



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
SAN DIEGO, CALIFORNIA 92140

DepO 5800.10E
9B:myg
7 May 1987

DEPOT ORDER 5800.10E w/chl

From: Commanding General
To: Distribution

Subj: Confinement

Ref: (a) Manual for Courts-Martial, United States 1984 (NOTAL)
(b) SECNAVINST 1640.10 (NOTAL)
(c) MCB, Camp Pendleton Order P5800.6 (NOTAL)
(d) MCO 1640.3C (NOTAL)
(e) SECNAVINST 5820.6 (NOTAL)
(f) DepO P5800.13A (NOTAL)

Encl: (1) Factors in Ordering Pretrial Confinement
(2) Pretrial Confinee's Acknowledgment of Rights Upon Confinement
(3) Commanding Officer's Pretrial Confinement Memorandum
(4) Initial Review Officer's Findings and Order

1. Purpose. This Order establishes procedures for pretrial confinement, post trial confinement, and confinement incident to proceedings to vacate suspended sentences.

✓ 2. Cancellation. Depot Order 5800.10D.

3. Background

a. Reference (a) prescribes procedures for all courts-martial. This Order implements the MCRD/WRR procedure for pretrial confinement, post trial confinement, and confinement incident to proceedings to vacate suspended sentences.

b. Initial Review Officer's Review. The decision to place a person in pretrial confinement or confinement incident to proceedings to vacate a suspended sentence is subject to review by an Initial Review Officer (IRO). See Rules for Courts-Martial (R.C.M.) 305, and 1109, of reference (a) and reference (b). In the interest of economy, and to reduce the administrative burden, the IRO's review normally will be accomplished before a confinee departs for a correctional facility.

c. Male Confinees. Male pretrial confinees from MCRD are normally confined at the Base Brig, Marine Corps Base, Camp Pendleton, California. Reference (c) must be complied with when utilizing this facility.

chl
d. Female Confinees. Female pretrial confinees for Marine Corps commands in Southern California will ordinarily be confined at the *Naval Consolidated* *Brig, Naval Air Station, Miramar.*

e. Foreign Nationals. When a servicemember who is a foreign national is placed in confinement, reference (e) requires that notification of that fact be provided to foreign consular officials. Commanding Officers who become aware that a foreign national may be, or has been, placed in pretrial confinement shall immediately notify the Assistant Chief of Staff, Staff Judge Advocate. The Assistant Chief of Staff, Staff Judge Advocate will make the required notification to consular officials.

f. Confinement by commands other than MCRD activities. Officers in commands not attached to MCRD who are considering ordering confinement shall consult this Headquarters (Assistant Chief of Staff, Staff Judge Advocate), when practicable before ordering confinement, or as soon thereafter as possible. The Assistant Chief of Staff, Staff Judge Advocate will provide any assistance required in determining appropriate confinement locations and make any required notification to Headquarters, U. S. Marine Corps. Reference (d) will be reviewed for guidance in the event it is impracticable to contact the Assistant Chief of Staff, Staff Judge Advocate before confinement is ordered.

4. Action

a. Pretrial Confinement Procedure. Pretrial confinement is physical restraint, imposed by order of competent authority depriving a person of freedom pending disposition of charges. Pretrial confinement procedure involves three steps: (1) the initial order to confine a servicemember; (2) the commanding officer's review of that decision; and (3) review by an initial review officer. When practicable, all three steps should be completed before transferring the servicemember to the confinement facility. In every case, however, the commanding officer must review the confinement decision within 72 hours after ordering a prisoner into pretrial confinement or after receipt of a report that a member of the commander's unit has been confined, and the initial review officer must review the case within seven days.

(1) Order. Any commissioned officer may order pretrial confinement of any enlisted person. As to officers, only the commanding officer may order pretrial confinement. The officer considering confinement shall, before ordering confinement, consider all factors, particularly those listed in enclosure (1). No person may be placed in pretrial confinement unless the officer ordering pretrial confinement has a reasonable belief that:

- (a) An offense triable by court-martial has been committed;
- (b) The person to be confined committed it; and
- (c) Confinement is required by the circumstances.

(2) Advice to the Accused and Report to Commanding Officer. When a person is to be ordered into pretrial confinement, he must be advised of his rights. Enclosure (2) contains the required advice. The accused will initial each paragraph indicating he has read and understands his rights, then sign and date/time the form. The accused's signature will be witnessed by appropriate authority. The enclosure may be modified as appropriate for commands not located at MCRD. A copy shall be given to the accused upon being ordered into confinement. The original reports shall be given to the commanding officer by the officer ordering confinement. The enclosure may be modified as appropriate by commands not located at MCRD.

