U.S. Department of
Homeland Security

United States
Coast Guard

Discipline and Conduct

COMDTINST M1600.2
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U.S. Department of Homeland Security
United States Coast Guard

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COMMANDANT INSTRUCTION M1600.2

Subj: DISCIPLINE AND CONDUCT

Ref:
(a) Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended)
(b) Military Justice Manual, COMDTINST M5810.1 (series)
(c) Military Assignments and Authorized Absences, COMDTINST M1000.8 (series)
(d) Coast Guard Pay Manual, COMDTINST M7220.29 (series)
(e) Manual for Courts-Martial (MCM), United States (current edition)
(f) Personnel Security and Suitability Program, COMDTINST M5520.12 (series)
(g) Military Casualties and Decedent Affairs, COMDTINST M1770.9 (series)
(h) Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, COMDTINST 1620.1 (series)
(i) Personnel and Pay Procedures Manual, PPCINST M1000.2 (series)
(j) United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series)
(k) Military Separations, COMDTINST M1000.4 (series)
(l) Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series)
(m) Legal Assistance Program, COMDTINST 5801.4 (series)

1. PURPOSE. This Manual establishes Coast Guard policy and procedures concerning the Code of Conduct, Civil arrest and convictions, absentee and deserters, dissident and protest activities, and military corrections/confinement for all personnel.

2. ACTION. All Coast Guard unit commanders, commanding officers, officers-in-charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Manual. No paper distribution will be made. Internet release is authorized.

3. DIRECTIVES AFFECTED. Chapter 8 of the Personnel Manual, COMDTINST M1000.6 (series), is

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hereby cancelled. The Coast Guard Personnel Manual is being eliminated and reissued as a set of manuals (including this one) which will allow for more expedited review of updates and promulgation of policy changes.

4. DISCLAIMER. This document is intended to provide operational requirements for Coast Guard personnel and is not intended to nor does it impose legally-binding requirements on any party outside the Coast Guard.

5. PROCEDURES. No paper distribution will be made of this Manual. Official distribution will be via the Coast Guard Directives (CGDS) DVD. An electronic version will be located on the following Commandant (CG-612) web sites. Intranet: http://cgweb.comdt.uscg.mil/CGDirectives/Welcome.htm, Internet: http://www.uscg.mil/directives/, and CGPortal: https://cgportal.uscg.mil/delivery/Satellite/CG612.

6. BACKGROUND. This Manual promulgates policy regarding discipline and conduct for all personnel. These policies were previously contained in Chapter 8 of the Coast Guard Personnel Manual, COMDTINST M1000.6. References to commands and Headquarters offices have been updated to reflect the current Coast Guard organizational structure. Changes to policy in previously issued ALCOAST messages have been incorporated as well as legislatively mandated changes. References to other elements of the legacy Personnel Manual have been updated to reflect the newly promulgated Manuals.

7. DISCUSSION. Citation of the word 'article' as used in this Manual is in general terms of reference, e.g. to denote paragraph or section, and is not citing CFR, USC, UCMJ, etc except where so noted.

8. RECORDS MANAGEMENT CONSIDERATIONS. This Manual has been evaluated for potential records management impacts. The development of this Manual has been thoroughly reviewed during the directives clearance process, and it has been determined there are no further records scheduling requirements, in accordance with Federal Records Act, 44 U.S.C. 3101 et seq., National Archives and Records Administration (NARA) requirements, and the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This policy does not have any significant or substantial change to existing records management requirements.

9. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

   a. The development of this Manual and the general policies contained within it have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management, and are categorically excluded (CE) under current USCG CE # 33 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series). Because this Manual contains guidance on, and provisions for, compliance with applicable environmental mandates, Coast Guard categorical exclusion #33 is appropriate.

   b. This directive will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating

to the environment. All future specific actions resulting from the general policies in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Policy NEPA regulations at 40 CFR Parts 1500-1508, DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates."

10. FORMS/REPORTS. The forms referenced in this Manual are available in USCG Electronic Forms on the Standard Workstation or on the Internet: http://www.uscg.mil/forms/; CGPortal at https://cgportal.uscg.mil/delivery/Satellite/uscg/References; and Intranet at http://cgweb.comdt.uscg.mil/CGForms.

