13–11. Type of separation
Soldiers separated under this chapter will be discharged. (See para 1–11 for additional instructions on ARNGUS and USAR personnel.)

Chapter 14
Separation for Misconduct

Section I
General Provisions

14–1. General
This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

14–2. Policy
a. Action will be taken to separate a Soldier for misconduct when it is clearly established that—
   (1) Despite attempts to rehabilitate or develop him/her as a satisfactory Soldier, further effort is unlikely to succeed.
   (2) Rehabilitation is impracticable or the Soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).
   (3) The provisions of paragraph 1–33 have been complied with, if applicable.
   b. Separation action may be taken when a Soldier is not under military control. (See chap 2, sec III.)
   c. Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.
   d. Before taking action against a Soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the Soldier has received adequate counseling and rehabilitation. (See para 1–16.)
   e. Misconduct involving fraudulent entry will be considered under chapter 7.
   f. Commanders will consider Soldiers meeting the criteria of section III of this chapter and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under section III, when the underlying misconduct warrants separation. When appropriate, commanders may initiate separation action while the Soldier is serving a sentence to confinement at the installation detention facility.

14–3. Characterization of service or description of separation
   a. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier’s overall record. (See chap 3, sec II.)
   b. When the sole basis for separation is a serious offense resulting in a conviction by court-martial that did not impose a punitive discharge, the Soldier’s service may not be characterized as under other than honorable conditions unless approved by HQDA (AHRC–EPR–F).
   c. When a Soldier has completed entry-level status, or paragraph 11–3c applies, characterization of service as honorable is not authorized unless the Soldier’s record is otherwise so meritorious that any other characterization clearly would be inappropriate.
      (1) A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated per paragraph 1–19c(2).
      (2) A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority to approve separation with service characterized as honorable when the sole evidence of misconduct is urinalysis results, which cannot be used for characterization of service as specified in AR 600–85, chapter 6, or when an administrative discharge board has recommended separation with an honorable discharge. (See para 2–12b(1).)
   d. If characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status (see chap 3, sec II), service will be described as uncharacterized, except as provided in paragraph 3–9a(3). (Also see para 11–3c.)
   e. An honorable characterization of service is generally required when the Government initially introduces limited-use evidence. (See para 3–8a and g.)
14–4. Authority for discharge or retention
   a. The separation authority is authorized to order discharge or direct retention in military service when disposition of a Soldier has been made by a domestic court of the United States or its territorial possessions.
   b. Upon determination that a Soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority. (See AR 600–8–19.)
   c. The separation authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving Soldier a probationary period not to exceed 12 months to demonstrate successful rehabilitation. (See paragraph 1–19 for delegation of authority.)

Section II
Conviction by Civil Court

14–5. Conditions that subject a Soldier to discharge and reduction in grade
   a. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings:
      (1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended.
      (2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.
   b. Initiation of separation action is not mandatory. Although the conditions established in a(1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. (See paragraph 14–7 for guidance on retention.)
   c. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action.
   d. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction. (See AR 600–8–19.)

14–6. Appeals
   a. A Soldier will be considered as having been convicted or adjudged a juvenile offender even though an appeal is pending or is later filed.
   b. A Soldier subject to discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so.
      (1) However, execution of the approved discharge will be withheld until one of the following circumstances occurs, whichever is earlier:
         (a) The Soldier has indicated, in writing, that he/she does not intend to appeal the conviction or adjudication as a juvenile offender.
         (b) The time in which an appeal may be made has expired.
         (c) The Soldier’s current term of service, as adjusted (see para 1–21), expires. (See limitation of para 14–9.)
      (2) If an appeal has been made, discharge will be withheld until formal action has been taken or until the Soldier’s current term of service, as adjusted (see para 1–21), expires. (See limitation of para 14–9.)
      (3) Upon request of the Soldier, or when the commander believes it appropriate, a Soldier may be discharged prior to final action on an appeal. In such cases, the entire file will be forwarded to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, for final decision.
   c. The recommendation of the separation authority for immediate discharge as an exception will fully substantiate the circumstances and the recommendation.

14–7. Retention action
Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army.
   a. In deciding whether retention should be recommended or approved, the gravity of the offense, related events, and any matters in extenuation, will be considered. The military record of the Soldier before the offense should be considered, as well as prospects for rehabilitation.
   b. If retention is desired and civil custody exists, such as parole or probation, that would interfere with the Soldier’s military duties, the civil authorities will be requested to relinquish such custody during the Soldier’s term of military service.
      (1) If the civil authorities decline to relinquish custody, as a general rule, the Soldier will be discharged.
      (2) The Soldier will also be discharged if the conditions for relinquishment of custody will cause an undue burden to the Army.
14–8. Action following disposition by domestic courts

a. When discharge is contemplated.

