

80TH TRAINING COMMAND (TASS)  
OFFICE OF THE STAFF JUDGE ADVOCATE



# THE JAG CORNER

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## INTRODUCTION

As leaders we need to be aware of new mandates for shaping the force, such as mandatory bars to re-enlist and mandatory initiation of administrative separation action for certain offenses. CPT Mayes's discusses these topics in her article, "Commander's Tools for Shaping the Force."

Taking care of Soldiers is every leader's responsibility. LTC Phillips's article "Bad Credit:

The Right Way Out," provides valuable information for Soldiers facing financial difficulty. There are many companies who promise a quick fix to credit issues; however, they often cannot deliver on what they promise. Helping your Soldiers to identify the right way to overcome these obstacles can save them money, time and maybe even their military career.

LTC Phillips article

"Taking the High Road: Virginia Lemon Law," should remind everyone that there is recourse should a vehicle not perform as it should. While it discusses Virginia Law specifically, we can use this to remind Soldiers to know the specifics of their State Law.

We hope the information contained in this newsletter is useful to you. Contact your Judge Advocate with any questions.



The 80th TASS OSJA at Yorktown Battlefield

## DISCLAIMER

The content of this newsletter is intended for informational purposes only. It is not intended to be, nor should it be relied upon, as legal advice. The content of this newsletter is designed for the purpose of

giving general information about the topics discussed. It is not intended to replace the information or advice you may obtain from a Judge Advocate or civilian attorney.

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MOVING TO  
REDUCE THE  
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## COMMANDER'S TOOLS FOR SHAPING THE FORCE

Service in the military is a privilege, not a right. The Army is at a crossroads, struggling to maintain effective operations in an uncertain budgetary future. The Department of Defense is reforming and reshaping the military in order to deal with the deep budget cuts the Pentagon faces. The Army is moving to reduce the number of Soldiers in an attempt to transform into a leaner force. In a 2 February 2012 memo, Secretary of the Army John M. McHugh stated “We will use the drawdown as an opportunity to shape our Army by ensuring that we retain only our very best Soldiers”.

Commanders have always possessed some tools to enable them to shape their units. With an eye toward downsizing, the Department of Defense and the Department of the Army have made

it even easier for Commanders to ensure only the best Soldiers remain. Many 2012/2013 Army Directives reinforce this principle. Army Directive 2012-03 (Army Retention Initiatives), Army Directive 2012-07 (Administrative Processing for Soldiers for Alcohol or Other Drug Abuse), Army Directive 2013-13 (Involuntary Separation of Reserve Component Officers for Final Denial or Revocation of Secret Security Clearance or Failure to Apply for a Security Clearance) and Army Directive 2013-21 (Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex Offenses) are just a few of the Army Directives that detail the command's responsibility to initiate mandatory separation processing and mandatory permanent bars to re-enlist when a Soldier com-

mits specific acts of misconduct or fails to perform to standard.

This article will answer some frequently asked questions regarding the command's responsibility in light of these new requirements and will clarify how these directives are implemented currently. (Story Continued on Page 4)



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## BAD CREDIT: THE RIGHT WAY OUT

Your 1979 AMC Pacer seized up when you were attempting to pass that semi-truck loaded with aviation parts on the way to DLA-Richmond. You love that car with its quirky bubble windows and functioning 8-track tape-player. The “Flying Fishbowl” transported you to high school and junior college; it is like your beloved hound dog and iPod loaded

with Greatful Dead and Darius Rucker tunes. The problem is that you lived the good life in junior college, borrowing money to the hilt, and your creditors are banging on your door. Now you are afoot, flat broke and your credit is a huge red flag. With no public transportation in the Richmond area, that is a problem. Your hard-

charging civilian boss won't understand if you are late for work and that hard-as-nails First Sergeant isn't understanding either if you aren't standing tall at Saturday morning formation!

Needless to say, getting a loan to buy a car is difficult when you have poor credit, even if you (continued on page 3)

## BAD CREDIT (CONTINUED)

have someone to cosign for you. Different banks and lending institutions have different criteria. Some small car lots may be willing to take a chance on you, but with high interest rates and repossession the first time you are late with a payment; 20% interest rates are not unheard of!