R. T. HEWITT /s/
Assistant Commandant for Human Resources

RECORD OF CHANGES			
CHANGE NUMBER	**DATE OF CHANGE**	**DATE ENTERED**	**BY WHOM ENTERED**

Table of Contents

CHAPTER 1 DISCIPLINE 1-1

1.A. Code of Conduct and Uniform Code of Military Justice for Members of the United States Armed Forces 1-1
1.A.1. General 1-1
1.A.1.a. Code of Conduct 1-1
1.A.1.b. Uniform Code of Military Justice (UCMJ) 1-1
1.A.2. Code of Conduct for Members of the United States Armed Forces 1-1
1.A.3. Uniform Code of Military Justice 1-2
1.A.4. Training 1-2
1.A.4.a. Code of Conduct 1-2
1.A.4.b. Uniform Code of Military Justice 1-2

1.B. Civil Arrest and Conviction 1-1
1.B.1. General information 1-1
1.B.2. Report of Arrest 1-1
1.B.2.a. Notification of Civil Arrest 1-1
1.B.2.b. Required Reports 1-1
1.B.2.c. Notification of Next of Kin 1-1
1.B.3. Report of civil conviction 1-2
1.B.3.a. Required Reports 1-2
1.B.3.b. Submission of Reports 1-2
1.B.4. Disciplinary Action after Civil Arrest and Trial 1-2
1.B.4.a. Coast Guard Policy 1-2
1.B.4.b. Performance Evaluations 1-2
1.B.5. Acceptance of Coast Guard Personnel from Civil Authorities when Civil Charges are Pending 1-3
1.B.5.a. Granting Leave 1-3
1.B.5.b. Release to Coast Guard 1-3
1.B.5.c. Prior to Release 1-3

1.C. Absentees and Deserters 1-4
1.C.1. Unauthorized Absence of Officers 1-4
1.C.2. Unauthorized Absence of Enlisted Personnel 1-4
1.C.2.a. Absentee 1-4
1.C.2.b. Deserter 1-4
1.C.2.c. Apprehension of Absentees and Deserters 1-5
1.C.2.d. Termination of Period of Absence or Desertion 1-6
1.C.2.e. Complete and Accurate Recordkeeping to Ensure a Prompt Trial 1-6
1.C.2.f. Unit to Which Absentee or Deserter is Attached 1-6
1.C.3. Return of Absentee or Deserter 1-7
1.C.3.a. General Information 1-7

1.C.3.b. Return of an Absentee or Deserter to a Unit Not Having Adequate Facilities for Retention 1-7
1.C.3.c. Action by Commander of District from Which Absent 1-7
1.C.3.d. Reporting Return of Absentee or Deserter 1-8
1.C.3.e. Payment of Reward or Reimbursement of Expenses 1-8
1.C.4. Absentees and Deserters from other Branches of the Armed Forces 1-8
1.C.4.a. When a Form DD-553 Received 1-8
1.C.4.b. When a Member Surrenders or is Delivered 1-8
1.C.5. Delivery by Civil Authorities 1-8
1.C.5.a. Prior to Accepting an Absentee or Deserter 1-8
1.C.5.b. When Civil Charges are Made after Custody of Member 1-9
1.C.5.c. Information Provided to Civil Authorities 1-9
1.C.6. Removal of Marks of Desertion 1-9
1.C.6.a. Mark of Desertion 1-9
1.C.6.b. When Removal is Authorized 1-9
1.C.7. Disposition of Personal Effects of Absentees or Deserters 1-9
1.C.7.a. Held at Member's Unit 1-9
1.C.7.b. When Member Returns 1-10
1.C.7.c. Disposition of Personnel Effects 1-10
1.C.8. Reduction of Absenteeism Problems 1-10
1.C.8.a. Establish a Program of Education 1-10
1.C.8.b. Action Taken 1-11

1.D. Dissident and Protest Activities 1-12
1.D.1. Policy 1-12
1.D.2. Specific Guidelines 1-12
1.D.2.a. Possession and Distribution of Printed Materials 1-12
1.D.2.b. Off-Post Gathering Places 1-12
1.D.2.c. Servicemen's Organizations 1-13
1.D.2.d. Publication of "Underground Newspapers" 1-13
1.D.2.e. On-Post Demonstrations and Similar Activities 1-13
1.D.2.f. Off-Post Demonstrations by Members 1-13
1.D.2.g. Grievances 1-13
1.D.3. Prohibition on Extremist and Criminal Gang Activity 1-14
1.D.3.a. Extremist Activity 1-14
1.D.3.b. Extremist Organizations and Criminal Gangs 1-14
1.D.3.c Prohibitions 1-14
1.D.3.d Command Authority Regarding Extremist and Criminal Gang Activity 1-16
1.D.3.e Command Options for Dealing with Extremist or Criminal Gang Activity 1-16
1.D.3.f Command Responsibility Regarding Extremist Organizations and Criminal Gangs 1-16

