

***** UNCLASSIFIED/ *****

Subject: ALARACT 035/2014 - INITIATING SEPARATION PROCEEDINGS AND PROHIBITING OVERSEAS ASSIGNMENT/DEPLOYMENT FOR SOLDIERS CONVICTED OF SE

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Precedence: ROUTINE

DAC: General

To: ALARACT, AL ALARACT(UC)

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THIS MESSAGE HAS BEEN TRANSMITTED BY USAITA ON BEHALF OF//DAPE-MPE//

SUBJECT: INITIATING SEPARATION PROCEEDINGS AND PROHIBITING OVERSEAS ASSIGNMENT/DEPLOYMENT FOR SOLDIERS CONVICTED OF SEX OFFENSES

1. REFERENCES.

A. DEPARTMENT OF THE ARMY DIRECTIVE 2013-21 (INITIATING SEPARATION PROCEEDINGS AND PROHIBITING OVERSEAS ASSIGNMENT FOR SOLDIERS CONVICTED OF SEX OFFENSES).

B. SECTION 16911, TITLE 42, UNITED STATES CODE (42 USC 16911).

C. THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION, DEPARTMENT OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, 2 JULY 2008 (FEDERAL REGISTER, VOLUME 73, NUMBER 128, PAGES 38030-38070).

D. DOD INSTRUCTION (DODI) 1325.07, ADMINISTRATION OF MILITARY CORRECTIONAL FACILITIES AND CLEMENCY AND PAROLE AUTHORITY, 11 MAR 13.

E. ARMY REGULATION (AR) 27-10, MILITARY JUSTICE, 3 OCT 11.

F. AR 135-178, ENLISTED ADMINISTRATIVE SEPARATIONS, 13 MAR 07, RAPID ACTION REVISION (RAR) 2, 13 SEP 11.

G. AR 635-200, ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS, 6 JUN 05, RAR 3, 6 SEP 11.

H. AR 135-175, SEPARATION OF OFFICERS, 28 FEB 87, RAR 2, 4 AUG 11.

I. AR 600-8-24, OFFICER TRANSFERS AND DISCHARGES, 12 APR 06, RAR 3, 13 SEP 11.

J. AR 10-87, ARMY COMMANDS, ARMY SERVICE COMPONENT COMMANDS, AND DIRECT REPORTING UNITS, 4 SEP 07.

K. AR 614-30, OVERSEAS SERVICE, 30 MAR 10.

L. AR 614-100, OFFICER ASSIGNMENT POLICIES, DETAILS, AND TRANSFERS, 10 JAN 06.

M. AR 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT, 29 FEB 09, RAR 2, 11 OCT 11.

2. PURPOSE. IN ACCORDANCE WITH REFERENCE A ABOVE, THIS MESSAGE ANNOUNCES CHANGES TO ARMY POLICY.

A. SEX OFFENSES ARE SERIOUS CRIMES. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER ARMY REGULATION, DIRECTIVE, POLICY OR OTHER LIKE GUIDANCE, THIS MESSAGE CONVEYS NEW POLICY, APPROVED BY THE SECRETARY OF THE ARMY ON 7 NOVEMBER 2013, TO ENSURE THAT THE DECISION TO RETAIN ANY SOLDIER CONVICTED OF A SEX OFFENSE IS FULLY INFORMED AND IN THE ARMY'S BEST INTEREST.

B. IN ADDITION, REFERENCE 1.A. ABOVE ESTABLISHES ARMY POLICY PROHIBITING THE OVERSEAS ASSIGNMENT OR DEPLOYMENT OF ANY SOLDIER CONVICTED OF A SEX OFFENSE. SOLDIERS CONVICTED AND RETAINED WHO ARE SERVING IN SUCH AN AREA SHALL BE REASSIGNED OR PROCESSED FOR SEPARATION IN ACCORDANCE WITH PARAGRAPH 3.B AND 3.C BELOW.

