hold placed on a soldier which precludes the processing of nearly all favorable personnel actions (e.g., promotion, awards, school attendance, payment of reenlistment bonuses, etc.) while the soldier’s chain of command conducts an investigation, determines whether or what adverse action to take against the soldier, and completes the adverse action.
  
  - 2. A flag itself is not an adverse action, because it can be removed as easily as it can be initiated. But since it prevents virtually all favorable action on/for a soldier, it can have a very adverse effect on the soldier’s career.
  
- C. Types. There are two types of flags, “transferable” and “nontransferable” actions. The impact of the action will vary depending upon the flag’s basis and type.
  - a. Regular (“non-transferable”) flags prevent appointment, reappointment, reenlistment, extension, entry on active duty or active duty for training, reassignment, promotion or reevaluation for promotion, awards and decorations, attendance at civil or military schools, unqualified resignation or discharge, retirement, advance or excess leave, payment of enlistment or selective reenlistment bonus, assumption of command, family member travel to an overseas command and command sponsorship of family members overseas when sponsor is overseas.

- b. APFT (Army Physical Fitness Test) failure (“transferable”) flags prevent promotion, reenlistment, and extension.
  - c. Weight control (“transferable”) flags prevent attendance at schools, promotions, assumption of command, awards and decorations, and reenlistment or extension.
- D. Procedure.
- 1. Any commander (or general officer staff head) directs the flag.
  - 2. Battalion S1 prepares DA Form 268, Report to Suspend Favorable Personnel Action (FLAG), and submits SIDPERS transaction. Properly administered, a flag has two (previously three) components:
    - a. A SIDPERS (Standard Installation/Division Personnel System) transaction that codes a soldier’s records in the Army’s automated personnel database and prevents favorable personnel transactions.
    - b. [Marking and physically segregating the soldier’s Military Personnel Records Jacket (MPRJ) at the military personnel records center, to alert personnel clerks that the soldier was flagged, thus preventing manual favorable personnel transactions at the personnel service company. The elimination of the MPRJ removed this safeguard and put more emphasis on unit-level management of personnel actions.]
    - c. Battalion S1 (or equivalent) unit management of the flagging system, to keep unit leadership and unit personnel clerks aware of the flag, and lift it when appropriate.
  - 3. Unit notifies soldier.
  - 4. Unit or battalion manages SIDPERS C95 report, which lists all flagged soldiers.

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- 5. Lift flag when appropriate.
- E. Approval Authority. Any commander or general officer staff head.
- F. Appeal. None.
- G. Records. DA Form 268 maintained only so long as soldier is flagged. No permanent record of flag itself, although there may well be a permanent record of the underlying adverse action which required the flag.

**V. EXTRA TRAINING.**

- A. Reference. AR 600-20, para 4-6b.
- B. Purpose. An effective, nonpunitive corrective measure.
- C. Procedure. No formal procedure.
  - 1. Any leader may order a soldier to train to overcome a deficiency.
    - a. Must be directly related to the deficiency.
    - b. Must be aimed at improving the soldier's performance.
  - 2. Not punishment; must stop when deficiency is overcome.
- D. Approval Authority. Any commander. An “inherent power of command.” May be delegated.
- E. Appeal. No specific procedure.
- F. Records. None; *however*. . .

1. “Deficiencies *satisfactorily corrected* by means of training and instruction will be not noted in the official records of the soldier concerned.” AR 600-20, para 4-6b(2) (emphasis added).
2. If the problem merits it, consider documenting with a counseling with a view towards separation. Destroy the counseling if, after a reasonable period, the problem truly is cured; otherwise, proceed to separation.

## **VI. REVOCATION OF PASS PRIVILEGES.**

- A. Reference. AR 600-8-10, Chapter 5, Section XIV.
- B. Purpose. Commanders should grant passes (defined as short, nonchargeable, authorized absences from post or place of duty during normal off-duty hours) to those soldiers whose performance of duty and conduct merits approval. If a soldier’s performance of duty and conduct do not merit approval, do not approve a pass.
- C. Procedure. No formal procedure. Regular passes usually do not require a DA Form 31 (although one may be used). If a soldier’s pass privileges are revoked, the soldier’s immediate commander or his or her representative should inform the soldier in writing. If DA Form 31 is used for regular passes, indicate disapproval on the form.
- D. Approval Authority. Any commander.
- E. Appeal. No special procedures.
- F. Records. None required. Consider documenting with a counseling statement.

## **VII. COUNSELING WITH A VIEW TOWARDS SEPARATION.**

- A. Reference. AR 635-200, para 1-16.

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- B. Purpose. An administrative prerequisite to many administrative separations, counseling with a view towards separation serves as a “final warning” to a soldier to improve performance or face discharge. It also is an attempt by the Army to protect its investment in the soldier’s recruiting and training costs. *Compare with* general counseling (AR 600-20, para 2-1e) (basic leadership tool used to assist soldiers in professional growth; not necessarily adverse).
- C. Procedure.
1. **May** be used at any time. As a prerequisite to processing a soldier for discharge under the following provisions of AR 635-200, the command **must** complete at least one recorded counseling:
    - a. Chapter 5, Involuntary Separation Due to Parenthood;
    - b. Chapter 5, Personality Disorder;
    - c. Chapter 11, Entry Level Performance and Conduct;
    - d. Chapter 13, Unsatisfactory Performance; or
    - e. Chapter 14, Minor Disciplinary Infractions or Pattern of Misconduct.
  2. The officer or NCO counseling the soldier will advise the soldier of:
    - a. The reason for counseling;
    - b. The fact that separation may be initiated if behavior continues;
    - c. The type of discharge that could result from possible separation; and
    - d. The effect of each type of discharge.