1.E. Court Memorandums, Punitive Letters of Censure, and Administrative Corrective Letters 1-18
1.E.1. Censure 1-18
1.E.2. Punitive Letters of Censure 1-18
1.E.2.a. Disposition 1-18
1.E.2.b. Appeals 1-18

1.E.3. Court Memorandums 1-18
1.E.4. Administrative Letters of Censure 1-19
1.E.4.a. Purpose 1-19
1.E.4.b. For Officers 1-19
1.E.4.c. For Enlisted 1-19

1.F. Military Corrections and Confinement 1-20
1.F.1. Purpose and Nature of Military Corrections 1-20
1.F.1.a. Definition 1-20
1.F.1.b. DoD Military Correctional System 1-20
1.F.1.c. Professional Correctional Programs 1-21
1.F.2. Definitions 1-22
1.F.2.a. Adjudged Prisoner 1-22
1.F.2.b. Aggregation of Sentences 1-22
1.F.2.c. Apprehension 1-22
1.F.2.d. Arrest 1-22
1.F.2.e. Beginning Date of Confinement 1-22
1.F.2.f. Brig 1-22
1.F.2.g. Clemency 1-22
1.F.2.h. Clemency Board 1-23
1.F.2.i. Computation of Sentences 1-23
1.F.2.j. Confinement 1-23
1.F.2.k. Continuity of Sentences 1-23
1.F.2.l. Correctional Centers or Facilities 1-23
1.F.2.m.Correctional Custody 1-23
1.F.2.n. Correctional Custody Unit (CCU) 1-23
1.F.2.o. Detention 1-23
1.F.2.p. Detention Center 1-24
1.F.2.q. Dischargee 1-24
1.F.2.r. Disposition Boards 1-24
1.F.2.s. Extra Good Time (in Confinement) 1-24
1.F.2.t. Full Term 1-24
1.F.2.u. Good Conduct Time in Confinement 1-24
1.F.2.v. Magistrate (Military) 1-24
1.F.2.w. Naval Clemency and Parole Board 1-24
1.F.2.x. Parole 1-25
1.F.2.y. Parole Officer 1-25
1.F.2.z. Parolee 1-25
1.F.2.aa. Parole Violator Term 1-25
1.F.2.bb. Probation 1-25
1.F.2.cc. Probation Violator Term 1-25
1.F.2.dd. Probation Officer 1-25
1.F.2.ee. Restoree 1-25
1.F.2.ff. Restriction 1-26
1.F.2.gg. Sentenced Prisoner 1-26
1.F.2.hh. Notification of Next of Kin 1-26
1.F.3. Pretrial Confinement 1-26

1.F.3.a. Policy 1-26
1.F.3.b. Military Magistrate Program 1-27
1.F.3.c. Places of Confinement for Persons Awaiting Trial 1-27
1.F.3.d. Short Term Confinement Facilities 1-28
1.F.4. The Preconfinement Phase - Designating Places of Confinement and Duty Status of Personnel Undergoing Disciplinary Action 1-28
1.F.4.a. General 1-28
1.F.4.b. Pre-Designation Liaison with Military Confinement Facility 1-28
1.F.4.c. Confinement in Civilian Facilities 1-29
1.F.4.d. Designation of Places of Confinement for Adjudged Prisoners 1-29
1.F.4.e. Re-designation and Transfer 1-30
1.F.4.f. Women 1-30
1.F.4.g. Officers 1-31
1.F.4.h. Military Duty Status of Personnel Awaiting Trial by Court-Martial 1-31
1.F.4.i. Military Duty Status of Persons Sentenced to Confinement by Court-Martial 1-32
1.F.4.j. Changes in Status 1-32
1.F.4.k. Action Required Prior to Delivery of Prisoners 1-33
1.F.4.l. Movement and Escort of Prisoners and Offenders 1-33
1.F.4.m. Pre-Confinement Physical Examination 1-33
1.F.5. Confinement Orders and the Process of Confinement 1-33
1.F.5.a. Confinement Order 1-33
1.F.5.b. Notification of Confinement Status 1-34
1.F.5.c. DNA Collection and Analysis Requirements 1-34
1.F.5.d. Records 1-36
1.F.5.e. Uniforms 1-36
1.F.5.f. Health and Comfort 1-37
1.F.5.g. Military Pay and Allowances 1-38
1.F.5.h. Delivery of Prisoners 1-38
1.F.5.i. Prisoner Escorts and Transportation of Prisoners 1-38
1.F.6. The Corrections Phase 1-38
1.F.6.a. Policy 1-38
1.F.6.b. Command Responsibilities during Confinement: Command Visits 1-38
1.F.6.c. Reduction in Confinement by Reason of Good Conduct 1-40
1.F.6.d. Suspension or Remission of Unexecuted Portion of Sentence 1-41
1.F.6.e. Parole 1-45
1.F.7. The Release Phase 1-48
1.F.7.a Final Release 1-48
1.F.7.b. Release Order 1-48
1.F.7.c. Temporary Absence 1-48
1.F.7.d. Release Date 1-49
1.F.7.e. Return of Personal Effects 1-49
1.F.8. Confinement in Federal Institutions 1-49
1.F.8.a. Transfer to a Federal Institution 1-49
1.F.8.b. Preparation of Discharge 1-49
1.F.8.c. Final Court-Martial Promulgating Order 1-50
1.F.9. Local Restraint and Detention of Military Personnel 1-50

