

## Section II Guidelines on Separation

### 1–15. Guidance

A substantial investment is made in training persons enlisted or inducted into the Army; therefore, this general guidance will be considered when initiating separation action.

*a.* Unless separation is mandatory, the potential for rehabilitation and further useful military service will be considered by the separation authority; where applicable, the administrative separation board will also consider these factors. If separation is warranted despite the potential for rehabilitation, consider suspending the separation, if authorized.

*b.* Adequate counseling and rehabilitation measures will be taken before initiating separation action against a Soldier when the reason for separation so specifies. An alleged or established inadequacy in previous rehabilitation efforts does not provide a legal bar to separation.

*c.* When deciding retention or separation in a case, consider the following factors:

(1) The seriousness of the events or conditions that form the basis for initiation of separation proceedings. Also consider the effect of the Soldier's continued retention on military discipline, good order, and morale.

(2) The likelihood that the events or conditions that led to separation proceedings will continue or recur.

(3) The likelihood that the Soldier will be a disruptive or undesirable influence in present or future duty assignments.

(4) The Soldier's ability to perform duties effectively now and in the future, including potential for advancement or leadership.

(5) The Soldier's rehabilitative potential.

(6) The Soldier's entire military record, including—

*(a)* Past contributions to the Army, assignments, awards and decorations, evaluation ratings, and letters of commendation.

*(b)* Memoranda of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities.

*(c)* Any other matter deemed relevant by the board or the separation authority, including specialized training, duties, and experience of persons entrusted by this regulation with making recommendations or decisions on separation or retention.

*(d)* Adverse information from a prior enlistment or period of military service only when such information would have a direct and strong probative value in determining whether separation is appropriate.

1. This includes records of nonjudicial punishment and convictions by court-martial. Such information ordinarily will be used only in those cases involving conduct repeated over an extended period of time.

2. In unusual situations, conduct from a prior enlistment that does not constitute a pattern of conduct manifested over an extended period of time may be considered in determining whether retention or separation is warranted. For example, a single incident of misconduct occurring in the prior period of service that, by itself, would warrant separation may be considered if the officials in the Soldier's chain of command neither knew, nor reasonably should have known of, at the time the Soldier re-enlisted.

3. Commanders who believe that a Soldier's case represents an unusual situation within the meaning of this paragraph should request guidance from the Commanding General (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478.

*(e)* Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

*d.* Commanders will review all administrative separations involving known victims of sexual assault (see AR 600–20, chap 8) and any Soldier who answered “Yes” to either of the questions cited under either paragraph 2–2*i* or 2–4*h*. Unless otherwise directed, this review must consider the following:

(1) Whether the separation appears to be in retaliation for the Soldier filing an unrestricted report of sexual assault. If so, consult with the servicing office of the staff judge advocate or other legal office.

(2) Whether the separation involves a medical condition that is related to the sexual assault, to include Post Traumatic Stress Disorder (PTSD). If so, consult with the appropriate medical personnel.

(3) Whether the separation is in the best interest of the Army, the Soldier, or both. If not, consult with the servicing staff judge advocate.

(4) The status of the case against the alleged offender, and the effect of the Soldier's (victim's) separation on the disposition or prosecution of the case. If the case is still open, consult the servicing Criminal Investigation Division unit and staff judge advocate.

*e.* Each commander in the chain of command must include a statement on his/her endorsement certifying review in

accordance with paragraph 1–15*d* of this recommendation. Commanders will ensure compliance with AR 340–21 and AR 25–55.

## **1–16. Counseling and rehabilitative requirements**

*a. General.* Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Effective leadership is particularly important in the case of Soldiers serving their initial enlistments. Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

- (1) Involuntary separation due to parenthood. (See para 5–8.)
- (2) Personality disorder. (See para 5–13.)
- (3) Other designated physical or mental conditions. (See para 5–17)
- (4) Entry-level performance and conduct. (See chap 11.)
- (5) Unsatisfactory performance. (See chap 13.)
- (6) Minor disciplinary infractions or a pattern of misconduct. (See para 14–12*a* and *b*.)
- (7) Failure to meet body fat standards. (See chap 18.)

*b. Counseling.* When a Soldier's conduct or performance becomes unacceptable, the commander will ensure that a responsible official formally notifies the Soldier of his/her deficiencies. At least one formal counseling session is required before separation proceedings may be initiated for one or more of the reasons specified in *a*, above. In addition, there must be evidence that the Soldier's deficiencies continued after the initial formal counseling.

