



DEPARTMENT OF THE NAVY

CHIEF OF NAVAL EDUCATION AND TRAINING
250 DALLAS ST
PENSACOLA FLORIDA 32508-5220

CNETINST 1640.2D
Code 00J

08 DEC 2000

CNET INSTRUCTION 1640.2D

Subj: PRETRIAL CONFINEMENT

Ref: (a) R.C.M. 305, MCM (1998 edition)
(b) JAGMAN 0127
(c) U.S. v. Rexroat, 38 M.J. 292 (C.M.A. 1993)
(d) R.C.M. 1109(c), MCM (1998 edition)

Encl: (1) Format for Command Memorandum Stating Basis for
Pretrial Confinement (PTC) and Confirming 48-Hour
Review of Probable Cause
(2) Format for Request from Naval Air Station, Pensacola
Naval Brig/Correctional Custody Unit (NASP NAVBRIG/
CCU) for Assignment of Counsel w/PTC Rights
(CNET 1640/2)
(3) Sample Memorandum, Initial Review Officer's (IRO's)
Action

1. Purpose. To promulgate procedures for the disposition and review of PTC of military personnel confined at the NASP NAVBRIG/CCU, and to provide guidance regarding the confinement of members in anticipation of proceedings concerning the vacation of a suspended court-martial sentence involving confinement. This instruction has been extensively revised and should be read in its entirety.

2. Cancellation. CNETINST 1640.2C

3. Initial Pretrial Confinement

a. Reference (a) establishes the requirements for commanding officers (CO's) to follow after ordering a member into PTC or after receiving a report that a member of the CO's unit or organization has been confined. Reference (b) provides additional guidance for PTC cases.

b. Per references (a) and (c), a neutral and detached officer must review the existence of probable cause to confine a service member within 48 hours of confinement. If the detainee's CO made the initial confinement decision personally, and if he/she is

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neutral and detached regarding the detainee and the suspected offenses, that probable cause decision satisfies reference (c). Otherwise, the detainee's CO shall review the existence of probable cause within 48 clock hours of the initiation of the detainee's confinement. The decision shall be memorialized in writing in an appropriate manner (log entry, memorandum to file, etc.). Additionally, the fact this 48-hour review requirement was completed shall be noted in enclosure (1) when submitted. In deciding whether to continue PTC, CO's shall be bound by the requirements for confinement specified in subsection (h)(2)(B) of reference (a).

c. If a CO approves continuation of PTC, the command shall promptly prepare a written memorandum for submission to the IRO in the format prescribed in enclosure (1). This memorandum must be submitted as soon as possible; but under no circumstances shall it be later than 72 hours from the commencement of PTC or 72 hours after receipt of report of PTC, in order to allow the IRO adequate time to review the case and schedule a hearing within seven calendar days from the date PTC was imposed. The original and one copy of this memorandum will be submitted to the IRO via CO, NASP (Code 01B00), telephone (850) 452-3100 ext. 1354 or DSN 922-3100 ext. 1354, fax (850) 452-4446 or DSN 922-4446, who shall be responsible for scheduling and providing the IRO with the necessary administrative support. A copy of the CO's memorandum will also be forwarded to the appropriate Naval Legal Service Office (NLSO) for the accused's designated defense counsel.

d. PTC is not appropriate in cases where the anticipated disciplinary action is nonjudicial punishment or summary court-martial. PTC is not authorized with respect to Sailors or Marines facing administrative separation proceedings.

4. Initial Review of Pretrial Confinement

a. Chief of Naval Education and Training (CNET) will appoint, by separate directive, one or more neutral and detached officers (IRO's) to review the necessity for continued PTC. This review will be conducted within seven calendar days of the imposition of confinement per subsection (i) of reference (a).

b. To facilitate scheduling of a hearing by the IRO, Officer in Charge (OIC), NASP NAVBRIG/CCU will coordinate with NASP (Code 01B00) and the appropriate NLSO to have counsel assigned to each detainee, as requested. Enclosure (2) may be used as a guide. Additionally, OIC, NASP NAVBRIG/CCU will provide CNET (Code 00J) and NASP (Code 01B00) daily brig status reports.

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c. Matters to be considered, rules of evidence, and standards of proof at the review hearing are specified in subsection (i)(2)(A) of reference (a). The detainee and the detainee's counsel, if any, shall be allowed to appear before the IRO and make a statement, if practicable. A representative of the command may also appear before the IRO to make a statement. In any case, the IRO may, at his or her discretion, request the presence of a command representative. Upon completion of review, the IRO shall issue a written memorandum per subsection (i)(2)(D) of reference (a). This memorandum shall set forth the IRO's decision on whether to continue PTC or order immediate release. This memorandum shall include the reasons for the decision using enclosure (3) as a guide. Copies of this memorandum shall be provided to CNET (Code 00J), NASP NAVBRIG/CCU, the detainee's command, the Trial Service Office Detachment, the detainee's counsel, and the detainee.