On the other hand, if you can get your Uncle Jerry, the mechanic, to work on your car, there might be some time to improve your credit score. Uncle Jerry might be able to wave his tools around to breathe new life into your Flying Fishbowl (even if just temporarily)!

Ads for “credit repair companies” are everywhere. *Don’t worry – we can fix that. It’s fast, easy, as simple as 1, 2, 3. All you do is fill out some paperwork and your credit starts improving immediately.* Do not be taken in by wild promises of a quick fix. The industry is filled with scam artists, including those who claim to be non-profits and those who may advise you to lie on loan applications or use a different Social Security number. Be on guard. Services are paid for *after* they are completed, not before, and anyone who claims they can remove current, legitimate negative information from your credit report is scamming you.

Only time can do that – seven years to be exact. You do not

have to go to a credit repair company. Just about anything such companies can do for you, you can do for yourself.

There are a number of things you can do immediately that will help rebuild your credit history. (1) Paying your bills on time affects your credit score! Your credit report contains information about where you work and live, if you pay your bills on time, if you’ve been turned into collections or filed bankruptcy and a history of negative reports will be reflected in your score. (2) Keeping balances low on your credit cards positively impacts your credit history. (3) Pay off your debt!

You are entitled to a free credit report from the Big Three consumer reporting companies, Experian, Equifax, and TransUnion, once a year, or within 60 days of being denied a loan, job, or

insurance. Apply online at [annualcreditreport.com](http://annualcreditreport.com).

When you receive the credit report, make sure you examine it for any inaccurate information. If you disagree with anything on the report, contest the inaccuracies by writing the credit bureaus and the company that provided the information. Be sure to include copies of any documentation you possess to support your claim, and ask the credit bureaus to remove the inaccurate information. For more information, check online at [www.ftc.gov/credit](http://www.ftc.gov/credit).

Working on your credit is hard work. It might mean cutting back on presents at Christmas. It might mean no fun-filled trip to Florida over spring break. It might mean drinking water from the water fountain.



“IT IS THE PROVINCE OF KNOWLEDGE TO SPEAK AND IT IS THE PRIVILEGE OF WISDOM TO LISTEN” - OLIVER WENDELL HOLMES

## TAKING THE HIGH ROAD: VIRGINIA LEMON LAW

Occasionally, the worst nightmare happens when you purchase a car. It just doesn’t work right, it doesn’t live up to the manufacturer’s warranty. When this happens, most reputable auto dealers will work with the new car owner to make it right. But when they don’t, military members often seek military legal assistance or civilians consult with a local attorney about using legal recourse.

On a practical side, if you have a recurring

problem with your new vehicle, you should place your complaints in writing and ensure you notify the manufacturer, and the dealer where you bought the car of the nonconformity to the warranty. Be sure to document all of the problems with the vehicle and explain that you want the nonconformity repaired or corrected.

Keep all receipts of service to your vehicle and the number of attempts the dealer has had to correct (Continued on page 8)

**SHAPING THE FORCE (CONT): ARMY DIRECTIVE 2012-03: NEW MANDATORY BARS**

Prior to this Army Directive, mandatory bars to reenlistment were imposed for failure to make progress in the Army Weight Control Program or for APFT failures, both of which left room for the possibility of overcoming the bar to reenlistment. The five new mandatory bars leave little room for improvement: (1) Loss of PMOS qualification due to the fault of the Soldier; (2) Denial of command list integration for promotion by unit commander; (3) use of illegal drugs or alcohol within the current enlistment/reenlistment period that re-

sults in either an officially filed letter of reprimand, a finding of guilty under Article 15, UCMJ (either Company or Field Grade) or a civilian or Court –martial criminal conviction; (4) Two or more separate findings of guilty at a Field Grade Article 15 for any offense during the Soldier’s current enlistment or period of service; (5) AWOL For more than 96 hours during current enlistment/reenlistment period.

