



UNITED STATES MARINE CORPS  
MARINE CORPS INSTALLATIONS EAST-MARINE CORPS BASE  
PSC BOX 20005  
CAMP LEJEUNE NC 28542-0005

MCIEAST-MCB CAMLEJO 1640.10A  
LSSS  
JAN 16 2020

MARINE CORPS INSTALLATIONS EAST-MARINE CORPS BASE CAMP LEJEUNE ORDER  
1640.10A

From: Commanding General  
To: Distribution List

Subj: REVIEW OF PRETRIAL CONFINEMENT BY INITIAL REVIEW OFFICER

Ref: (a) JAGINST 5800.7F, Sec. 0127 (JAGMAN)  
(b) R.C.M. 305, MCM, 2016  
(c) SECNAVINST 1640.9D

Encl: (1) Notice to Accused Upon Pretrial Confinement  
(2) Commander's 72-Hour Memorandum  
(3) Notice of Missing 72-Hour Memorandum for Continued Pretrial  
Confinement  
(4) Pretrial Confinement Hearing Record

Reports Required: I. Results of Hearing (Report Control Symbol  
MCIEAST-MCB CAMLEJ-1640-01) par 4b(2)(a)  
II. Pretrial Confinement Report (Report Control  
Symbol DD-1640-03) par 4b(2)(a)

1. Situation. The Initial Review Officer (IRO) performs an important role in maintaining the safety and security of Camp Lejeune and the surrounding areas while also providing for the rights of the accused. This Order sets forth the guidelines for the efficient and fair functioning of the pretrial confinement process. The importance of maintaining the credibility and viability of the procedures in this Order cannot be overemphasized as this process must be both transparent and impartial in order to ensure that proper due process is provided to the accused and ample consideration is placed on the Command's request for a service member to be confined.

2. Cancellation. MCIEAST-MCB CAMLEJO 1640.10.

3. Mission

a. To issue Marine Corps Installations East-Marine Corps Base Camp Lejeune (MCIEAST-MCB CAMLEJ) policy and procedures for review of pretrial confinement, as required by references (a) through (c).

b. Summary of Revision. This Order has been revised to update current policy and procedures and should be reviewed in its entirety.

DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited.

4. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent. I intend to ensure that all Marines and Sailors confined in the MCIEAST Regional Brig in pretrial confinement are placed in confinement because an offense triable by a court-martial has allegedly been committed by the confinee, and that continued confinement is necessary because it is foreseeable that; the confinee will not appear at trial, a pretrial hearing, or preliminary hearing, or that the confinee will engage in serious criminal conduct, and that less severe forms of restraint are inadequate to ensure a confinee's presence at trial or other hearings, or to prevent future serious criminal misconduct. This Order is extended to all service members, regardless of Branch of Service, who are confined in the MCIEAST Regional Brig.

(2) Concept of Operations

(a) Reference (a) directs the Commanding General (CG) as the General Court-Martial Convening Authority, as the cognizant authority over the MCIEAST Regional Brig, to designate one or more officers, of the pay grade O-4 or above, to act as the IRO. The IRO will be neutral and detached, should be selected for their maturity and experience, and, if practicable, should have command experience. The IRO will review the necessity for continued pretrial confinement of an accused confined in this facility a crucial role in our military justice system.

(b) Primary and alternate IROs, may be designated as needed, by the CG, MCIEAST-MCB CAMLEJ, and may be authorized to conduct pretrial hearings on personnel from other branches of service upon approval of the request. Officer appointments will be made in accordance with regulations prescribed by the Secretary concerned.

(c) It is the policy of this Command, consistent with reference (b), that less severe forms of restraint must always be considered before pretrial confinement may be imposed.

