

## MILPERSMAN 1620-010

### INTERROGATION AND SEARCH OF SERVICEMEMBERS

<b>Responsible Office</b>	NAVPERSCOM (PERS-06)	Phone:	DSN	882-3164
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1. **Policy**. The interrogation or search of servicemembers in connection with any offense shall be, whenever possible, conducted by or in the presence of a servicemember of the same sex. Searches should be conducted by a member of the same sex while members of the opposite sex remain outside the search area but in close proximity.

**NOTE:** This does not apply to special agents of Naval Criminal Investigative Service who are governed by internal regulations of that organization.

2. **Exceptions**. Exceptions to the policy may be

a. under urgent circumstances wherein an imminent danger to life or property exists; or

b. when the facts and circumstances of the investigation necessitate an immediate interrogation and a servicemember of the same sex is not available.

## MILPERSMAN 1620-020

### RESERVISTS SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

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<b>Governing Directives</b>	Manual for Courts-Martial (MCM), 1984 JAGINST 5800.7C
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#### 1. Jurisdiction - General Rule

a. Members of reserve components on active duty (including any form of annual training (AT) or active duty for training (ADT) or performing inactive duty training (IDT) are subject to the Uniform Code of Military Justice (UCMJ). Termination of a period of active duty or IDT, does not relieve them of amenability to UCMJ jurisdiction for an offense committed during such period, and they may later be involuntarily ordered to active duty for the purpose of

- (1) investigation under UCMJ article 32;
- (2) trial by court-martial; or
- (3) nonjudicial punishment.

b. UCMJ articles 2(a)(3), 2(d), and 3(d) provide further guidance.

c. Retired personnel of the Naval Reserve are subject to the UCMJ only when they are receiving hospitalization from an Armed Force. See UCMJ article 2(a)(5).

#### 2. Jurisdiction - Exceptions. There are jurisdiction exceptions:

a. A complete termination of military status by discharge at the end of a member's term of enlistment, even if followed by immediate reenlistment, terminates jurisdiction over the member

for offenses committed during the prior period of service and amenability to trial by court-martial therefor.

(1) See U.S. ex. rel. Hirshberg v. Cooke, 336 U.S. 210 (1949).

(2) UCMJ article 3(a)-(c) provides factors which override this exception.

b. A reenlistment before the end of a member's term of enlistment does not terminate jurisdiction over the member for offenses committed during that prior period of service. See U.S. v. Clardy, 13 M.J. 308 (CMA 1982).

3. **Jurisdiction - Summary Court - Martial Limitation.** Only commissioned officers on active duty may serve as summary court-martial officer as prescribed in UCMJ article 25(a).

4. **Command Responsibilities**

a. Commanding officers are responsible for the discipline of Reserve members of their command whether such members are performing active duty, AT, ADT, or IDT with their command.

b. Unless otherwise specified, "commanding officer" as used here refers to a commander, commanding officer, or officer in charge. To impose nonjudicial punishment, a command relationship must exist between the commander and the accused, i.e., orders to that command (AT, ADT, TAD, Modified Drill, etc.).

c. Commanding officers of reserve units have the same authority under the UCMJ during periods of IDT as that of commanding officers of active duty commands, except authority to convene general and special court-martial.

5. **Discipline.** Discipline shall be administered in the same manner as for active duty personnel, with modifications required by the conditions under which inactive duty reservists serve. The following limitations apply to inactive duty reservists:

a. If a restraint-type punishment (e.g., confinement, restriction, extra duties) pertains to inactive duty reservists who have been ordered to active duty for disciplinary proceedings, the period of active duty may not be extended for the purpose of serving such punishment, nor may a sentence to

confinement be adjudged, unless the order to active duty received Secretarial approval (generally **Assistant Secretary of the Navy, Manpower and Reserve Affairs (ASN(M&RA))**), but may be Secretary of the Navy, Under Secretary of the Navy, or any ASN).

**NOTE:** For the purpose of this article, all reference to the Secretary will be to ASN(M&RA). See UCMJ article 2(d)(5); and MCM, 1984, Rules for Court-Martial, Rule 1003(c)(3) (hereafter referred to R.C.M.).

b. If a restraint-type punishment pertains to reservists performing IDT, such restraint on liberty shall not extend beyond the normal IDT period but may be carried over to later periods of IDT or active duty. See R.C.M. 1003(c)(3). (Note that confinement may not adjudged on IDT. See subparagraph c(1).)

c. If pretrial confinement is involved, see the "Pretrial Confinement of IDT Reservists" paragraph below.

