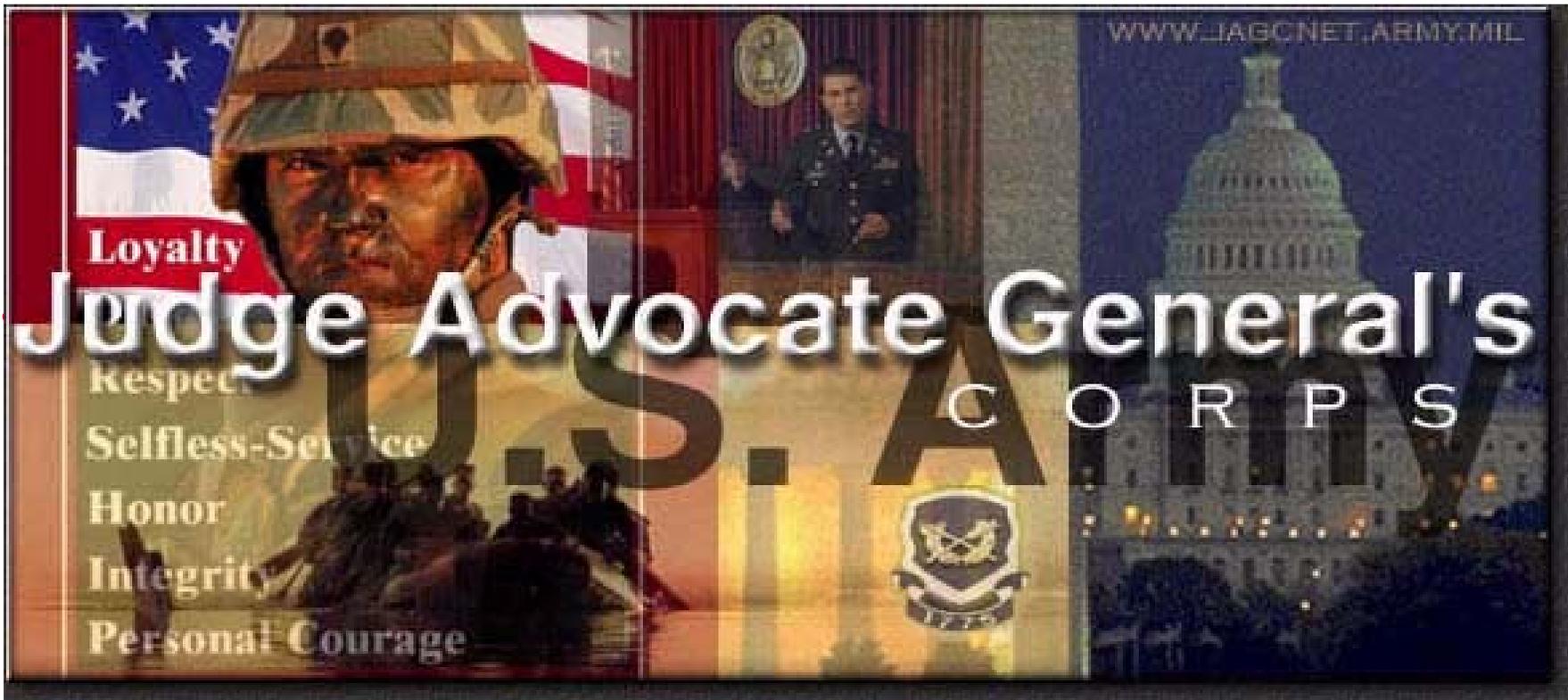


Consequences of a Criminal Conviction for Service Members



MAJ Michael Gould
United States Army Reserve



AGENDA

- **MILITARY JUSTICE OVERVIEW**
- **ADVERSE ADMINISTRATIVE ACTIONS**
- **ADMINISTRATIVE SEPARATION ACTIONS (“Chapters”)**
- **NONJUDICIAL PUNISHMENT (ART. 15s)**
- **COURTS MARTIAL**
- **LAUTENBERG AMENDMENT**

THE COMMANDER'S TOOLS

ADMINISTRATIVE

Counseling
Formal Reprimand
Pull Pass Privileges
Corrective Training
Rehab. Transfer
Adverse NCOER
Admin. Reduction
Flag
Bar
Admin. Separation