3. POLICY.

A. FOR THE PURPOSES OF THIS POLICY, A CONVICTION INCLUDES A PLEA OR FINDING OF GUILTY, A PLEA OF NOLO CONTENDERE, AND ALL OTHER ACTIONS TANTAMOUNT TO A FINDING OF GUILTY. THE CONVICTION QUALIFIES UNDER THIS POLICY IF IT OCCURRED IN ANY U.S. JURISDICTION. IAW REFERENCE B, AS FURTHER EXPLAINED BY REFERENCE C, CERTAIN FOREIGN CONVICTIONS MAY ALSO BE COVERED. A CONVICTION UNDER THIS POLICY INCLUDES A CONVICTION AT A GENERAL OR SPECIAL COURT-MARTIAL, BUT DOES NOT INCLUDE RESULTS FROM A SUMMARY COURT-MARTIAL OR NONJUDICIAL PUNISHMENT UNDER THE UNIFORMED CODE OF MILITARY JUSTICE (UCMJ), ARTICLE 15.

B. CONSISTENT WITH REFERENCES 1.B, C, AND E, FOR THE PURPOSES OF THIS POLICY, A SEX OFFENSE INCLUDES OFFENSES FROM ANY OF THESE SIX CATEGORIES: (1) OFFENSES INVOLVING A SEXUAL ACT OR SEXUAL CONTACT, AS DEFINED BY THE JURISDICTION WHERE THE CONVICTION OCCURRED; (2) CERTAIN OFFENSES AGAINST MINORS, AS DEFINED IN PARAGRAPH 7 OF REFERENCE B; (3) FEDERAL OFFENSES UNDER 18 USC, SECTION 1591, OR 18 USC CHAPTERS 109A OR 117; (4) A MILITARY OFFENSE SPECIFIED UNDER APPENDIX 4 TO ENCLOSURE 2 TO REFERENCE D; (5) ATTEMPTS AND CONSPIRACIES TO COMMIT ONE OF THE OFFENSES IN (1) THROUGH (4); OR A MILITARY OFFENSE SPECIFIED IN PARAGRAPH 24-2 OF REFERENCE E. COMMANDERS SHOULD CONSULT THEIR LOCAL STAFF JUDGE ADVOCATE (SJA) FOR QUESTIONS PERTAINING TO CONVICTIONS UNDER THIS POLICY.

C. UPON DISCOVERY THAT A SOLDIER WITHIN THEIR COMMAND SUSTAINED A SEX OFFENSE CONVICTION THAT DID NOT RESULT IN A PUNITIVE DISCHARGE OR DISMISSAL, COMMANDERS WILL INITIATE AN ADMINISTRATIVE SEPARATION ACTION. THIS POLICY APPLIES TO ALL PERSONNEL CURRENTLY IN THE ARMY, REGARDLESS OF WHEN THE CONVICTION FOR A SEX OFFENSE OCCURRED AND REGARDLESS OF COMPONENT OF MEMBERSHIP AND CURRENT STATUS IN THAT COMPONENT.

(1) FOR ENLISTED PERSONNEL:

(A) COMMANDERS WILL FOLLOW THE CURRENT POLICY FOR INITIATING AN ADMINISTRATIVE SEPARATION PURSUANT TO REFERENCES 1.F. OR 1.G., AS APPROPRIATE. USE OF SECRETARIAL PLENARY AUTHORITY, PER SUBPARAGRAPH (B) BELOW, SHOULD ORDINARILY BE

USED WHEN A SOLDIER WITH A SEX OFFENSE HAS FIRST BEEN PROCESSED FOR SEPARATION UNDER ANOTHER REGULATORY BASIS AND BEEN RETAINED.

(B) IF THE SEPARATION AUTHORITY APPROVES RETENTION, HE OR SHE WILL INITIATE AN ACTION FOR THE EXERCISE OF SECRETARIAL PLENARY SEPARATION AUTHORITY UNDER PARAGRAPH 14-3, AR 135-178 OR PARAGRAPH 5-3 OF AR 635-200, AS APPROPRIATE.