These new mandatory bars allow the commander no discretion in imposing the bar. Especially noteworthy is the

requirement to initiate a mandatory bar when a Soldier has an incident ‘involving the use of illegal drugs or alcohol.’ The term “involving the use of illegal drugs or alcohol” includes, but is not limited to, a drunken bar fight, DWI/DUI, drunk on duty, or any of the illegal drug related offenses listed in the UCMJ. If a Soldier commits one of these offenses and receives a civilian conviction that Soldier’s command must initiate a bar to reenlistment no matter whether the offense was committed while the Soldier was on orders or not.



**SHAPING THE FORCE (CONT): ARMY DIRECTIVE 2012-07: THE NEW MANDATORY SEPARATION REGARDING ALCOHOL AND DRUG USE**

This policy works hand in hand with mandatory separations under AR 600-85 and is squarely focused on initiation of separation proceedings following an alcohol or illegal drug event. The policy for mandatory separation initiation applies to both officers and enlisted members who: (1) qualify as illegal drug abusers, as defined in AR 600-85; (2) commit two serious incidents of alcohol-related misconduct within a 12-month period (As defined in AR 600-85, a serious incident of alcohol-related misconduct is any offense of a civil or military nature that is punishable under the UCMJ by con-

finement for a term exceeding one year); (3) engage in illegal trafficking, distribution, possession, use or sale of illegal drugs; (4) test positive for illegal drugs a second time during their careers; or are (5) convicted of driving while intoxicated OR driving under the influence a second time during their careers.

Of specific noteworthiness is the DWI/DUI conviction requirement. The Soldier must have been convicted twice during his/her career in a civilian and/or at a court martial for the mandatory separation provision to apply. That means it will not apply

to those who faced only an ART 15 and not a court martial. NOTE: that if the Soldier does have these two convictions he or she SHALL BE separated – not just processed – unless retained by the first General Officer in the chain of command who has a legal advisor (See AR 600-85, paragraph 3-3). (Story on page 5)

“THE POLICY FOR MANDATORY SEPARATION INITIATION APPLIES TO BOTH OFFICERS AND ENLISTED MEMBERS”



## SHAPING THE FORCE (CONT): ARMY DIRECTIVE 2013-13: NEW INVOLUNTARY SEPARATION FOR OFFICERS WHO FAIL TO APPLY FOR SECURITY CLEARANCE



This policy fills a gap previously left by AR 380-67 regarding reserve officers. Previously if a reserve officer was denied a security clearance or his/her clearance was revoked, a show cause board was mandatory, but there was no provision to deal with an officer who just never applied for a clearance. This mandatory separation process applies to all Reserve component officers who: (1) receive a final denial of a secret security

clearance; (2) receive a final revocation of their secret security clearance; or (3) when a reserve component officer fails to apply for an initial security clearance or a reinvestigation for a clearance.

AR 380-67 Section III, has always required a Secret clearance as a condition of appointment for all reserve officers; however, it did not address what to do if the offi-

cer then failed to apply for reinvestigation, allowing the clearance to lapse. AD 2013-13 now requires commanders of all officers who fail to apply or reapply for a security clearance to initiate separation proceedings. Of note is the fact that no time frame for reapplication is listed, leaving some leeway for commanders. Commanders should consult with their JAG office for guidance should an officer allow this to happen.

“ANY DECISION MADE TO RETAIN A SOLDIER CONVICTED OF A SEXUAL OFFENSE IS MADE BY A FULLY INFORMED AUTHORITY WITH THE ARMY’S BEST INTEREST IN MIND.”



## SHAPING THE FORCE (CONT): ARMY DIRECTIVE 2013-21: SEXUAL OFFENSES

The Army is facing more scrutiny than ever regarding its dealings with sexual offenders. This policy attempts to ensure that any decision made to retain a Soldier convicted of a sexual offense is made by a fully informed authority with the Army’s best interest in mind. AD 2013-21 mandates (1) the initiation of separation proceedings on any Soldier convicted of a sex offense whose conviction did not result in a punitive discharge or dismissal, (2) Enlisted Soldiers only: if the separation authority approves retention or the Soldier had already been submitted to an administrative separation action that resulted in retention, the separation authority WILL initiate a separation action under the Secretarial plenary authority, (3) Soldier convicted of a sexual offense are not allowed to be stationed overseas or be deployed on a temporary duty, temporary change of station, or permanent change of station in an overseas location. If a Soldier is currently overseas he/she is no longer

eligible for service and the command must identify these Soldiers and work with Army Human Resources Command to reassign them within the continental US, Hawaii, Alaska, the commonwealth of Puerto Rico, or Territories or possessions of the United States.