(3) Commanding Officer's Review. Not later than 72 hours after ordering a prisoner into pretrial confinement or after receipt of a report that a member of a commander's unit has been confined, the confinee's commanding officer shall review the pretrial confinement order. (If practicable, he shall review the confinement order immediately and forward it to the IRO prior to confinement). Using enclosure (1) as a guide, the commanding officer shall consider the requirements and factors for and against pretrial confinement.

(a) Memorandum. If the commanding officer approves the initial pretrial confinement decision, the commanding officer shall complete a memorandum which states the reasons for pretrial confinement. The form found in enclosure (3) shall be used for that purpose. The enclosure may be modified as appropriate by commands not located at MCRD.

(b) Forwarding for Review. If practicable, the commanding officer's memorandum (referred to in paragraph 4a(3)(a) above) will be completed before the person is placed in pretrial confinement, and will be forwarded to the Marine Corps Recruit Depot IRO for review. If the person has been confined prior to the commanding officer's review, the commanding officer's memorandum will be forwarded to the Marine Corps Base, Camp Pendleton, IRO. However, additional information may be added at any time prior to the IRO's hearing on the case.

(4) Initial Review Officer's Review. If it is practicable to conduct the IRO's review before the prospective confinee is transported off the Depot for pretrial confinement, the Marine Corps Recruit Depot IRO shall review the case. The MCRD IRO will determine whether the requirements justifying confinement as set forth under RCM 305(h)(2)(B), have been proven by a preponderance of the evidence before the person is transferred to a confinement facility. However, when the accused has

been placed in pretrial confinement before the Marine Corps Recruit Depot IRO has reviewed the case, the IRO for the Correctional Facility will conduct the review of the case.

(a) Initial Review Officer Procedure. Procedures to be followed by the IRO are set forth in R.C.M. 305(i) of reference (a) and in Camp Pendleton Base Orders on the subject. The prisoner, the prisoner's counsel (if any), and a representative of the command may appear and testify.

(b) Initial Review Officer Memorandum. As required by R.C.M. 305(i)(6) of reference (a), the IRO shall prepare a memorandum of decision containing the IRO's conclusions and factual basis for confinement. The memorandum is to be maintained by the IRO. The MCRD IRO shall use the format of enclosure (4). Copies of all IRO Memorandums will be provided by the MCRD IRO to the accused, the accused's commanding officer, the Assistant Chief of Staff, Staff Judge Advocate, and the Camp Pendleton IRO.

(c) Reconsideration. Upon notice to the parties, the IRO is required by R.C.M. 305(i)(7) of reference (a) to reconsider the decision to confine the accused if significant information arises that was not previously considered.

b. Confinement after Release. A person may be confined after release by the IRO from confinement only upon discovery of new evidence of misconduct which either alone or in conjunction with all other available evidence justifies confinement.

c. Confinement as the Result of Court-Martial. Except as provided below, confinement may be ordered by the convening authority of the court-martial which adjudged the confinement. Further, by this Order, the Commanding General's authority to order post-trial confinement is hereby delegated to all officers detailed to serve as trial counsel in accordance with R.C.M. 1101(b)(2) of reference (a).

d. Vacation of Suspended Confinement. The suspension of sentence of a probationer who violates the terms of suspension may be vacated in accordance with R.C.M. 1109 of reference (a). Confinement incident to vacation of a suspended sentence requires an order to confinement and a hearing. When practicable, both steps will be completed prior to transfer of the person to the confinement facility. If the probationer is confined prior to the hearing, R.C.M. 1109 requires that the hearing occur within seven days of confinement.

(1) Confinement Order

(a) Authority. In the case of enlisted probationers, officers may order confinement incident to proceedings to vacate a suspended sentence. As to officers, only the commanding officer may order confinement.

(b) Probable Cause. No probationer may be placed in confinement unless the officer ordering confinement has probable cause to believe that the probationer violated a condition of the probation.

(2) Hearing Requirements. Hearings pursuant to R.C.M. 1109 shall be held by the MCRD IRO. The accused must be notified in writing of the time, place, and purpose of the hearing, including the alleged violation(s) of the conditions of suspension. The sole issue to be resolved at the hearing is whether there is probable cause to believe that the probationer violated the conditions of the suspension. The IRO is required to set forth in a written memorandum the decision, the reasons for the decision, and the information relied upon. The formats for reports of vacation hearings are contained in Appendix 18 of reference (a). Additional information regarding vacation of suspended sentences is found in reference (f).

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5. Applicability. This Order applies to all organizations and personnel for whom the Commanding General, MCRD/WRR, serves as officer exercising general court-martial jurisdiction.