(d) Pretrial confinement will not be imposed unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

1. An offense triable by court-martial has been committed;

2. The confinee committed it; and

3. Confinement is necessary because it is foreseeable that the confinee will not appear at trial, pretrial hearing, or investigation, or the detainee will engage in serious criminal misconduct, and less severe forms of restraint are inadequate. (Note: Serious criminal misconduct includes, but is not limited to, intimidation of witnesses or other obstruction of justice, serious injury of others, or other offenses, which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States.)

(e) The IRO, when evaluating whether continued pretrial confinement is necessary, will consider the factors listed in the discussion section of reference (b). Specifically, that a person should not be confined as a mere matter of convenience or expedience, the IRO is tasked with considering this non-exhaustive list of factors to properly address this issue, to include;

1. The nature and circumstances of the offenses charged or suspected, including extenuating circumstances;

2. The weight of the evidence against the confinee;

3. The confinee's ties to the locale, including family, off-duty employment, financial resources, and length of residence;

4. The confinee's character and mental conditions;

5. The confinee's service record including any record of previous misconduct;

6. The confinee's record of appearance or flight from other pretrial investigations, trials, and similar proceedings; and

7. The likelihood that the confinee can and will commit further serious criminal misconduct if allowed to remain at liberty.

(f) If pretrial confinement is initially valid, but is later determined to be unnecessary by the commander due to a change in circumstances, the confinee will be immediately released.

(g) If the decision of the IRO is to release the confinee, the Officer-in-Charge of the MCIEAST Regional Brig will be directed, in writing, to effect the release. Subsequent confinement shall not be directed, except as authorized by reference (b).

b. Tasks

(1) Chain of Command of Accused shall:

(a) Upon confinement, promptly notify the accused of their rights under reference (b), by using enclosure (1), which will be acknowledged by the accused and provided to the IRO.

(b) Within 72-hours (not to be interpreted as three working days) of the imposition of pretrial confinement under military control, a neutral and detached official, (who may be the accused's commanding officer (CO)), must review the adequacy of the probable cause to believe the accused has committed an offense suitable for trial at a Special or General Court-Martial, and of the continued necessity for pretrial confinement. This preliminary probable cause review is met if:

1. The CO, complying with section 305(d) of reference (b), personally orders the accused into confinement;

2. The CO, who did not personally order the accused into confinement, signs the 72-hour memorandum, as required by paragraph 305(h) of reference (b), within 72-hours of the imposition of confinement; or

3. The IRO conducts the seven day review of pretrial confinement, as required by section 305(i) of reference (b), within 72-hours of the imposition of confinement.

(c) If it is determined that continued pretrial confinement is required, the CO will complete a 72-hour memorandum, in accordance with section 305(h)(2)(C) of reference (b), utilizing the format depicted in enclosure (2) (original and two copies). This memorandum should be signed by the commander, or in their absence, the "Acting" commander, as assigned in writing. The CO must provide this letter to the IRO. The CO should clearly describe the rationale which led to the decision requiring continued physical restraint and state the reasons for their conclusions that the requirements for confinement, in accordance with reference (b), have been met. Enclosure (2) will be subscribed personally by the CO. It is the responsibility of the CO ordering confinement to ensure that this memorandum is delivered to the office of the IRO promptly.

(d) If the 72-hour memorandum is delivered by the CO at the same time they initially orders pretrial confinement, a second 72-hour memorandum need not be prepared, although additional information may be provided to the IRO.

(e) Failure to receive the 72-hour memorandum promptly may cause the IRO to forward enclosure (3), or to direct, in writing, release from confinement, in accordance with the references.

(2) IRO shall:

(a) Promptly, upon receipt of the 72-hour memorandum, the IRO shall hold an informal hearing to determine the necessity for continued pretrial confinement. Reference (b) provides that the IRO shall make their determination within seven days of imposition of confinement, and for good cause, this time limit may be extended to the 10th day. However, this Command's policy is that the review by the IRO be made as soon as practicable after receipt of the 72-hour memorandum. All possible notice, along with all required documentation/evidence, will be given to the defense counsel, if one is assigned or requested. Results of the hearing will be reported by the IRO utilizing the Pretrial Confinement Hearing Record, enclosure (4).