5. Vacation of Suspended Sentence that Includes Confinement

a. Reference (d) is the primary source of rules regulating the confinement of "probationers" who are awaiting proceedings to vacate the suspension of a court-martial sentence that includes confinement. A "probationer" is a person who is still subject to the terms of a suspended court-martial sentence.

b. When a preliminary hearing is required to review the necessity of the confinement of probationers per reference (d), the IRO shall be an officer who has been appointed to conduct reviews of PTC per paragraph 4 above.

6. Form. CNET 1640/2 is available on the CNET web site at www.cnet.navy.mil.


D. L. BREWER, III
Vice CNET

Distribution (CNETINST 5218.2D):
Lists I (2-7, 10, 23, 24, 26, 35, 36, 41, 44), II (5-7, 10-20, 27), III (1 & 3), IV (2 & 5)

CNETINST 1640.2D

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Copy to:

SNDL FF32A (NAVSUPPACT MID SOUTH)
FT1 (CNATRA)
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39C1 (COM TWO ZERO NCR)
39D1 (NMCB 1, NMCB 7, NMCB 74, NMCB 133)

Available on CNET Web Site: www.cnet.navy.mil

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FORMAT FOR COMMAND MEMORANDUM STATING BASIS FOR
PRETRIAL CONFINEMENT (PTC)
AND CONFIRMING 48-HOUR REVIEW OF PROBABLE CAUSE

(Date)

MEMORANDUM

From: Commanding Officer,
 To: Initial Review Officer
 Via: Commanding Officer, Naval Air Station, Pensacola (Code O1B00)

Subj: PRETRIAL CONFINEMENT ICO (DETAINEE'S RATE, NAME, BRANCH OF SERVICE,
 AND SSN)

Ref: (a) R.C.M. 305, MCM (1998 edition)
 (b) CNETINST 1640.2D

Encl: (1) (Copy of charge sheet, report chit, S/R page 6 (as applicable),
 and confinement order)
 (2) (Copy of investigative reports, statements compiled by NCIS or
 Security Department, etc.)

1. Per references (a) and (b), following is provided in case of subject member:

- a. Date and time of confinement: _____
- b. Place of confinement: _____
- c. Command ordering confinement: _____
- d. Previous disciplinary record: _____

2. The requirement to review probable cause within 48 hours of the initiation of confinement was satisfied because (check one):

() the commanding officer is neutral and detached in this matter and personally made the initial confinement decision; or

() the commanding officer is neutral and detached in this matter and personally reviewed the existence of probable cause to continue the confinement initially ordered by _____

within 48 hours of the initiation of confinement; or

() (Other - explain): _____

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3. There is probable cause to conclude that:

a. The offense(s) specified in enclosure (1) have been committed and are triable by court-martial.

b. Subject member committed the offense(s) specified in enclosure (1).

c. Confinement of subject member is necessary because it is foreseeable that (check one or both, as applicable):

() The detainee will not appear at trial, pretrial hearing, or investigation;

() The detainee will engage in serious criminal misconduct; and

d. Less severe forms of restraint are inadequate.

4. The conclusions expressed in the preceding paragraph are based upon the following rationale:

a. That the detainee committed the alleged offense(s) is supported by the information contained in the investigative report in enclosure (2). (If no report, explain general circumstances supporting the command's decision to confine subject member.)

b. That the detainee will not appear at trial, pretrial hearing, or investigation, or that the detainee will engage in serious misconduct is supported by _____

_____.

c. That lesser forms of restraint are inadequate is supported by _____

_____.

5. Name and telephone number of command representative who is familiar with the case and who will appear at IRO's hearing: _____

_____.

MUST BE SIGNED BY CO/ACTING CO --
NOT BY DIRECTION

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FORMAT FOR REQUEST FROM NAVAL AIR STATION, PENSACOLA
NAVAL BRIG/CORRECTIONAL CUSTODY UNIT
(NASP NAVBRIG/CCU) FOR ASSIGNMENT OF COUNSEL FOR PTC
W/PTC RIGHTS (CNET 1640/2)

(Date)

From: Officer in Charge, Naval Brig/Correctional Custody Unit, Pensacola
To: Commanding Officer, Naval Legal Service Office Central

Subj: REQUEST FOR ASSIGNMENT OF DEFENSE COUNSEL IN THE CASE OF U.S. V.

Ref: (a) R.C.M. 305, MCM (1998 edition)

Encl: (1) Copy of Confinement Order
(2) Pretrial Confinement Rights

1. Per reference (a) and enclosure (1), detainee _____ was confined on _____ and informed of his/her rights (enclosure (2)) on _____. The detainee requests a defense counsel be assigned to represent him/her during the Initial Review Officer's (IRO's) hearing per provisions of subsection (i) of reference (a). By return endorsement, it is requested that this command be notified of counsel assignment.