6. **Breach of Discipline.** When a breach of discipline is such to warrant trial by special or general court-martial, the accused may be retained in the present duty status, as circumstances warrant, until completion of action in the case to avoid loss of jurisdiction over the offender (in instances where a complete termination of military status is pending) or because of the gravity of the offense (considerations here include, but are not limited to, potential damage to national security, harm to others, and risk of flight). Positive action with a view to trial (i.e., apprehension, arrest, confinement or other restraint, or referral and receipt of charges) should be taken immediately. See R.C.M. 202; and the "Holdover in Current Status" paragraphs of this article.

7. **Determination for the Release Reservist.** If a command or unit at which a reservist is performing active duty, AT, ADT, or IDT determines the member should not be retained in the service by reason of unsatisfactory performance, homosexuality, security, or misconduct, a recommendation to that effect, with specific facts supporting that recommendation, shall be made to the member's reserve unit commanding officer.

8. **Procedures for Involuntary Recall to Active Duty -**

**Introduction.** The following paragraphs detail procedures to be used for involuntary recall to active duty. The topics describe

- a. who may request an order to involuntary active duty of an inactive-duty reservist,
- b. to whom the request should be submitted,
- c. how the request should be submitted,
- d. who has the authority to order to active duty,
- e. how the request may be submitted under exigent circumstances, and
- f. how to schedule the required consultation with the local judge advocate.

9. **Procedures for Involuntary Recall to Active Duty - Who May Request**

- a. Only commanding officers who exercise court-martial convening authority may submit a request for an order to involuntary active duty of an inactive-duty reservist for disciplinary action.
- b. The submitting command may be either the accused's reserve command or unit or the active duty command or activity with a judge advocate assigned (including area coordinator) at which the accused was assigned or present at the time of the commission of the offense. In either event, consultation with a judge advocate, if reasonably available, prior to submitting a request is required. In addition, consultation with the Staff Judge Advocate, Commander, Naval Reserve Force (COMNAVRESFOR) (Code 003), is strongly encouraged.

10. Procedures for Involuntary Recall to Active Duty - To Whom Submitted

	<b>IF...</b>	<b>THEN...</b>
a.	The submitter is a reserve component commanding officer,	<p>the request should be submitted to</p> <ul style="list-style-type: none"> <li>• Commander, Naval Air Reserve Force (COMNAVAIRESFOR) (Code N00J), or</li> <li>• Commander, Naval Surface Reserve Force (COMNAVSURFRESFOR) (Code N00J),</li> </ul> <p>as appropriate.</p> <p><b>Copies</b> should be provided to</p> <ul style="list-style-type: none"> <li>• Navy Judge Advocate General (JAG) (Code 20),</li> <li>• Navy Personnel Command (NAVPERSCOM) (PERS-92 and PERS-06L), and</li> <li>• other appropriate commands.</li> </ul>
b.	The submitter is a commanding officer of an active duty command,	<p>the request should be submitted to</p> <ul style="list-style-type: none"> <li>• COMNAVRESFOR (Code 003)</li> </ul> <p><b>Copies</b> should be provided to</p> <ul style="list-style-type: none"> <li>• Navy JAG (Code 20);</li> <li>• NAVPERSCOM (PERS-92 and PERS-06L),</li> <li>• and other appropriate commands,</li> <li>• including a copy to the offender's reserve unit.</li> </ul>

Please note the procedures for the following unusual circumstances:

	IF...	THEN...
c.	<p><b>NOTE 1 -</b> Pretrial confinement is involved, or confinement as a punishment is sought,</p>	<p>ASN (M&amp;RA) must approve the order to active duty (see Step 7 of "Procedures for Involuntary Recall to Active Duty - How Submitted," and "Procedures for Involuntary Recall to Active Duty - Exigent Circumstances" below).</p> <p>COMNAVRESFOR, COMNAVSURFRESFOR, or COMNAVVAIRESFOR (hereafter referred to as appropriate RESFOR commander) shall coordinate with NAVPERSCOM (PERS-92 and PERS-06L) for such approval.</p>
d.	<p><b>NOTE 2 -</b> The case involves national security matters as defined in JAGINST 5800.7C, section 0159,</p>	<p>notice requirements and disposition limitations of JAGINST 5800.7C, section 0126(b) apply.</p> <p>This does not, however, limit the authority to order the member to active duty.</p>