(b) During the conduct of the hearing, per reference (b), the IRO may receive evidence orally or in writing as the Military Rules of Evidence are not applicable.

(c) The IRO is responsible for the conduct of hearings/rehearing on pretrial confinement at any time prior to referral of charges. After referral of charges, the Military Judge may review the propriety of pretrial confinement in court upon motion for appropriate relief for the accused. Any action by the Military Judge relative to pretrial confinement should be immediately reported to the IRO.

(3) Commanders for other Installations with Service Members in the MCIEAST Regional Brig. Submit, in writing, nominated IROs and alternate IROs to the CG, MCIEAST-MCB CAMLEJ in sufficient time to ensure appointment of an IRO resident thereafter.

5. Administration and Logistics. The primary IRO for MCIEAST-MCB CAMLEJ is located in the Magistrate's Office, Building 60, Molly Pitcher Lane, MCB CAMLEJ.

6. Command and Signal

a. Command

(1) This Order is applicable to all commands which utilize the MCIEAST Regional Brig.

(2) Concurrence. This Order has been coordinated with and concurred with by the Commanding Generals, II Marine Expeditionary Force; 2d Marine Aircraft Wing; Commander, U.S. Marine Corps Forces, Special Operations Command; and the Commanding Officers of Marine Corps Air Station (MCAS), Cherry Point and MCAS New River, and is applicable to hearings conducted by the IRO at MCAS Cherry Point, appointed by the CG, MCIEAST-MCB CAMLEJ.

b. Signal. This Order is effective the date signed.



N. E. DAVIS  
Chief of Staff

DISTRIBUTION: A/C (plus H&S Bn, WTBn, MCAS NR, and MCAS CHERPT)

Copy to: II MEF  
COMMARFORSOC  
CG, 2d MAW

Notice to Accused Upon Pretrial Confinement

1. The nature of the offense(s) for which you are being held in pretrial confinement is/are:

---

---

---

2. You have the right to remain silent. Any statement you make may be used against you in a trial by courts-martial.

3. You have the right to retain civilian counsel at your own expense and you have the right to request assignment of military counsel.

4. The procedures by which your pretrial confinement status will be reviewed are as follows:

a. Within 72-hours after ordering you into pretrial confinement, or after receipt of notification that you have been confined, your Commanding Officer shall decide whether pretrial confinement will continue. If they approved continued pretrial confinement in your case, a written memorandum containing their reason(s) for this conclusion must be immediately forwarded to the Initial Review Officer (IRO), a neutral and detached officer.

b. Within seven days of your being placed in pretrial confinement, the IRO will determine the adequacy of probable cause to believe you committed an offense triable by courts-martial and the necessity for continued pretrial confinement. At this review hearing, you may be present and represented by civilian counsel at your own expense, or if you so request, you may have military counsel assigned for the limited purpose of representing you at this pretrial confinement review hearing or, if you have a detailed military counsel, they may represent you. The IRO may, for good cause, extend the time for completion of the initial review to 10 days after imposition of pretrial confinement. Upon completion of the review, the IRO will either approve continued pretrial confinement or order your release.

c. The IRO, upon request, based upon any significant information not previously considered, and after giving notice to you and the government's counsel, will reconsider the decision to confine you.

d. Once charges are referred to trial by court-martial, the military judge, upon motion by you, will review your pretrial confinement.

e. If you prefer, you may waive your right to be present at your Pretrial Confinement Hearing. If you invoke this right, your case will still be considered and a determination made by the IRO as to your release from, or continuation of, confinement.

Acknowledgement of the Accused

1. I have read this document and I understand my rights and the process by which my pretrial confinement will be reviewed.
2. I do/do not desire to be represented by military/civilian counsel.
3. I do/do not desire to be present at my Pretrial Confinement Hearing. Note: Military/civilian counsel signature required if accused waives right to be present at hearing. Waiver of right to be present at hearing does not remove the obligation of IRO to independently review the continued confinement.

