

## CHILD ABUSE AND NEGLECT

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### 1. Introduction

a. Army Regulation 608-18, issued 1 September 1995, defines Army objectives on the handling of child abuse cases. These objectives are: "to encourage the reporting of all instances of such abuse, to ensure the prompt assessment and investigation of all abuse cases, to protect victims of abuse, and to treat all family members affected by or involved in abuse."<sup>3</sup>

b. At the request of the Department of the Army, Medical Command issued a "Medical Protocol for the Identification and Treatment of Child Abuse and Neglect," which serves as the guide for medical personnel who encounter cases of child abuse. This Protocol constitutes a step by step procedure for physicians and other health care providers who suspect that their young patients may have sustained injuries as a result of abuse. The Protocol is comprised of a series of checklists and diagrams, which are to be completed by the attending physician. It also contains brief instructions regarding the role and responsibilities of the health care provider in the investigation of a suspected case of child abuse. The Medical Command and AR 608-18 require use of this Protocol.

c. The purpose of this article is to acquaint judge advocates (JAs) with the provisions contained in AR 608-18 and to clarify the MEDCOM Protocol. In doing so, we hope to prepare JAs to answer the questions most frequently asked about the regulation by concerned health care providers and others. This article will only address abuse which occurs within the family unit, although AR 608-18 also discusses other types of abuse which may occur on military installations, for example, Child Developmental Centers, Youth Services, Chapels, etc. The Department of the Army Community and Family Support Center has already issued a

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<sup>3</sup>Dep't of Army, Reg. AR 608-18, The Army Family Advocacy Program, para. 1-5 (1 Sep. 1995)[hereinafter AR 608-18].

guide entitled, "Managing Out of Home Child Sexual Abuse Cases," (1996) to which the reader is referred for further information on this particular form of child abuse.<sup>4</sup>

d. In order to understand the role and responsibilities of medical and legal personnel when faced with a suspected case of child abuse which occurs within the military, we will analyze the rules and procedures which govern the way a child abuse case is handled in six stages: 1) occurrence, 2) detection, 3) reporting, 4) investigation, 5) treatment, and 6) prosecution.

## 2. Occurrence.

a. The glossary section of Army Regulation 608-18 defines three types of child abuse. Child physical abuse is defined as "maltreatment that refers to physical acts that caused or may have caused physical injury to the victim."<sup>5</sup> While it is recognized that each parent has the right to discipline his or her own child, certain measures clearly exceed the bounds of socially acceptable corporal punishment. Medical personnel or law enforcement, by themselves, should not determine what is considered acceptable corporal punishment. A line of cases starting with United States v. Brown, 26 M.J. 148 (C.M.A. 1988), interprets the bounds of corporal punishment.<sup>6</sup> The second type of child abuse is child sexual abuse which is defined as, "[t]he employment, use, persuasion, inducement, enticement or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually

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<sup>4</sup>See Dep't of Army, *Managing Out of Home Child Sexual Abuse Cases*, 1996.

<sup>5</sup>AR 608-18, *supra* note 2, Section II (Terms).

<sup>6</sup>See *U.S. v. Brown*, 26 M.J. 148 (C.M.A. 1988) (holding that parental discipline is an affirmative defense if: (1) the action was taken for a parental purpose; (2) the action was to safeguard or promote the welfare of the child; and (3) a reasonable degree of force is utilized); *U.S. v. Scofield*, 33 M.J. 857 (A.C.M.R. 1991) (holding that an actor who acts out of parental concern with a force known to create substantial risk may be criminally liable for his actions); *U.S. v. Robertson*, 36 M.J. 190 (C.M.A. 1992) (holding that the use of parental discipline by use of force is not without limits); *U.S. v. Gowadia*, 34 M.J. 714 (ACMR 1992) (holding that a proper motive and reasonable force is necessary for the affirmative defense of parental discipline); *U.S. v. Ziots*, 36 M.J. 1007 (ACMR 1993) (holding that the grabbing of a three-year old's cheeks, hitting the child with a closed fist and biting and sucking a child's jaw until red marks appear constitute assault and battery and not parental discipline); *U.S. v. Ward*, 39 M.J. 1085 (ACMR 1994) (holding that spanking a child on his bottom and slapping the child on the face 2-3 times is assault and battery and not parental discipline); *U.S. v. Arnold*, 40 M.J. 744 (AFCMR 1994) (holding that shaking a one-month old child and his swing because he would not stop crying is assault and battery and not the affirmative defense of parental discipline).