This policy applies to all convictions, even if they occurred prior to the Army Directive being published. This places a huge responsibility on commanders to make sure they are aware of their Soldiers background. This can be particularly difficult for commanders in reserve units. Army Directive 2013-06, Providing Specified Law Enforcement Information to Commanders of Newly Assigned Soldiers, does allow commanders to have the Office of the Provost Marshal General conduct a background check using ONLY the Army’s law enforcement reporting system, but does not indicate that they are allowed to run local background checks on new arrivals. As we are all aware, reserve Sol-

diers spend a large portion of their time in civilian jurisdictions and may have convictions which will not appear in the military law enforcement system. If a commander suspects a Soldier has a criminal past he/she should consult with his JAG office.

All of the above listed Army Directives provide commanders with new tools to apply when reshaping their units. The military is moving toward a much leaner force and not all eligible Soldiers will be allowed to continue the privilege of wearing the uniform. It is imperative that commanders take an active role in ensuring only the very best qualified Soldiers are retained.

Bars are processed by your retention office and separations are processed by your legal office. Procedures for a Bar to Reenlistment are outlined in AR 601-280, Chapter 8. Separation procedures will vary based on the Soldier’s status and the offense. Please contact your servicing Judge Advocate with any other questions or concerns.

## JUDGING THE COMPETITION



CPT Mayes, LTC Carpenter and CPT Obenshain (from left to right) participated in judging mock trials at the University of Richmond's School of Law

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## SOCIAL MEDIA AND RESPECT

Even as Reservists, we must remember that we are Soldiers always. This includes the time that we spend on social media networks. We have all had Threat Awareness training, and understand the risks of putting information out for the rest of the Cyber world to see. However, it is also important to point out a growing trend of posting information about your place of employment on

these sites. Be it, complaining about your superior officer, or some of your subordinates, there are consequences to these actions. "Disrespect toward a Superior Commissioned Officer" under Article 89 of the UCMJ may consist of acts or language, and it doesn't matter if it is directed against the officer in the official capacity or private capacity. As a leader, it is also important

to note that saying derogatory statements about those who follow you will only hurt morale. It is a privilege to wear the uniform and to serve our country by helping the war effort through the training of soldiers. Don't jeopardize that privilege. As a Soldier, be careful not to post any disrespectful information on your social networking site

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## PROTECT YOURSELF FROM IDENTITY THEFT

It is rare to turn on the news or read the paper these days without hearing about some form of identity theft. Almost everyone knows someone who has had their credit card number, social security number, or some other important information stolen or misused. Yet, despite the widespread nature of this problem, many of us don't realize that even small changes in our habits can work to significantly reduce our risk of becoming a victim of identity theft.

As a member of the Army Reserve, protecting your identity should be of even greater importance than it may be to the average citizen. Unfortunately, due to travel requirements and constant use of computer networks, your service in the Army Reserve may also present more opportunities for your identity to be stolen or misused. As a result, Army Reservists should be particularly aware of how identity theft occurs, what policies are in place to protect your identity, and what actions you can take to prevent and respond to identity theft.

Identity theft is simply defined as the unauthorized use of personally identifiable information (PII). It can involve such things as the use of credit card information to access existing accounts, the use of your home address and phone number to open new accounts, or the use of your

social security number to obtain government benefits. The impact of identity theft can range from a short-term inconvenience to a long-term damage of your personal credit. Though identity theft can certainly occur through sophisticated computer attacks, as seen in the recent Target stores security breach, most often it is simply the result of carelessness on the part of individuals in protecting our personal information.