1.F.9.a. Difference between Confinement and Restraint 1-50
1.F.9.b. Exigent Situations 1-50
1.F.10. Correctional Custody 1-50
1.F.10.a. General 1-50
1.F.10.b. Jurisdiction 1-51
1.F.10.c. Guidelines for the Imposition and Administration of Correctional Custody 1-51
1.F.10.d. Administration of the Punitive Aspects of Correctional Custody 1-52
1.F.10.e. Administration of the Correctional Aspects of Correctional Custody 1-56
1.F.10.f. Administration of Correctional Custody Imposed Upon Recruit Trainees at Training Centers 1-57
Exhibit 1.F.1. Confinement Designation Chart 1-59
Exhibit 1.F.2. U. S. Navy Correctional Custody Units (CCUs) 1-60
Exhibit 1.F.3. Qualifying Military Offenses under 10 U.S.C. § 1565 1-62

1.G. Shore Patrol and Escort of Prisoners 1-63
1.G.1. Joint Control by Military Police and Shore Patrol 1-63
1.G.1.a. Agreement among the Services 1-63
1.G.1.b. Use of Judgment 1-63
1.G.1.c. Details for Coordination 1-63
1.G.2. Unit Shore Patrol 1-63
1.G.2.a. Definition 1-63
1.G.2.b. Guidance 1-63
1.G.2.c. Composition 1-63
1.G.2.d. Assignments 1-64
1.G.2.e. Jurisdiction 1-64
1.G.3. General Instructions to Shore Patrol 1-64
1.G.3.a. Military Conduct and Etiquette 1-64
1.G.3.b. Use of Alcohol 1-64
1.G.3.c. Liberty Parties 1-64
1.G.3.d. Purpose 1-65
1.G.3.e. Use of Nightstick 1-65
1.G.3.f. Confiscation of Identification Cards 1-65
1.G.3.g. Search of Prisoners 1-65
1.G.4. Transport of Prisoners 1-65
1.G.4.a. General 1-65
1.G.4.b. Means of Travel 1-67
1.G.5. Prisoner Escorts 1-68
1.G.5.a. Prisoner Escorts 1-68
1.G.5.b. Escort to Prisoner Ratio 1-69
1.G.5.c. Arming of Escorts 1-69
1.G.5.d. Action by District Commanders Authorizing the Arming of Prisoner Escorts 1-71

CHAPTER 2 CONDUCT 2-1

2.A. Interpersonal Relationships within the Coast Guard 2-1
2.A.1. General 2-1

2.A.1.a. Coast Guard Values 2-1
2.A.1.b. Mission Success 2-1
2.A.1.c. Leadership and Military Discipline 2-1
2.A.1.d. Custom and Tradition 2-1
2.A.1.e. Officers and Senior Enlisted 2-1
2.A.2. Policy 2-1
2.A.2.a. Professional Work Environment 2-1
2.A.2.b. Positive Social Interaction 2-2
2.A.2.c. Acceptable Personal Relationships 2-2
2.A.2.d. Assessing the Propriety 2-2
2.A.2.e. Violation of Service Policy 2-3
2.A.2.f. Unacceptable Romantic Relationships 2-3
2.A.2.g. Prohibited Relationships 2-4
2.A.2.h. Family Relationships 2-4
2.A.3. Examples of Acceptable and Unacceptable Relationships and Conduct 2-4
2.A.3.a. Acceptable Relationships 2-4
2.A.3.b. Unacceptable Relationships 2-4
2.A.3.c. Unacceptable Conduct 2-4
2.A.4. Fraternization 2-5
2.A.4.a. Definition 2-5
2.A.4.b. Personal Relationships between Officer and Enlisted 2-5
2.A.4.c. Romantic Relationships between Officer and Enlisted 2-5
2.A.4.d. Marriage between Officer and Enlisted 2-6
2.A.5. Responsibility 2-6
2.A.5.a. Primary Responsibility 2-6
2.A.5.b. Early Resolution 2-6
2.A.5.c. Commanding Officer Responsibility 2-6
2.A.5.d. Academy and Training Center Staff 2-6
2.A.5.e. Violation by Commanding Officer 2-6
2.A.6. Resolving Unacceptable Relationships 2-7
2.A.6.a. General 2-7
2.A.6.b. Training 2-7
2.A.6.c. Counseling 2-7
2.A.6.d. Personnel Reassignment 2-7
2.A.6.e. Evaluations 2-7
2.A.6.f. Other Administrative Actions 2-7
2.A.6.g. Disciplinary Action 2-7
2.A.7. Action 2-8
Exhibit 2.A.1. Interpersonal Relationships 2-9