D. J. FULHAM

DISTRIBUTION: I, X

Copy to: MCB, CAMPEN Initial Review Officer
CO, Base Brig, MCB, CAMPEN



UNITED STATES MARINE CORPS
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
SAN DIEGO, CALIFORNIA 92140-5001

DepO 5800.10E Ch 1
9B

22 DEC 1995

DEPOT ORDER 5800.10E Ch 1

From: Commanding General
To: Distribution List

Subj: CONFINEMENT

1. Purpose. To direct pen changes to the basic Order.
2. Action. In subparagraph 3d, make the following changes: In the first sentence, delete the words "Metropolitan Correctional Center, San Diego, California, if possible, or such other confinement facility as may be designated in accordance with reference (d)." and insert the words "Naval Consolidated Brig, Naval Air Station, Miramar."
3. Filing Instructions. File this Change transmittal immediately behind the signature page of the basic Order.


J. M. GUERIN
Chief of Staff

DISTRIBUTION: A, G

Copy to: MCB, CAMPEN Initial Review Officer
CO, Base Brig, MCB, CAMPEN

FACTORS IN ORDERING PRETRIAL CONFINEMENT

1. Pretrial confinement may not be imposed:

- a. To await imposition of or as punishment by nonjudicial punishment;
- b. To await trial by summary court-martial;
- c. When an accused has been found to have been mentally irresponsible, or is mentally incompetent to stand trial, as determined by a board of psychiatrists;
- d. Pending execution of an approved administrative discharge (However, an accused otherwise properly confined who requests discharge to escape trial by court-martial may be retained in confinement pending action on that request by the discharge authority); or
- e. For any reason other than: to assure the accused's presence for trial, pretrial hearing, or investigation and/or prevent the foreseeable future serious criminal misconduct of the accused.

2. Considerations Summary

- a. The nature and circumstances of the offenses charged or suspected, including extenuating circumstances;
- b. The weight of the evidence against the accused;
- c. The accused's ties to the locale, including family, off-duty employment, financial resources, and length of residence;
- d. The accused's character and mental condition;
- e. The accused's service record, including any record of previous misconduct;
- f. The accused's record of appearance at or flight from other pretrial investigations, trials, and similar proceedings;
- g. The reliability of information (oral, written, under oath);
- h. The contents of personnel and police records; and
- i. The adequacy of less severe forms of restraint.

3. Inferences

- a. Factors which may indicate that pretrial confinement is not necessary:
 - (1) An absentee or deserter voluntarily returns (surrenders) to his unit;
 - (2) An absentee or deserter has returned to his unit in compliance with stragglers orders;
 - (3) Senior enlisted personnel facing charges after a previously unblemished record;
 - (4) A first-time absentee or deserter, regardless of whether he was apprehended or surrendered, who agrees in writing to be present for his trial. (See paragraphs 3b(1), (2), and (4) below;
 - (5) Obviously stable individuals facing minor charges;
 - (6) An accused has retained civilian counsel to represent him at trial;

ENCLOSURE (1)

(7) The accused has remained with his organization for a period of time without any restraint or has complied with orders imposing restriction in lieu of arrest; and

(8) The accused's domicile (permanent home), family, and/or household goods are located in the vicinity of the command to which he is assigned.

b. Factors which may, but do not necessarily, indicate the necessity for pretrial confinement:

(1) The accused has entered an unauthorized absence status while awaiting trial by court-martial;

(2) The accused commenced a period of unauthorized absence by breach of restriction or correctional custody, escape from custody or restraint following trial while awaiting review action on a sentence involving restraint not yet served, or while an appeal from nonjudicial punishment was pending, or in violation of a previous written agreement to be present for trial;

(3) The accused commenced a period of unauthorized absence under circumstances which indicate such absence was to avoid or impede the investigation, trial or punishment of himself or alleged co-actors, or to avoid delivery to civilian authorities;

(4) The seriousness and number of the offenses (As a general proposition, as the degree of seriousness--and number--of offenses increases, the more likely it may be that a person accused of the offenses may flee to avoid conviction); and

(5) A first-time absentee or deserter who frequently moved to different locations during the absence, or worked under an assumed name or other identification during the absence, or through statements or actions otherwise indicated he has no intention of voluntarily returning to military control.

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_____ g. The reviewing officer's conclusions and factual findings shall be set forth in a written memorandum. I may receive a copy of the memorandum upon request.

_____ h. The decision to confine me may be reconsidered upon request based upon any significant information not previously considered.

_____ i. Once charges are referred to trial, the military judge shall review the propriety of my pretrial confinement upon motion for appropriate relief.