- D. The command must give the soldier a reasonable opportunity to overcome the deficiencies.
  
- E. Approval Authority. None. Counseling may be conducted by “a responsible person.” AR 635-200, para 1-18b.
  
- F. Appeal. None.
  
- G. Records.
  - 1. To be used as a prerequisite for separation, each counseling session must be recorded in writing.
  
  - 2. DA Form 4856 (General Counseling Form) normally should be used for this purpose.
  
  - 3. Filed in unit personnel files - not in MPRJ or OMPF (Official Military Personnel File). No permanent, long-term record, unless incorporated into separation action. Maintain until soldier departs unit; destroy one year later IAW MARKS.
  
  - 4. Commander's Notebook. Beware of Freedom of Information Act access. Generally, no right to access under FOIA if:
    - a. Prepared voluntarily; and
  
    - b. Used only as a memory aid by preparer.
  
  - 5. Article 15 (DA Form 2627) does not satisfy requirement in and of itself. Solution: have legal clerk/legal center prepare DA Form 4856 to accompany each Art 15.

## VIII. REHABILITATIVE TRANSFER.

- A. Reference. AR 635-200, para 1-16.
  
- B. Purpose. A soldier must be recycled or reassigned to a new unit at least once before separation action can be initiated under AR 635-200:
  - 1. Involuntary separation due to parenthood, para 5-8.
  - 2. Personality disorder, para 5-13.
  - 3. Entry level performance and conduct, chap 11.
  - 4. Unsatisfactory performance, chap 13.
  - 5. Minor disciplinary infractions or a pattern of misconduct, para 14-12a and 14-12b.
  
- C. Procedure.
  - 1. Period required.
    - a. Soldiers in replacement stream: recycle between training companies where feasible; if not, between training platoons.
    - b. Soldiers in regular units: reassign between battalion-size units at least once, with a minimum of three months in each unit, where possible. PCS possible only for SPC/CPL & below, w/ less than 2 years TIS, & no family members.
  - 2. Very limited. The company-level commander requests the transfer, and the request is processed through command channels to the approval authority. No due process rights for the soldier.

3. A soldier usually cannot be reassigned to a different installation on a rehabilitative transfer. *See* AR 635-200, para 1-16c(3).

D. Approval Authority.

1. Not specified in AR 635-200, para 1-16. Logically, first commander with authority over the gaining and losing unit.
2. May waive requirement for rehabilitative transfer.
  - a. Routine, common practice in many units. (“The exception that swallows the rule.”)
  - b. *Waiver now extremely limited in Chapter 11 and Chapter 13 cases.* *See* DA Messages cited above. **Represents significant change from common past practice for many units.**
  - c. Document why you are doing it. Make sure there is something in the file to *support* your *conclusion* that transfer would:
    - (1) “Create serious disciplinary problems or a hazard to the military mission or to the soldier, or
    - (2) “Be inappropriate because the soldier is resisting rehabilitation attempts, or
    - (3) “Rehabilitation would not be in the best interest of the Army as it would not produce a quality soldier.”

E. Appeal. No specific provisions.

- F. Records. No specific provisions. In practice, losing unit should document reasons for rehabilitation with counseling with a view towards separation, and maintain those records for one year after soldier’s departure (*i.e.*, transfer to gaining unit if needed to support a separation action).

## IX. ADMINISTRATIVE REPRIMAND, CENSURE, OR ADMONITION.

- A. Reference. AR 600-37. (See also AR 25-400-2, The Army Records Information Management System (ARIMS)) 18 Mar 2003.
  
- B. Purpose.
  - 1. Documents misconduct or poor performance in official files.
  - 2. Leadership tool.
  - 3. Be wary of information originating *solely* from intelligence and personnel security files: this information requires special handling (See, e.g., AR 600-37, para 4-6; AR 380-67, Chapter 8).
  
- C. The terms defined.
  - 1. “Reprimand. To reprove severely; to censure formally, especially with authority. . . . A public and formal censure or severe reproof, administered to a person in fault by his superior officer or by a body or organization to which he belongs.” Black’s Law Dictionary 1170 (5th ed. 1979).
  - 2. “Censure. . . . An official reprimand or condemnation.” *Id.* at 203.
  - 3. “Admonish. To caution or advise. To counsel against wrong practices, or to warn against danger of an offense.” *Id.* at 45.
  - 4. What’s the practical difference? Don’t use *censure*; it’s ambiguous. Use *reprimand* instead if you wish to reprove someone for something they have done. Use *admonish* if the person’s wrongdoing is not clear, but you wish to make a record of warning the person to avoid or desist from certain behavior. The procedures outlined in AR 600-37 apply to the filing of all three actions.

D. Procedure.

1. Drafting and initiating the letter.
  - a. For enlisted soldiers. Initiated by the person's immediate commander, any higher commander in the chain of command, a supervisor, school commandant, general officer, or GCMCA.
  - b. For officers. As above, less "supervisor," plus any rating official.
2. Contents. (*See Figure 3, infra* at p. O-15.)
  - a. Reason for reprimand.
  - b. The statement that the reprimand was imposed as an administrative measure and not as punishment under Article 15. AR 27-10, para 3-3.
  - c. If the reprimand is intended for filing in the OMPF, either the reprimand or the document referring the reprimand should indicate where the drafter desires to file the reprimand.
3. Notice and rebuttal by the soldier. AR 600-37, paras 3-2 and 3-6.
4. No right to counsel, but local legal assistance and Trial Defense Services will often try to see soldiers, time permitting.