NONJUDICIAL

(Article 15s)

Summary

Company Grade

Field Grade

JUDICIAL

(Courts-Martial)

Summary

Special (BCD
Special)
General

Dual Sovereignty Doctrine

- Prior prosecution in state court no bar to federal (including military) prosecution for the same offense. ***Abbate v. United States***, 369 U.S. 187 (1959)

ADVERSE ADMINISTRATIVE ACTIONS

- **Counseling & Admonition**
 - Para. 1-16, AR 635-200, counseling
 - Memorandum of Reprimand
- **Revoke Pass Privileges**
- **Corrective Training**
- **Rehab. Transfer**
- **NCOER**
- **Flag**
- **Bar to Reenlistment**
- **Removal From Promotion List**
- **Administrative Reduction in Rank**
- **Administrative Separation**

ADMINISTRATIVE REPRIMAND

- **AR 600-37; AR 190-5**
- **Purposes**
- **Procedures**
 - **Drafting and Initiating**
 - **Notice and Rebuttal**
 - **Disposition: OMPF v. Local File**
- **Appeals**
- **DUI: General Officer Memo of Reprimand**

BAR TO (RE)ENLISTMENT

- Conviction of a felony in state or federal court results in ineligibility to enlist or re-enlist. 10 U.S.C. § 504.

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REMOVAL FROM PROMOTION LIST

- **AR 600-8-19**
- **E-2 to E-4: Commander Decides**
- **E-5 and E-6: Board Decides**
- **E-7 and Up: Recommend to PERSCOM**
 - **Substandard duty performance or misconduct**

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ADMINISTRATIVE REDUCTION

- **AR 600-8-19**
- **Authority to Reduce**
 - E-1 thru E-4 - **Company Commander (CPT)**
 - E-5 thru E-6 - **Bn Commander (LTC)**
 - E-7 & above - **Bde Commander (COL)**
- **Grounds**
 - **Civilian Court Conviction**
 - **Inefficiency**
- **Procedures (E-5 & above get board w/in 30 days)**

MISCELLANEOUS ACTIONS

- **REVOCAION OF PASS PRIVILEGES (nonpunitive)**
- **REHAB. TRANSFER**
- **CORRECTIVE (EXTRA) TRAINING**
 - AR 600-20, para. 4-6b
 - Purpose: To correct deficiencies
 - Must be directly related to deficiencies
- **FLAGS (Suspension of Favorable Actions)**
 - AR 600-8-2

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ADMINISTRATIVE SEPARATION ACTIONS

(“How to Fire a Soldier From His or Her Job”)

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SEPARATIONS: COMMON ISSUES

- **Admin Separation = “You’re Fired”**
- **Honorable v. General Discharge v. OTH**
- **Separation Board**
 - **OTH recommended; or**
 - **6 or more years active and reserve service**

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RELEVANT CHAPTERS

- **Personality Disorder (Ch. 5-13)**
- **Other Designated Physical or Mental Conditions (Ch. 5-17)**
- **Fraudulent Entry (Ch. 7)**
- **Alcohol/Drug Abuse (“ADAPCP Failure”) (Ch. 9)**
- **In Lieu of Trial by Court-Martial (Ch. 10) ***
- **Conviction by a Civilian Court (Ch. 14-5)**
- **Minor Disciplinary Infractions (Ch. 14-12a)**
- **Pattern of Misconduct (Ch. 14-12b)**
- **Commission of a Serious Offense (Ch. 14-12c)**

PERSONALITY DISORDER (CH. 5-13)

- **Procedure:**
 - **Para. 1-16 Counseling**
 - **Mental Evaluation by certified psychologist/ psychiatrist:**
a deeply ingrained maladaptive pattern of behavior of long duration that interferes with the soldier's ability to perform duty.
- **No Medical Exam Needed**
- **Separation Authority: Bde Cdr**
- **Type of Discharge: Honorable**

OTHER PHYSICAL OR MENTAL CONDITIONS (CH. 5-17)

Procedure:

**Para. 1-16 counseling
Chance to Rehabilitate**

Mental or Medical Evaluation:

Other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty.