explicit conduct (or any simulation of such conduct) or the rape, molestation, prostitution, or other forms of sexual exploitation of children, or incest with children."<sup>7</sup> The third type of abuse is emotional abuse which "involves a pattern of active, intentional berating, disparaging, or other abusive behavior toward the victim that may not cause observable injury. Emotional neglect involves passive or passive-aggressive inattention to the victim's emotional needs, nurturing, or psychological well-being."<sup>8</sup>

b. Certain families seem more prone to instances of child abuse than do others. Health professionals have attempted to identify a combination of factors that may lead to child abuse. These may include a history of abuse in the family, a high degree of stress resulting from economic or personal difficulties, or a special mental, physical, or emotional condition of the child which makes him or her especially difficult to raise. For assistance in identifying families at risk, consult your local social work services.

### 3. Detection.

a. The health care provider will routinely detect abuse based on bruises, burns, or other traumatic or recurrent injuries, and behavior such as wary or fearful attitude toward adults, sexual precocity inappropriate to stage of development, and low self esteem.<sup>9</sup>

b. Battery is generally an easy type of child abuse to detect as the abuser usually leaves marks in the form of bruises, scars, and broken bones. Sexual abuse, especially that which occurs within the family, is often harder to detect. These abusers usually employ persuasion or coercion, rather than brute force, to obtain the victim's compliance.<sup>10</sup> Often the child does not even realize that he or she is in fact the victim of abuse; he or she may be persuaded that everything is "OK."

c. In general, the health care provider will be alert to the possibility of child abuse whenever the type or degree of a child's injury is not consistent with the explanation given for it.<sup>11</sup> Physicians consider: 1) whether the history adequately explains the physical

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<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>See AR 608-18, *supra* note 2, para. 3-5.

<sup>10</sup>See Jack W. Rickert, *Child Abuse and Hearsay: Doing Away with the Unavailability Rule*, Army Law., Nov. 1987, p. 41.

<sup>11</sup>See *id.*

findings; 2) whether the child is developmentally capable of injuring himself or herself in the manner described; and 3) whether the injury could have been prevented with better supervision.<sup>12</sup> If the answer to either of the first two questions is no or the answer to the third question is yes, the physician should suspect child abuse and document this finding using the Protocol.

#### 4. Reporting.

a. Once a health care provider has determined that abuse may be the cause of a child's injuries, he or she is obligated under both state law and Army regulations to notify the appropriate authorities.<sup>13</sup> In the Army, one should notify two organizations: 1) the installation's report point of contact (RPOC); and 2) the military law enforcement agency (MP or USACIDC).<sup>14</sup>

b. The physician may also contact the local Case Review Committee (CRC), although this will be done automatically by the RPOC, who must notify the CRC of every report received.<sup>15</sup> The CRC is a multidisciplinary body comprised of representatives from the medical, legal, and social work communities whose mission is to foster treatment for victims, and sometimes offenders, of child abuse and domestic violence. They coordinate their efforts in an attempt to facilitate the efficient and productive management of cases involving military personnel and spousal or child abuse.<sup>16</sup>

c. The CRC makes its initial determination regarding each case after a consideration of the medical evidence, the perceived intent of the suspected individual, and other circumstances that are particular to the given case. The CRC determines the appropriate classification of each case (suspected, substantiated or unsubstantiated), the severity of the case, the recommended course of treatment, and the requisite follow-up action.<sup>17</sup> This information is then relayed to the Commander. The group's decision regarding

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<sup>12</sup>See *id.*

<sup>13</sup>See AR 608-18, *supra* note 2, para. 3-7.

<sup>14</sup>Under AR 608-18, *supra* note 2, para. 3-6, "each installation will establish a telephone reporting system for handling all reports of spouse and child abuse to include abuse which occurs in a DoD sanctioned or operated activity for children (e.g., CDS, YS)." The installation commander designates a RPOC who will be accessible twenty-four hours a day and designs the program based on the installation's factors. See AR 608-18, *supra* note 2, para. 3-6.