(1) The number and frequency of formal counseling sessions are discretionary. Such factors as the length of time since the prior counseling, the Soldier's performance and conduct during the intervening period, and the commander's assessment of the Soldier's potential for becoming a fully satisfactory Soldier, must be considered in determining if further counseling is needed.

(2) Counseling will be comprehensive and in accordance with chapter 17 of this regulation and will include the reason(s) it is being administered, the date, the fact that separation proceedings may be initiated if the deficiencies continue, and other guidance as appropriate.

(3) Each counseling session must be recorded in writing. DA Form 4856 (General Counseling Form) will be used for this purpose.

(4) The Soldier's counseling or personal records must reflect that he/she was formally counseled concerning his/her deficiencies and given a reasonable opportunity to overcome or correct them.

*c. Rehabilitation.* Except as provided in *d*, below, the following rehabilitative measures are required prior to initiating separation proceedings for entry-level performance and conduct (see chap 11), unsatisfactory performance (see chap 13), or minor disciplinary infractions/patterns of misconduct (see chap 14):

(1) *Trainees.* Soldiers undergoing initial entry or other training will be recycled (reassigned between training companies or, where this is not feasible, between training platoons) at least once.

(2) *Other than trainees.* Soldiers not in training status will be locally reassigned at least once, with a minimum of 3 months of duty in each unit. Reassignment should be between battalion-sized units or between brigade-sized or larger units when considered necessary by the local commander.

(3) *Permanent change of station (PCS) transfer.* PCS funds normally will not be used for rehabilitative transfers. However, in meritorious cases where it is determined that a Soldier with potential to be a distinct asset to the Army would benefit from a change in commanders, associates, and living or working conditions, the commander exercising general court-martial jurisdiction may authorize PCS transfer within the same command. As an alternative, a request for reassignment to another command may be submitted to Headquarters, Department of the Army (AHRC-EP-appropriate career branch), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478.

*d. Waivers.*

(1) Waiver of the counseling requirement is not authorized.

(2) The rehabilitative transfer requirements in chapters 11, 13, and 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier. Such circumstances may include:

(*a*) Two consecutive failures of the Army physical fitness test.

(*b*) Pregnancy while in entry-level status.

(*c*) Highly disruptive or potentially suicidal behavior, particularly in reception battalions.

(*d*) Active resistance of rehabilitative efforts.

(*e*) Soldiers assigned to small installations or at remote locations.

(*f*) Situations in which transfer to a different duty station would be detrimental to the Army or the Soldier (for

example, indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth).

(3) Waiver of rehabilitative transfer may be granted at any time on or before the date the separation authority approves or disapproves the separation proceedings. Waiver authority may be withheld by a higher separation authority in a particular case, a class or category of cases, or all cases. Decision to withhold waiver authority will be announced in writing.

### **1–17. Restrictions on administrative separation and board hearings**

*a.* Separation action for the reasons indicated in paragraph 1–16*a* will not be started until a Soldier has been counseled by a responsible person about his/her deficiencies and offered a reasonable opportunity to overcome them.

*b.* Separation per this regulation normally should not be based on conduct that has already been considered at an administrative or judicial proceeding and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separations under the provisions of chapters 11, 13, and 14 and AR 380–67 are subject to the following restrictions. No Soldier will be considered for administrative separation because of conduct that—

(1) Has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. Only Headquarters, Department of the Army (HQDA) will decide that an action does not have the effect of an acquittal. The convening authority must submit a request for such a determination through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478.

(2) Has been the subject of a prior administrative board in which the board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct, except when the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

(3) Has been the subject of an administrative separation proceeding resulting in a final determination by a separation authority that the Soldier should be retained, except when—

*(a)* The Soldier's subsequent conduct or performance forms the basis, in whole or in part, for a new proceeding. Such conduct need not independently justify the Soldier's discharge, but it must be serious enough to raise a question as to his/her potential for further useful military service.

*(b)* Fraud or collusion is discovered that was not known at the time of the original proceeding and that will probably produce a result much less favorable for the Soldier at a new hearing.

*(c)* Substantial new evidence is discovered that was not known at the time of the original proceeding despite the exercise of due diligence.