Separation Authority: Bde Cdr

Type of Discharge: Honorable

FRAUDULENT ENLISTMENT (CH. 7)

Deliberate material misrepresentation, omission, or concealment of information which, if known by the Army, might have resulted in rejection

Procedure:

No para 1-16 counseling

No medical or mental exam needed

Separation Authority: Bde Cdr

Type of Discharge: Honorable, General or OTH

CONVICTION BY CIVILIAN COURT (CH. 14-5)

- **Required**
 - **Civilian Conviction:**
 - » **Civilian sentence of 6 or more months, even if suspended/probation, or**
 - » **Punitive discharge would be authorized at C-M for the type of offense committed.**
 - **No Para. 1-16 Counseling needed**
- **Separation Authority: GCMCA**
- **Types of Discharge: Honorable, General or OTH**

PATTERNS OF MISCONDUCT (CH. 14-12b)

- **Procedure**
 - **Para 1-16 Counseling/Rehabilitative transfer**
 - **Evidence of Misconduct: Article 15s, Letters of Indebtedness, Bounced Checks, Bar, Negative Counseling, etc..**
- **Mental & Medical Exams**
- **Separation Authority: Bde Cdr**
- **Types of Discharge: Honorable, General, or OTH**

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COMMISSION OF SERIOUS OFFENSE (CH. 14-12c)

- **Required**
 - **“Serious Offense”**
 - » **Any offense for which punitive discharge is authorized by the MCM at court-martial**
 - » **Includes disobedience!**
 - » **Mandatory initiation rules for drug use**
 - **No Para. 1-16 Counseling needed**
- **Mental & Medical Exams**
- **Separation Authority: Bde Cdr**
- **Types of Discharge: Honorable, General, or OTH**

NONJUDICIAL PUNISHMENT ARTICLE 15, UCMJ

- **Procedure - Appendix B, AR 27-10**
- **Not a Guilty Plea**
- **Rights: Spokesperson (except summarized), documents/witnesses/evidence, open hearing.**
- **Min. 48 hours to decide, consult counsel**
- **Appeals. 5 days to submit. JAG review. Command has 5 days to act.**
- **Filing - Often more important than the punishment for NCOs.**
- **Vacation of Suspended Punishments**

AUTHORIZED PUNISHMENTS

ARTICLE 15, UCMJ

- **Summarized**
 - 14 days extra duty
 - 14 days restriction
- **Company Grade**
 - Red. 1 grade (E1-E4)
 - Forfeit 7 days pay
 - 14 days extra duty
 - 14 days restriction
- **Field Grade**
 - Reduction
 - » E5-E6: 1 Grade
 - » E1-E4: Red. to E1
 - 1/2 mo. pay for 2 mos.
 - 45 days of extra duty
 - 45 days restriction

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THE COURT-MARTIAL PROCESS

**WHY A SEPARATE MILITARY JUSTICE SYSTEM?
UNIQUE DISCIPLINARY NEEDS
EFFICIENCY IN A SPARTAN ENVIRONMENT
WORLD-WIDE JURISDICTION**

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LEGAL BASIS OF MILITARY JUSTICE

U.S. CONSTITUTION

Article I, Section 8--Congress

Article II, Section II--President

UCMJ (10 U.S.C SECTIONS 801-946)

MANUAL FOR COURTS MARTIAL

Rules for courts Martial

Rules of Evidence

REGULATIONS

CASE LAW

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THE MILITARY COURT SYSTEM

TRIAL COURTS

Summary Court-Martial (SCM)

Special Court-Martial (SPCM)

**Special Court-Martial empowered to adjudge a Bad
Conduct discharge (BCD-SPCM)**

General Court Martial (GCM)--Felonies

SUMMARY COURT-MARTIAL

- **Enlisted Personnel Only**
- **Convened by: Bn Cdr or higher**
- **Members: Summary Court-Officer**
- **Max Punishments:**
 - **Red to E-1 (E-4 and below)**
 - **Red of 1 Grade (E5 - E7)**
 - **Confinement for 1 Month (E4 and below)**
 - **45 days hard labor w/o conf (E4 and below)**
 - **2 months restriction**
 - **Forfeiture of 2/3 pay for 1 month**

