

USAREC Regulation 27-3

Legal Services

Procedures in Drunk Driving Cases

**Headquarters
United States Army Recruiting Command
1307 3rd Avenue
Fort Knox, KY 40121-2725
14 July 2016**

UNCLASSIFIED

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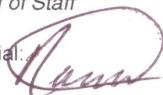
Effective 14 July 2016

Legal Services

Procedures in Drunk Driving Cases

For the Commander:

BRIAN W. BASSETT
Colonel, GS
Chief of Staff

Official:

Mr. Ronnie L. Creech
Assistant Chief of Staff, CIO/ G-6

History. This regulation supersedes the UR 190-3, dated 30 Sept 11, and is effective 14 July 2016.

Summary. This regulation prescribes policies and procedures for drunk driving incidents involving United States Army Recruiting Command personnel.

Applicability. This regulation is applicable to all military personnel or civilian recruiters assigned or attached to the United States Army Recruiting Command.

Proponent and exception authority. The proponent of this regulation is the Staff Judge Advocate. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation.

Army management control process. This regulation contains management control provisions in accordance with AR 11-2 but does not identify key management controls that must be evaluated.

Supplementation. Supplementation of this regulation is prohibited.

Relation to USAREC Reg 10-1. This publication establishes policies and procedures to advise the commander regarding drunk driving cases according to UR 10-1, para 3-31.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQ USAREC, ATTN: RCSJA, 1307 3rd Avenue, Fort Knox, KY 40121-2726.

Distribution. This regulation is available electronically and can be found on the USAREC Enterprise Portal.

*This regulation supersedes USAREC Regulation 190-3, 30 September 2011.

SUMMARY of CHANGE

UR 27-3

Procedures in Drunk Driving Cases

This is a new regulation, dated 14 July 2016, that supersedes the old UR 190-3, dated 30 Sept 11 and changes the Following:

- o Clarifies the language on when a suspension can be repealed and more closely coincides with the standard that is mentioned in AR 190-5 for reinstatement of POV driving privileges on a military installation in paragraph 6(a).
- o Changes blood alcohol content of “at least 0.05 percent” to “at least 0.08 percent” in paragraph 6(a)(1)(b).
- o Clarifies the restriction on issuing non-judicial punishment in cases where civilian courts have adjudicated the same offense, and reiterates the need to consult with the BJA or SJA prior to imposing non-judicial punishment in DUI related offenses.
- o Clarifies that when the BN Commander provides information on the drunk driving incident to ensure processing of the written reprimand, he will also include other documents that are necessary to determine the recruiter’s suitability to hold a position of special trust and authority in paragraph 6(b)(2)(i).
- o Incorporates current GOMOR service procedures with 72 hour confirmation of service to the Deputy Commanding General-Operations.
- o Makes administrative changes to Appendix A: obsolete publications removed, formal regulation names corrected, additional reference added.
- o Revises Appendix B. A flowchart detailing a Battalion Commander’s actions when a Soldier is suspected of drunk driving or driving under the influence of drugs.

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Glossary

1. Purpose

This regulation sets out United States Army Recruiting Command (USAREC) procedures for the processing for drunk driving and other motor vehicle incidents involving alcohol, and provides information concerning:

- a. Suspension and reinstatement of driving privileges for Government vehicles.
- b. Written general officer (GO) reprimands.
- c. Non-judicial punishment (Article 15) for drunk or impaired drivers.

2. References

For required and related publications and prescribed and referenced forms, see appendix B.

3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

4. Responsibilities

- a. Commanders will ensure that members of their command are reminded of the adverse effect drunk driving incidents will have on their careers.
- b. Pursuant to AR 190-5, para. 2-7, a general officer will issue a memorandum of reprimand (GOMOR) to intoxicated drivers. Commanders may provide recommendations to the Commanding General (CG), USAREC concerning disposition of GOMORs. Additionally, Commanders will review the service records of Soldiers involved in drunk driving incidents to determine if administrative reduction, bar to reenlistment, administrative separation, or other action is warranted.
- c. All USAREC personnel are required to report immediately to their recruiting company (Rctg Co) commander or next more senior commander, if appropriate, all known or suspected cases of drunk driving involving all USAREC personnel, both military and civilian and contract recruiters. This requirement also applies to contract employees who use a Government-owned vehicle for the performance of their duties. This subparagraph is punitive. USAREC personnel who fail to comply with its provisions may be subject to disciplinary action under the Uniform Code of Military Justice (UCMJ) or, for civilian employees, to disciplinary or adverse personnel actions under Federal law and regulations.