<sup>15</sup>See AR 608-18, *supra* note 2, para. 3-6.

<sup>16</sup>See AR 608-18, *supra* note 2, para. 2-3.

<sup>17</sup>See AR 608-18, *supra* note 2, para. 2-4.

the disposition of individual cases is a subjective one. A CRC meeting is not a formal administrative hearing. It is not an adversarial proceeding.

d. The SJA, or SJA representative, is one of the designated members of the CRC.<sup>18</sup> In addition to participating in discussions about individual cases, it is the SJA's responsibility to advise the CRC regarding applicable state laws and regulations, the confidentiality of witnesses, records and reports, and the release of information to appropriate civilian authorities.<sup>19</sup> The SJA may suggest alternate courses of action when those under consideration by the CRC are limited or prohibited by local officials who may have authority over military personnel.<sup>20</sup> The SJA representative should also advise the chain of command about the specific facts and circumstances of appropriate cases. The different representatives to the CRC will have varying degrees of knowledge about each case. The SJA is in an excellent position to consolidate this information and advise the command.

e. While it is technically true that all members of the military community are either encouraged or required to report known or suspected cases of child abuse, it is sometimes necessary for the Army to offer a promise of confidentiality as an incentive for persons to come forth with information.<sup>21</sup> SJAs may expect to be consulted regarding the confidentiality of sources. As a general rule, health care providers and others whose duty it is to discover instances of child abuse are not granted a promise of confidentiality. This is normally reserved for independent third parties as an inducement to report.<sup>22</sup>

## 5. Investigation.

a. The objective of any suspected child abuse investigation is twofold: first, to gather information as

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<sup>18</sup> See AR 608-18, *supra* note 2, para. 1-7(k).

<sup>19</sup> See *id.*

<sup>20</sup> See AR 608-18, *supra* note 2, para. 1-7.

<sup>21</sup> See AR 608-18, *supra* note 2, para. 3-7 & 3-8. Law enforcement, doctors, nurses, social workers, youth services, school personnel, CDS, psychologists and other medical personnel are required to report suspected or known child abuse. See AR 608-18, *supra* note 2, para. 3-7(b). Commanders should report known or suspected cases of child abuse. See AR 608-18, *supra* note 2, para. 3-7(c). All other soldiers and personnel should be encouraged to report instances. See AR 608-18, *supra* note 2, para. 3-7(a). In addition, installation regulations may require more soldiers and personnel to report known or suspected instances of child abuse.

<sup>22</sup> See *id.*

quickly and accurately as possible within the provisions of applicable law and regulations; and second, to protect the victim from any further harm or trauma as a result of the investigation. Prompt investigation is necessary, especially in the case of sexual abuse, as evidence (i.e. photographs, semen, etc.) may be "lost" or destroyed by the accused or by other family members.<sup>23</sup>

b. The investigation involves a cooperative effort between medical providers, law enforcement personnel, and social workers.<sup>24</sup> The efforts of all participants should be coordinated in order to avoid duplication, so the victim is not subjected to multiple interviews. The SJA may assign counsel to work closely with the case manager in order to protect the interests of the child during this process.<sup>25</sup>

c. Medical examination, treatment, or hospitalization of the victim may be conducted without permission of either the victim (if under age 16) or the victim's parents if one or both of the parents is suspected of being an abuser or of concealing information regarding abuse, unless consent is otherwise required by applicable law.<sup>26</sup> Medical photographs will usually be necessary in order to document the extent and location of the child's injuries. Law enforcement officials have the primary responsibility for taking these photographs.<sup>27</sup> Under certain circumstances, this task may be left to the medical personnel.<sup>28</sup> Health care providers are authorized under Army regulations to take these photographs and to conduct any and all necessary medical tests without fear of liability, except in the case of medical negligence. A memorandum of understanding should be developed between law enforcement and medical personnel regarding the photographing of victims of abuse.

d. Army regulations also authorize physicians to take child abuse victims into medical protective custody.<sup>29</sup> Medical protective custody is allowed without parental permission (unless prohibited by applicable law) if it is determined that the immediate welfare and safety of the child dictates this course of action. The Army standard to make this determination is whether "the child so suffers from abuse or neglect by a parent that imminent removal from the home is necessary to avoid imminent danger to the

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<sup>23</sup> See AR 608-18, *supra* note 2, para. 3-12.

