

INFORMATION PAPER

USARC-JA
22 January 2019

SUBJECT: Retention and Separation of Legally Non-Deployable Soldiers

1. Purpose. To provide an overview and references for Judge Advocates when advising commanders on issues pertaining to retention and separation of legally non-deployable Soldiers.

2. BLUF. Soldiers are legally non-deployable when they are convicted and sentenced to confinement by civilian or military authorities, or when they are pending legal actions. Soldiers who were convicted and sentenced to confinement will have to be processed for administrative separation upon release.

3. References:

a. DoDI 1332.45, Retention Determinations for Non-Deployable Service Members, 30 July 2018.

b. Army Directive 2018-22, Retention Policy for Non-Deployable Soldiers, 8 November 2018.

4. Background. On 30 July 2018, the Department of Defense released DoDI 1332.45 with a goal to maximize the lethality and readiness of our force. This policy requires that our Soldiers are deployable. Army Directive 2018-22 applies the DoD policy to the Army. The policy states that for a Soldier to be deployable, he or she must be administratively, legally, and medically cleared for deployment in any environment in which the Army is operating or could operate.

5. Reference 3a. establishes two categories of legal non-deployability – Prisoner and Legal Action. Soldiers within these categories are reported as temporarily non-deployable.

a. Prisoners.

(1) Soldiers convicted by civilian or military authorities and sentenced to confinement are legally non-deployable. Those with confinement sentences that are for 30 days or more but less than six months are considered to be temporarily non-deployable while they are confined. Soldiers confined for more than six months are not included in end strength numbers, and will not be included in the monthly non-deployability report.

(2) According to Army Directive 2018-22, paragraph 4j, Soldiers who fall under the prisoner category will be processed for administrative separation upon release from confinement. This requirement does not apply to Soldiers who have been sentenced to a

punitive discharge at a court-martial. The underlying misconduct that resulted in the military or civilian conviction will be the underlying basis for separation. However, this reference does not restrict the authority of commanders to immediately initiate the administrative separation of a Soldier based upon a civil conviction.

b. Legal action. Soldiers who are under arrest, confined for 30 days or less, pending military or civil court action, under investigation, a material witness, on commander directed hold, pending non-judicial punishment action under Article 15, UCMJ, or pending discharge based on action under the UCMJ, are legally non-deployable.

6. Legal actions do not include Soldiers being processed for administrative separation or classified as unsatisfactory participants. These Soldiers are considered temporarily non-deployable under the administrative categories of reference 3a.

Prepared by: 1LT Anton V. Yatsenko/910-570-8416
Military Law Attorney, HQ, USARC OSJA
Released by: LTC Moises Castillo
Deputy, Military Law Division