2.B. Discrimination 2-10
2.B.1. General 2-10
2.B.1.a. Definition 2-10
2.B.1.b. Policy 2-10
2.B.1.c. Prohibitions 2-10
2.B.1.d. Violation of Provisions 2-10
2.B.1.e. Allegation Awareness 2-11

2.B.2. Sexual Harassment 2-11
2.B.2.a. Policy 2-11
2.B.2.b. Administrative and Criminal Sanctions 2-11

2.C. Hazing 2-13
2.C.1. Policy 2-13
2.C.2 Definition 2-13
2.C.2.a. Definition 2-13
2.C.2.b. Implied Consent 2-14
2.C.2.c. Initiation Ceremonies 2-14
2.C.3 Responsibilities 2-15
2.C.3.a Training Centers 2-15
2.C.3.b Commanders 2-15
2.C.3.c. Coast Guard Personnel 2-16
2.C.4. Penalties 2-16

2.D. Indebtedness 2-17
2.D.1. General Policy 2-17
2.D.1.a. Military Duty 2-17
2.D.1.b. Command Action 2-17
2.D.1.c. Disputing the Claim 2-17
2.D.1.d. Waiver of Military Obligation 2-17
2.D.1.e. Insufficient Funds 2-18
2.D.1.f. Information Provided to Creditors 2-18
2.D.2. Command Indoctrination and Counseling 2-18
2.D.3. Action upon Receipt of Complaint of Indebtedness 2-19
2.D.3.a. Initial Complaint 2-19
2.D.3.b. Retention of Receipts 2-19
2.D.3.c. Response to Correspondence 2-20
2.D.3.d. Waiver of Military Obligation 2-20
2.D.4. Repeated Indebtedness or Failure to Obey Court Orders 2-21
2.D.4.a. Administrative Responsibilities 2-21
2.D.4.b. Financial Statements 2-21
2.D.4.c. Officers 2-21
2.D.4.d. Enlisted Personnel 2-21
2.D.4.e. Transfers 2-21
2.D.4.f. Separation 2-21
2.D.4.g. Security Clearances 2-22
2.D.5. Remission or Waiver of Indebtedness to the United States 2-22
2.D.5.a. Remissions 2-22
2.D.5.b. Waivers 2-22
2.D.5.c. Applications 2-22

2.E. Support of Dependents 2-23
2.E.1. General 2-23
2.E.1.a. Policy 2-23
2.E.1.b. Entitlement to Basic Allowance for Housing (BAH) 2-23

2.E.1.c. Support of a Lawful Spouse 2-24
2.E.1.d. Adopted Children 2-24
2.E.1.e. Command Responsibility 2-24
2.E.2 Support Requirement Pursuant to Court Order 2-24
2.E.2.a. Support of Spouse or Former Spouse 2-24
2.E.2.b. Support of Children 2-25
2.E.2.c. Temporary Waiver of Requirement to Support Dependents 2-26
2.E.2.d. Garnishment of Pay 2-26
2.E.2.e. Advice Regarding Support Provisions for Children When Divorce is Contemplated 2-27
2.E.3. Support Requirement in the Absence of a Court Order 2-27
2.E.3.a. Applicability 2-27
2.E.3.b. Basic Considerations 2-28
2.E.3.c. Support Scale 2-28
2.E.3.d. Separation, Desertion, and/or Misconduct of Spouse 2-29
2.E.3.e. Special Circumstances 2-29
2.E.4. Action upon Receipt of Complaints of Nonsupport and Insufficient Support of Dependents 2-30
2.E.4.a. Enlisted Personnel 2-30
2.E.4.b. Commissioned Officers and Chief Warrant Officers 2-32
2.E.4.c. Security Considerations 2-34
2.E.5. Determination of Paternity and Support of Illegitimate Children 2-34
2.E.5.a. General 2-34
2.E.5.b. Foreign Complaints 2-34
2.E.5.c. Judicial Order or Decree of Paternity or Support 2-34
2.E.5.d. Temporary Waiver of Compliance with Court Order 2-35
2.E.5.e. Garnishment of Pay in Paternity Cases 2-35
2.E.5.f. No Judicial Determination 2-35
2.E.5.g. Replies to Paternity Complaints 2-35
2.E.5.h. Members Not on Active Duty 2-36