E. Appeal.

1. Local filing. No formal appeal process.

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COMPANY A  
16TH SIGNAL BATTALION, 29TH SIGNAL GROUP  
FORT ARLINGTON, VIRGINIA 11111

ABCD-EF-B

6 June 2002

MEMORANDUM FOR PV2 Kathleen B. Nash, Company A, 16th Signal Battalion, 29th Signal Group, Fort Arlington, Virginia 11111

SUBJECT: Written Reprimand UP AR 600-37

1. On 22, 24, 26, and 31 May 2002, you were absent without authority from your appointed place of duty. You failed to report to the unit supply room at Company A, 16th Signal Battalion, 29th Signal Group, at the appointed time, 0800, to begin your duties on those dates. Further you were formally counseled on a number of prior occasions and orally admonished for similar offenses. You are hereby reprimanded for your conduct on 22, 24, 26, and 31 May.
2. You are expected to be at your appointed place of duty at the appointed time unless excused by proper authority. Your persistent tardiness will not be tolerated in this unit.
3. This is an administrative reprimand imposed under the provisions of AR 600-37 and not as punishment under UCMJ, Article 15.
4. I intend to file this written reprimand in your unit personnel file. You have 72 hours from the receipt of this reprimand to submit matters in rebuttal or on your behalf. Your response should be by endorsement to this reprimand. I will withhold my decision on imposing and filing this reprimand until I receive and consider your response.

HARD CHARGER  
Captain, SC  
Commanding

*Figure 3*

2. OMPF filing. Appealed to DA Suitability Evaluation Board (DASEB). Normally, consideration of these appeals is restricted to SSG and above.
  - a. Grounds for removal: document is untrue or unjust.
  - b. Grounds for transfer from P-fiche to R-fiche: document is untrue or unjust; or reprimand has served its intended purpose. If basis is that reprimand has served its intended purpose, soldier must wait at least one year since imposition of the reprimand and have received at least one OER or NCOER.
- F. Records. Memorandum maintained in local unit files until 12 months after a soldier's departure, or permanently on the OMPF.

**X. LOCALLY IMPOSED (OR "FIELD") BAR TO REENLISTMENT.**

- A. Reference. AR 601-280, Chapter 8 (29 Sep 95).
- B. Purpose.
  1. Only soldiers of high moral character, personal competence, and demonstrated adaptability to the requirement of the professional soldier's moral code will be reenlisted in the Active Army. Soldiers who cannot, or do not, measure up to such standards . . . will be barred from further service . . . AR 601-280, para 8-2a.
  2. A potentially rehabilitative tool: puts pressure on soldier to shape up; sets up soldiers who fail to do so for separation.

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3. Discretionary grounds for bar to reenlistment. AR 601-280, para 8-4d, lists 28 reasons, including but not limited to tardiness, loss of clothing or equipment, substandard personal appearance or hygiene, indebtedness, nonjudicial punishment, traffic violations, inability to follow orders, apathy, cannot adapt to military life, failure to manage personal affairs, behavior which brings discredit upon the unit or Army, failure to pass APFT or weapons qualification, and noncompetitive for promotion.
  4. Mandatory grounds for bar to reenlistment. AR 601-280, para 8-4c.
    - a. Single soldier and in-service couples with dependent family members when soldier has been counseled IAW AR 600-20, Chapter 5, and does not have an approved family member care plan on file w/in 2 months.
    - b. Single soldiers and in-service couples with dependent family members w/ instructions of overseas assignment, if unable to provide the name of a guardian who will care for their family members in CONUS in the event of evacuation from overseas.
    - c. Weight control failures.
  5. Commander's option: bar from reenlistment, or proceed directly to separation action.
    - a. Soldiers who fail two consecutive APFTs (or commander may proceed with separation immediately).
    - b. Soldiers who are removed for cause from an NCOES course (or commander may proceed with separation immediately).
- C. Procedure. AR 601-280, para 8-5.
1. Initiating the bar.

- a. Any commander in soldier's chain of command may initiate.
  - b. Bars are usually not appropriate during a soldier's first 90 days or last 30 days in a unit. If circumstances warrant, soldier may be barred, but the certificate should explain the timing.
  - c. Use DA Form 4126-R.
2. Notice and rebuttal by the soldier.
    - a. If soldier requests, allow seven days for comment.
    - b. Rebuttal attached to DA Form, 4126-R.
    - c. No right to counsel. TDS or legal assistance will generally try to see soldier.
  3. Initiating commander attaches soldier's rebuttal (if any) and forwards through chain of command to approval authority. Personal action by each commander or acting commander required. Any commander may disapprove.
  4. Restrictions.
    - a. May not approve bar after soldier separates from active duty.
    - b. May not enter bar in soldier's records after soldier separates from active duty.
    - c. May not retain soldier involuntarily past ETS in order to approve bar.
  5. Company level commander informs/"counsels" soldier if bar approved using back side of DA Form 4126-R, Bar Certificate.