	IF...	THEN...
e.	<p>Pretrial confinement is involved, or confinement as a punishment or pretrial confinement is sought,</p>	<p>ASN (M&amp;RA) must approve the order to active duty (see Step 7 of "Procedures for Involuntary Recall to Active Duty - How Submitted," and "Procedures for Involuntary Recall to Active Duty - Exigent Circumstances," below).</p> <p>COMNAVRESFOR, COMNAVSURFRESFOR, or COMNAVVAIRESFOR (hereafter referred to as appropriate RESFOR commander), shall coordinate with NAVPERSCOM (PERS-92 and PERS-06L) for such approval.</p>
f.	<p>The case involves national security matters as defined in JAGINST 5800.7C, section 0159,</p>	<p>Notice requirements and disposition limitations of JAGINST 5800.7C, section 0126(b) apply.</p> <p>This does not, however, limit the authority to order the member to active duty.</p>

11. **Procedures to Submit Involuntary Recall to Active Duty.**

Depending on the circumstances and necessity for expedience, the request may be by letter, message, electronic mail, or telephone and shall

Step	Action
1	contain the complete identity of the accused (grade, full name, social security number, designator).
2	include a detailed summary of the contemplated charges and specifications or a copy of the charge sheet, if available (care should be exercised to avoid triggering the speedy trial provisions of R.C.M. 707).
3	provide a summary of evidence in the case.
4	state facts showing amenability to trial by court-martial or imposition of nonjudicial punishment.
5	indicate the military status; unit to which assigned at the time of submission and at the time of commission of the alleged offenses; and location and home address of the accused.
6	indicate where the accused should be ordered to active duty and why the order to active duty at the desired location is advisable.
7	state whether or not the accused is in pretrial confinement; whether or not the accused will be placed in pretrial confinement upon being ordered to active duty; and, if appropriate, whether or not confinement as a punishment should be authorized and ASN (M&RA) approval obtained.

**NOTE:** If submission is by telephone, also inform by telephone commands which would otherwise receive copies of the request as indicated in the previous paragraph, "Procedures for Involuntary Recall to Active Duty - To Whom Submitted."

12. **Procedures for Involuntary Recall to Active Duty - Authority to Order to Active Duty**

a. The command to which a request is submitted is authorized to order the reservist to active duty for disciplinary action and to issue such orders. For administrative and centralized accounting purposes, however, COMNAVRESFOR (Code 003) with NAVPERSCOM (PERS-92) will coordinate and direct the issuance of orders.

(1) Upon receiving direction to issue written orders, unless contemporaneous ASN (M&RA) approval for the orders is also requested, the appropriate RESFOR commander will issue orders recalling the inactive duty reservists to active duty.

(2) If contemporaneous ASN (M&RA) approval for the orders is requested, NAVPERSCCOM (PERS-92) will coordinate with NAVPERSCOM (PERS-06L) and effect the submission process to ASN (M&RA).

b. The command issuing orders shall deliver them for execution.

c. A copy of all orders issued to IDT reservists called to active duty for disciplinary action and status reports of significant events (e.g., commission of additional offenses, imposition of pretrial confinement, court-martial results), as they occur, shall be provided to ASN (M&RA), appropriate RESFOR commander, JAG (Code 20), NAVPERSCOM (PERS-92 and PERS-06L).

13. **Procedures for Involuntary Recall to Active Duty - Exigent Circumstances**. In exigent circumstances (e.g., national security matters and risk of grave bodily harm to another), the request may be submitted to any active duty general court-martial authority (GCMA), preferably the appropriate RESFOR commander or the area coordinator, for action. That GCMA may act on the request, after consultation with a judge advocate if reasonably available, and verbally order the reservist to active duty and pretrial confinement if warranted. Notification to all concerned (i.e., ASN (M&RA), JAG (Code 20), NAVPERSCOM (PERS-92 and PERS-06L), and the appropriate RESFOR commander), follow-up written orders, ASN (M&RA) approval (if required), and the time requirements of this article must be adhered to.