(4) Has been the subject of a judicial proceeding resulting in acquittal based on a finding of not guilty only by reason of lack of mental responsibility. Soldiers in this category will normally be separated utilizing Secretarial plenary authority (see para 5–3), unless separation for disability is appropriate. (See AR 635–40.)

*c.* The provisions of *b*, above, do not preclude a Soldier convicted by a court-martial whose sentence does not include a punitive discharge from being processed for administrative separation under chapters 13 or 14 at any time after sentencing. Conduct that was the subject of such a court-martial may be considered in determining retention or separation and, if appropriate, characterization of service.

*d.* Criminal history information from personnel investigative (PSI) reports requested within the first 90 days of a Soldier's initial enlistment may be used to support separation proceedings initiated under paragraph 5–14 and chapter 7, sections III and IV. Use of PSI reports in connection with all other separation proceedings is prohibited unless specific authorization is granted in accordance with AR 380–67, paragraph 10–100. Requests for such authorization may be submitted on a case-by-case basis through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478.

### **1–18. Suspension of execution of approved separation**

*a.* A highly deserving Soldier may be given a probation period to show successful rehabilitation before the Soldier's enlistment or obligated service expires.

(1) The separation authority or higher authority may suspend (except fraudulent entry) execution of an approved separation for a period of full-time military duty not to exceed 12 months. (See chap 2.)

(2) When there are approved reasons for separation in addition to fraudulent entry, suspension may be authorized only when waiver of the fraudulent entry is obtained.

*(a)* During the period of suspension, the Soldier must show that he/she is able to behave properly under varying conditions.

*(b)* The Soldier can also show that he/she can perform assigned duties efficiently.

*b.* Upon satisfactory completion of the probation period, or earlier if rehabilitation has been achieved, the authority that suspended the separation will cancel execution of the approved separation. If the Soldier has been transferred to the command of another separation authority, the separation will be canceled by the new separation authority or higher authority.

*c.* If the Soldier engages in conduct similar to that for which separation was approved, but then was suspended, or

otherwise fails to meet the appropriate standards of conduct and duty performance, the commander concerned, the convening authority, or the separation authority will take one of the following actions:

- (1) Initiate punitive or new administrative action in spite of the suspension of execution of the approved discharge.
- (2) Withhold action in the case of a Soldier who is absent without authority or in civilian confinement by delivery under Uniform Code of Military Justice (UCMJ), Article 14 (Absence Without Authority), or while in civilian confinement. The provisions of either (1), above, or (3), below, will be complied with when the Soldier returns to military control and before the period of probation expires.
- (3) Advise the Soldier, in writing, that vacation of the suspension is being considered and the reasons that warrant such consideration.
  - (a) The Soldier will be given 3 duty days to consult with counsel and submit a written statement in his/her own behalf or decline to make any statement.
  - (b) The commander taking the action will consider any information the Soldier submits. If the Soldier identifies specific legal issues for consideration, the separation authority will have the matter reviewed by an officer of the Judge Advocate General's Corps. The separation authority may—
    1. Vacate suspension of the approved action and execute separation, or
    2. Continue to suspend execution of the approved separation for the remainder of the probation period.

### **Section III**

#### **Separation Authority**

#### **1–19. Authority to approve or disapprove separation**

a. Except for Secretarial plenary authority (see para 5–3); separation due to reduction in force, strength limitations, or budgetary constraints (see para 16–7); the Qualitative Management Program (see chap 19); voluntary separation of Soldiers serving indefinite enlistments (see para 4–4); conviction by a foreign court (see paras 14–1a and d and 14–9a); and the early release from active duty of RC personnel serving Active Guard Reserve (AGR) tours under 10 USC 12301(d) (see para 5–15), commanders who are General Court-Martial Convening Authorities (GCMCAs) and their superior commanders are authorized to approve or disapprove separation per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. (See *l*, below, for delegation of authority to approve discharge in chapter 10 AWOL offense cases.) (See also para 3–7d.)

b. A general officer in command who has a judge advocate or legal advisor available is authorized to approve or disapprove the separation or release from AD or ADT of Soldiers per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. This general officer, unless also the GCMCA, cannot order separation or release for lack of jurisdiction (see para 5–9) or discharge in lieu of trial by court-martial. (See chap 10.)

c. Commanders who are special court-martial convening authorities are authorized to approve or disapprove separation on the following chapters listed below. This authority does not include officers in the grade of major (O–4) or below, who are acting commanders:

(1) Unless otherwise provided in this regulation, chapters 5, 6, 7, 8, 9, 11, 13, 16, and 18 when the issuance of a characterization of service under other than honorable conditions is not warranted.