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6. Periodic review by the unit commander.
    - a. At least once every 3 months after date of approval, and 30 days before the soldier's PCS or ETS.
    - b. [After first review, must advise soldier of option of voluntary separation under AR 635-200, para 16-5. This provision has been suspended indefinitely by DA.]
    - c. Must lift bar or initiate separation (AR 635-200, Chapter 13, for underlying grounds) after second review.
  7. [Option of requesting voluntary separation. AR 635-200, para 16-5, and AR 601-280, para 8-5f. *This provision of the regulation has been suspended indefinitely by DA.*]
    - a. [Approval is at discretion of first LTC-level commander.]
    - b. [A soldier separated under these provisions will receive an honorable discharge, but no separation pay.]
- D. Approval Authority. Depends upon soldier's active Federal service (AFS) on date of bar initiation (note change from previous practice, when AFS at ETS controlled).
1. Less than ten years AFS on date bar was initiated: LTC commander or SPCMCA.
  2. Ten years or more AFS on date bar was initiated: general officer in command or GCMCA .
  3. Commander who initiates bar cannot approve bar.
  4. If bar initiated above company level, approval authority must be GCMCA, GO in command, or HQDA.

- E. Appeal.
  - 1. Soldier has seven days to submit appeal.
  - 2. If otherwise qualified, soldier will not be involuntarily separated while appeal is pending.
  - 3. Appellate authority. Depends upon soldier's AFS on date of bar initiation and approval authority.
    - a. Less than 10 years AFS on date bar was initiated: general officer in command or GCMCA .
    - b. 10 years or more AFS on date bar was initiated, or bar approved by GCMCA/GO in command: HQDA.
    - c. Bar approved by PERSCOM: no appeal.
- F. Records. DA Form 4126-R (still) filed permanently in MPRJ. Approved bar annotated on soldier's DA Form 2-1.

## **XI. THE QUALITATIVE MANAGEMENT PROGRAM (OR "QMP") BAR TO REENLISTMENT.**

- A. **New Authority: AR 635-200, Ch. 19.** Old Authority: AR 601-280, Chapter 10. (Proponency and guidance for QMP has moved to AR 635-200.)
- B. Purpose. Eliminate unproductive and nonprogressive soldiers. Not intended to be rehabilitative; in reality a fast track to separation.
- C. Procedure.

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1. Files of all soldiers Staff Sergeant (E-6) or higher in grade (with at least 8 years TIS) reviewed annually by DA promotion boards. Boards select soldiers for QMP.
  
2. Notification packet mailed from DA to installation or overseas command, who forwards packet to first LTC (or higher) commander in soldier's chain of command. Commander must serve packet on soldier within two days. Packet contains:
  - a. Instruction letter to commander;
  
  - b. Instruction letter to soldier;
  
  - c. Document(s) which triggered bar; and
  
  - d. Soldier's statement of option.
  
3. Using DA Form 4941-R, a soldier has seven days from date of receipt to elect one of seven options:
  - a. Appeal;
  
  - b. Do nothing and face separation;
  
  - c. Request immediate voluntary discharge under AR 635-200 and forfeit any chance to receive separation pay;
  
  - d. Retire, if retirement eligible;
  
  - e. Request retirement from Active Duty with a concurrent transfer to the Reserve Components;
  
  - f. Extend to retirement eligibility, if memorandum date is between 17 years, 9 months AFS and 20 years AFS; or,



## **XII. THE ARMY WEIGHT CONTROL PROGRAM.**

### A. References.

1. AR 600-9, The Army Weight Control Program, 1 Sep 86 (as published in All Ranks Personnel Update 15, 1 Oct 90). I01, 4 Mar 94 (exp 4 Mar 96). New version of AR 600-9 pending. Expected publication was Summer 1995; with the recent issuance of DODI 1308.3, Physical Fitness and Body Fat Procedures, Nov 5, 2002, DA may release additional guidance in early 2004.
2. AR 635-200, Personnel Separations – Enlisted Personnel, 1 Nov 2000.

### B. Purpose. To ensure that all soldiers:

1. Are able to meet the physical demands of their duties under combat conditions; and
2. Present a trim military appearance at all times.

### C. Procedure.

1. Commanders and supervisors will monitor soldiers to ensure that they maintain proper weight. At minimum, soldiers will be weighed when they take the APFT or at least every 6 months. Commander may direct weight check if soldier presents an unmilitary appearance.
2. All soldiers scheduled to attend professional military schooling will be screened before departure. If the soldier exceeds the screening table weight, he will not be allowed to depart unless his commander determines that he meets body fat composition standards. Soldiers arriving overweight at any DA select school or those who PCS to a professional military school will be processed for disenrollment.

3. Soldiers exceeding the screening table weight will be tested for body fat using the “tape” test.
4. Commanders will flag overweight personnel IAW AR 600-8-2. Flagged personnel are:
  - a. Are nonpromotable;
  - b. Will not be assigned to command positions;
  - c. Will not be authorized to attend professional military schooling; and
  - d. Will not be allowed to reenlistment or extend unless:
    - (1) The GCMCA approves an extension of a soldier who either has a temporary medical condition that precludes weight loss or is pregnant and otherwise qualified for reenlistment; or,
    - (2) The GCMCA approves an extension of a soldier who has completed a minimum of 18 years active federal service. [Application for retirement will be submitted at the time the extension is approved.]
5. Flagged personnel will be enrolled in the Army Weight Control Program (AWCP).
  - a. The loss of 3-8 pounds per month is deemed to be satisfactory progress in the AWCP. Overweight soldiers who fail to make satisfactory progress within 6 months will either be processed for a bar to reenlistment or will have separation proceedings initiated against them. Commander must notify the soldier in writing that separation is being considered and consider the soldier’s response. If the soldier’s response is not satisfactory,

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initiate separation UP AR 635-200, Chapter 18. Results in an honorable discharge.

