

PERSONNEL—GENERAL
APPREHENSION, RESTRAINT, AND RELEASE TO CIVIL AUTHORITIES

Effective 1 January 1972

This revision deletes material covered in the Manual for Courts-Martial; incorporates the procedures for notification of next of kin when the trial of an Army member by military or civil court appears probable; and provides additional instructions concerning delivery of military members to the civil authorities. Local limited supplementation of this regulation is permitted but is not required. If supplements are issued, Army Staff agencies and major Army commands will furnish one copy of each to The Adjutant General (HQDA (DAAG-PSS) Washington, DC 20314).

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1. **Scope.** This regulation deals with several matters supplementing the conditions and procedures set forth in paragraphs 17 through 23 and paragraph 174, Manual for Courts-Martial, United States, 1969 (Revised edition) concerning the apprehension and restraint of persons subject to the Uniform Code of Military Justice; with the apprehension and restraint of persons not subject to the Code; with notification of the next of kin when trial by court-martial or foreign civilian court appears probable; and with the policy and procedures for delivery of Army personnel to civil authorities in connection with civilian criminal charges.

2. **Persons subject to military law.** The basic source of information concerning apprehension, arrest, and restraint of persons subject to the Uniform Code of Military Justice is the Manual for Courts-Martial, United States, 1969 (Revised edition); and particularly paragraphs 17 through 23 and paragraph 174 of the Manual, which always should be consulted for guidance on this subject.

3. **Persons not subject to military law.** Persons not subject to military law may be apprehended or restrained by members of the Department of the Army in other than foreign countries, as follows:

a. All members of the Armed Forces, acting in a private capacity, have the ordinary right of citizens to assist in the maintenance of peace, including the right to apprehend suspected offenders. This right to make a "citizen's arrest" is governed by the substantive law applying at the particular locality, however, and care should be exercised to avoid exceeding the "citizen's arrest" authorization granted by the law of that locality. In addition, official use of military personnel to enforce civil law is made a crime by the Posse Comitatus Act (18 USC 1385). For prosecution of petty offenses committed on military reservations by persons not subject to the Uniform Code of Military Justice, see AR 27-44.

b. The restraint imposed under the provisions of a above will not exceed that reasonably necessary, nor extend beyond such time as may be required to dispose of the case by orderly transfer of custody to civil authority, or otherwise, under the law (para 6).

c. Persons not subject to military law who enter a military reservation for any purpose prohibited by law or lawful regulation may be removed therefrom upon orders of the commanding officer and ordered not to reenter. For penalty which may be imposed upon reentry after ejection, see title 18, USC 1382.

*This regulation supersedes AR 633-1, 13 September 1962, and AR 633-56, 31 March 1959.

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4. Foreign countries. In foreign countries, the power of the United States military authorities to apprehend, detain, and deliver United States personnel to civil authorities of foreign countries is governed by the provisions of international agreements and the laws of the host nation. The extent of this power in any particular nation is to be determined from the directives of the oversea command concerned.

5. Notification to next of kin of the pending trial. *a.* When an individual is charged with a serious offense before a court-martial or a criminal offense before a civil court and trial appears probable, a chaplain will counsel him to advise his parents, spouse, or guardian of the circumstances, or to authorize the chaplain to communicate directly with these individuals. If the enlisted person refuses to do either and he is 21 years of age, the refusal and the name of the officer receiving such refusal will be recorded in the offender's personnel file. When the enlisted person concerned is under 21 years of age, and he refuses to inform his parents, spouse, or guardian, the chaplain will, unless there is some compelling reason to the contrary, inform them by letter or other communication of the details he considers pertinent and proper under the circumstances. For the purposes of this paragraph a serious offense will be construed to include any offense for which a punitive discharge may be adjudged by a court-martial, and a criminal offense before a civil court will include any offense which may result in discharge under the provisions of AR 635-206.

b. When a chaplain is not stationed within a foreign country in which an enlisted man is to be tried, or is otherwise not reasonably available to perform the counseling service, these duties may be performed by any commissioned officer of another branch of the service.