5. Policy

a. Drunk driving is serious misconduct, service discrediting, and detrimental to the public image of this command. Commanders will ensure that appropriate actions are taken quickly but fairly.

b. Upon receiving information of any drunk driving incident or driving under the influence of drugs by one of their Soldiers, commanders must forward evidence of such incidents directly to their Brigade Judge Advocate (BJA) who will subsequently forward the information to Headquarters, United States Army Recruiting Command (HQ USAREC), Staff Judge Advocate (SJA), for issuance of a written reprimand in accordance with AR 190-5 and paragraph 6b of this regulation. Suspension of Government driving privileges is required for all incidents of drunk driving as provided in paragraph 6a.

c. Drunk driving or driving under the influence of drugs is considered a serious incident and must be reported through the chain of command to HQ USAREC, SJA, in accordance with USAREC Reg 190-4, paragraph 4-1(b) utilizing USAREC Form 190-4.2(Incident Information Report, old UF 958).

6. Procedures

- a. Suspension of Government driving privileges for Soldiers and civilian recruiters.

(1) The Rctg Co commander will suspend Government driving privileges immediately when any one of the following occurs:

- (a) the individual is charged with driving under the influence of alcohol or drugs;
- (b) the individual has a blood alcohol content (BAC) of at least 0.08 percent or in violation of state law, whichever is lower, if the sample was taken because the individual was driving, operating, or in actual physical control of a motor vehicle;
- (c) the individual refuses to take a lawfully requested chemical test; or
- (d) other credible evidence of drunk driving, such as physical observation or field sobriety tests by law enforcement or medical personnel, supports a determination of drunk driving regardless of the disposition of any charge by local or military authorities.

(2) Government driving privileges will be suspended whether or not the civilian driver's license was suspended.

(3) The suspension will remain in effect until:

- (a) A final disposition resulting in a finding of not guilty, charges are reduced or dismissed to an offense not amounting to intoxicated driving, or an equivalent determination is made in a nonjudicial proceeding (See AR 190-5, paragraph 2-9 for exceptions.) and;

(b) return of any state driving privileges if such privileges were suspended or revoked (written evidence should be provided by the Soldier); and

(c) the Rctg Bn commander, after such disposition has occurred makes a written determination that the individual's driving presents no discernible risk stemming from alcohol or drug abuse. Normally, the Rctg Bn commander's recommendation will be based on a favorable Army Substance Abuse Program (ASAP) referral.

(4) In the event a contract employee is charged with drunk driving or driving under the influence, the contract provisions between the Government and the contractor will be applicable. Rctg Bns will provide notice to the contracting officer's representative within 24 hours of discovering the incident.

b. Drunk driving written reprimands for Soldiers.

(1) The Soldier will be flagged immediately in accordance with AR 600-8-2. The flag will remain in effect until a written reprimand is issued and a filing determination is made, or a determination is made by the appropriate authority that a written reprimand will not be given.

(2) The following procedures are established for processing drunk driving written reprimands:

(a) Upon learning of an alleged incident commanders will immediately coordinate with the office of the BJA for assistance in obtaining all available information.

(b) The best evidence readily available normally will include:

1. Military or civilian police reports including all statements and other documents.

2. Results of field sobriety, breathalyzer, and blood alcohol or other chemical tests.

3. Reports of refusal to complete or to consent to chemical testing.

4. Records of civil court (or federal magistrate) convictions with the specific charge of which the Soldier was convicted.

5. All prior drunk driving citations (to include traffic tickets resulting from the drunk driving) with court dispositions.