Signature

(Date)

FIRST ENDORSEMENT

From: Commanding Officer, Naval Legal Service Office Central
To: Officer in Charge, Naval Brig/Correctional Custody Unit, Pensacola

1. Readdressed and returned.
2. The following defense counsel has been assigned to represent the detainee at the IRO's hearing procedure per the provisions of subsection (i) of reference (a) and in other pretrial matters:

3. The detainee should be promptly notified of this assignment.

Signature

Copy to:
NASP (Code 01B00)

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PRETRIAL CONFINEMENT RIGHTS

INITIAL AND DATE

<p>I have been advised that I am suspected of the following offense(s) in violation of the Uniform Code of Military Justice.</p>	
<p><i>I have been advised that:</i></p>	
<p>1. I have the right to remain silent.</p>	
<p>2. Any statement made by me may be used against me,</p>	
<p>3. If I am ordered into pretrial confinement by other than my commanding officer, a report must be made to him/her within 24 hours that contains my name, offense(s), and the name of the person ordering or authorizing my confinement.</p>	
<p>4. I have the right to retain civilian counsel at no expense to the United States.</p>	
<p>5. I have the right to have military counsel appointed upon my request prior to review by the reviewing officer.</p>	
<p>6. Review of the adequacy of probable cause to continue pretrial confinement shall be made by a neutral and detached officer within 48 hours of imposition of confinement under military control.</p>	
<p>7. After the order or within 72 hours after my commanding officer receives the report of my confinement, he/she will decide whether pretrial confinement will continue.</p>	
<p>8. If continued pretrial confinement is approved, my commanding officer will forward a written memorandum to a reviewing officer via the Staff Judge Advocate, NAS Pensacola. This memorandum will outline the reasons for continued pretrial confinement. The reviewing officer must make a decision within 7 days of the confinement being imposed. The reviewing officer may, for good cause, extend the time limit for completion of the review to 10 days.</p>	
<p>9. The reviewing officer may approve continued pretrial confinement or order my immediate release after he/she conducts a hearing. I will have a right to appear at the hearing, make a statement, and have counsel present. This hearing will be held as soon as possible after the reviewing officer receives the memorandum from my commanding officer.</p>	
<p>10. If the charges for which I am confined are referred to trial, the military judge may review the propriety of the pretrial confinement.</p>	
<p>SIGNATURE AND DATE</p>	

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SAMPLE MEMORANDUM
INITIAL REVIEW OFFICER'S (IRO'S) ACTION

Ref: (a) Manual for Courts-Martial (1998 edition)

Accused: _____

Confining Authority: Commanding Officer, _____
(Detainee's Command)

Date of Review: _____

1. Having been afforded an opportunity to do so, the detainee and his/her counsel appeared before the IRO. The accused was advised that the purpose of the review was to determine the adequacy of probable cause to believe the accused had committed the offense(s) and of the necessity for continued pretrial confinement. Specifically, the detainee was advised that the IRO would review the determination by the detainee's commanding officer under R.C.M. 305(h) (2) (B) of reference (a) that:

- a. An offense triable by court-martial had been committed;
- b. The detainee committed it; and
- c. Confinement is necessary because it is foreseeable that:

(1) The detainee will not appear at a trial, pretrial hearing, or investigation, or

(2) The detainee will engage in serious criminal misconduct; and

- d. Less severe forms of restraint are inadequate.

2. The detainee was advised that he/she was suspected of the following offense(s): _____

3. The detainee was further advised, per Article 31, Uniform Code of Military Justice (UCMJ), that he/she had the absolute right to remain silent and that any statement by him/her could be used as evidence against him/her in a court-martial or other legal proceedings.

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4. (Optional, if applicable - A representative of the detainee's command was present.) The IRO considered the memorandum prepared by the commanding officer under R.C.M. 305(h)(2)(C) of reference (a), and the following additional written matters presented by the command (copies attached): (Optional, if applicable - The command representative also made a statement summarized as follows:)

5. (Optional, if applicable - The detainee was represented by counsel. The IRO considered a statement submitted by the detainee, summarized as follows:

The IRO also considered the following written matters submitted by the detainee (copies attached): _____

IT IS HEREBY DETERMINED BY THE IRO THAT:

___ The detainee should be released from pretrial confinement.

___ A preponderance of the evidence supports the commanding officer's determination that an offense(s) triable by court-martial has/have been committed, that the detainee committed it/them, and that the detainee should continue in pretrial confinement because: _____

(Initial Review Officer)

- Copy to:
- Detainee
- CNET (Code OOJ)
- Detainee's Commanding Officer
- NASP NAVBRIG/CCU
- Detainee's Defense Counsel
- Trial Counsel