

ARIZONA Department of Emergency and Military Affairs POLICY	NO. 10.09	
	DATE 01 NOVEMBER 2018	OPR AZNG-SJA
SUBJECT: Arizona National Guard Disciplinary Action Withholding Policy	REGULAR POLICY LETTER DISTRIBUTION (POLICY LETTER 10.01)	

APPLICABILITY: This Policy applies to all subordinate commands, units, detachments, and personnel assigned or attached to the Arizona National Guard, This Policy rescinds the previous Withholding Policy, dated 10 January 2014, and remains in effect until rescinded or superseded by the undersigned authority.

PURPOSE: To ensure senior-level visibility and consistency in the application of disciplinary actions, this Policy furnishes guidance and establishes responsibilities for the administration of military justice and related administrative actions within the Arizona National Guard. Commanders shall communicate directly with their servicing Judge Advocate in matters relating to the administration of military justice and/or adverse actions against military members. Commanders should also consult with their senior enlisted advisor regarding discipline of enlisted service members.

POLICY:

1. Notification: Within 72 hours after discovery of any misconduct listed in subparagraphs 1a, 1b, and 1c, the chain of command will report the allegations using a Commander's Critical Incident Report (CCIR) format. The CCIR will be sent to the individuals in the appropriate chain of command IAW subparagraphs 1d and 1e:

a. any allegations of misconduct committed by a service member in the grade of E-7 or above.

b. any allegations of misconduct committed by service members of any grade that constitute a sex offense¹ or sexual harassment.²

c. any allegations of misconduct by service members of any grade that, if proven, would constitute a felony³ under state or federal law.

d. Army: TAG, DEMA Deputy Director, Land Component Commander, Director of Joint Staff, State Command Sergeant Major (in matters involving enlisted personnel), the State Judge Advocate Office, and the Army Office of the Staff Judge Advocate (OSJA).

e. Air: TAG, DEMA Deputy Director, Air Component Commander, Director of Joint Staff, State Command Chief Master Sergeant (in matters involving enlisted personnel), the State Judge Advocate Office, and the Air Office of the Staff Judge Advocate (OSJA).

2. Withholding: I hereby withhold to the appropriate Component Commander the authority to investigate (beyond simple fact-finding) and dispose of allegations of misconduct involving the subjects listed in subparagraphs 2a and 2b. This authority may be delegated, on a case by case

¹ For purposes of this Policy, "sex offense" is defined as conduct that, if proven, would constitute a violation of the Uniform Code of Military Justice (2016 Edition) Article 120, 120b, or 120c or Arizona state law.

² For purposes of this Policy, "sexual harassment" is defined by applicable component regulations.

³ For purposes of this subparagraph, the requirement to report is unaffected by charging decisions or the outcome of any civilian case.

basis, in writing, by the Component Commander

a. Any allegations of misconduct involving sex offenses by service members of any grade. Units should consult with their assigned Judge Advocate to determine the applicability of this paragraph. (See footnote 1). In no event, however, may an allegation involving a sex offense be delegated, for initial disposition, below the first O-6 Special Court-Martial Convening Authority (SPCMCA) in the chain of command. If the SPCMCA is below the grade of O-6, then the case is withheld to the Component Commander. Subordinate commanders may make recommendations as to disposition to the O-6 SPCMCA and may only take action on such offense when the SPCMCA relegates the case back to their level. All other offenses arising from or related to the same incident/s are also withheld to the Component Commander, subject to the same delegation authorities and restrictions described herein, including offenses committed by the alleged victim.

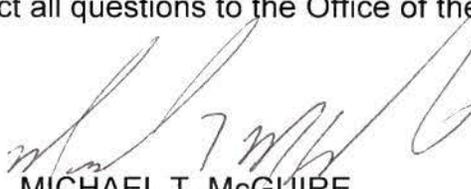
b. Any allegations of misconduct by service members of any grade that, if proven, would constitute a felony under state or federal law. Units should consult with their assigned Judge Advocate to determine the applicability of this paragraph.

3. Investigations: Investigations into allegations of any misconduct identified in paragraph 2 above, both AR 15-6 and Command Directed Investigations (CDIs), will be tracked by the respective component OSJA from initiation of the investigation through closure. All other investigations will be tracked at the MACOM or Wing level. Actual investigation and disciplinary materials will be maintained at the MACOM/Wing level in accordance with applicable document retention regulations. Upon completion of any misconduct investigation, at a minimum, the following information will be forwarded to the respective component OSJA: (a) name of the individual who appointed the investigation; (b) date the investigation was initiated; (c) name of investigator; (d) nature of the allegation(s) and person(s) being investigated, if applicable; (e) MACOM/Wing/Unit of the person(s) involved; and (f) a brief summary of the findings and recommendations.

4. Timeline: In order to properly administer military discipline, investigations must be completed in a timely manner. Although timelines are ultimately dictated by the circumstances of each particular case, misconduct investigations should be completed within 30 days of appointment of investigation.

REFERENCES: a. Army Regulation (AR) 27-10, Military Justice, dated 11MAY2016; b. Army Regulation (AR) 600-20, Command Policy, dated 6NOV2014; c. Air Force Instruction (AFI) 51-201, Administration of Military Justice, dated 8DEC2017; d. Arizona Manual for Courts-Martial; e. Uniform Code of Military Justice, 2016

REQUESTS FOR INFORMATION: Please direct all questions to the Office of the State Judge Advocate.



MICHAEL T. MCGUIRE
Major General, AZNG
The Adjutant General

Note: This policy does not create a contract for employment between any employee and the Department of Emergency and Military Affairs (DEMA). Nothing in this policy changes the fact that all uncovered employees of the State are at-will employees and serve at the pleasure of the appointing authority. This policy supersedes all previous policy letters addressing this subject.