- b. Overweight soldiers who are reenrolled in the AWCP within 24 months of successfully complete an enrollment in the AWCP will be processed for separation. Recent regulatory change doubled the post-AWCP jeopardy period from 12 months.
- c. The AWCP no longer provides a “grace period” for second-time enrollees. Soldiers were formerly afforded 90 days to achieve standard when reenrolled in the AWCP after more than 12 months but less than 36 months of successfully completion of the AWCP.

D. Approval Authority.

- 1. Authority to place a soldier in the weight control program: company-level commander.
- 2. Separation authority for active-component enlisted soldiers.
  - a. LTC-level commander if soldier has less than six years active and reserve service (notification procedure used).
  - b. SPCMCA if soldier has six or more years service (administrative board procedure used).

E. Appeal. No specific procedure.

F. Records.

- 1. Upon removal from weight control program, records will be maintained in unit (Bn S1/PAC) files for 36 months or until the soldier’s PCS.

2. Upon transfer from one unit to another, the losing commander will forward a memorandum to the gaining commander indicating the status of the soldier's participation in a weight control program, and forward any records.
3. When soldier successfully completes AWCP, completion date will be entered in SIDPERS and the soldier's name and completion date will continue to print out on the unit's C95 (FLAG) roster for 36 months.

### **XIII. DRUNK OR DRUGGED DRIVING SANCTIONS.**

#### A. References.

1. AR 190-5.
2. AR 600-85.

#### B. Purpose. Drunk driving (including drugged driving) administrative sanctions operate in concert with the Army's Alcohol and Substance Abuse Program (ASAP) to prevent alcohol and drug abuse, identify abusers, rehabilitate those abusers who warrant retention, and separate those who do not.

#### C. Procedures.

1. Withdrawal of driving privileges. AR 190-5, para 2-5.
  - a. **Suspension** is immediate pending resolution of drunk driving charges brought in the following circumstances:
    - (1) Refusal to take or complete a lawfully requested chemical test to determine contents of blood for alcohol or other drugs;

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- (2) Operating a motor vehicle with a blood alcohol content (BAC) of 0.10% by volume or higher or in violation of the law of the jurisdiction that is being assimilated on the installation;
  - (3) Operating a motor vehicle with a BAC of at least 0.05% by volume but less than 0.10% blood alcohol by volume in violation of the law of the jurisdiction in which the vehicle is being operated, if the jurisdiction imposes a suspension solely on the basis of the BAC; or,
  - (4) On an arrest report or other official documentation of the circumstances of an apprehension for intoxicated driving.
- b. **Limited hearing.** AR 190-5, para 2-6. Following the suspension of driving privileges, the subject has ten days in which to request a hearing. If requested, the hearing must be conducted by the installation commander or designated hearing officer within ten days. The hearing officer must issue a decision within ten duty days of the hearing. Issues addressed:
- (1) Did the law enforcement official have reasonable grounds to believe person was DWI or in actual physical control of motor vehicle while under the influence of alcohol or other drugs?
  - (2) Was the apprehension or citation lawful?
  - (3) Was the person lawfully requested to submit to a test for alcohol or other drug content of blood, breath, or urine and was he informed of the consequences of refusal to take or fail to complete such test?

- (4) Did the person refuse to submit to the test for alcohol or other drug content of blood, breath, or urine? Did the person fail to complete the test? Do the results of a completed test indicate a BAC of .10% or higher the presence of other drugs?
- (5) Was the testing method used valid and reliable? Were the results accurately evaluated?

c. **Revocation** for period of one year. AR 190-5, para 2-5.

- (1) Lawfully apprehended for DWI and refused to submit to or to complete a test to measure the alcohol content in the blood, or detect the presence of any other drug.
- (2) Conviction, NJP, or military or civilian administrative action resulted in suspension or revocation of a driver's license for DWI.
- (3) Compute from date of original suspension, exclusive of periods when full driving privileges restored pending resolution of charges.

d. **Restricted privileges.** AR 190-5, para 2-11. Specifically tailored to permit the subject to drive under restricted conditions (e.g., for medical emergencies; to and from work site; duty driving).

- (1) May be requested at any time.
- (2) GCMCA acts on all DWI/DUI requests for restricted privileges.

2. Referral to ASAP. AR 190-5, para 2-9.

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- a. Mandatory (within 10 days).
  - b. Enrollment is discretionary.
3. General Officer Memorandum of Reprimand (GOMOR). (See Figure 5, *infra* p. O-29).

<b>Department of the Army 52d Infantry Division (Mechanized) and Fort Arlington Fort Arlington, Virginia 11111-1111</b>	
ABCD-EF-G	15 June 2002
MEMORANDUM FOR 1LT Gideon Pillow, Company A, 2d Battalion, 11th Infantry, Fort Arlington, Virginia 11111	
SUBJECT: Written Reprimand UP AR 600-37	
<p>1. On 1 March 2002 you were apprehended at approximately 2200 while driving your privately owned vehicle on Fort Arlington. The arresting officer cited you for driving under the influence of intoxicating liquor. Subsequently, on 3 June 2002, you were convicted of that offense after a trial on the merits in the Federal Magistrate's Court. I reprimand you for your conduct.</p> <p>2. Your conduct on 1 March 2002 demonstrates a serious disregard for your own safety and that of others. It raises grave doubts as to whether you can perform your duties. Your lack of judgment in this incident calls into question whether you deserve the special trust and confidence that the President of the United States has reposed in you as a commissioned officer. I charge you to conduct yourself in a manner that is worthy of an officer in the United States Army.</p> <p>3. This is an administrative reprimand imposed under the provisions of AR 600-37 and not as punishment under UCMJ, Article 15.</p> <p>4. I intend to file this written reprimand in your Official Military Personnel File. You have 72 hours from the receipt of this reprimand to submit matters in rebuttal or on your behalf. Your response, if any, should be by endorsement to this reprimand. I will withhold my decision on imposing and filing this reprimand until I receive and consider any response you may make.</p>	
<b>RICHARD J. HALFTRACK</b> Major General, USA Commanding	