(1) When a Soldier is under military control, the unit commander will take action as specified in the administrative board procedure (see chap 2, sec II), except that the use of the notification procedure (see chap 2, sec I) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7c.

(2) Chapter 2, section III, prescribes additional actions to be taken when a Soldier is confined and the administrative board procedure will be used, except that the use of the notification procedure is authorized if characterization of service under other than honorable conditions is not warranted.

b. When board hearing is waived or completed. The separation authority may

(1) Disapprove a recommendation for discharge and direct retention.

(2) Approve a recommendation for retention.

(3) Approve a recommendation for discharge and approve the type discharge certificate recommended by the board or a more favorable one than that recommended. He/she may not direct a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined per paragraph 14–3.

(4) Approve a recommendation for discharge and suspend execution of the discharge.

14–9. Procedure for civil court cases in foreign countries

a. Major overseas commanders may approve discharge of Soldiers convicted by a foreign tribunal. This authority may be delegated to a general officer with a judge advocate (JA) on his/her staff. Every action taken in such delegation will state the authority.

(1) When a Soldier is convicted by a foreign tribunal, and the Soldier returns to the United States before initiation or completion of discharge proceedings per this paragraph, discharge proceedings will be initiated or completed per paragraph 14–5. The proceedings will be completed as if the Soldier had been convicted by the domestic court of the United States or its territorial possession. (See paras 14–4 and 14–8.)

(2) The recommendation for discharge will include the items specified in b(1) through (4), below. In such cases, the authorities specified in paragraph 1–19 may approve and order discharge under this paragraph if the Soldier has been assigned to their command.

(3) HQDA authorization is required before Soldiers who have completed 18 or more years of active Federal service may be discharged.

(4) This provision is not intended to relieve overseas commanders of their responsibility to promptly initiate and process civil court cases on Soldiers of their command.

b. Commanders will forward the board proceedings, or waiver, through channels to the major overseas commander. Cases will be processed through the chain of command to the commander in the United States authorized to approve discharge. In both situations, the recommendation regarding discharge will include—

(1) Information concerning the civil record and military service of the Soldier.

(2) A statement from the court indicating that the Soldier has been initially convicted.

(3) A statement as to the character of discharge desired, including a statement as to whether paragraph 2–4 has been complied with.

(4) A report of the trial proceedings submitted by the official U.S. observer, if any, attending the trial or a transcript of the record of trial, if obtainable.

c. Army personnel confined in foreign prisons will not be discharged from military service until the term of imprisonment is completed and they return to the United States.

(1) Normally, Soldiers who are disposed of by a foreign tribunal, but not confined, or who are confined but whose release from confinement is imminent, will be returned to the United States or its territorial possessions for discharge. It is general policy that the Soldier will be returned to CONUS.

(2) Very unusual cases may be forwarded through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, with supporting reasons as to why a Soldier should be authorized discharge in a foreign country. Only most unusual situations will be considered. If discharge in a foreign country is desired, either by the commander or the Soldier concerned, this paragraph and chapter 1, section IX will be complied with before such requests are submitted to HQDA.

d. If HQDA authorizes discharge in a foreign country, the overseas commander accomplishing the discharge will inform the nearest U.S. diplomatic or consular mission of such action.

e. A Soldier may not be retained in the Service beyond ETS without his/her consent (see para 1–27) to complete board action under chapter 2, section II.

(1) When the Soldier has not requested retention per paragraph 1–27 and it appears that compliance with chapter 2, section II, cannot be accomplished before the Soldier’s ETS, the case with full details, will be submitted through channels to Headquarters, Department of the Army (AHRC–EPR–F) 2461 Eisenhower Avenue, Alexandria, VA 22332–0478.
(2) The case will be submitted in time to permit appropriate consideration before the Soldier’s ETS. There is no authorization to begin last minute administrative discharge action and then to request special consideration or retention beyond ETS to complete board action.

14–10. Pay and allowances
Any questions pertaining to pay and allowances will be referred to DFAS representatives.

14–11. Detainers and strength accountabilities
   a. Detainer.
      (1) When a detainer is lodged with civil authorities with the objective of having the Soldier returned to military control upon release from confinement, communication to the civil authorities will clearly show the reason for the detainer. A mere statement that the individual is wanted by the Army may lead to erroneous conclusions. The absence of detailed information may deprive the Soldier of parole consideration. Civil authorities may believe the Soldier is wanted for trial, when, in fact, the Army’s only objective is to restore the Soldier to duty.
      (2) When a detainer has been lodged with civil authorities, and a decision is later made to accomplish administrative discharge, the civil authorities will be notified, in writing, to remove the detainer and that such detainer be canceled.
      (3) Notification will be made when discharge is accomplished. Verbal notification may be made, but must be confirmed in writing at the earliest date.

   b. Strength accountability.
      (1) A Soldier sentenced to confinement for 6 months or more in a domestic, civil, or foreign institution will be dropped from military strength when his/her sentence begins. (See AR 600–8–6.) However, the Soldier’s chain of command retains administrative responsibility for processing separation action.
      (2) When discharge is approved by the separation authority but suspended due to appellate action (see para 14–6), the Soldier will be administratively reassigned to the nearest Personnel Control Facility (PCF) per AR 600–62 and AR 630–10. The Soldier’s MPRJ or local file, as appropriate, and DA Form 201 will be forwarded to the commander of the PCF.

