



DEPARTMENT OF THE ARMY AND AIR FORCE
ILLINOIS ARMY AND AIR NATIONAL GUARD
1301 N. MACARTHUR BOULEVARD
SPRINGFIELD IL 62702-2317

NGIL-ZA

3 September 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: NGIL Policy Memorandum 27-13-001-TAG, ILNG Military Justice Policy Memorandum – **Change 1**

1. References: See Enclosure 1.

2. Applicability and Purpose: This policy applies to the Illinois Army and Air National Guard (ILARNG and ILANG referred to hereafter as ILNG). The purpose is to furnish guidance and establish responsibility for the administration of military justice and related administrative actions within the ILNG. The proponent of this memorandum is the full-time Staff Judge Advocate (NGIL-JA). **This change 1 supersedes the previous memorandum dated 22 May 2013, subject as above.**

3. Investigative Authority.

a. In General. Commanders and principal staff officers retain authority to conduct administrative command-directed investigations and inquiries (to include appointment of investigating officers) IAW AR 15-6 and USAF guidance, except as provided below.

b. Non-Consensual Sexual Contact Cases. *Regardless of rank of the service member(s) involved*, authority to conduct administrative command-directed investigations and inquiries (to include appointment of investigating officers) is withheld to the ILARNG Chief of Staff and the ILANG Director of Staff, respectively, in *all cases involving allegations of non-consensual sexual contact* as defined in Article 120, UCMJ (Manual for Courts-Martial, United States, 2012 Ed., part IV, paragraph 45). This includes but is not limited to allegations of rape, sexual assault, aggravated sexual contact, or abusive sexual contact in violation of Article 120, forcible sodomy in violation of Article 125, and all attempts to commit such offenses in violation of Article 80, UCMJ, as made applicable to the ILNG under the Military Code of Illinois. This withholding also applies to all other alleged offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim of rape, sexual assault, forcible sodomy, non-consensual sexual contact or the attempts thereof.

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4. Disposition Authority. Initial disposition authority is withheld as follows, which may not be further delegated except as provided below:

a. To the ILARNG Land Component Commander and AAG-Air, respectively, to initially dispose of non-consensual sexual contact cases as referenced in paragraph 3b above, *regardless of rank of the service member(s) involved*;

b. To the ILARNG Land Component Commander and AAG-Air, respectively, to initially dispose of other misconduct committed by field-grade commissioned officers (O-4 to O-6), Chief Warrant Officers (CW3- CW5) and noncommissioned officers in the grade of E-9.

c. Except with respect to non-consensual sexual contact cases as referenced in paragraphs 3b above, to each O-6 MSC/Brigade/Wing Commander to initially dispose of misconduct committed by company-grade commissioned officers (O-1 to O-3), Warrant Officers (WO1 – CW2) and noncommissioned officers in the grades of E-6 through E-8. With respect to ILARNG units or detachments under State Command and Control without a Commander billeted at the grade of O-6, e.g., JFHQ-IL, such authority is withheld to the ILARNG Land Component Commander.

5. Release of Disposition Authority: On a case-by-case basis, upon request, the ILARNG Land Component Commander or AAG-Air may release disposition authority of a particular matter below that which is provided in this memorandum. Such a request may be verbal but will be confirmed in writing or email.

6. Self-reporting requirements for arrests, civil charges and civil convictions of ILNG personnel are IAW references 8 (ILARNG) and 9 (ILANG) at enclosure 1.

7. POC is the full-time Staff Judge Advocate, (217) 761-3510.

Encls:
as


DANIEL M. KRUMREI
Brigadier General, ILARNG
The Adjutant General

DISTRIBUTION:
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ENCLOSURE 1

References

1. Uniform Code of Military Justice, Title 10 U.S. Code, Chapter 47.
2. Manual for Courts-Martial, United States, 2012 Edition, Part IV.
3. Memorandum from the Secretary of Defense, Subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases, April 20, 2012.
4. Military Code of Illinois, Articles XIV (“Military Offenses”) and XV (“Courts-Martial”), 20 ILCS 1805/68 - 82.
5. Army Regulation (AR) 600-20, Command Policy, dated 27 Apr 10.
6. AR 15-6, Procedures for Investigating Officers and Boards of Investigation, 2 October 2006.
7. National Guard Illinois (NGIL) Regulation 27-10, 1 Nov 10.
8. NGIL Policy Memorandum 27-13-001-AAG, ILARNG Self-Reporting Policy for Arrests, Criminal Charges and Convictions.
9. HQ ILANG Instruction 36-29, Personnel – Military Standards, 24 April 2013.
10. ILARNG Military Justice Policy Memorandum, 30 December 2011, rescinded.

ENCLOSURE 2

INFORMATION PAPER

SUBJECT: The Adjutant General's ILNG Military Justice Policy

1. Purpose. Provide additional information regarding The Adjutant General's memorandum, "NGIL Policy Memorandum 27-13-001 (**Change 1**), ILNG Military Justice Policy Memorandum," dated-- -- July 2013, regarding withholding of investigative and disposition authorities

2. Discussion.

a. *In General*. In non-consensual sexual contact cases (*see* paragraphs 3b and 4a), initial disposition authority discussed in the memorandum is withheld to the ILARNG Land Component Commander, AAG-Air, respectively, *regardless of rank of the service member(s) involved*. ILARNG Land Component Commander/AAG-Air will consult with NGIL-JA prior to deciding on disposition. In cases involving *other types of misconduct*, disposition authority is withheld either at the Land Component Commander/AAG-Air or MSC/Brigade/Wing level, *based on rank*. *See* paragraphs 4b and 4c.

b. *Initial Disposition*. "Initial disposition" includes the following actions: summary court-martial, nonjudicial punishment, adverse administrative action, and no action. *See* Rule for Courts-Martial (RCM) 306(c) as made applicable to the ILNG by the Section 70 of Military Code of Illinois (20 ILCS 1805/70). Any action other than preferral of charges or forwarding the case to the ILARNG Land Component Commander/AAG-Air is prohibited; however, any commander may take other immediate actions, including but not limited to: responding to sexual assault victim requests for expedited transfer; providing such victims support; issuing military protective orders; approving search authorizations; providing investigative coordination; and ordering restraints on liberty.

c. *Collateral Misconduct in Non-Consensual Sexual Contact Cases*. The withholding policy applies to all other alleged offenses related to non-consensual sexual contact cases as mentioned in paragraphs 3b (investigative appointing authority) and 4b (initial disposition authority) of the memorandum arising out the same incident (e.g., adultery or false official statement), including victim collateral misconduct (e.g., underage drinking).

d. *Subordinate Command Actions*. Commanders subordinate to the ILARNG Land Component Commander/AAG-Air should make disposition recommendations. After review and consultation with NGIL-JA, the ILARNG Land Component Commander/AAG-Air may take any action deemed appropriate. The ILARNG Land Component Commander/AAG-Air may send the case back to a subordinate commander, in which case the subordinate commander is free to take whatever action he or she deems appropriate, including taking no action.

e. *Investigative Appointment Authority*. *Regardless of rank of the service member(s) involved*, the authority to conduct and appoint administrative investigations and inquiries in non-consensual sexual contact cases is withheld to the ILARNG Chief of Staff, ILANG Director of Staff. Commanders and principal staff officers at the MSC/Brigade/Wing level and below may not initiate such investigations. However, they and their subordinates will initiate serious incident reports (SIRs) and conduct preliminary information gathering in such cases and staff such information through command channels to the Chief of Staff, Director of Staff, as required.