Figure 5

- a. Mandatory. Must be issued to active duty Army commissioned and warrant officers and NCOs, including corporals.
- b. General Officer will sign.
- c. Based upon:
  - (1) Conviction of intoxicated driving or driving under the influence of alcohol or other drugs, 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, 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 is 0.10% or higher, irrespective of other charges, or off post when the blood alcohol content is in violation of state laws, irrespective of other charges; or,
  - (4) Driving or being in physical control of a motor vehicle, either on or off the installation, when lawfully requested chemical tests reflect the presence of illegal drugs.
- d. Filing is IAW AR 600-37. The General Officer may:
  - (1) Decide to not file the GOMOR;

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- (2) Decide to file the GOMOR in the soldier's Unit Personnel File.
  - (3) Decide to file the GOMOR in the soldier's OMPF.
4. Consider other administrative actions. AR 190-5, para 2-7c.
  - a. Administrative reduction UP AR 600-200.
  - b. Bar to reenlistment UP AR 601-280.
  - c. Administrative discharge per AR 635-200. AR 600-85, para 1-11c, directs the command to consider separation in DWI cases.

#### **XIV. REMOVAL FROM PROMOTION LIST.**

- A. Reference. AR 600-8-19, para 3-28 (Local Promotion List) and para 4-18 (Centralized Promotion List).
- B. Purpose. To take administrative action against those soldiers who have been selected for promotion, but whose conduct or duty performance no longer merits promotion. Recall that soldiers may be selected for promotion some months before they are actually promoted. Such soldiers are said to be "on the list." (The informal practice has evolved of writing such "promotable" soldiers' ranks with "(P)" after the rank designation, such as "SGT(P) Chen" or "LTC(P) Vasquez.") [For the Army policy on use of "(P)" designation, *see* AR 25-50, para 7-5c(2).]
- C. Procedure.
  1. Soldiers otherwise eligible for promotion to PV2 (E-2), PFC (E-3), and SPC/CPL (E-4). (Unit commander promotes without referral to promotion board.) Unit commander may decide not to promote.

2. Soldiers selected for promotion to SGT (E-5) and SSG (E-6). (Local board considers soldiers for promotion to SGT and SSG. Field grade commander of unit authorized LTC commander approves the list.)
  - a. The command will provide soldiers with a written explanation for the proposed removal. However, under certain circumstances, including those listed in AR 600-8-19, para 3-28b, immediate removal from the promotion list is required. Though not all inclusive, no further due process is required in the following circumstances:
    - (1) Failure to Qualify for MOS-required Security Clearance;
    - (2) Local Bar to Reenlistment (if appeals exhausted);
    - (3) Reduction in Grade;
    - (4) Weight Control Failure;
    - (5) Release from Active Duty; and,
    - (6) Dropped From Rolls.
  - b. A removal board will be convened if immediate removal is not justified under AR 600-8-19, para 31b.
    - (1) AR 15-6 procedures do not apply.
    - (2) Recorder will give at least 15 days written notice to soldier.
    - (3) Soldier may be present and recorder will arrange for the presence of requested witnesses, if reasonably available.

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- (4) Recorder will provide statements of witnesses who cannot attend the board.
  - (5) Soldier may:
    - (a) Appear personally or decline to appear;
    - (b) Challenge members for cause;
    - (c) Question witnesses; and,
    - (d) Remain silent, make a sworn or unsworn statement, and/or submit to examination by the board.
  - (6) The board will:
    - (a) Fully and impartially evaluate the case;
    - (b) Make a recommendation; and
    - (c) Prepare a written report for submission to the approval authority.
  - (7) The promotion authority will approve or disapprove the board's recommendation and notify the soldier of his decision.
3. Soldiers selected for promotion to SFC (E-7), MSG/1SG (E-8), and SGM/CSM (E-9). (Soldiers selected for promotion by DA-level board.)
- a. Commanders may recommend removal from a DA list. Removal may be based on substandard duty performance or

misconduct. "Removal based on minor or isolated incident(s) of conduct may be unfair to the soldier." (IO1, Apr 94)

- b. The commander must submit a recommendation for removal if the soldier is nonpromotable due to being overweight and:
  - (1) Soldier fails to make satisfactory progress after six months; or
  - (2) After 12 months in a weight control program the soldier still exceeds body fat standards.
  
- c. Removal without referral to the soldier (AR 600-8-17, para 4-18a(1)). Commanders will notify Cdr, PERSCOM, by message for immediate removal of any soldier who has been:
  - (1) Reduced;
  - (2) Discharged;
  - (3) Dropped from the rolls;
  - (4) Approved for retirement (IO1, Apr 94);
  - (5) Barred from reenlistment due to signing a declination of continued service statement, AWOL, local bar, or court-martial during current enlistment (IO1, Apr 94);
  - (6) Or who otherwise falls within the factual situations listed in AR 600-8-19, para 4-18(a)(1).