\_\_\_\_\_  
Accused Signature/Date

\_\_\_\_\_  
Counsel Signature/Date

4. I certify that the accused was given this document and acknowledged their understanding of its contents by their signature above.

\_\_\_\_\_  
Witness Signature/Grade/Date



Commander's 72-Hour Memorandum

From: Commanding Officer, \_\_\_\_\_  
To: Initial Review Officer, Marine Corps Installations East-Marine  
Corps Base, Camp Lejeune  
Subj: PRETRIAL CONFINEMENT  
Ref: (a) MCIEAST-MCB CAMLEJO 1640.10A  
(b) R.C.M. 305, MCM, 2016

1. In accordance with references (a) and (b), the following information is furnished in support of my decision to continue pretrial confinement of:

Name: \_\_\_\_\_ EDIPI: \_\_\_\_\_ Grade: \_\_\_\_\_

Unit: \_\_\_\_\_ Age: \_\_\_\_\_

Average Proficiency/Conduct: \_\_\_\_/\_\_\_\_ Education: \_\_\_\_\_

GT: \_\_\_\_\_

Time/date confined: \_\_\_\_/\_\_\_\_

Total service to date: \_\_\_\_ years, \_\_\_\_ months, \_\_\_\_ days

Marital status: \_\_\_\_\_ Number of children: \_\_\_\_\_

Dependents in local area: Y/N Off duty employment: \_\_\_\_\_

Additional information (as necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The named detainee is alleged to have committed the following offense(s): Dates, places, Uniform Code of Military Justice Articles, etc.

3. Basis upon which named detainee is suspected of having committed the above alleged offense(s): Documents, statements, other evidence, etc.

4. A review of the named detainee's past record reflects the following disciplinary actions (include punishments, if any):

5. In making my decision, I also considered the following matters in extenuation and mitigation:

Subj: PRETRIAL CONFINEMENT

6. It is my opinion that a lesser form of pretrial restraint is inadequate and continued pretrial confinement is necessary:

- a. \_\_\_ To ensure the presence of the detainee at trial because:
- \_\_\_ Absence terminated by apprehension.
  - \_\_\_ Past record of absence offenses.
  - \_\_\_ Present absence(s) commenced while detainee was pending former administrative/legal action.
  - \_\_\_ Detainee broke restriction or lesser form of pretrial restraint.
  - \_\_\_ The nature and circumstances of the offenses charged or suspected, including extenuating circumstances.
  - \_\_\_ Other (describe):

and/or:

- b. \_\_\_ To prevent the detainee from committing serious criminal misconduct because:
- \_\_\_ Detainee has a past record of committing violent acts.
  - \_\_\_ Past record/medical/psychiatric evaluation indicates unstable character or mental condition.
  - \_\_\_ Detainee has allegedly tried to obstruct justice by threatening witnesses or tampering with evidence.
  - \_\_\_ It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command.
  - \_\_\_ Other (describe):

7. Additional comments:

F. M. LAST

MCIEAST-MCB CAMLEJO 1640.10A  
JAN 16 2020

Notice of Missing 72-Hour Memorandum for Continued Pretrial  
Confinement

THIS MEMORANDUM IS SUBJECT TO THE PRIVACY ACT OF 1974

From: Initial Review Officer  
To: Commanding Officer, \_\_\_\_\_

Subj: 72-HOUR MEMORANDUM FOR CONTINUED PRETRIAL CONFINEMENT,  
CASE OF: \_\_\_\_\_

Ref: (a) R.C.M. 305, MCM, 2016  
(b) MCIEAST-MCB CAMLEJO 1640.10A

1. Subsections (h)(2)(A-C) of reference (a) delineates actions required by the Commanding Officer upon pretrial confinement of an individual under their command.
2. In the case of (Name, Electronic Data Interchange Personal Identifier, Unit), confined on (Date) at (Time), records indicate that the 72-hour memorandum has not been received as required by the references. This delay is not considered "good cause" (as defined in reference (a)) and jeopardizes the proper and expeditious process in this case.
3. You are encouraged to review references (a) and (b) and ensure the 72-hour memorandum is received by the Initial Review Officer within the next 24-hours.
4. Questions regarding this matter should be directed to the undersigned at 910-451-2718, or to the Prisoners' Service Officer, MCIEAST-MCB CAMLEJ Regional Brig, at 910-451-7465.