(2) Chapter 14 when—

(a) Discharge under other than honorable conditions is not warranted under paragraph 3–7c and the notification procedure is used. An Honorable Discharge may be ordered only when the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case.

(b) An administrative separation board recommends an entry-level separation or discharge with a General Discharge certificate.

(c) An administrative board recommends discharge with an Honorable Discharge and the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case.

(3) This includes the authority to convene an administrative board when required by this regulation for actions initiated under the notification procedure (see chap 2, sec I).

(a) A board convened by a special court-martial convening authority is not authorized to recommend discharge under other than honorable conditions.

(b) A special court-martial convening authority (SPMCA) is not authorized to convene administrative separation boards in misconduct actions when a characterization of service under other than honorable conditions is contemplated because such actions must be initiated under the administrative board procedure (see chap 2, sec II).

(4) Chapter 10 when authority to approve requests for discharge has been delegated per *l*, below.

(a) This authority is limited to cases in which the Soldier—

1. Has been AWOL for more than 30 days.
2. Has been dropped from the rolls of his or her unit as absent in desertion.
3. Has been returned to military control.

4. Is currently at the personnel control facility (PCF).
5. Is charged only with AWOL for more than 30 days.
- (b) This authority does not include cases involving any other charged offense, including desertion.
- (c) This SPMCA cannot disapprove a request for discharge in lieu of trial by court-martial. The request for discharge must be approved prior to trial. (See the initial Article 39(a) session for general and special courts-martial, the initial convening of a summary court-martial.)
- (d) A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this paragraph.
  - d. The following commanders who have judge advocate or legal advisor available are authorized to approve or disapprove separation under paragraph 5-11 and chapters 8, 11, and 16; and under chapters 9, 13, and 18 when the case is processed using the notification procedure (see chap 2, sec I):
    - (1) Commanders in the grade of lieutenant colonel or above.
    - (2) Commanders in the grade of major, who are on an approved recommended list for promotion to lieutenant colonel and who are assigned to command any unit authorized a commander in the grade of lieutenant colonel, or above. This authority does not include officers in the grade of major, who are acting commanders, even if on an approved recommended list for promotion to lieutenant colonel.
  - e. The authority granted under *b*, *c*, and *d*, above, may be withheld by a higher separation authority in a particular case or class of cases. Such authority will be in writing and will be valid until revoked in writing.
  - f. Except when discharged pursuant to the approved sentence of a court-martial or for physical disability (AR 635-40), any Soldier who has completed 18 or more years of active Federal service will not be involuntarily discharged or released from active duty without approval at HQDA level. These separation actions will be submitted to HQDA (AHRC-EPR-F) for forwarding to the proper authority. Requests for voluntary separation (for example, those submitted under chaps 6, 10, or 16) need not be sent to HQDA for approval.
  - g. The authority to convene an administrative separation board, when required by this regulation, may not be delegated.
  - h. Unit commanders are authorized to order discharge for immediate re-enlistment (see para 17-3) under the provisions of AR 601-280.
  - i. The authority to approve or disapprove requests for length-of-service retirement is as specified in paragraph 12-2.
  - j. The general court-martial authority, or a general officer in command who has a judge advocate or legal advisor available, may delegate to other officials of his/her or her staff the authority to approve, disapprove, or otherwise appropriately dispose of cases under chapter 6 (when an honorable discharge certificate will be awarded) and chapter 16.
  - k. Commanders of recruiting battalions (RBNs) in grade of lieutenant colonel or higher are authorized to void enlistments under paragraph 7-15e.
  - l. The GCMCA or higher authority at installations having PCFs may delegate the authority to approve separations in lieu of trial by court-martial (see chap 10) to the commander exercising special court-martial convening authority over the Soldier who submitted the request for discharge in cases in which the Soldier—
    - (1) Has been AWOL for more than 30 days.
    - (2) Has been dropped from the rolls of his/her unit as absent in desertion.
    - (3) Has been returned to military control.
    - (4) Currently is at the PCF.
    - (5) Is charged only with AWOL for more than 30 days.
  - m. The authority referred to in *l*, above, does not include cases involving any other charged offense, including desertion. The request for discharge must be approved prior to trial (the initial Article 39(a) session (Uniform Code of Military Justice (UCMJ)) for general or special courts-martial, the initial convening of a summary court-martial). Authority to disapprove separations for the good of the Service (see chap 10) remains at the GCMCA or higher authority and may not be delegated. All delegations must be in writing and will be valid until revoked in writing. A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this authority.
  - n. Separation authority for cases involving Soldiers who filed an unrestricted report of sexual assault (see AR 600-20, chap 8) within 24 months of initiation of the separation action is withheld to the GCMCA or higher authority.

