

Domestic Violence

Military Response and Regulations

Rev Feb 2010

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Military Justice

- Manual for Courts Martial (2008 Ed)
 - Rules for Court Martial (RCM) Part II
 - Pretrial Restraint: RCM 304, 305
 - Evidence Part III
 - Penal Code Part IV
 - Nonjudicial Punishment Part V



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Pretrial Restraint: RCM 304, UCMJ Art 9, 10

- Authority
 - Officer may restrain any enlisted person
 - CO may restrain officer
- Requirements.
 - PC to believe that offense triable by court-martial was committed, suspect committed it, restraint is required by the circumstances
- Types of restraint
 - Conditions on liberty
 - Restriction
 - Confinement
- Pretrial restraint begins speedy trial clock (RCM 707)

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Pretrial Confinement: RCM 305, UCMJ Article 10



- Requirements to impose pretrial confinement. PC that:
 - Offense triable by court-martial was committed, &
 - Suspect committed it, &
 - Confinement is needed because it is "foreseeable" that
 - Prisoner won't otherwise appear for court or
 - Prisoner will otherwise engage in "serious criminal misconduct" &
 - Lesser forms of restraint are inadequate

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Review of Pretrial Confinement

- W/in 48 hours CO reviews adequacy of PC to continue PTC
- W/in 72 hours CO prepares memo of PTC decision stating reasons why PTC is justified
- W/in 7 days* hearing is conducted before neutral initial review officer to examine necessity of continued PTC

*May be extended to 10 days after imposition of restraint for good cause

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Review of Pretrial Confinement

- Reconsideration: Upon request if significant info not previously considered
- Review by judge after charges referral for trial
- Judge may direct sentence credit
 - Day for day credit against sentence for noncompliance
 - Additional day for day credit for abuse of discretion or unreasonably harsh conditions
 - Above are in addition to normal day for day sentence credit to which the accused is entitled

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Military Protective Order: References



- DoDI 6400.06 Policy on DV and MPO
- SecNavInst 1752.3B (Navy FamAdv Program)
- AR 608-18 (Army FamAdv Program)
- MCO P 1700.24B (MCCS Personal Services Manual, ch 5 section 5003)

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Military Protective Orders (MPO)

- CO order to stay away from and / or not to contact a specific person
- Can NOT issue MPO to a civilian
- Finding of fault is NOT a prerequisite
- Applicable at all places, at all times
- No hearing requirements, no required format for MPO request (may be issued w/o request)

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Military Protective Order

- Issued to safeguard victim, quell disturbance, maintain good order and discipline while V seeks CPO, support existing CPO
- CO "may" use form 2873
- CO "shall tailor the terms of the MPO to meet the specific needs of an individual victim"

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MPO / CPO Relationship



- 10 USC 1657a: Military must report MPO to civilian law enforcement.
- 10 USC 1651a: Civilian restraining order shall have "the same force and effect on a military installation as such order has within the jurisdiction of the court" SecDef to make implementing instruction DoDI 6400

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On Base CPO Enforcement



- SecDef Implementation DoDI 6400.06 6.1.3
 - Active Duty: Noncompliance w/ CPO may result in military administrative & disciplinary sanction
 - Civilians: Noncompliance may result in debarment
 - "Any person who violates a CPO while on a military installation is subject to the imposition of sanctions by the court issuing the order."

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FINANCIAL SUPPORT FOR DEPENDENTS

- Army AR 608-99
- Navy MILPERSMAN 1754-30
- USAF AFI 36-2906
- USMC MCO P5800.16A Ch 15
- USCG COMDINST M100.6A

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Family Advocacy Community Counseling Services

- USMC: MCO P1700.24B
- Army: AR 608-18
- Navy: SecNavInst 1752.3B
- USAF: AFI 40-301
- USCG: COMDINST 1750.7C

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Family Advocacy Program Community Counseling



- Victim advocacy / counseling / assistance
- Incident review and assessment
- Treatment

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Victim Advocate Services

- Assessment
- MPO / CPO Assistance
- Safety plan
- Information and assistance available
- Restrictive reporting

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Restrictive Reporting



- V may obtain services & assistance w/o notification to command or law enforcement
- Disclosure must be to auth official: Victim advocate, health care provider

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Restrictive Reporting

- Exceptions to Non-Disclosure (DoDI 6400.06 encl 3)
 - As necessary to prevent "serious and imminent threat to the health or safety of the victim or another person."
 - Compliance with state / Federal law concerning the reporting of child abuse. (See NC Gen Stat 7B-301)
 - Compliance with court orders
- VA to consult w/ supervisor and SJA prior to disclosure if time permits
- VA to make every effort to advise V of intended disclosure
- Info received from independent source, e.g., law enforcement report, will be disclosed and command may investigate the matter