F. M. LAST

Copy to:  
Prisoner SvcO, MCIEAST-MCB CAMLEJ Regional Brig  
Command SJA

Enclosure (3)

Pretrial Confinement Hearing Record

THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974

From: Initial Review Officer  
To: File

Subj: HEARING RECORD IN THE CASE OF (GRADE, NAME, EDIPI), (UNIT),  
AT (TIME) ON (DATE)

1. Hearing

I do/do not desire to be present at my pretrial confinement hearing.  
Note: Counsel signature required if accused waives right to be  
present at hearing.

\_\_\_\_\_  
Signature of accused/date

\_\_\_\_\_  
Signature of counsel/date

2. Procedure

a. \_\_\_ Prior to the commencement of the hearing, subject detainee  
was advised pertinent to Article 31, Uniformed Code of Military  
Justice.

b. \_\_\_ Prior to the commencement of the hearing, subject detainee  
was advised of the right to present evidence.

c. \_\_\_ The detainee DID/DID NOT desire to be represented by  
military/civilian counsel.

d. \_\_\_ The detainee DID/DID NOT have counsel present. If counsel  
present, name of counsel: \_\_\_\_\_.

e. \_\_\_ The following evidence was considered:

- (1) \_\_\_ Information on the 72-Hour Memorandum
- (2) \_\_\_ Detainee's Service Record Book
- (3) \_\_\_ Statement of the detainee (substance):
- (4) \_\_\_ Other:

3. Decision

a. \_\_\_ Apparent court-martial jurisdiction DOES/DOES NOT  
exist.

b. \_\_\_ Probable cause to believe that offense(s) HAVE/HAS BEEN  
committed and that subject detainee committed same.

c. \_\_\_ Continued pretrial confinement is not appropriate and release is directed forthwith.

or

d. \_\_\_ A lesser form or pretrial restraint is considered inadequate and continued pretrial confinement is appropriate:

(1) \_\_\_ To ensure the presence of the detainee at trial because:

\_\_\_ Absence was terminated by apprehension.

\_\_\_ Past record of absence offenses.

\_\_\_ Present absences commenced while detainee was pending former administrative/legal action.

\_\_\_ Detainee broke restriction or lesser form of pretrial restraint.

\_\_\_ The nature and circumstances of the offenses charged or suspected, including extenuating circumstances.

\_\_\_ Other:

and/or

(2) \_\_\_ To prevent the detainee from committing serious criminal misconduct because:

\_\_\_ Detainee has past record of committing violent acts.

\_\_\_ Past record/medical/psychiatric evaluation indicated unstable character or mental condition.

\_\_\_ Detainee has allegedly tried to obstruct justice by threatening witnesses or tampering with evidence.

\_\_\_ It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command.

\_\_\_ It is foreseeable that the alleged and potential acts of the detainee pose a serious threat to the national security of the United States.

\_\_\_ Other:

\_\_\_\_\_  
Initial Review Officer

4. Rehearing

\_\_\_ Requested by detainee or counsel because of new evidence.

a. Rehearing granted/denied because of no new evidence/charges referred to trial (review by military judge only).

b. Information considered:

c. Detainee's counsel, if any, notified of all information considered and given opportunity to rebut.

d. Decision

\_\_\_\_\_  
Initial Review Officer/Date

Copy to:

CO, \_\_\_\_\_  
OIC, MCIEAST MCB CAMLEJ Regional Brig  
Detainee File (original)