6. Delivery to civil authorities. *a. Authority.* Any commander exercising general court-martial jurisdiction, or commanding officer designated by him, may authorize the delivery of a member of the Armed Forces under his command to civil authorities in accordance with the Uniform Code of Military Justice, Article 14. Such member will be delivered upon the request of civil authorities of the United States, a State of the United States, or a political subdivision thereof, when he is accused of a crime or offense made punishable by the laws

of the jurisdiction making the request. Commanders are encouraged to consult with the staff judge advocate whenever they receive a request for delivery. Staff judge advocates should consult with HQDA (DAJA-MJ), Washington, DC 20310, in appropriate cases.

b. Policy. The policy of the Department of the Army is that commanding officers will cooperate with civil authorities and, unless the best interests of the service will be prejudiced thereby, will deliver a member of the Armed Forces to such authorities upon presentation of a proper request accompanied by reliable information showing that there is reasonable cause to believe that the person requested has committed a crime or offense made punishable by the laws of the jurisdiction making the request. A person will not be shielded from a just prosecution by the civil authorities because of his status as a member of the Armed Forces. In determining whether a member of the Armed Forces should be delivered to the civil authorities, the commanding officer will exercise his sound discretion in the light of the facts and circumstances of each particular case. Among other pertinent matters, he should consider the seriousness of the offense charged, whether court-martial charges are pending against the alleged offender, whether he is serving a sentence imposed by court-martial, and whether, under the existing military situation, the best interests of the service warrant his retention in the Armed Forces. Generally, a member of the Armed Forces will not be returned from overseas unless the offense involved is a felony or other serious crime punishable by confinement for a period in excess of one year. If the member concerned is stationed overseas and a determination is made to return him to the United States for delivery, he will be returned to an appropriate port of entry at government expense. Request for disposition instructions for personnel to be returned to CONUS will be submitted in writing by the most expeditious means. Requests will be addressed to the Chief of Personnel Operations in accordance with paragraph 7, AR 340-13, and AR 340-12 (Appropriate career branch for officers/appropriate MOS control branch as outlined in table 1-1, 1-2, AR 614-200, for enlisted personnel). Requests will contain the basic personnel data outlined in paragraphs 1-18a(1) and 1-20c(13), AR 614-200, in addition to the home of record of all personnel

reported. The commanding officer authorizing the return of a member will promptly notify The Provost Marshal General (HQDA (DAPM-MPO) Washington, DC 20314) of the return, together with information as to the expected date of the arrival in CONUS, the port of entry, and flight number if known so that office may coordinate with the civil authorities and local military police. It is contrary to the general policy of the Department of the Army to transfer military personnel from a station within one State to a station within another State for the purpose of making such personnel amenable to civilian legal proceedings. Accordingly, if the delivery of a member of the Army is requested by a State other than the State in which he is located, or to which he is returned from overseas, the authorities of the requesting State will be required to undertake extradition according to the prescribed procedures to obtain custody of an individual. The requesting State must also arrange to take him into custody.

c. Requirements for delivery. There ordinarily will be required with each application by the civil authorities for the surrender of a member of the Armed Forces a copy of an indictment, presentment, information, or warrant, together with sufficient information to identify the person sought as the person who allegedly committed the offense charged and a statement of the maximum sentence which may be imposed upon conviction. If the request for delivery is based upon an indictment, presentment, or information, it will be assumed that there is reasonable cause to believe that the offense charged was committed by the person named therein. If the request for delivery is based upon a warrant, the commanding officer may cause an inquiry to be made to satisfy himself that reasonable cause exists for the issuance of the warrant; however, if a warrant is accompanied by the statement of a United States attorney or the prosecuting officer of a State of the United States or political subdivision thereof that a preliminary official investigation of the offense charged shows that there is reasonable cause to believe that the offense charged was committed by the person named therein, no further inquiry need be made. Commanding officers specified in *a* above are authorized to deliver Army personnel to appropriately identified federal officers who are not in possession of an indictment, presentment, informa-

tion, or warrant where such federal officers certify in writing that a Federal warrant has been issued.

d. Retaining custody pending request for delivery. If the commanding officer specified in *a* above is in receipt of a statement of a United States attorney or the prosecuting officer of a State of the United States or a political subdivision thereof that there is a reasonable cause to believe that a member of the Armed Forces under his command has committed an offense punishable by the laws of the pertinent jurisdiction, the commanding officer may, upon the request of such civil official, agree to retain the alleged offender in his command for a reasonable period of time, not extending beyond the termination of his current enlistment or period of service, pending presentation of a request for delivery accompanied by the evidence indicated in *c* above. In the event an alleged offender who is the subject of such an agreement is transferred out of the jurisdiction in violation of the agreement, he may be returned at government expense notwithstanding other provisions of this regulation.

