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(c) Any concerned soldier or citizen can submit a SAR to the nearest installation PMO/DES, CI or CID office. The receiving office will then be responsible for reviewing the information and determining whether it is appropriate for submission into eGuardian.

Subpart D—Victim and Witness Assistance Procedures

§ 635.22 Procedures.

(a) As required by DoDD 1030.01 (Available at *http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf*), Army personnel involved in the detection, investigation, and prosecution of crimes must ensure that victims and witnesses rights are protected. Victim's rights include-

(1) The right to be treated with fairness, dignity, and a respect for privacy.

(2) The right to be reasonably protected from the accused offender.

(3) The right to be notified of court proceedings.

(4) The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial, or for other good cause.

(5) The right to confer with the attorney for the Government in the case.

(6) The right to restitution, if appropriate.

(7) The right to information regarding conviction, sentencing, imprisonment, and release of the offender from custody.

(b) [Reserved]

Subpart E—National Crime Information Center Policy

§ 635.23 Standards.

The use of NCIC is limited to authorized criminal justice purposes such as, stolen vehicle checks or wants and warrants. Subject to FBI regulations and policy, NCIC checks of visitors to a military installation may be authorized by the Installation/Garrison Commander as set forth in DoD 5200.08–R (Available at *http://www.dtic.mil/whs/directives/corres/pdf/520008r.pdf*) and DoDI 5200.08 (Available at *http://www.dtic.mil/whs/directives/corres/pdf/520008p.pdf*). Visitors to Army installations are non-DoD affiliated personnel.

PART 637—MILITARY POLICE INVESTIGATION

Subpart A—Investigations

Sec.

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Subpart B [Reserved]

AUTHORITY: 28 U.S.C. 534 note, 42 U.S.C. 10601, 18 U.S.C. 922, 42 U.S.C. 14071, 10 U.S.C. 1562, 10 U.S.C. Chap. 47.

SOURCE: 70 FR 36029, June 22, 2005, unless otherwise noted.

Subpart A—Investigations

§ 637.1 General.

(a) Military Police Investigators (MPI) and Department of the Army Civilian (DAC) detectives/investigators fulfill a special need for an investigative element within the military police to investigate many incidents, complaints, and matters not within U.S. Army Criminal Investigation Command (USACIDC) jurisdiction, but which cannot be resolved immediately through routine military police operations. Investigative personnel are assets of the installation or activity commander, under the supervision of the

local provost marshal. USACIDC elements will provide investigative assistance in the form of professional expertise, laboratory examinations, polygraph examinations, or any other assistance requested which does not distract from the USACIDC mission of investigating serious crimes. A spirit of cooperation and close working relationship is essential between USACIDC and the provost marshal office in order to accomplish the mission and project a professional police image.

(b) Creation of a formalized investigation program does not constitute the establishment of a dual ''detective'' force. The separation of investigative responsibilities is very distinct. The MPI Program is neither a career program nor a separate Military Occupational Specialty (MOS). Individuals in the MPI Program are specially selected, trained, and experienced military or civilian men and women performing traditional military police functions. Military personnel are identified by their additional skill identifiers (ASI V5) and may be employed in any assignment appropriate to their grade and MOS.

(c) The provost marshal may authorize wearing of civilian clothing for the MPI investigative mission.

(d) MPI and DAC detective/investigator personnel must be familiar with and meet the requirements of Army Regulation (AR) 190–14 (Carrying of Firearms and Use of Force for Law Enforcement and Security Duties).

§ 637.2 Use of MPI and DAC Detectives/Investigators.

Only those matters requiring investigative development will be referred to the MPI for investigation. Provost marshals will develop procedures to determine which incidents will be referred to the MPI for completion and which will be retained and completed by uniformed MP personnel. Except as otherwise provided, MPI and DAC detectives/investigators will normally be employed in the following investigations:

(a) Offenses for which the maximum punishment listed in the Table of Maximum Punishment, Manual for Courts-Martial, United States, 2002 is confinement for 1 year or less. Provisions of the Federal Assimilative Crimes Act will also be considered when assigning cases to MPI. The same punishment criteria apply.

(b) Property-related offenses when the value is less than $1,000 provided the property is not of a sensitive nature, such as government firearms, ammunition, night vision devices, or controlled substances.