The federal government has a variety of policies in place to ensure the protection of our PII. Specifically, DoD Directive No. 5400.11-R outlines Department of Defense policies regarding privacy protection. Likewise, OMB memorandum M\_07\_16 provides direction to all federal government agencies for safeguarding against and responding to a breach of PII. For Army Reservists, AR 340-21 implements the Army Privacy Program, and AR 25-2 implements the Army Information Assurance Program, which both aim to protect personal information. If you believe that there has been a breach of personal information, records, or networks, you should report it immediately to your systems administrator, network administrator, information assurance manager, or information assurance security officer. Being vigilant for potential breaches of security or exposure of personal information is just

one way we can prevent identity theft.

In addition, there are some simple steps you can take to further protect yourself against identity theft. First, you have the right to obtain a free copy of your credit report every year. Reviewing your credit report can help identify unauthorized uses of personal information and other potential problems. Second, instead of throwing away old bank statements, medical bills, and other documents that contain personal information, you should shred them so that it is more difficult for potential identity thieves to obtain that information. Third, you should avoid posting personal information online that could be used to open accounts or lines of credit in your name. This includes your home address, phone number and children's names. Finally, you should be very careful not to share PIN numbers or passwords with anyone unless absolutely necessary. While it may be necessary to share this information with a spouse or loved one while you are mobilized or on temporary orders, sharing this type of information with friends or coworkers increases the opportunities for identity theft.

In November of 2013, the Los Angeles Times reported about several Army Reservists who were victims of more than \$100,000 in theft as a result of the unauthorized use



“AS A MEMBER  
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# Only Moves Forward



## IDENTITY THEFT (CONTINUED)

of their personal information while deployed on active duty in Afghanistan. It is alleged that the thieves obtained their information from another Army Reservist. This episode should highlight the need for us as members of the Army Reserve to be particularly careful in handling our personal information. The damage caused by identity theft can take months or even years to repair, and it can affect the ability of our family members

can affect the ability of our family members to pay bills or obtain basic necessities in our absence. Thus, the steps above should be used whenever possible to reduce the risk of identity theft and the potential hardship associated with being a victim of such theft.

For more information on recognizing the signs of identity theft, protecting yourself from identity theft, and what

to do if you do become a victim, review the privacy and identity theft resources available through the Federal Trade Commission at [www.consumer.ftc.gov](http://www.consumer.ftc.gov). You can also utilize the Defense Department's Privacy and Civil Liberties Office at <http://dpclo.defense.gov/privacy>. Identity theft can happen to anyone, but making yourself a harder target is a good way to discourage potential identity thieves from seeking you out.

## LEMON LAWS (CONTINUED)

the problem. Also keep a log of how many days your vehicle is in the shop. If you continue to have the same problems, be sure to send copies of all your documentation, along with a demand for satisfaction under the State Lemon Law, to the manufacturer. If you don't get a satisfactory result, contact your 80<sup>th</sup> Training Command (TASS) legal assistance attorney for legal advice. In particular, Virginia has a Lemon law. But before you threaten the seller or manufacturer of the car with legal action, you should understand the law. The Virginia Motor Vehicle Warranty

Enforcement Act covers new vehicles purchased or leased in Virginia. The term vehicle includes cars, pickup or panel trucks, motorcycles, self-propelled motorized chassis of motor homes and mopeds. If you have tried unsuccessfully to have your new vehicle, which you purchased in Virginia, repaired three or more times for the same problem, or the vehicle has been out of service for more than 30 days in one year, your vehicle could be classified as a "lemon". If your vehicle is a lemon, you may be eligible for a replacement vehicle of the same value or a refund,

minus the reasonable amount for your use of the vehicle. To accomplish this task, you need to alert the manufacturer of your intentions. If the manufacturer does not respond, contact the Office of Consumer Affairs, Virginia Department of Agriculture and Consumer Services at (804) 786-2042. If the Office of Consumer Affairs cannot help you, then you can file a lawsuit. Be sure that you maintain all documentation to assist your lawyer in a lawsuit, such as sale or lease documents, maintenance records, repair statements, all documents pertaining to the flaw, and rental car receipts while the Lemon was not working. If you have particular questions about this law, contact the Legal Assistance Office.

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