CHAPTER 1 DISCIPLINE

1.A. Code of Conduct and Uniform Code of Military Justice for Members of the United States Armed Forces

1.A.1. General

1.A.1.a. Code of Conduct

Taking the oath of allegiance is the pivotal fact which changes an individual's status from that of a civilian to that of a member of the United States Armed Forces. There are a number of requirements and responsibilities which fall on the member at that time. One is adherence to the Code of Conduct for Members of the United States Armed Forces, Executive Order No. 10631 dated 17 August 1955 (as amended).

1.A.1.b. Uniform Code of Military Justice (UCMJ)

The substance of Article 137 of reference (a), Uniform Code of Military Justice, shall be carefully explained to each new Coast Guard member at the time of entrance on active duty, or within six days thereafter.

1.A.2. Code of Conduct for Members of the United States Armed Forces

Section 1

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the Armed Forces of the United States, I hereby prescribe the Code of Conduct for members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof. All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the Armed Forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity. The Secretary of Defense (and the Secretary of The Department of Homeland Security with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the Armed Forces of the United States.

Section 2

I. I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II. I will never surrender of my own free will. If in command I will never surrender the members of my command while they still have the means to resist.

III. If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV. If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V. When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI. I will never forget that I am American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

1.A.3. Uniform Code of Military Justice

A complete text of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended) and reference (e), Manual for Courts-Martial, United States, shall be made available to a member on active duty upon their request, for the member's personal examination. Specific articles to be explained include Articles 2, 3, 7-15, 25, 27, 31, 38, 55, 77-134, and 137-139. In addition, service members will be informed of the Coast Guard policy on sexual conduct.

1.A.4. Training

1.A.4.a. Code of Conduct

The Code of Conduct for members of the United States Armed Forces shall be carefully explained to each member upon entry into active duty. This training shall be conducted prior to completion of recruit training, graduation from Officer Candidate School or graduation from the Academy, as appropriate. The Code shall be explained again to enlisted members after six months of active duty and upon the time(s) of reenlistment.

1.A.4.b. Uniform Code of Military Justice

Article 137 shall be explained again after the member has completed six month of active duty, and periodically thereafter, including upon reenlistment. This brief shall be documented on an Administrative Remarks, Form CG-3307, entry in the members Personnel Data Record (PDR).

1.B. Civil Arrest and Conviction

1.B.1. General information

a. Granting Leave. Article 2.A.17.b of reference (c), Military Assignments and Authorized Absences, COMDTINST M1000.8 (series), covers prohibition from granting leave in connection with arrest by civilian authorities.

b. Deductible Time. Reference (d), Coast Guard Pay Manual, COMDTINST M7220.29 (series), covers deductible time due to arrest by civilian authorities.

c. Delivering Members to Civilian Authorities. Reference (e), Manual for Courts-Martial, and reference (b), Military Justice Manual, COMDTINST M5810.1 (series), governs delivering Coast Guard members to civilian authorities.

d. Reserves. The provisions of this Article apply equally to reservists, regardless of members' reserve status at the time of the civil arrest or conviction.

e. Delegation of Requirements. The administrative requirements imposed by this Article and reference (f), Personnel Security and Suitability Program, COMDTINST M5520.12 (series), shall not be delegated to units below the Sector level.

1.B.2. Report of Arrest

1.B.2.a. Notification of Civil Arrest

Any Coast Guard member arrested or detained by civil authorities shall immediately advise their commanding officer or officer of the day and state the facts concerning such arrest and detention. Notifications of civil arrest shall be made using Personnel Security Action, Form CG-5588, as required by reference (f), Personnel Security and Suitability Program, COMDTINST M5520.12 (series).

1.B.2.b. Required Reports

When it is anticipated that final action by civil authorities will occur within a few days of the arrest, reference (f), Personnel Security and Suitability Program, COMDTINST M5520.12 (series) authorizes submission of a single report covering the arrest and subsequent action. When final action by the civil authorities will be delayed, an arrest report will be made promptly and followed by a final action report. In prolonged cases, interim reports should be submitted at 30-day intervals as required by reference (f), Personnel Security and Suitability Program, COMDTINST M5520.12 (series).