**NOTE:** The intent of this article is not to unduly interfere with the RESFOR commanders in their administration of the reserve forces. Though preferable for the appropriate RESFOR commander or area coordinator to issue the order to active duty of an inactive duty reservist, because of unique service-situations and circumstances the preferred manner may not always be practical. Consequently, such orders issued by any active duty GCMA, under exigent circumstances, with or without prior judge advocate consultation, are valid.

14. **Procedures for Involuntary Recall to Active Duty - Judge Advocate Consultation.** The required consultation ordinarily should be done with a local judge advocate. Additional guidance may be obtained from a judge advocate at COMNAVRESFOR (Code 003), NAVPERSCOM (PERS-06), or Navy JAG (Code 20). Since situations will arise on weekends, the following duty office phone numbers are provided:

DUTY OFFICE	PHONE NUMBERS
COMNAVRESFOR	DSN: 678-5313 COMM: (504) 678-5313
NAVPERSCOM	DSN: 882-3070 COMM: (901) 874-3070
NAVY JAG OFFICE HOURS PAGER (24 HRS)	DSN: 325-5190 COMM: 1 (888) 523-9055
Chief of Naval Operations	DSN: 225-0231 COMM: (703) 695-0231

15. **Holdover in Current Status - An Inactive Duty Reservist who is on Active Duty.** An inactive duty reservist who is on active duty (including AT or ADT) may be retained in that status provided

a. the reservist committed an offense while in that status, and

b. the command has taken action with a view to trial by court-martial. See R.C.M. 202(c). A reservist may not be heldover for nonjudicial punishment.

**NOTE:** No prior approval for such retention is required. The command effecting a holdover, however, shall notify ASN (M&RA), JAG (Code 20), COMNAVRESFOR (Code 003), and NAVPERSCOM (PERS-92 and PERS-06L) of such action by the most expeditious means available (see "Notice" paragraph below).

16. **Holdover in Current Status - an Inactive Duty Reservist who is Performing IDT.** An inactive duty reservist who is performing IDT may be retained in that status provided

a. there is probable cause to believe the reservist committed an offense punishable by death or more than 10 years confinement while in that status;

b. approval is obtained to keep the member in that status prior to expiration of IDT, or as soon thereafter as is reasonably practicable under the circumstances, from the appropriate RESFOR commander, the area coordinator, or in exigent circumstances, any active duty GCMA;

c. immediate action is taken to order the accused to active duty; and

d. a judge advocate is consulted prior to effecting the holdover, or as soon thereafter as is reasonably practicable. A reservist may not be heldover for nonjudicial punishment.

**NOTE (1):** The requirement for holdover past IDT is similar to ordering the reservist to involuntary active duty; i.e., judge advocate consultation (if reasonably available) and active duty GCMA order. Consequently, the reservist may be ordered to active duty rather than heldover past IDT. The holdover provision allows the commander additional time to investigate the offense to best determine its gravity. In most cases, the gravity of the offense is evident and the commander may directly order the reservist to active duty.

**NOTE (2):** References to "expiration of IDT" and "past IDT" are not to the exact hour and minute a drill period ends but include the entire day in which a drill period is performed.

**17. Holdover in Current Status - Release from Active Duty of IDT Reservists Held under This Article**

a. Except as provided in the "Exception" paragraph of this article, inactive-duty reservists heldover on active duty may be retained in that status until completion of the court-martial and execution and service of any sentence thereof. They must be released from active duty no later than the close of business one full workday after the completion of disciplinary proceedings, including service of punishment.

b. Except as provided in the "Exception" paragraph of this article, inactive-duty reservists heldover on IDT and ordered to active duty for disciplinary action:

(1) Must be released from active duty no later than the close of business one full workday after completion of disciplinary proceedings, i.e., announcement of the sentence by

a court-martial, if the order to active duty for disciplinary action was effected without ASN (M&RA) approval.

(2) May be retained on active duty to serve a punishment to confinement or other restraint on liberty, the execution of which is not precluded by the terms of a pretrial agreement, if the order to active duty received ASN (M&RA) approval. In such cases the reservist must be released from active duty no later than the close of business one full work day after the completion of disciplinary action, including service of punishment.

18. **Exception.** If retention on active duty of inactive duty reservists is authorized because of the commission of additional offenses, such reservists may be retained on active duty for further disciplinary action as warranted by the circumstances. See R.C.M. 202(c).