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- d. Other cases. If the reason for removal is not listed in AR 600-8-19, para 4-18a(1), the recommendation for removal must be referred to the soldier and the soldier must be given 15 days to submit matters in rebuttal. A soldier who declines to submit rebuttal must do so in writing.
  - (1) Upon initiation, the commander must impose a flag.
  - (2) Forward recommendation and soldier's rebuttal through GCMCA. May be disapproved at any level.
  - (3) DA makes final decision.

D. Approval Authority.

- 1. Soldiers otherwise eligible for promotion to PV2 (E-2), PFC (E-3), and SPC/CPL (E-4): unit commander.
- 2. Soldiers selected for promotion to SGT (E-5) and SSG (E-6): field grade commander of unit authorized LTC commander.
- 3. Soldiers selected for promotion to SFC (E-7), MSG/1SG (E-8), and SGM/CSM (E-9): DA.

E. Appeal. No specific procedure.

F. Records.

- 1. Soldiers otherwise eligible for promotion to PV2 (E-2), PFC (E-3), and SPC/CPL (E-4). No records required. If reasons warrant, consider documenting with a counseling with a view towards separation.

2. Soldiers selected for promotion to SGT (E-5) and SSG (E-6). DA Form 4187, Removal Board Report, and DA Form 3355 filed in battalion functional files for two years.
3. Soldiers selected for promotion to SFC (E-7), MSG/1SG (E-8), and SGM/CSM (E-9). Maintained at DA.

## **XV. ADMINISTRATIVE REDUCTION FOR CIVIL CONVICTION OR INEFFICIENCY.**

- A. Reference. AR 600-8-19, Chapter 7.
- B. Purpose.
  1. Civil conviction. 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. AR 600-8-19, para 7-4.
  2. Inefficiency. Inefficiency is a demonstration of characteristics that shows that the person cannot perform duties and responsibilities of the grade and MOS. Inefficiency may also include an act or conduct that clearly shows that the soldier lacks those abilities and qualities normally required and expected of an individual of that grade and experience. Commanders may consider misconduct, including conviction by a civil court, as bearing on efficiency. A soldier may be reduced under this authority for long-standing unpaid personal debts that he or she has not made a reasonable effort to pay. AR 600-8-19, para 7-6.
  3. Authority to Reduce.
  4. PV2, PFC, and SPC/CPL - Company, troop, battery, and separate detachment commanders.

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5. SGT and SSG - Field grade commander of any organization authorized a LTC or higher grade commander.
  6. SFC, MSG/1SG, and SGM/CSM - Commanders of organizations authorized a COL or higher grade commander.
- C. Procedure.
1. Civil Court Conviction (domestic or foreign, or adjudication as a juvenile offender). AR 600-8-19, Table 7-2. (*See Chart, infra* at pp. 2-39 through 2-40).
    - a. Soldier will be reduced to PVT, E-1, if sentence includes death or confinement for one year or more (not suspended). Board action not required.
    - b. The command will consider reducing the soldier (one or more grades) if sentenced to confinement for more than 30 days but less than one year (not suspended) or confinement for one year or more (suspended). Board action required for SGT or above.
    - c. The command may consider reduction for all other offenses. Board action required for SGT or above.
  2. Inefficiency. AR 600-8-19, para 6-4.
    - a. Soldier cannot perform duties and responsibilities of the grade and MOS. Inefficiency includes long standing unpaid debts that the soldier has not made a reasonable effort to pay.
    - b. Command must document inefficiency. Should establish a pattern of inefficiency rather than identify a specific incident. A single act of misconduct is not a sufficient basis for reduction for inefficiency.

- c. Soldier must have been in unit at least 90 days.
  - d. Command may reduce soldier only one grade.
3. Soldier gets notice and opportunity to respond.
- a. SPC/CPL and below - no board.
  - b. SGT and above - reduction board is usually required (exceptions noted above). Board appearance may be declined in writing, which will be considered acceptance of the reduction board's action.
4. Reduction Boards. AR 600-8-19, para 6-6.
- a. Must have both officers and enlisted members.
  - b. At least three voting members.
  - c. Members impartial.
  - d. Recorder without vote appointed.
  - e. Board has officer or enlisted soldier or both of same sex as soldier being considered for reduction.
  - f. For inefficiency cases only, one board member will be familiar with soldier's MOS or field of specialization.
  - g. If soldier is minority and requests minority member on board, generally must provide minority member.

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- D. Appeal.
  - 1. SSG and below - next higher authority.
  - 2. SFC and above - next higher authority who is a general officer.
  
- E. Records. Filed in OMPF.