<sup>24</sup> See AR 608-18, *supra* note 2, para. 3-13.

<sup>25</sup> See AR 608-18, *supra* note 2, para. 3-14.

<sup>26</sup> See AR 608-18, *supra* note 2, para. 3-19(b).

<sup>27</sup> See AR 608-18, *supra* note 2, para. 3-19(c).

<sup>28</sup> See *id.*

<sup>29</sup> See AR 608-18, *supra* note 2, para. 3-23.

child's life or health."<sup>30</sup> In cases in which the applicable civil law suggests a different standard, it is to be used over that supplied by the Army regulation.<sup>31</sup> The recommendation regarding protective custody is initially made by the treating physician, then considered by the medical treatment facility (MTF) commander on advice of the servicing SJA.<sup>32</sup>

e. A suspected child abuse victim living on post may be removed from the home by the Installation Commander, who is responsible for the health and welfare of everyone within his command.<sup>33</sup> Local civilian authorities may also take a child into protective custody or arrange for placement in foster care under certain circumstances, without violating the principle of federal sovereignty. The majority of Army installations are exclusive jurisdiction, and The Judge Advocate General has traditionally held that state child welfare laws do not apply on such installations. However, the Installation Commander may invite local authorities to participate in handling child abuse cases.<sup>34</sup> Arrangements such as this should be detailed in memoranda of understanding between installation commanders and local authorities.

f. Questioning of suspects is to be conducted by law enforcement officials who have jurisdiction over the case.<sup>35</sup> It should be emphasized that it is not the role or responsibility of the health care provider to act as a criminal investigator. The function of the health care provider is primarily to detect and report cases involving suspected child abuse. The fundamental responsibility of the medical professional is to insure the child's health and welfare.

g. Health care providers are not required to provide Article 31(b) warnings prior to asking questions for general treatment and diagnostic purposes.<sup>36</sup> However, "[a]ny inquiry that seeks more than the minimum information to make a diagnosis or prescribe proper treatment implies a subjective intent to use this information for nonmedical

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<sup>30</sup>*Id.*

<sup>31</sup>*See id.*

<sup>32</sup>*See id.*

<sup>33</sup>*See* Dep't of Army, Reg. 600-20, Army Command Policy, para. 2-1 (30 Mar. 1998)[hereinafter AR 600-20].

<sup>34</sup>*See* Dep't of Army, Pam. 27-21, Child Welfare Services, para. 2-10d (18 Sep 1990)[hereinafter DA PAM 27-21].

<sup>35</sup>*See* AR 608-18, *supra* note 2, para. 3-21.

<sup>36</sup>*See* Joseph L. Falvey, Jr., *Health Care Professionals and Rights Warning Requirements*, Army Law., Oct. 1991, p. 23.

purposes, and thus may require warnings."<sup>37</sup> Army Regulation 608-18 stresses that family advocacy and law enforcement should work together to promptly and fully investigate abuse.<sup>38</sup> This interaction of joint cooperation and the reporting requirement of Army Regulation 608-18 to the CRC, a board that includes law enforcement and SJA, creates a potential agency relationship for health care providers.<sup>39</sup> Medical personnel arguably act as law enforcement instruments to investigate and report facts to the CRC.<sup>40</sup> Thus, any medical provider who may ask investigative, rather than treatment related questions of a suspect that may require him to incriminate himself should be preceded by Article 31(b) rights warning.<sup>41</sup>

h. Measures must often be taken to insure the long-term safety and well being of abuse victims. Military Rule of Evidence 412 "broadens the trial protections afforded victims of sexual misconduct, and Rules 413-415 liberalize the admissibility of propensity evidence in criminal and civil cases involving allegations of sexual assault and child molestation."<sup>42</sup> The installation commander, after consultation with the SJA, may adopt any of the following measures as appropriate in the given situation: 1) pretrial restraint of the accused; 2) pretrial confinement of the accused; 3) removal from government quarters or bar from the installation if the accused is a civilian; 4) foster care placement for the child victim; or 5) return to CONUS if overseas.<sup>43</sup>