(C) IF AN ENLISTED SOLDIER WHO HAS BEEN CONVICTED OF A SEX OFFENSE ALREADY HAS BEEN SUBJECT TO AN ADMINISTRATIVE SEPARATION UNDER REFERENCES 1.F. OR 1.G., FOR THAT CONVICTION AND HAS BEEN RETAINED, THE SEPARATION AUTHORITY WILL INITIATE SEPARATION UNDER THE SECRETARIAL PLENARY AUTHORITY, AS DETAILED IN PARAGRAPH 14-3, AR 135-178 OR PARAGRAPH 5-3, AR 635-200 AS APPROPRIATE.

(2) FOR COMMISSIONED AND WARRANT OFFICERS:

(A) COMMANDERS WILL INITIATE AN ELIMINATION ACTION UNDER REFERENCES 1.H. OR 1.I., AS APPROPRIATE.

(B) NO FURTHER ACTION IS REQUIRED IF A COMMISSIONED OR WARRANT OFFICER WHO HAS BEEN CONVICTED OF A SEX OFFENSE HAS ALREADY BEEN SUBJECT TO AN ELIMINATION ACTION FOR THAT CONVICTION AND HAS BEEN RETAINED. UP 10 USC 1182(D)(1), IF A BOARD OF INQUIRY DETERMINES THAT THE OFFICER HAS ESTABLISHED THAT HE OR SHE SHOULD BE RETAINED ON ACTIVE DUTY, THAT OFFICER'S CASE IS CLOSED AND THEY MAY NOT AGAIN BE CONSIDERED FOR SEPARATION FOR THE SAME CONDUCT.

D. COMMANDERS WILL ENSURE THAT SOLDIERS CONVICTED OF A SEX OFFENSE ARE NOT ASSIGNED OR DEPLOYED ON A TEMPORARY DUTY (TDY), TEMPORARY CHANGE OF STATION (TCS), OR PERMANENT CHANGE OF STATION (PCS) STATUS TO DUTY STATIONS OUTSIDE OF THE CONTINENTAL UNITED STATES (OCONUS). THE ONLY PERMITTED OCONUS LOCATIONS ARE HAWAII, ALASKA, THE COMMONWEALTH OF PUERTO RICO, OR TERRITORIES OR POSSESSIONS OF THE UNITED STATES.

E. SOLDIERS CURRENTLY SERVING IN ANY NON-PERMITTED OCONUS LOCATIONS WHO HAVE BEEN CONVICTED OF A SEX OFFENSE ARE INELIGIBLE FOR CONTINUED DUTY AT THOSE LOCATIONS. ACCORDINGLY, OVERSEAS COMMANDERS OF ARMY COMMANDS, ARMY SERVICE COMPONENT COMMANDS OR DIRECT REPORTING UNITS (AS ESTABLISHED IN REFERENCE 1.J.) WILL IDENTIFY SUCH SOLDIERS IN THEIR COMMANDS AND COORDINATE WITH THE APPLICABLE HEADQUARTERS, DEPARTMENT OF THE ARMY ASSIGNMENT AUTHORITY (E.G., COMMANDER, U.S. ARMY HUMAN RESOURCES COMMAND; THE JUDGE ADVOCATE GENERAL; OR CHIEF OF CHAPLAINS) FOR REASSIGNMENT TO THE CONTINENTAL UNITED STATES OR TO A PERMITTED OCONUS LOCATIONS, LISTED IN PARAGRAPH 3.D., ABOVE AS SOON AS POSSIBLE. SOLDIERS WHO ARE DEPLOYED TO A NON-PERMITTED OCONUS LOCATION IN ANY STATUS (TDY/TCS) WILL IMMEDIATELY BE RETURNED TO THEIR PARENT ORGANIZATION. COMMAND RESPONSIBILITY TO REASSIGN OR REDEPLOY A SOLDIER UNDER THIS POLICY TAKES PRECEDENCE OVER INITIATION OF SEPARATION. ACCORDINGLY, SOLDIERS CONVICTED OF A SEX OFFENSE WILL FIRST BE REASSIGNED OR REDEPLOYED TO CONUS OR A PERMITTED OCONUS LOCATION. THE RECEIVING COMMANDER WILL SUBSEQUENTLY ENSURE THE INITIATION OF SEPARATION IN ACCORDANCE WITH PARAGRAPH 3.C., ABOVE.