#### **1-20. Action by commanders having separation authority**

- a. Commanders having separation authority directing separation or release from active duty of a Soldier will comply with AR 635-10 and Army Pamphlet 635-4.
- b. Recoupment of the unearned portion of an enlistment or re-enlistment bonus is required by law (37 USC 308) when a Soldier is separated voluntarily or because of misconduct.
  - (1) In implementation of the law, DOD 7000.14-R, volume 7A, paragraph 0904, contains specific separation reasons for which bonus recoupment is required.

- (2) Semiannual by-name reports reflecting the Army's success at actual recoupment are required by Congress.
- (3) Individual commanders must screen actions to ascertain recoupment requirements and then counsel Soldiers about their repayment responsibilities.

*c.* Counseling concerning earned education benefits is required by law. For voluntary separations under the provisions of chapters 5, 8, and 16, as well as other provisions of this regulation that involve separation as an exception to policy more than 90 days before ETS, separation authorities will take an active role in this counseling process as follows:

(1) Soldiers with less than 20 months of a 24-month initial enlistment, and less than 30 months of a 36-month-or-longer initial enlistment at the time of separation must be counseled that loss of accrued benefits will occur and that monies deducted from pay are not refundable.

(2) Approval of separation under these provisions is contingent upon this counseling, and a statement of understanding must be included in the approval packet.

*d.* Commanders, in coordination with the servicing staff judge advocate, will counsel permanent resident aliens enlisted in the Army for three or more years who wish to fulfill naturalization requirements through honorable military service (8 USC 1439). Counseling should include an explanation that voluntary or involuntary separation could affect fulfillment of the naturalization requirements.

## **Section IV**

### **Separation After Expiration of Term of Service/Period of Active Duty/Active Duty Training**

#### **1–21. Time lost to be made good**

Every Soldier in active Federal service who is unable for more than 1 day to perform duty will complete the full term of service or obligation, exclusive of such time lost. The term will be served when the Soldier returns to full duty status.

*a.* Lost time refers to periods of more than 1 day when a Soldier on active duty cannot perform duty because of

- (1) Desertion.
- (2) Absence without proper authority.
- (3) Confinement under sentence.
- (4) Confinement while awaiting trial or disposition of Soldier's case, if trial results in conviction.
- (5) Intemperate use of drugs or alcohol. (See AR 600–85.)
- (6) Disease or injury, the result of Soldier's misconduct.

*b.* Time lost during an enlistment period will be made good at the end of the enlistment period. When an enlistment is extended by law, time lost will be made good at the end of the extension. This requirement may be waived by HQDA. Recommendations for waiver of time lost will be submitted to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, when the separation authority considers that because of unusual circumstances, waiver of time lost is in the best interest of the Soldier and the Government.

*c.* Reserve Component personnel ordered to initial active duty for training (IADT) will make up time lost.

(1) Commanding officers of training installations can waive this requirement if the Soldier has completed the required training and the commander determines that it would not be in the best interest of the Service to retain the Soldier on active duty for training to make good time lost.

(2) Commanding officers of training installations are authorized to endorse the orders extending the initial period of ADT for reservists who must make good the time lost during IADT. One copy of the memorandum will be furnished the State Adjutant General or the commander that issued the original ADT orders and the Soldier's unit commander.

*d.* Soldiers of the ARNGUS and the USAR being released from active duty because the unit in which they were ordered to active duty is released from active duty status will not be retained on active duty to make good time lost.

#### **1–22. When investigation is initiated with view to trial by court-martial or Soldier is awaiting trial or result of trial**

*a.* A Soldier may be retained after his/her term of service has expired when one of the following applies:

- (1) An investigation of his/her conduct has been started with a view to trial by court-martial.
- (2) Charges have been preferred.
- (3) The Soldier has been apprehended, arrested, confined, or otherwise restricted by the appropriate military authority.