19. **Pretrial Confinement of IDT Reservists**

a. Reservists on IDT may be placed in pretrial confinement if the circumstances of the offense warrant and an order to active duty with ASN (M&RA) approval, to include pretrial confinement, is sought and obtained not later than two-full working days past the end of IDT. See R.C.M. 304 and 305; and Note 1 of the "Pretrial Confinement of IDT Reservists;" Step 7 of the "Procedures for Involuntary Recall to Active Duty - How Submitted;" and "Procedures for Involuntary Recall to Active Duty - Exigent Circumstances" paragraphs of this article. Consultation with a judge advocate, if reasonably available, is required; liaison with COMNAVRESFOR (Code 003) is encouraged.

b. An inactive duty reservist ordered to active duty for disciplinary action shall not be placed in pretrial confinement unless

(1) the order to active duty and imposition of pretrial confinement have been previously approved by ASN (M&RA);

(2) ASN (M&RA) approves pretrial confinement for the offense(s) to which the order to active duty related (where it did not initially include pretrial confinement) within two-full workdays of its imposition; or

(3) the member, while on active duty, commits an offense which warrants pretrial confinement. See R.C.M. 304 and 305.

20. **Release from Active Duty**

a. Inactive duty reservists ordered to active duty without ASN (M&RA) approval must be released from active duty no later than the close of business one-full work day after completion of disciplinary proceedings (i.e., announcement of the sentence by a court-martial or the award of punishment), unless retention on active duty is authorized by other authority (commission of additional offenses). See R.C.M. 202(c) and MILPERSMAN 1160-050.

b. Inactive duty reservists ordered to active duty with Secretarial approval may be retained on active duty to serve a punishment to confinement or other restraint on liberty, the execution of which is not precluded by the terms of a pretrial agreement. Unless retention on active duty is authorized by other authority (commission of additional offenses), such persons must be released from active duty no later than the close of business one-full work day after completion of disciplinary proceedings or service of the sentence to confinement or other restraint on liberty, as appropriate. See UCMJ, article 2(d)(5); R.C.M. 202(C); and MILPERSMAN 1160-050.

21. **Notice**

a. Notify ASN (M&RA), JAG (Code 20), COMNAVRESFOR (Code 003), NAVPERSCOM (PERS-92 and PERS-06L), and others as may be required by local regulations, of all instances where an inactive duty reservist has been held over past IDT, AT, or ADT or has been placed in pretrial confinement without prior ASN (M&RA) approval. The notice shall include, at a minimum,

(1) name, grade, and SSN of the reservist;

(2) date, time, and place of holdover or pretrial confinement;

(3) reason for holdover or pretrial confinement.

b. Notify the activities listed above as significant events occur (e.g., commission of an additional offense, court-martial results, dismissal or withdrawal of ALL charges, release from active duty).

22. Delivery of Orders

a. Involuntary recall orders shall be delivered in person, by telephone followed by certified mailing of the orders, or by certified mailing without prior telephone notice (this form of notice is limited to instances where is impracticable to personally serve the member or telephonically contact the member or where the member cannot be contacted or located). The orders shall be in writing and contain information as to the date, time, and place of reporting for duty, and the proper uniform in which to report (if initial notice is by telephone, this information shall be relayed to the member).

b. The person making the personal delivery or telephone notification shall prepare and sign a memo indicating the date and time such delivery or notice was made and fully identify themselves on the memo by name, grade, SSN, command, and contact phone number.

c. The member generally shall be given at least 30 calendar days notice before the reporting date, regardless of the delivery means used. The day of notification is not counted in computing the 30-day period. The notification day is the day the member is personally given the orders, or the day the member is notified by telephone of the orders, or the day the orders are deposited in the U.S. mail as first-class certified mail to the member's last known address of record provided by the member or held by the command to which the member is attached, whichever is earlier. If the last day of the 30-day period falls on a Saturday, Sunday, or Federal holiday, the next day is considered the last day of the 30-day period.

d. These procedures, including the 30-day notice period, are general guidelines and are not intended to confer a legal right or benefit upon the member to whom the orders are directed. The notice period should be reasonable in relation to the duration of the active duty period covered by the orders and the disruption the duty period will cause the member. Exigent circumstances, however, (national security issues, danger to others, etc.), may warrant immediate recall.