## 6. Treatment.

a. It must be remembered that child abuse is not only a crime requiring punishment of some sort, but also a "manifestation of family dysfunctioning in need of treatment."<sup>44</sup> In some cases, the disruption and the loss of income which result from incarceration of an abusive parent causes greater strain on the family. This compounds the family's problems, rather than relieving them. Treatment for the abuser, in the form of crisis intervention,

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<sup>37</sup>*Id.*

<sup>38</sup>See AR 608-18, *supra* note 2, para. 3-14.

<sup>39</sup>See Hayden, *Health Care professionals and Article 31(b)*, *UCMJ*, Army Law., Mar. 1994, p. 55-56.

<sup>40</sup>See Hayden, *supra* note 35, p. 24.

<sup>41</sup>See Hayden, *supra* note 35, p. 32.

<sup>42</sup>Stephen R. Henley, *Caveat Criminale: The Impact of the New Military Rules of Evidence in Sexual Offense and Child Molestation Cases*, Army Law., Mar. 1996, p. 82-83.

<sup>43</sup>See AR 608-18, *supra* note 2, para. 3-25.

<sup>44</sup>Alfred F. Arquilla, *Crime in the Home*, Army Law., Apr. 1988, p. 3.

education, and therapy, both as an individual and with the family as a whole, may be recommended.

b. Children who are victims of domestic violence often require medical treatment as a result of their abuse. Children who require medical or dental care in MTFs for injuries or illnesses stemming from abuse are entitled to treatment for one year from the date of the active duty member's discharge. These services, like all other medical benefits offered by the Army to military dependents, are subject to the availability of space and facilities and the capabilities of the local professional staff.<sup>45</sup>

c. It should be noted that treatment for the abuser does not preclude the use of disciplinary or administrative actions against him or her.<sup>46</sup> Some offenders are simply not amenable to rehabilitation treatment. The appropriate curative and punitive measures are to be determined on a case by case basis.<sup>47</sup>

## 7. Prosecution.

a. There are a number of disciplinary and administrative actions that may be taken against a soldier in a substantiated case of child abuse. These vary in degree of severity and impact on the soldier and his family members. Possible actions include admonition, reprimand, non-judicial punishment under Article 15, UCMJ, administrative discharge, or trial by courts-martial.

b. Before determining an appropriate course of action, commanders should consider the following: 1) the seriousness of the charges; 2) any extenuating circumstances; 3) any mitigating factors (i.e. service record, self-referral, CRC recommendation, potential for rehabilitation, etc.); and 4) whether there would be an adverse effect on treatment.<sup>48</sup>

c. The SJA becomes involved with the prosecution of an active duty abusive parent if the command decides to take UCMJ action. The SJA may also become involved with the prosecution of an abusive parent who is a dependent living on the installation because such instances may be prosecuted in conjunction with the United States Attorney's Office. The cases most frequently prosecuted involve the sexual

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<sup>45</sup>See 10 U.S.C.A. 1076, para. e.

<sup>46</sup>See AR 608-18, *supra* note 2, para. 3-29b.

<sup>47</sup>See AR 608-18, *supra* note 2, para. 3-26.

<sup>48</sup>Commanders should also consult R.C.M. 306(b) for additional factors to be considered. The goal of such a decision should be a warranted, fair and appropriate disposition.

abuse of children. Although cases of this nature occur much less often than do cases involving battery, soldiers charged with sexual abuse of their children are tried by courts-martial at a significantly higher rate than those whose cases involve spousal or child battery.<sup>49</sup>

d. A military determination regarding whether or not to prosecute does not preclude independent legal action by local civilian authorities. Cooperation between SJAs, CRC and civilian authorities regarding access to evidence and information compiled during the military investigation and follow-up is expected.<sup>50</sup> Army Central Registry files, which contain an index of all reported cases of child abuse occurring on Army installations, may be made available to the appropriate civilian authorities through the local CRC.<sup>51</sup> Release of this information is restricted and should be coordinated through the appropriate command FOIA/PA personnel office.