(c) Forward this information even if civilian court (or federal magistrate) proceedings are pending. If there are problems obtaining any of the required evidence, submit what is available and explain the difficulties encountered for the missing evidence to the BJA who will forward the information to HQ USAREC, ATTN: RCSJA.

(d) If the incident occurs on a military installation, the Rctg Bn or immediate commander will state whether the installation is processing a written GO reprimand for the incident.

(e) The Rctg Bn commander will include a statement of alcohol rehabilitation status. Military personnel who are apprehended for drunk driving (on or off duty) shall be referred to the local ASAP in accordance with AR 600- 85, paragraph 3-9(a). If the individual is not referred to ASAP, the commander will provide a written explanation.

(f) The Rctg Bn commander will explain what disciplinary and other actions have been taken or are contemplated. A bar to reenlistment normally should be initiated if the criteria for a written reprimand is warranted. The commander's explanation is particularly important in the case of repeat offenders.

(g) In accordance with this regulation, USAREC Form 27-3.1 (Drunk Driving Incident Information, (the old UF 943)) (see fig 1) will be used for providing the required information.

(h) The SJA will prepare the written reprimand. When signed by a GO, the written reprimand will be sent, as an email attachment, directly from the OSJA to the Rctg Bn commander. The Deputy Commanding General-Operations (DCG-O), Brigade Commander, Brigade Judge Advocate, and Brigade Paralegal will be copied on the email (cases involving the headquarters staff, consult with the the OSJA). Along with the GOMOR, the following documents will be attached to the email:

1. An acknowledgment of receipt of reprimand for the respondent to complete and return.

2. Commander recommendations on filing determination to be completed and returned by the Rctg Bde, Bn, and Co commanders, respectively.

(i) The Rctg Bn commander will serve the respondent with the GOMOR and the acknowledgement of receipt of reprimand within 72 hours of receipt. This services may be delegated to the Rctg Co commander, if necessary. Completion of GOMOR service will be reported within 72 hour period to the DCG-O through the reply-all function of the original email.

(3) The respondent's acknowledgment of receipt must be returned by the Rctg Bn commander to the OSJA, via email, within seven calendar days from the date of receipt. Extensions will be granted only with approval from the delegated OSJA official or the Commanding General. Any rebuttal matters the respondent wishes the Commanding General to consider prior to his filing determinations must be submitted with the acknowledgment of receipt.

(4) Filing recommendations from the chain of command must also be forwarded with the respondent's acknowledgment and any rebuttal matters, along with the following information:

(a) The Bn commander will ensure other documents are provided, if necessary, to determine the recruiter's suitability to hold a position of special trust and authority. Unless withheld to higher authority, battalion commanders may initiate a relief for cause evaluation on their discretion.

(b) An update on the status of rehabilitation.

(c) Any related disciplinary and adverse administrative action regarding the Soldier.

(d) A statement of the Soldier's duty performance while assigned to USAREC.

(5) The BJA will monitor the processing of the file for timeliness and review the file to ensure that it is complete.

(6) Upon receipt at this headquarters, the appropriate GO will make the decision on filing the written reprimand in accordance with AR 600-37.

c. Non-judicial punishment.

(1) The authority to impose non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for drunk driving is withdrawn from Rctg Co commanders in accordance with AR 27-10, paragraph 3-7d. Any non-judicial punishment in such cases will be imposed by Rctg Bn or higher commanders. IAW AR 27-10, Chapter 4, the Rctg Bn or higher commander is limited in their exercise of non-judicial punishment for drunk driving related misconduct if civilian courts exercise jurisdiction over the event.

(2) Civilian courts (or federal magistrates) usually adjudicate drunk or impaired driving offenses in the United States, therefore commanders will not impose non-judicial punishment for drunk driving or other misconduct involving intoxicated use of a motor vehicle (including boats) without consulting their Brigade Judge Advocate or the Staff Judge Advocate.

d. Questions concerning this regulation should be addressed to the Office of the Staff Judge Advocate, HQ USAREC at DSN 536-0547 or commercial (502) 626-0547.