*b.* If charges have not been preferred, the Soldier will not be retained more than 30 days beyond the ETS unless the general court-martial convening authority approves retention. (See para 1–31.)

*c.* A Soldier who is awaiting trial or result of trial by court-martial when he/she would otherwise be eligible for discharge or release from AD will not be discharged or released until final disposition of the court-martial charges. (For effective date of discharge, see sec V of this chapter.)

*d.* Soldiers under sentence to an unsuspended dishonorable or bad conduct discharge will not be discharged before

appellate review is completed, unless so directed by HQDA. If the Soldier is absent without leave at the time appellate review is completed, the punitive discharge may still be carried out. This paragraph does not apply to Soldiers processed for discharge under the provisions of chapter 10.

### **1–23. En route to United States or to territory of origin**

When a Soldier is held in service after period of service expires under the conditions in *a* and *b*, below, the Soldier will be retained for the convenience of the Government.

*a. As a casual for separation.* A Soldier en route to the United States from overseas as a casual will not be separated until arrival at destination.

*b. As Soldiers of an organization.* Soldiers whose periods of service expire while at sea en route to the United States with their organization and who signify intention to re-enlist for the same organization on the day following discharge will be discharged and re-enlisted at sea. Those who do not signify their intention to re-enlist will be held in the Service until they arrive in the United States.

### **1–24. Medical/dental care required or sick in hospital when period of service expires**

*a.* A Soldier may only be considered for retention past the set release date when one or both of the following apply:

(1) Continued health care is required (must be in-hospital status but not necessarily occupying a bed).  
(2) Physical disability processing is required or has been initiated. The request for retention will be submitted per *b* and *c*, below. Soldiers determined medically fit for retention or separation will not be retained past the set release date.

*b.* A Soldier being retired for maximum length of service or maximum age will not be retained on active duty unless his/her medical condition indicates referral of the case to a physical evaluation board. When retention is required, the hospital commander will notify Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, and request the Soldier’s retirement orders be rescinded. The request will include the medical diagnosis and expected date of case referral to the physical evaluation board for processing.

*c.* No Soldier will be retained beyond his/her scheduled release date without written consent signed by the Soldier. (See fig 1–1.)

(1) If the Soldier is mentally incompetent or otherwise unable to sign, the next of kin or legal representative will be requested to sign for the Soldier.

(2) The consent affidavit will be filed in the Soldier’s MPRJ or local file, as appropriate, U.S. Army. (See DA Form 201.)

(3) A Soldier retained under this paragraph is subject to favorable or adverse personnel action including actions per this regulation. However, if the Soldier later demands discharge, he/she cannot be retained on active duty for the sole purpose of taking such administrative action. An officer authorized by law to administer oaths under the UCMJ, Article 36, will swear the Soldier (insuring that the Soldier personally appears before the officer), and tell the Soldier—

*(a)* How he/she will benefit from remaining on active duty in the Army beyond the scheduled date of release to complete hospital care or a physical evaluation (or both) under chapter 61, 10 USC.

*(b)* If he/she elects to be discharged or released from active duty as scheduled, he/she will not, after such discharge or release from active duty, be eligible for separation or retirement for physical disability.

*d.* Note: If the Soldier is unable to sign and the next of kin or legal representative cannot be located or will not indicate whether or not the Soldier will be retained, the Soldier will be retained. The hospital commander will supply full details of the case including actions taken to secure consent for retention. The hospital commander will notify—

(1) The nearest military commander exercising general court-martial authority for RA Soldiers.  
(2) The appropriate State Adjutant General for ARNGUS (AGR) personnel.  
(3) The Commander, USA HRC (DARP-ARE), 1 Reserve Way, St. Louis, MO 63132–5200, for USAR (AGR) Soldiers.

*e.* The medical facility commander will—

(1) Send requests for retention, endorsed by the Soldier’s unit commander, to the nearest GCMCA for the following personnel:

*(a)* Regular Army personnel.

*(b)* ARNGUS and USAR personnel on IADT or AGR tours. Retention of ARNGUS personnel must be coordinated with the appropriate State Adjutant General. The Adjutant General (ATTN: AHRC–PDZ–B) will be the approval authority for ARNGUS and USAR Soldiers on IADT or Active Guard/AGR tours.