Section III
Acts or Patterns of Misconduct

14–12. Conditions that subject Soldiers to discharge
Soldiers are subject to action per this section for the following:
   a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions. Except as provided in paragraph 11–3c, if separation of a Soldier in entry-level status is warranted solely by reason of minor disciplinary infractions, the action will be processed under chapter 11.
   b. A pattern of misconduct. A pattern of misconduct consisting of one of the following:
      (1) Discreditable involvement with civil or military authorities.
      (2) Discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.
   c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM.
      (1) An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense. (See para 1–43 for civil offenses under investigation by foreign authorities.)
      (2) Abuse of illegal drugs is serious misconduct.
         (a) However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under a or b, above, as appropriate.
         (b) All Soldiers against whom charges will not be referred to a court-martial authorized to impose a punitive discharge or against whom separation action will not be initiated under the provisions of chapter 9 or section II of this chapter will be processed for separation under a, b, or c, above, as applicable.
            1. “Processed for separation” means that separation action will be initiated and processed through the chain of command to the separation authority for appropriate action.
            2. The immediate and intermediate commanders will recommend separation or retention. Recommendations will be made as to characterization of service. (See para 2–2 or 2–4.)
            3. The separation reason in all separations authorized by this paragraph will be “misconduct-abuse of illegal drugs.” Voluntary (self) identification/referral in accordance with AR 600–85, paragraph 3–2, does not require initiation of separation proceedings under this section.
Any Soldier convicted of a sexually violent offense at a court-martial, as listed in AR 27–10, paragraph 24–2, but whose sentence did not include a punitive discharge will be processed for separation (see para 14–12c(b)(1)).

14–13. Procedures
The administrative board procedures (see chap 2, sec II) will be used; however, the use of the notification procedure (see chap 2, sec I) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7c.

14–14. Separation authority
Commanders specified in paragraph 1–19 are authorized to convene boards and order separation under this chapter.

14–15. Commanding officer’s report
When the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service he/she will report the fact in memorandum form (see fig 2–5) to the separation authority specified in paragraph 1–19 through the intermediate commander.

14–16. Action by intermediate commanders
Intermediate commanders may take one of the following actions in cases of misconduct, except for cases of abuse of illegal drugs:

a. Disapprove the recommendation and direct reassignment of the Soldier to another organization or direct disposition by other means. In case of reassignment, the commanding officer’s report will be sent to the new organization commander for information.

b. Approve the commanding officer’s recommendation and send the report to the separation authority.

   (1) Recommendation will be made as to characterization of service. (See para 2–2 or 2–4.)

   (2) Disposition through medical channels is required if the Soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct for which action prescribed in this regulation is being considered, and action under the UCMJ will not be initiated.

   c. Recommend separation for unsatisfactory performance if the reason for separation is determined to be a pattern of misconduct caused by the conditions in paragraph 13–2a, and unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to misconduct and take further action per paragraph 13–9.

14–17. Action by the separation authority
On receiving a recommendation for separation for misconduct, the separation authority may take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the Soldier to another organization. In case of reassignment, the commanding officer’s report will be forwarded to the new organization commander for information.

b. Disapprove the recommendation and return the case to the originator for disposition by other means. Include the reasons for considering separation for misconduct inappropriate, or take other appropriate action under this regulation.

c. Disapprove the recommendation relating to misconduct and take action himself/herself.

   (1) The case can be referred to the appropriate separation authority (see para 1–19c or 1–19d) to determine whether the Soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13–2a, and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate.

   (2) Unless unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

   d. Convene a board of officers as prescribed in chapter 2, section II, to determine whether the Soldier should be separated for misconduct.

   e. When the board hearing has been properly waived, direct separation of the Soldier for misconduct.

   f. When the board hearing has been properly waived, approve separation of the Soldier for misconduct and suspend execution of the separation. (See para 1–18.)

   g. Direct that the case be processed through medical channels, if appropriate.

   (1) Such disposition is required if the Soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct, and action under the UCMJ is not initiated. A copy of the signed decision by the GCMCA will be included with the records.

   (2) Authority to determine that a case will be referred for disability processing instead of other administrative processing will not be delegated.