BCD-SPECIAL COURT-MARTIAL

- **Convened By: GCMCA**
- **Members**
- **Max Punishments:**
 - **Red to E1**
 - **6 Months Confinement**
 - **Forfeit 2/3 pay for 6 months**
 - **Bad Conduct Discharge**
- **Goes on record as federal misdemeanor conviction**

GENERAL COURT-MARTIAL

- **Convened By: GCMCA**
- **Members**
- **Article 32 Investigation**
- **Max Punishment:**
 - **Red to E1**
 - **Confinement (depending on offense)**
 - **Total Forfeiture of Pay and Allowances**
 - **Dishonorable Discharge/Dismissal**
 - **Death (depending on offense)**
- **Goes on record as federal felony**

THE MILITARY COURT SYSTEM

APPELLATE COURTS

Courts of Criminal Appeals

Review all cases involving punitive discharge or confinement in excess of one year.

U.S. Court of Appeals for the Armed Forces

Review all cases involving the death penalty and cases which it certifies for review.

United States Supreme Court

Gun Control Act of 1968

- *Denied felons ability to possess firearms*
- *Public Interest Exception*
 - Exempted state and federal employees
 - Police Officers and Military Members

Lautenberg Amendment

- Amended the Gun Control Act of 1968
- Makes it a felony for anyone convicted of a
- “misdemeanor crime of domestic violence” to ship,
- receive, or possess firearms or ammunition
- *Revoked the public interest exception*

Violence Against Women Act of 1994

- Prohibits a subject of a domestic violence restraining order from possessing firearms and ammunition

18 U.S.C. § 922(g)(8)

- anyone subject to a qualifying restraining order cannot possess a firearm or ammunition
- does not include significant others/dating relationship per Wis. Stat. 813.12(1)(ag)

27 C.F.R. §178.11; Bureau of ATF, “Federal Firearms Regulations Reference Guide,” ATF P5300.4, p. 152 (2000)

18 U.S.C. §922(g)(9)

- It shall be unlawful for any person ...who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport ..., or possess ..., any firearm or ammunition; or to receive any firearm or ammunition

18 U.S.C. §921(a)(33)

- "misdemeanor crime of domestic violence" means an offense that--
 - (i) is a misdemeanor under Federal or State law; and
 - (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon,

18 U.S.C. §921 (a)(33)

- “committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.”

Misdemeanor Crime of Domestic Violence?

- Wis. Stat. 947.01 *Disorderly Conduct*
Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

Does Wis. Stat. 947.01 trigger the ban?

- Open Letter to All State and Local Law
- Enforcement Officials by BATF
 - “All misdemeanors that involve the use or attempted use of physical force.”
 - “Whether or not the statute or local ordinance specifically defines the offense as a domestic violence misdemeanor”

United States v. Lewitzke, 176 F.3d 1022, 1025 (7th Cir. 1999)

Elements to trigger the Firearm Ban

- Offender is current or former spouse, parent or guardian of the victim; share a child or cohabitating or cohabitated; and persons “similarly situated” to a spouse, parent or guardian and;
- Factual basis must state an element of use or attempted use of physical force

“Conviction”

- Determined by State or Federal law
- “Nolo Contendere”/No Contest pleas
 - same effect as a plea of guilty
- “Hold open” and Amendment to Disorderly Conduct
- Does not include deferred prosecution agreements pursuant to Wis. Stat. 971.37

Deferred Prosecution Agreements

- DPA does not trigger the firearm disability
- A guilty plea as a condition of the DPA that amends the criminal complaint to a lesser charge does trigger the firearm disability; if the plea contains an element of use or attempted use of physical force against the protected class of individuals.

Collateral Attack on Conviction

- A person shall not be convicted, unless:
 - the client was represented by counsel, or knowingly and intelligently waived right to counsel
 - Entitled to a trial by jury, the case was tried by a jury, or
 - Client must have knowingly and intelligently waived right to trial, by guilty plea. *State v. Bangert*, 131 Wis.2d 246 (1986)

United States v. Akins, 243 F.3d 1199 (9th Cir. 2001)

Relief From Disabilities

- Expunge the criminal conviction. *Wis. Stat.977.01*
- Set Aside
- Pardon
- Restoration of Civil Rights?

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QUESTIONS

- **Michael Gould**
- **414-227-4892**
- **gouldm@opd.wi.gov**

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