(s) _____

Date and Time

Witnessed: _____

ENCLOSURE (2)

UNITED STATES MARINE CORPS
Marine Corps Recruit Depot
San Diego, California 92140-5001

U N I T E D S T A T E S)	COMMANDING OFFICER'S
)	PRETRIAL CONFINEMENT
v.)	
)	
)	MEMORANDUM
)	
_____)	
PRETRIAL CONFINEE)	

TO THE INITIAL REVIEW OFFICER

Per R.C.M. 305(h)(2)(C), the following information is submitted:

1. The accused (will be) (was) placed in pretrial confinement at the following date and time:
2. The offense(s) the servicemember has allegedly committed, (is) (are) as follows:
3. The general circumstances known concerning each offense are as follows:
4. The type of court-martial contemplated is _____ SPCM
_____ GCM.
5. Disciplinary record of the servicemember:

Nonjudicial Punishment(s)

Date	Offense(s)	Punishment
------	------------	------------

Court-Martial Conviction(s)

Date	Type of Court	Offense(s)	Punishment
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6. Mitigating or extenuating circumstances in the case:

ENCLOSURE (3)

7. Summary of other information considered. (May be incorporated by reference, e.g., witness statements, investigative reports, or official records.) (Attach all written information).

- a. Confinement order (attached)
- b.
- c.
- d.
- e.

8. I am of the opinion that there is probable cause to believe that an offense triable by court-martial, as set forth above, was committed; that the accused committed it; and that confinement is required by the circumstances. There is apparent court-martial jurisdiction over the accused for the offenses involved.

9. I am of the opinion that confinement is necessary because it is foreseeable that (select one or both)

- a. The accused will not appear at a pretrial prehearing, or investigation.
- b. The accused will engage in serious criminal misconduct.

10. My opinion that the servicemember should remain in pretrial confinement is based on the following reason(s) (initial applicable items and provide statement in support of items initialed):

_____ He will likely absent himself or desert to avoid facing trial. THE REASONS I BELIEVE HE WILL NOT APPEAR AT TRIAL ARE:

_____ There is a probability that the servicemember, if not confined, will inflict serious bodily harm (e.g., mutilation, deep cuts, broken bones, etc.) on another. THE PREPONDERANCE OF THE EVIDENCE WHICH LEADS ME TO THIS CONCLUSION IS AS FOLLOWS:

_____ There is a probability that the servicemember, if not confined, will attempt to obstruct justice by intimidating witnesses. The PREPONDERANCE OF THE EVIDENCE WHICH LEADS ME TO THIS CONCLUSION IS AS FOLLOWS:

_____ There is a high degree of probability that the servicemember, if not confined, will commit an act or acts which will result in a serious threat to the morale, discipline, readiness or safety of the military community by appreciably impairing the combat readiness or operational effectiveness of a unit of the U.S. Armed Forces. THE PREPONDERANCE OF THE EVIDENCE WHICH LEADS ME TO THIS CONCLUSION IS AS FOLLOWS:

11. I have considered lesser forms of restraint. I am of the opinion that only confinement will prevent the commission by the servicemember of those act(s) set forth in paragraph 10, above, which I have initialed. THE PREPONDERANCE OF THE EVIDENCE WHICH LEADS ME TO THIS CONCLUSION IS AS FOLLOWS:

12. I expressly represent that the foregoing instruments are true and correct to the best of my knowledge and belief.

Done at _____, California

This ___ day of _____, 19 ____

Signature of Commanding Officer

Commanding Officer of _____

Telephone Number _____

ENCLOSURE (3)

UNITED STATES MARINE CORPS
Marine Corps Recruit Depot
San Diego, California 92140-5001

UNITED STATES)	INITIAL
)	
v.)	REVIEW OFFICER'S
)	FINDINGS
)	AND
_____)	ORDER
PRETRIAL CONFINEE)	

SUMMARY OF HEARING

Date and Time Detained:

Offenses Charged:

Date and Time of Hearing:

Persons Present:

At the outset of the hearing, accused was advised of his rights (see Exhibit I).

The reasons for detention given by command in addition to those set forth in the Commanding Officer's Pretrial Confinement Memorandum (Exhibit II) are:

The accused presented the following reasons for release:

INITIALS

INITIAL REVIEW OFFICER'S FINDINGS
(Strike inapplicable words)

_____ I do (not) find probable cause to believe that an offense triable by court-martial has been committed.

_____ I do (not) find probable cause to believe that the accused committed it.

_____ There is (no) apparent court-martial jurisdiction.

_____ Pretrial confinement is (not) fully justifiable under the circumstances because:

- _____ a. It is likely the accused will not appear at trial, pretrial hearing, or investigation, or
- _____ b. It is likely the accused will engage in serious criminal misconduct.
- _____ c. Less severe forms of restraint are inadequate.

ENCLOSURE (4)

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7 May 1987

DISCUSSION

ORDER

The confinee is to be (released from) (continued in) pretrial confinement.

Done at _____, California
This _____ day of _____, 19____

Initial Review Officer
By Authority of the Secretary of the Navy

DISTRIBUTION:
MCRD Initial Review Officer (Original)
Confinee
Confinee's CO
AC/S, SJA, MCRD
CO, Correctional Facility

ENCLOSURE (4)