(c) Offenses involving use and/or possession of non-narcotic controlled substances when the amounts are indicative of personal use only. Military police will coordinate with the local USACIDC element in making determinations of ''personal use''. MPI and DAC detectives/investigators may be employed in joint MPI/USACIDC drug suppression teams; however, the conduct of such operations and activities remain the responsibility of USACIDC. When employed under USACIDC supervision, MPI and DAC detectives/investigators may also be utilized to make controlled buys of suspected controlled substances.

(d) Activities required for the security and protection of persons and property under Army control, to include support of Armed Forces Disciplinary Control Boards as prescribed in AR 190–24. If MPI detect a crime-conducive condition during the course of an investigation, the appropriate physical security activity will be promptly notified. Crime-conducive conditions will also be identified in military police reports.

(e) Allegations against MP personnel, when not within the investigative responsibilities of USACIDC.

(f) Offenses committed by juveniles, when not within the investigative responsibilities of USACIDC.

(g) Gang or hate crime related activity, when not within the investigative responsibilities of USACIDC.

§ 637.3 Installation Commander.

The installation commander, whose responsibilities include ensuring good order and discipline on his installation, has authority to order the initiation of a criminal investigation upon receipt of information of activity of a criminal nature occurring on the installation.

§ 637.4 Military Police and the USACIDC.

(a) The military police or the USACIDC are authorized to investigate allegations of criminal activity occurring on the installation. Nothing in this paragraph is intended to conflict with or otherwise undermine the delineation of investigative responsibilities between the military police and the USACIDC as set forth in AR 195–2.

(b) When investigative responsibility is not clearly defined, and the matter cannot be resolved between military police investigations supervisors and USACIDC duty personnel, or between military police investigations supervisors and unit commanders, the provost marshal will be informed and will resolve the matter with the appropriate USACIDC activity commander/Special Agent in Charge (SAC) or unit commander.

(c) The control and processing of a crime scene and the collection and preservation of the evidence are the exclusive responsibilities of the investigator or supervisor in charge of the crime scene when the military police have investigative responsibility. To prevent the possible loss or destruction of evidence, the investigator or supervisor in charge of the crime scene is authorized to exclude all personnel from the scene. The exercise of this authority in a particular case may be subject to the requirement to preserve human life and the requirement for continuing necessary operations and security. These should be determined in conjunction with the appropriate commander and, where applicable, local host country law enforcement authorities.

(d) Unit commanders should consult with the installation provost marshal concerning all serious incidents. Examples of incidents appropriate for investigation at the unit level include simple assaults not requiring hospitalization and not involving a firearm, or wrongful damage to property of a value under $1,000. Other incidents should be immediately referred to the installation provost marshal.

(e) The military police desk is the official point of contact for initial complaints and reports of offenses. The provisions of AR 190–45 are to be followed for all military police records, reports, and reporting.

(1) When incidents are reported directly to a USACIDC field element, USACIDC may either direct the reporting person to the MP desk or report the incident to the MP desk themselves.

(2) Upon receipt of the complaint or report of offense, the MP desk will dispatch an available patrol to the scene of the incident. The patrol will take appropriate measures to include locating the complainant, witnesses, suspects, and victims, apprehending offenders, securing the crime scene, rendering emergency assistance, determining and reporting to the MP desk, by the most expeditious means possible, the appropriate activity having investigative responsibility.

(f) In those cases in which the USACIDC has an ongoing investigation (typically fraud and narcotics matters), they may delay notification to the military police to avoid compromising their investigation.

(g) Procedures will be developed to ensure mutual cooperation and support between MPI, DAC detectives/investigators and USACIDC elements at each investigative level; however, MPI, DAC detectives/investigators and USACIDC personnel will remain under command and control of their respective commanders at all times.

(1) With the concurrence of the commander concerned, MPI and DAC detectives/investigators may provide assistance to USACIDC whenever elements assume responsibility for an investigation from MPI.

(2) When requested by a USACIDC region, district, or the special agent-in-charge of a resident agency, the provost marshal may provide MPI or DAC detective/investigator assistance to USACIDC on a case-by-case basis or for a specified time period.