e. The primary purposes of the Case Review Committee's Central Registry are to provide treatment services for victims and perpetrators of abuse, and to collect statistical data on substantiated or suspected cases of child or spousal abuse. Army regulations also provide that information obtained through this source may be used to determine assignments and fitness of continued military services.<sup>52</sup> It is strongly recommended, however, that commanders consult with their local SJA prior to instituting adverse actions based solely on a report of substantiated child abuse or neglect which has been obtained through the Central Registry.

f. The SJA Victim/Witness Liaison works with victims to aid in the mitigation of hardships, foster full cooperation, and ensure rights and resources are fully explained.<sup>53</sup> The Victim/Witness Liaison may refer the victim to various compensation programs, but the Department of the Army started transitional compensation to alleviate some hardship of abused dependents. Transitional compensation may be authorized for dependents of active duty soldiers who are separated, either via courts-martial or administrative proceedings, or sentenced to a forfeiture of

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<sup>49</sup>See Arquilla, *supra* note 43, p. 7.

<sup>50</sup>See AR 608-18, *supra* note 2, para. 6-5.

<sup>51</sup>See AR 608-18, *supra* note 2, para. 5-3.

<sup>52</sup>See AR 608-18, *supra* note 2, para. 3-32.

<sup>53</sup>See Dep't of Army, Reg. 27-10, Military Justice, para. 18-4 (24 June 1996)[hereinafter AR 27-10].

all pay and allowances due to dependent abuse.<sup>54</sup> This Department of the Army compensation may be paid to eligible dependents for 12 to 36 months, but may be forfeited if the victim cohabitates with the offender, if the soldier's spouse remarries, or if the soldier's spouse actively participated in the crime.<sup>55</sup> The Army Community Services Center Director or Family Advocacy Program Manager is appointed the coordinator to initiate these claims through the Installation Commander to the Department of the Army.<sup>56</sup>

## 8. Conclusion.

In a case involving the suspected child abuse of a military family member, the SJA should monitor and help coordinate the prompt investigation of all charges, the accurate and complete documentation of the facts, the legal and ethical accumulation of evidence, and the protection of the rights of both the accused and the child victim. Furthermore, the SJA must cooperate with other agencies involved - medical, social work, and law enforcement - to make sure that the investigative process does not contribute to or compound the traumatic experience of the child.

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<sup>54</sup>See Dep't of Army, Reg. 608-1, Army Community Services Program, para. 2-18(a) (C1, 21 Mar. 1997)[hereinafter AR 608-1]. The abused family may be eligible to receive monetary funds equivalent to the DIC amount and military identification cards to enter the commissary and post exchange. In addition, if requested, the abused dependent may receive medical and dental benefits for up to one year, but the medical and dental benefits are limited to treat the damage from the abuse.

<sup>55</sup>See AR 608-1, *supra* note 53, para. 2-19 & 2-22 (C1, 21 Mar. 1997).

<sup>56</sup>See AR 608-1, *supra* note 53, para. 2-25 (C1, 21 Mar. 1997).

## CHILD ABUSE AND NEGLECT

### REFERENCES:

1. Federal Statutes: 10 USC Section 1076, para. e.
2. Army Regulations/Circulars/Letters/Pamphlets:
  - a. Dep't of Army, Reg. 27-10, Military Justice (24 Jun. 1996).
  - b. Dep't of Army, Reg. 608-1, Army Community Services Program (C1, 21 Mar. 1997).
  - c. Dep't of Army, Reg. AR 608-18, The Army Family Advocacy Program (1 Sep. 1995).
  - d. Dep't of Army, Reg. 600-20, Army Command Policy (30 Mar. 1998).
  - e. Douglas G. Andrews, *The Child Sexual Abuse Case: Part I*, Army Law., Nov. 1987, p. 45.
  - f. Douglas G. Andrews, *The Child Sexual Abuse Case: Part II*, Army Law., Dec. 1987, p. 33.
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  - k. Hayden, *Health Care Professionals and Article 31(b), UCMJ*, Army Law., Mar. 1994, p. 53.
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