(2) Include the following information in the request:

*(a)* Soldier’s name, grade, and SSN.

*(b)* Reason for separation (such as ETS).

*(c)* Scheduled release date.

*(d)* A copy of the signed affidavit consenting to retention.

*(e)* Medical reason for retention.

*(f)* Medical recommendation (approval or disapproval).

*f.* Retention requires approval by the GCMCA. The GCMCA may delegate this authority to other military or civilian officials on his/her staff. Every action taken according to such a delegation will state that it is taken “pursuant to authority delegated by \_\_\_ dated \_\_\_.” The Adjutant General (ATTN: TACP-PDZ-B) will be the approval authority for ARNGUS and USAR Soldiers on initial active duty for training or Active Guard/AGR tours.

(1) A copy of the retention action on RA personnel will be sent to Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249, for filing in the OMPF.

(2) A copy of the retention action for ARNGUS personnel will be sent to the appropriate State Adjutant General.

(3) A copy of the retention action for USAR (AGR) personnel will be sent to Commander, USA HRC, (DARP-FS) 1 Reserve Way St. Louis, MO 63132-5200.

*g.* Soldiers will be advised of the advantages of remaining on active duty. Soldiers will be furnished the following list of retention advantages:

(1) Advantages while remaining on active duty for completion of hospitalization or medical care or while being processed for disability:

(a) Medical care and/or hospitalization provided.

(b) Receipt of normal benefits such as pay and allowances, including exchange and commissary privileges.

(c) Eligibility for dependent medical care if Soldier is on AD or ADT under orders that specify a period of more than 30 days or is under orders specifying a period of 30 days or less that are modified or extended resulting in more than 30 days.

(d) State income tax benefits where allowed by the laws of the states concerned.

(2) Advantages, if processed and found eligible for disability separation:

(a) If permanently retired, the Soldier may choose the pay most favorably computed per Army regulations, or under the law under which he/she is eligible for retired pay. If temporarily retired, the same selection of pay is authorized, but the minimum pay will not be less than 50 percent of basic pay while temporarily retired.

(b) If retired, a former Soldier and authorized Family members would be eligible for certain medical care depending on facilities and staffing availability at Uniformed Services facilities and certain medical care in civilian facilities. (See AR 40-3.)

(c) If discharged for disability, Soldier will be entitled to severance pay.

(d) To the extent that retired pay is based on the percent of disability involved, such pay is excluded in computing gross income reportable for taxation.

#### **1-25. Indebtedness**

*a.* A Soldier who is eligible for discharge or release from active duty will not be retained—

(1) To satisfy a debt to the U.S. Government or to an individual.

(2) To obtain remission or cancellation of a debt to the U.S. Government. The Secretary of the Army is authorized to remit or cancel only that part of a Soldier’s debt that is unpaid before or at the time of honorable discharge, retirement, or release from active duty.

*b.* A request for remission or cancellation of indebtedness will be acted on before the date the Soldier is eligible for discharge, retirement, or release. (See AR 600-4.)

#### **1-26. Retention for miscellaneous reasons**

Retention beyond a Soldier’s ETS to process administrative separation proceedings pursuant to this regulation is not authorized. If it is desirable to retain a Soldier beyond the ETS for any reason other than those covered by paragraphs 1-21 through 1-24, request for approval of such action must be submitted to

*a.* Headquarters, Department of the Army (AHRC-EPR-F), 200 Stovall Street, Alexandria, VA 22332-0478, for RA personnel.

*b.* The appropriate State Adjutant General for ARNGUS (AGR) personnel.

*c.* Commander, USA HRC (DARP-ARE), 1 Reserve Way St. Louis, MO 63132-5200, for USAR (AGR) personnel.

#### **1-27. Retained in service while subject to criminal jurisdiction of foreign courts but not physically confined by such courts**

Retention in service per this paragraph is intended to permit the Government to fulfill its obligations under current jurisdictional agreements with foreign governments. (See fig 1-2.)

*a.* If it appears that final action on the civil charges will not be completed before the accused’s ETS, the following action will be taken:

(1) The Army will try to obtain the accused’s consent to be retained beyond ETS until final action on the civil charges and consequent administrative separation action has been completed. Before such consent is obtained, the Soldier concerned will be advised that since he/she is subject to the UCMJ, it is possible that court-martial charges may be preferred if the foreign government does not proceed with the case. However, court-martial charges will not be