(3) With the concurrence of the appropriate USACIDC commander, CID personnel may be designated to assist MPI or DAC detectives/investigators on a case-by-case basis without assuming control of the investigation.

(4) Modification of investigative responsibilities is authorized on a local basis if the resources of either USACIDC or the military police cannot

fully support their investigative workload and suitable alternatives are not available. Such modifications will be by written agreement signed by the provost marshal and the supporting USACIDC commander. Agreements will be in effect for no more than two years unless sooner superseded by mutual agreement.

§ 637.5 Off-post investigations.

(a) In Continental United States (CONUS), civilian law enforcement agencies, including state, county, or municipal authorities, or a Federal investigative agency normally investigate incidents occurring off-post. When an incident of substantial interest to the U.S. Army occurs off-post, involving U.S. Army property or personnel, the military police exercising area responsibility will request copies of the civilian law enforcement report.

(b) In Overseas areas, off-post incidents will be investigated in accordance with Status of Forces Agreements and other appropriate U.S. host nation agreements.

§ 637.6 Customs investigations.

(a) Customs violations will be investigated as prescribed in AR 190–41. When customs authorities find unauthorized material such as contraband, explosives, ammunition, unauthorized or illegal weapons or property, which may be property of the U.S. Government, notification must be made via electronic message or facsimile to HQDA, Office of the Provost Marshal General (DAPM–MPD–LE). All such notifications will be made to the military police and investigated by CID or the military police, as appropriate.

(b) Military police will receipt for all seized or confiscated U.S. Government property and contraband shipped by U.S. Army personnel. Property receipted for by military police will be accounted for, and disposed of, in accordance with evidence procedures outlined in AR 195–5.

(c) When it has been determined that the subject of an MP customs investigation is no longer a member of the U.S. Army, the investigation will be terminated, a final report submitted indicating the subject was released from the U.S. Army, and an information copy of the report furnished to the appropriate civil investigative agency.

(d) Recovery of weapons and significant amounts of ammunition will be reported by the U.S. Army element receipting for them from the U.S. Customs Service in accordance with AR 190–11 and AR 190–45.

§ 637.7 Drug enforcement activities.

Provost marshals and U.S. Army law enforcement supervisors at all levels will ensure that active drug enforcement programs are developed and maintained, and that priorities for resources reflect the critical and important nature of the drug enforcement effort.

(a) MPI and DAC detectives/investigators will conduct investigations of offenses involving use and possession of non-narcotic controlled substances. A copy of all initial, interim and final military police reports concerning drug investigations will be provided to the USACIDC at the local level. Enforcement activities will be coordinated with the USACIDC at the local level.

(b) Any investigation of offenses involving possession/use of non-narcotic controlled substances generated as a result of another USACIDC investigation may be transferred to MPI with the concurrence of both the supporting USACIDC commander and provost marshal.

(c) Elements of USACIDC will be provided the opportunity to interview subjects, suspects or witnesses in MPI or DAC detective investigations involving controlled substances without assuming responsibility for the investigation. MPI and DAC detectives/investigators may also interview subjects, suspects or witnesses of USACIDC investigations.

§ 637.8 Identification of MPI.

(a) During the conduct of investigations, MPI will identify themselves by presenting their credentials and referring to themselves as ''INVESTIGATOR.'' When signing military police records the title ''Military Police Investigator'' may be used in lieu of military titles. Civilian personnel will refer to themselves as ''INVESTIGATOR'' if they are classified in the 1811 series, and as ''DETECTIVE'' if they are in

the 083 series. Civilian personnel will use the title ''DAC Investigator'' or ''DAC Detective''; corresponding to their classification series.

(b) The use of titles such as ''Mr.'', ''Mrs.'', ''Miss'' or ''Ms.'' in connection with an individual's identification as an MPI is prohibited, except when employed in a covert investigative role. When MPI or DAC detectives/investigators are employed in covert roles, supervisors will ensure that coordination with USACIDC or civilian law enforcement agencies is accomplished as appropriate.

§ 637.9 Access to U.S. Army facilities and records.

(a) MPI and DAC detectives/investigators will be granted access to all U.S. Army facilities, records or information when necessary for an ongoing investigation, consistent with the investigator's clearance for access to classified national defense information, the requirements of medical confidentiality, and the provisions of applicable regulations.