(1) AFFECTED SOLDIERS WHO ARE IN MILITARY CONFINEMENT FACILITIES IN ANY NON-PERMITTED OCONUS LOCATION WILL REMAIN FOR THE TERM OF THEIR CONFINEMENT. AFFECTED SOLDIERS WHO ARE CONVICTED OF A SEX OFFENSE AND SCHEDULED FOR IMMEDIATE

CONFINEMENT IN A NON-PERMITTED OCONUS LOCATION MAY UNDERGO THIS CONFINEMENT AS SCHEDULED. IN EITHER OF THESE CIRCUMSTANCES, COMMANDERS WILL FOLLOW CURRENT POLICY FOR INITIATING ADMINISTRATIVE SEPARATION PROCEEDINGS, WITH THE INTENT TO COMPLETE THE SEPARATION PROCESS DURING THE PERIOD OF CONFINEMENT. IF SEPARATION CANNOT BE FINALIZED DURING THE PERIOD OF CONFINEMENT, REASSIGNMENT TAKES PRECEDENCE UPON COMPLETION OF CONFINEMENT, AS OPPOSED TO THE SOLDIER REMAINING IN THE NON-PERMITTED OCONUS LOCATION FOR THE PURPOSE OF FINALIZING SEPARATION.

(2) AFFECTED NON-ACTIVE GUARD RESERVE (NON-AGR) SOLDIERS, WHOSE DOMICILE AND UNIT OF ASSIGNMENT ARE LOCATED IN A NON-PERMITTED OCONUS LOCATION, MAY REMAIN IN THAT LOCATION PENDING SEPARATION BY THEIR CURRENT COMMAND. THESE SOLDIERS, HOWEVER, WILL ONLY PERFORM INACTIVE OR ACTIVE DUTY SERVICE AT THE LOCATION OF THEIR UNIT OF ASSIGNMENT, EXCEPT WHERE TRAVEL IS NECESSARY AS PART OF THE SEPARATION PROCESS.

4. THE PROVISIONS OF THIS MESSAGE ARE EFFECTIVE IMMEDIATELY. THIS MESSAGE AND ANY IMPLEMENTING INSTRUCTIONS (E.G., MILPER MESSAGES) TAKE PRECEDENCE OVER AND SUPERSEDE ANY CONFLICTING GUIDANCE. THIS MESSAGE REMAINS IN EFFECT UNTIL ARMY REGULATIONS LISTED IN PARAGRAPH 1 ABOVE ARE REVISED AND PUBLISHED, AS APPLICABLE.

5. THE DEPUTY CHIEF OF STAFF, G-1 IS THE PROPONENT FOR ADMINISTRATIVE SEPARATIONS AND ASSIGNMENT POLICY. THE HQDA POC FOR ENLISTED SEPARATIONS IS CHIEF, PROFESSIONAL DEVELOPMENT BRANCH, (DAPE-MPE), ODCS, G-1 (DSN 225-7991, COMMERCIAL 703-695-7991), AND THE HQDA POC FOR OFFICER SEPARATIONS IS CHIEF, OFFICER CAREER POLICY BRANCH (DAPE-MPO), ODCS, G-1 (DSN 225-7277; COMMERCIAL 703-695-7277). THE HQDA POC FOR ASSIGNMENT POLICY IS CHIEF, DISTRIBUTION AND READINESS BRANCH, (DAPE-MPE), ODCS, G-1 (DSN 225-7961/7924, COMMERCIAL 703-695-7961/7924).

6. EXPIRATION DATE OF THIS MESSAGE CANNOT BE DETERMINED.