DRUNK DRIVING INCIDENT INFORMATION

(For use of this form see USAREC Reg 27-3)

INSTRUCTIONS: Fill in the information requested below and attach the necessary documentation. Then forward this document directly to Office of the Staff Judge Advocate, HQ USAREC, Fort Knox, KY 40121-2725. Use continuation sheets if needed.

1. PERSONNEL INVOLVED:

- a. Grade and Name: _____
b. Duty Position and Service Component: _____
c. Organization (Rctg Co and Rctg Bn): _____

2. CIRCUMSTANCES:

- a. Date and place (to include city and state): _____
b. How incident arose (e.g., stopped for speeding, had accident, etc.):

c. Law enforcement agency involved: _____
d. Injuries and/or property damage:

e. Privately-owned vehicle (POV) or government-owned vehicle (GOV): _____
f. Blood alcohol content: _____
g. Type of test: Blood Breath Urine

3. CIVILIAN ACTIONS:

- a. Court date and/or results: _____
b. Punishment by civilian authorities: _____
c. Rehabilitation program, if any: _____
d. License suspended, length of suspension: _____

4. MILITARY ACTIONS (Flag, government driving privileges suspended, Article 15, bar to reenlistment, etc.):**5. ALL PREVIOUS ALCOHOL RELATED INCIDENTS (dates and circumstances):**

6. Rctg Bn commander intentions for either recommending separation or retention on active duty, and rationale for the recommendation are attached.

Yes No

7. Statement of soldier's duty performance while assigned to USAREC is attached.

Yes No

8. Military alcohol and/or drug rehabilitation screening done. Yes No

Status: _____

9. Supporting documents. Attach copies of civilian or military police reports, court records, blood and/or breathalyzer test, and any other documents which provide information regarding the incidents.



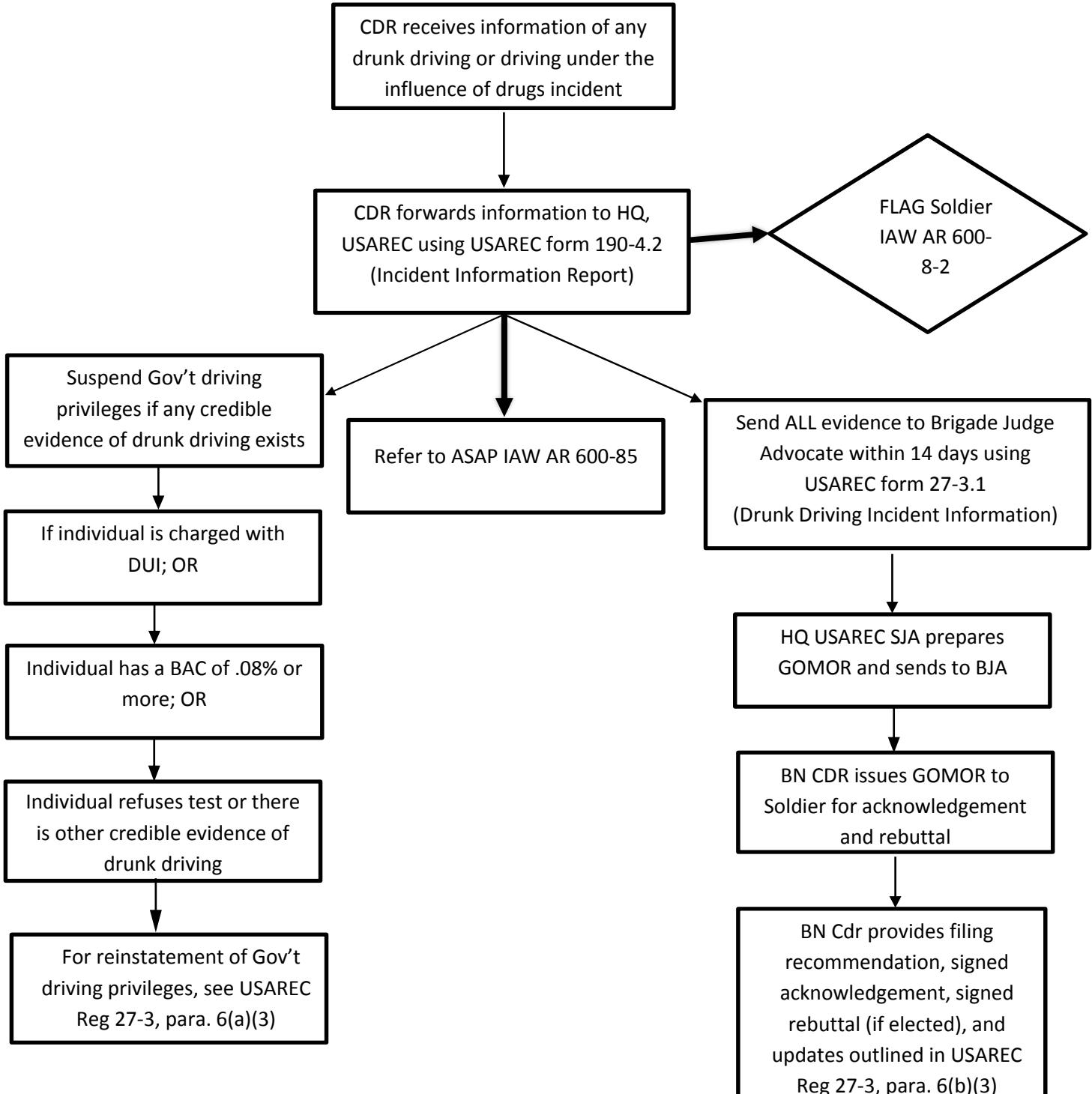
(Rctg Bn S1 or Commander)