### ARMY ADVERSE ADMINISTRATIVE ACTIONS

	<b>SUSPENSION OF FAVORABLE PERSONNEL ACTION</b>	<b>EXTRA TRAINING</b>	<b>REVOCAION OF PASS PRIVILEGES</b>	<b>COUNSELING WITH A VIEW TOWARDS SEPARATION</b>	<b>REHABILITATIVE TRANSFER</b>
<b>Grounds for Action</b>	Other adverse action contemplated or investigation pending	Soldier deficient in any aspect of duty or conduct	Soldier deficient in any aspect of duty or conduct	Cdr contemplates separation for parenthood (5-8), personality disorder (5-13), entry level perf (ch 11), unsat perf (ch 13), or misconduct (ch 14)	
<b>Ultimate Result</b>	Many favorable personnel actions barred temporarily	Soldier corrects the problem	Soldier not permitted to leave post or place of duty during normal off-duty hours	Soldier on notice that continued poor performance may lead to separation, and consequences	Soldier gets a fresh start in a new unit
<b>Regulation</b>	AR 600-8-2 (30 Oct 87)	AR 600-20, para 4-6b (30 Mar 88)	AR 600-8-10, para 5-28 (1 Jul 94)	AR 635-200, para 1-18 (17 Sep 90)	
<b>Who Initiates</b>	Commander or GO staff head	Any leader	Any leader	“Any responsible person”	Commander
<b>Board hearing</b>	No	No	No	No	No
<b>Entitled to Counsel</b>	No (but see AR 27-3, para 3-6g(4)(i))	No	No	No	No
<b>SJA Review</b>	No	No	No	No	No
<b>Approval Authority</b>	Cdr or GO staff head	“[I]nherent power of command.”	Unit Commander	None	Commander w/ auth over losing and gaining unit
<b>Appeal Authority</b>	No formal appeal	No formal appeal	No formal appeal	No formal appeal	No formal appeal

### ARMY ADVERSE ADMINISTRATIVE ACTIONS

	ADMINISTRATIVE REPRIMAND	LOCAL (OR FIELD) BAR TO REENLISTMENT	DA OR QMP BAR TO REENLISTMENT	DRUNK DRIVING SANCTIONS
<b>Grounds for Action</b>	Misconduct or unsatisfactory performance	Untrainable, unsuitable, PT failure, NCOES RFC, weight control failure; [no family care plan or no guardian, if applic.]	Moral or ethical problems; declining performance; no potential for continued service	Refusal to test; BAC > .10% (or between .05% and .10% depending on local law); or any official report of DWI
<b>Ultimate Result</b>	Written reprimand may be filed in soldier's permanent records	Soldier can't reenlist, and may face separation action in six months	Soldier will be separated in 90 days, unless appeal successful	Privilege to drive on post or in overseas command suspended or revoked
<b>Regulation</b>	AR 600-37, chap 3 (19 Dec 86)	AR 601-280, chap 8 (29 Sep 95)	AR 635-200, ch. 19 (1 Jan. 01)	AR 190-5, chap 2
<b>Who Initiates</b>	Cdr, supervisor (enl) or rater (off), school cmdt, GO or GCMCA	Any commander	SSG & +: all records reviewed automatically by HQDA promo. boards	Installation commander or designee not assigned to law enf duties
<b>Board hearing</b>	No	No	Record review; see above	W/in 10 days, on request
<b>Entitled to Counsel</b>	No (but see AR 27-3, para 3-6g(4)(j))	No (but see AR 27-3, para 3-6g(4)(f))	No (but see AR 27-3, para 3-6g(4)(f))	No (but see AR 27-3, para 3-6g(4)(w))
<b>SJA Review</b>	No	No	No	No
<b>Approval Authority</b>	OMPF: GO or GCMCA	<10 yrs svc: LTC cdr; 10-18, >20: GO or GCMCA; 18-20: DA	HQDA promotion selection board	Installation commander
<b>Appeal Authority</b>	OMPF: DASEB	<10 yrs svc: GO or GCMCA; all others: DA	Commander, US Army Enlisted Records Center	GCMCA may grant restricted privileges

### ARMY ADVERSE ADMINISTRATIVE ACTIONS

	<b>REMOVAL FROM SGT OR SSG PROMOTION LIST</b>	<b>REMOVAL FROM SFC, MSG, OR SGM PROM LIST</b>	<b>REMOVAL FROM OFFICER PROMOTION LIST</b>	<b>REDUCTION FOR INEFFICIENCY (ENLISTED)</b>	<b>REDUCTION FOR CIVIL CONVICTION (ENLISTED)</b>
<b>Grounds for Action</b>	Poor duty perf, Art. 15 punishment; pending OTH discharge; 16 other grounds	Substandard duty performance; 10 other grounds	Referred OER or AER, Art. 15, OMPF reprimand; AWCP failure; derogatory info	Unable to perform duties & responsibilities required of rank and MOS	Any civilian conviction. Mandatory if confined for 1 yr or more (unsuspended)
<b>Ultimate Result</b>	Soldier is removed from promotion standing list			Soldier is reduced one rank	Soldier is reduced one or more ranks
<b>Regulation</b>	AR 600-8-19, chap 3 (1 Nov 91)	AR 600-8-19, chap 4 (1 Nov 91)	10 U.S.C. § 629(a); AR 600-8-29 (30 Nov 94)	AR 600-8-19, chap 6 (1 Nov 91)	
<b>Who Initiates</b>	Any commander	Any commander	Any commander	Any commander	Any commander
<b>Board hearing</b>	Yes (not full AR 15-6 board)	No	DA Promotion Review Board considers paper case	Yes, if soldier is SGT or above, unless reduction is for unsuspended sentence of confinement for one year or more	
<b>Entitled to Counsel</b>	No	No	No	Yes (provided by Trial Defense Service)	
<b>SJA Review</b>	No	No	No	No	No
<b>Approval Authority</b>	LTC-level commander	DA Standby Advisory Board	The Secretary of the Army	PV2-CPL: company level commander SGT-SSG: field grade commander SFC-CSM: COL or higher commander	
<b>Appeal Authority</b>	No formal appeal	No formal appeal	No formal appeal	Next higher cdr for SSG & below First GO for SFC & above	

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