(b) Upon presentation of proper identification when conducting an official investigation, MPI and DAC detectives/investigators will be authorized access to information contained in medical records and may request extracts or transcripts. Medical records will remain under the control of the records custodian who will make them available for courts-martial or other legal proceedings. Procedures for obtaining information from medical records are contained in AR 40–66.

§ 637.10 Authority to apprehend or detain.

MPI and DAC detectives/investigators have authority to make apprehensions in accordance with Article 7, Uniform Code of Military Justice (UCMJ); Rule for Courts-Martial 302 (b)(1), Manual for Courts-Martial, United States 2002 (Revised Edition). They may detain personnel for identification and remand custody of persons to appropriate civil or military authority as necessary. Civilians committing offenses on U.S. Army installations may be detained until they can be released to the appropriate Federal, state, or local law enforcement agency.

§ 637.11 Authority to administer oaths.

MPI and DAC detectives/investigators have authority pursuant to Article 136(b)(4), UCMJ to administer oaths to military personnel who are subject to the UCMJ. The authority to administer oaths to civilians who are not subject to the UCMJ is 5 U.S.C. 303(b).

§ 637.12 Legal considerations.

(a) Coordination between installation judge advocates and investigators must occur during the conduct of investigations.

(b) The use of the DA Form 3881 (Rights Warning Procedure/Waiver Certificate) to warn accused or suspected persons of their rights is encouraged.

(c) When necessary, investigators will coordinate with a judge advocate or civilian attorney employed in the Office of the Staff Judge Advocate for the purpose of establishing a legal opinion as to whether sufficient credible evidence has been established to title an individual in a report. Investigators should also coordinate with the Office of the Staff Judge Advocate in drafting search warrants and in determining whether probable cause exists to conduct a search.

§ 637.13 Retention of property.

Reports of investigation, photographs, exhibits, handwritten notes, sketches, and other materials pertinent to an investigation, including copies, negatives or reproductions, are the property of the U.S. Government, either as owner, or custodian.

§ 637.14 Use of National Crime Information Center (NCIC).

Provost marshals will make maximum use of NCIC terminals available to them, and will establish liaison with the U.S. Army Deserter Information Point (USADIP) as necessary to ensure timely exchange of information on matters concerning deserters. The USADIP will ensure replies to inquiries from provost marshals on subjects of MP investigations are transmitted by the most expeditious means. Use of NCIC will be in accordance with AR 190–27.

§ 637.15 Polygraph activities.

MPI and DAC detectives/investigators will utilize the polygraph to the full extent authorized. Requests for polygraph examination assistance will be forwarded to the supporting USACIDC element in accordance with provisions of AR 195–6. The investigative or intelligence element requesting approval to conduct a polygraph examination will submit a completed DA Form 2805 (Polygraph Examination Authorization) to the authorizing official. A request may also be sent via an electronic message or electronic mail or media provided all elements of the DA Form 2805 are included in the request. Approvals will be obtained prior to the conduct of an examination. Telephonic requests, followed with written requests, may be used in emergencies. The requesting official will include the following data on every polygraph examination request for criminal investigations:

(a) The offense, which formed the basis of the investigation, is punishable under Federal law or the UCMJ by death or confinement for a term of 1 year or more. Even though such an offense may be disposed of with a lesser penalty, the person may be given a polygraph examination to eliminate suspicion.

(b) The person to be examined has been interviewed and there is reasonable cause to believe that the person has knowledge of, or was involved in, the matter under investigation.

(c) Consistent with the circumstances, data to be obtained by polygraph examination are needed for further conduct of the investigation.

(d) Investigation by other means has been as thorough as circumstances permit.

(e) Examinee has been interviewed on all relevant subjects requested for testing and the polygraph examination is essential and timely.

§ 637.16 Evidence.

Military police are authorized to receive, process, safeguard and dispose of evidence, to include non-narcotic controlled substances, in accordance with AR 195–5. If no suitable facility is available for the establishment of a military police evidence depository or other operational circumstances so dictate, the evidence custodian of the appropriate USACIDC element may be requested to receipt for and assume responsibility for military police evidence. Personnel selected as military police evidence custodians need not be trained as MPI and should not be issued MPI credentials, unless they are also employed as operational MPI. Further information concerning evidence collection and examination procedures can be found in Field Manual (FM) 3–19.13, Law Enforcement Investigations.