Figure 1. USAREC Form 27-3.1

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Appendix A

Flowchart detailing a Battalion Commander's actions when a Soldier is suspected of drunk driving or driving under the influence of drugs.



Appendix B

References

Section I

Required Publications

AR 27-10

Military Justice. (Cited in para 6c(1).)

AR 190-5

Motor Vehicle Traffic Supervision. (Cited in para 5b)

AR 600-8-2

Suspension of Favorable Personnel Actions (Flags). (Cited in para 6b(1).)

AR 600-37

Unfavorable Information. (Cited in para 6b(6).)

AR 600-85

The Army Substance Abuse Program (ASAP). (Cited in para 6b(2)(e).)

UCMJ

Uniform Code of Military Justice. (Cited in para 6c(1).)

USAREC Reg 190-4

Incident Reporting. (Cited in para 5c.)

Section II

Related Publications

AR 385-10

The Army Safety Program, Chapter 11: Motor Vehicle Accident Prevention.

AR 600-8-24

Officer Transfers and Discharges.

AR 635-200

Active Duty Enlisted Administrative Separations.

USAREC Reg 380-4

Security Program.

Section III

Prescribed Form

USAREC Form 27-3.1 (old UF 943)

Drunk Driving Incident Information. (Prescribed in para 6b(2)(g).)

Section IV

Referenced Form

USAREC Form 190-4.2 (old UF 958)

Incident Information Report.

Glossary

Section I Abbreviations

ASAP

Army Substance Abuse Program

BAC

Blood Alcohol Content

BJA

Brigade Judge Advocate

GO

General Officer

GOMOR

General Officer Memorandum of Reprimand

HQUSAREC

Headquarters, United States Army Recruiting Command

Rctg Bn

Recruiting Battalion

Rctg Co

Recruiting Company

SJA

Staff Judge Advocate

USAREC

United States Army Recruiting Command

Section II

Terms

Drunk Driving

Driving, operating, or other actual physical control of a motor vehicle while intoxicated or impaired due to the use of alcohol or drugs in violation of UCMJ Art. 111 or similar law of the jurisdiction in which the vehicle is being operated. In cases where evidence of BAC is available, intoxicated driving refers to a BAC of 0.08 percent or higher, or is in violation of state law.

Government Vehicle

This term includes motor vehicles owned, rented, or leased by the Department of Defense. This includes vehicles owned, rented, or leased by NAF activities of the military department and DOD.

USAREC

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