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FAP Incident Review and Assessment

- Case Review Committee: 5003.6 MCCA Manual
- Procedures and Evidence
- Standard of Proof: Preponderance
- Decisions
 - Substantiated / Unsubstantiated Unresolved / Unsubstantiated Did Not Occur
 - Level of severity (USMC only)
 - Treatment / counseling recommendations
- Progress reviews: At least every 90 days

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Treatment / Counseling

- **CORE ISSUES.** Six 2 hr sessions. Conflict, power, emotional management, impulse control.
- **DOMESTIC CONFLICT & CHILDREN.** Impact of DV on children. One 3 hr session
- **RELATIONSHIP SKILLS.** Four 2 hr sessions. Listening, expressing feelings, identify & change distorting thinking, negotiation, problem solving, managing anger.
- **MEN'S PERSPECTIVE.** Four 2 hr sessions addressing power and control tactics, internalized family and cultural norms.

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Treatment / Counseling

- **WOMEN'S GROUP.** Six 2 hr sessions. Community resources, safety planning, self esteem, marriage, children. Other topics as appropriate.
- **TRICARE.** Military funded private health care provider. Military dependents. ActDu only if referred by military provider.
- **MILITARY OneSource.** DoD funded. ActDu and dependents. "Short term, non medical counseling." Phone, on line, face to face.
<http://www.militaryonesource.com/MOS/About/CounselingServices.aspx>

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Treatment / Counseling

- **PSYCHOLOGICAL / PSYCHIATRIC COUNSELING.** As required.
- **FINANCIAL COUNSELING.** As required.
- **SUBSTANCE ABUSE COUNSELING.** As required.
- **LEGAL ASSISTANCE.** As required / available.

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CRC Decision Appeal



- May be made by alleged perp or by V
- Limited basis:
 - Failure to substantially follow procedures
 - Availability of new information
- Appeal / Reconsideration is by the CRC
- USMC: No provision for additional appeal
- Army: MTF CO "may" forward to CO US Army Medical Command AR 608-18 2-6

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USMC Collateral Effects: Fitness Reports



- "Derogatory material shall" be marked on fitrep for substantiation at level III or higher [MCO P1700.24B section 5003.7]
- Per MCO P1610.7F section 6b, non-exhaustive list of grounds for adverse report includes:
 - Substantiation at level IV or V
 - Subsequent substantiation at level III
 - Requires "Due process" [NFI] determination by CO that subject is culpable.

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USMC Collateral Effects: Administrative Separation



- CO "shall" initiate adsep after 2nd substantiation (normally at III, IV,V) when
 - Rehab, education, counseling previously afforded or
 - SM refused or failed to cooperate with Rx, or
 - SM failed to meet conditions of ct order or probation
 - Notwithstanding above, single incident may be sufficient to adsep where CO determines SM has no potential for further service

Source: MCO P1700.24B 5003.9

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USMC Collateral Effects: Administrative Separation

- MARCORSEPMAN:
 - 6210.2 Minor disciplinary infractions: at least 3 incidents of minor misconduct in current enlistment
 - 6210.3 Pattern of Misconduct: At least 2 incidents of misconduct w/in 1 enlistment more severe than at .1
 - 6210.6 Commission of "serious" offense (punitive discharge auth if tried at CM)

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USMC Collateral Effects: Administrative Discharge

- MARCORSEPMAN
 - 6210.7 Civilian conviction. Punitive disch auth if tried at CM OR sentence included 6 months jail regardless of whether suspended
 - Characterization of discharge may be honorable, general (under honorable conditions), or other than honorable
 - Adsep processing is not mandatory for any of the aforementioned basis

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Transitional Compensation

- Authorization: 10 USC 1059
 - DoDI 1342.24
 - OpNavInst 1750.3
- Compensation to V when dependent abuse offense results in
 - SM sentenced to punitive discharge by CM, or
 - SM sentenced to forfeit all pay, or
 - Administratively separated

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Transitional Compensation

- Commencement of Payments
 - Date sentence adjudged, or
 - Date adsep is approved by sep authority
- Duration
 - 36 months unless or SM's unserved contract obligation, whichever is less
 - Notwithstanding above, at least 12 months

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Transitional Compensation

- Amount:
 - Same as dependency indemnity comp 38 USC 1311
 - \$1,091 / month for spouse
 - Additional \$271 per dependent child
- Medical, Exchange, Commissary privileges for duration of payment period
- See community counseling center for assistance

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Transitional Compensation

- Forfeiture of Transitional Compensation
 - V remarries (not renewed if divorce)
 - V cohabits with perp
- Ineligible if an active participant in the conduct for which SM was separated or sentenced; e.g., civilian spouse also harms child or helps SM to do so.

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