§ 637.17 Police Intelligence.

(a) The purpose of gathering police intelligence is to identify individuals or groups of individuals in an effort to anticipate, prevent, or monitor possible criminal activity. If police intelligence is developed to the point where it factually establishes a criminal offense, an investigation by the military police, (USACIDC) or other investigative agency will be initiated.

(b) Police intelligence will be actively exchanged between Department of Defense (DOD) law enforcement agencies, military police, USACIDC, local, state, federal, and international law enforcement agencies. One tool under development by DOD for sharing police intelligence is the Joint Protection Enterprise Network (JPEN). JPEN provides users with the ability to post, retrieve, filter, and analyze real-world events. There are seven reporting criteria for JPEN:

(1) Non-specific threats;

(2) Surveillance;

(3) Elicitation;

(4) Tests of Security;

(5) Repetitive Activities;

(6) Bomb Threats/Incidents; and

(7) Suspicious Activities/Incidents.

(c) If a written extract from local police intelligence files is provided to an authorized investigative agency, the following will be included on the transmittal documents: ''This document is provided for information and use. Copies of this document, enclosures thereto, and information therefrom, will not be further released without the prior approval of the installation Provost Marhsall.

(d) Local police intelligence files may be exempt from certain disclosure requirements by AR 25–55 and the Freedom of Information Act (FOIA).

§ 637.18 Electronic equipment procedures.

(a) DOD Directive 5505.9 and AR 190–53 provide policy for the wiretap, investigative monitoring and eavesdrop activities by DA personnel. The recording of telephone communications at MP operations desks is considered to be a form of command center communications monitoring which may be conducted to provide an uncontroversial record of emergency communications. This includes reports of emergencies, analysis of reported information, records of instructions, such as commands issued, warnings received, requests for assistance, and instructions as to the location of serious incidents.

(b) The following procedures are applicable to the recording of emergency telephone and/or radio communications at MP operations desks within the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Panama, and Guam.

(1) All telephones connected to recording equipment will be conspicuously marked ''For Official Use Only-connected to recording device'' and access to use will be restricted to MP operations desk personnel.

(2) The connection of voice-recording equipment or private-line service with the telecommunications network will be in accordance with applicable telephone company tariffs which permit direct electrical connection through telephone company recorder-connector equipment. An automatic audible-tone device is not required.

(3) Official emergency telephone numbers for MP desks will be listed in appropriate command, activity, or installation telephone directories with a statement that emergency conversations will be recorded for accuracy of record purposes. Other forms of prewarning are not required.

(4) Recordings, which contain conversations described in this section, will be retained for a period of 60 days. Transcripts may be made for permanent files, as appropriate.

(5) The recording of telephone communications or radio transmissions by MP personnel for other than emergency purposes is prohibited. If an investigator requires the use of electronic surveillance equipment, assistance must be requested from the USACIDC. This policy is established pursuant to Department of Defense directives that limit such activity to the criminal investigative organizations of the Services and DOD.

(6) Commanders having general courts-martial convening authority will issue written authorizations for the recording of emergency telephone communications at MP operations desks. The letter of authorization will contain specific authority for the type of equipment to be used, the phone numbers identified as emergency lines and instructions limiting recordings to calls received on the phones so designated. One copy of the authorization will be forwarded to the Office of the Provost Marshal General (OPMG), 2800 Army Pentagon, Washington, DC 20310–2800.

§ 637.19 Overseas MP desk.

The recording of telephone communications at MP operations desks outside the United States will be conducted within restrictions contained in international agreements between the U.S. and host nations.

§ 637.20 Security surveillance systems.

Closed circuit video recording systems, to include those with an audio capability, may be employed for security purposes in public places so long as notices are conspicuously displayed at all entrances, providing persons who enter with a clear warning that this type of monitoring is being conducted.

§ 637.21 Recording interviews and interrogations.

The recording of interviews and interrogations by military police personnel is authorized, provided the interviewee is on notice that the testimony or statement is being recorded. This procedure is a long-accepted law enforcement procedure, not precluded by DA policies pertaining to wiretap, investigative monitoring, and eavesdrop activities.