1.B.2.c. Notification of Next of Kin

(1) Member Over 21 Years of Age. When an enlisted member is awaiting trial in a civil court and charged with the commission of a felony, the commanding officer should impress upon the member the desirability of informing his or her parents, spouse, or guardian as appropriate, of the circumstances.

(2) Member Under 21 Years of Age. In those cases where the member is under 21 years of age, and where it appears that the parents, spouse, or guardian will not be otherwise informed of the proceedings, the commanding officer should inform the parents, spouse, or guardian, by letter or other form of communication, of the details considered pertinent and proper under the circumstances.

1.B.3. Report of civil conviction

1.B.3.a. Required Reports

All civil convictions shall be reported as required by reference (f), Personnel Security and Suitability Program, COMDTINST M5520.12 (series).

1.B.3.b. Submission of Reports

A copy of the Personnel Security Action, Form CG-5588, used to report any civil conviction shall be submitted to Commander (CG PSC-OPM) or (CG PSC-EPM), as applicable, and (CG PSC-PSD-MR). This form shall be retained in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12.

1.B.4. Disciplinary Action after Civil Arrest and Trial

1.B.4.a. Coast Guard Policy

(1) Courts-Martial after Civil Trial. Coast Guard policy is against trial by court-martial for the same act(s) for which a member has already been tried by a state or foreign country; see Article 3.B.4. of reference (b), Military Justice Manual, COMDTINST 5810.1 (series).

(2) Reserve Specific. Normally, reservists are subject to reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), only while performing inactive or active duty. However, the Coast Guard may impose administrative measures on reservists, regardless of reserve status, for discrediting acts or behavior identified through civilian law enforcement apprehension, arrest, or conviction, or through other evidence. These measures include, but are not limited to performance evaluations, documentation of substance or alcohol abuse, separation and suspension of driving privileges, etc.

1.B.4.b. Performance Evaluations

Actions resulting in a civil court conviction bring discredit upon the Coast Guard and, except for minor traffic violations, shall be reflected in the performance evaluations of both officer and enlisted members. A description of the unacceptable conduct shall be set forth in the performance evaluation rather than merely referencing, without elaboration, the fact of conviction. For example; if a member stabbed a person, the circumstances surrounding the stabbing should be described, not the legal conclusion that the member assaulted a person. The underlying conduct, not merely the fact of conviction, reflects negatively on the Coast Guard.

1.B.5. Acceptance of Coast Guard Personnel from Civil Authorities when Civil Charges are Pending

1.B.5.a. Granting Leave

Members released on bail or their own recognizance may be made available for trial as dictated by Article 2.A.17.a. of reference (c), Military Assignments and Authorized Absence COMDTINST M1000.8 (series).

1.B.5.b. Release to Coast Guard

Normally, it is desirable to have Coast Guard members placed in the Coast Guard's custody rather than remaining in jail. Commanding officers shall contact the civil authorities concerning the member's release. Members released to Coast Guard custody must be made available to civil authorities on demand.

1.B.5.c. Prior to Release

Before arranging for the release of a member to Coast Guard custody, consideration should be given to the following factors:

(1) The nature of the alleged offense(s);

(2) The physical and mental condition of the accused;

(3) The impact of the member's presence on the unit; and

(4) The unit's ability to ensure the member will be available at the request of the civilian authorities.

1.C. Absentees and Deserters

Detailed procedures for carrying out these policies are in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series).

1.C.1. Unauthorized Absence of Officers

In all cases of unauthorized absence, extended unexplained absence, or extended unexplained failure to report in compliance with official orders, the commanding officer shall notify Commander (CG PSC-OPM) of the facts and circumstances. Appropriate documents must be submitted, as the unauthorized absence of an officer results in loss of pay and allowances. If it is manifest that the absentee does not intend to report or return to Coast Guard jurisdiction, the commanding officer will further notify the district commander or the immediate superior in command, as appropriate, and request advice or aid with a view of initiating all practicable and reasonable local action to return the absentee to Coast Guard jurisdiction.

1.C.2. Unauthorized Absence of Enlisted Personnel

1.C.2.a. Absentee

(1) Definition. The term "absentee" denotes any member not classified administratively as a deserter who is absent without authority from their unit, organization, or other place of duty where they are required to be present.

(2) Length of Absentee. Any enlisted member absent from the Coast Guard without authority will normally be carried as an absentee during the first 29 days of their absence.

(3) Reasons for Required Administrative Actions. Commands are responsible for following the procedures in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series) when an enlisted member has been absent for any of the following reasons.