e. Action by commanding officers. Commanding officers, other than those specified in *a* above, will refer such requests with their recommendation for disposition to the appropriate commanding officer, who, after determining the propriety of the request, will take the action indicated in this subparagraph. If the commanding officer having authority to deliver denies a request for delivery of an offender to the civil authorities, he will immediately forward the request direct to The Judge Advocate General (HQDA (DAJA-MJ); Washington, DC 20310) together with his reasons for denying the request. In cases involving special circumstances, the commanding officer having authority to deliver may forward the request with his recommendation for disposition direct to HQDA (DAJA-MJ), Washington, DC 20310, for advice before taking his action.

f. Procedure for executing delivery. When the commanding officer specified in *a* above authorizes the delivery of a person to the civil authorities, he will inform the appropriate requesting agency or official of the time and place of delivery. In addition, he will advise the requesting agency or official that delivery of the person will be made at no expense to the Department of the Army. It will be understood that the civil agency or official will

advise the delivering commander of the outcome of the trial and, if the Army authorities desire the return of the person, will deliver him to the place of original delivery or to an Army installation nearer the place of civil detention, designated by the Army authorities, at no expense to the Department of the Army. A written receipt (fig. 1) will be executed by the official who takes delivery of the accused. When a member is returned to the United States from overseas for delivery, the appropriate CONUS commander exercising general court-martial jurisdiction, or his designee, will take the necessary action for executing delivery in accordance with this subparagraph. The form agreement (fig. 1) will be applicable on most occasions when a delivery to civil authorities is made. However, it will not apply to all situations, e.g., when a delivery is made to the authorities of the requesting State under the Uniform Criminal Extradition Act. Accordingly, the agreement may have to be modified in individual cases. The appropriate staff judge advocate should be consulted if a modification of the form agreement appears to be necessary.

g. Return to Army control. Upon being advised of the outcome of the trial or other disposition of the charges against the alleged offender, the commanding officer specified in *a* above will, if return is desired, inform the appropriate civil agency or official of the name and location of the Army installation to which such person is to be delivered. Either the place of original delivery or an installation nearer the place of civil detention of the offender may be designated in accordance with existing policies governing assignments and transfers of personnel. In those instances where a mem-

ber is released on bail and precluded from returning to his station or camp for any reason, e.g., the terms of his bail preclude him from leaving the jurisdiction of the court, instructions should be requested from Chief of Personnel Operations (HQDA (DAPO-EP), Washington, DC 20310) to insure the member's continued presence within the jurisdiction. An agreement under *d* above may be utilized to insure the continued presence in the jurisdiction of a member assigned to an installation located within a jurisdiction which the member is precluded from departing by the terms of his release on bond. In appropriate cases, civil authorities considering whether a member should be released on bond may be informed by the appropriate commanding officer that an agreement has been made under *d* above, and that the soldier will not be reassigned out of the jurisdiction. Military authorities, however, cannot provide official assurance that the member will not absent himself from the jurisdiction other than pursuant to military orders.

h. Action when individuals are convicted by civil authorities.

(1) *Commissioned officers and warrant officers.* A letter will be forwarded through channels to The Adjutant General (DA (DAAG-PSS-S), Washington, DC 20314) as outlined in AR 635-120.

(2) *Enlisted personnel.* Appropriate action will be taken under section VI, AR 635-206. For personnel identified in table 1-1, AR 614-200, notify HQDA (DAPO-EPC-SM), Washington, DC 20310, of the soldier's conviction by civil court and the date action is initiated under the provisions of AR 635-206.



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ACCEPTANCE OF CUSTODY OF MEMBER OF ARMED FORCES

In consideration of the delivery of _____ (grade and name) _____, (SSN) _____, United States Army, to the civil authorities of the _____ (United States) (State of) _____, at _____ (place of delivery) _____, for trial on the charge of _____, I hereby agree, pursuant to the authority vested in me as _____ (official designation) _____, that the commander of _____ (general court-martial jurisdiction) _____ will be informed of the outcome of the trial and that the Army member will be returned to the Army authorities at the aforesaid place of delivery or to an Army installation nearer the place of civil detention, as may be designated by the authorities of the Department of the Army, without expense to such Department or to the person delivered, immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, unless the Army authorities shall have indicated that return is not desired.

(Signature)

Figure 1

The proponent agency of this regulation is the Office of the The Adjutant General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) direct to HQDA (DAAG-PSS) Washington, DC 20314.

By Order of the Secretary of the Army:

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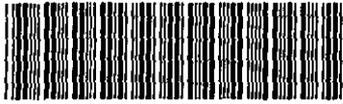
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