(a) Unauthorized absence from a permanent unit or temporary duty (TDY) unit for a period in excess of 24 hours.

(b) Failure to report in compliance with permanent change of station (PCS) orders.

(c) Failure to report in compliance with temporary duty under instruction (TEMDUINS) orders.

(d) Failure to report in compliance with temporary duty (TDY) orders.

(e) Unauthorized absence at time of sailing of cutter.

1.C.2.b. Deserter

(1) Definition. The term "deserter" denotes a member who has been administratively declared a deserter on the 30th day of absence, or at any time during the first 29 days of absence when one or more of the following conditions exists:

(a) When the intent to remain away from the Service is evident from circumstances attendant on the absence.

(b) When the absence was evidently entered into to avoid hazardous duty or to shirk important service as defined in reference (e), Manual for Courts-Martial (MCM), United States (current edition), Part IV, Article 9.c.(2)(a).

(c) Where it is known that the member, concealing their existing obligation to the Coast Guard, has enlisted or accepted appointment in another Service.

(2) Required Administrative Actions. Commands are responsible for the following actions and shall follow the procedures in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series) when an enlisted member has been declared a deserter.

(a) On the 31st day of absence, or in those cases where the member is earlier declared to be a deserter, the member's commanding officer shall issue a Deserter/Absentee Wanted by the Armed Forces, Form DD-553. The command with administrative control of the member's unit will furnish necessary data, where the Personnel Data Record (PDR) is not at the unit.

(b) At the time the Deserter/Absentee Wanted by the Armed Forces, Form DD-553, is issued, the commanding officer shall appoint an inventory board, as prescribed in Article 11.A.11.b.(2) of reference (g), Military Casualties and Decedent Affairs, COMDTINST M1770.9 (series), and cause the absentee's personal effects to be collected and inventoried. Inventory shall be recorded on Personnel Effects Inventory and Disposition, Form CG-3853. (See Article 1.C.7. of this Manual.)

(c) Entry in the PDR.

(d) Closing the health record.

(e) Complying with the rules covering dependents receiving medical care.

(f) Making an entry in the PDR of an enlisted member who is mentally irresponsible.

(g) Notification to next of kin.

(h) Inventorying and disposing of deserter's personal affects (if not previously done).

(i) Disposition of records.

1.C.2.c. Apprehension of Absentees and Deserters

Absentees and deserters may be apprehended by authorized members of the Armed Forces under the circumstances prescribed by Article 7(b) of reference (a), Uniform Code of Military Justice and reference (e), Manual for Courts-Martial, (MCM), United States (current edition)). Any civil officer having authority to apprehend offenders under the laws of the United States, the District of Columbia, a State, Territory, Commonwealth, or Possession may summarily

apprehend a deserter from the Armed Forces and deliver them into custody of those forces (Article 8 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, and reference (e), Manual for Courts-Martial (MCM), United States (current edition)). United States authorities may apprehend absentees and deserters in foreign countries only when authorized by an international agreement with the country concerned or by agreement with appropriate local authorities when such agreement is within the purview of an existing international agreement. In this latter case, careful consideration must be given to possible international implications and adverse foreign reactions. Where apprehension cannot be accomplished, or in any case where doubt exists as to apprehension authority, a report of the facts shall be forwarded to Commander (CG PSC-EPM-1) for resolution. Outside the jurisdiction of the U. S., commanding officers shall take such initial actions as the local situation may warrant, within the primacy of international agreements, to secure cooperation in apprehension of members absent without leave.

1.C.2.d. Termination of Period of Absence or Desertion

The period of absence of absentees or deserters is terminated by their delivery or surrender to, or apprehension by, an activity or organization of the Armed Forces, provided that military control over them is exercised by the act of competent authority of any Armed Force having knowledge of their status and identity. For purposes in which the duration of unauthorized absence is a factor under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, but not for administrative purposes, the period of absence of absentees or deserters is terminated by their apprehension by civil authority if the apprehension is made at the request of competent authority of the Armed Forces through issuance of the Deserter/Absentee Wanted by the Armed Forces, Form DD-553, or by other means.

1.C.2.e. Complete and Accurate Recordkeeping to Ensure a Prompt Trial

The Commandant requires that every effort be made to bring returned absentees and deserters promptly to trial. To accomplish this desired end, strict compliance with instructions and procedures with respect to preparation and submission of reports and entries in the PDR is necessary. The PDR, in absentee cases, is often the only evidence available; therefore, it is essential that it contain definite entries setting forth all the facts in the case.

1.C.2.f. Unit to Which Absentee or Deserter is Attached

The Commandant considers that, as a general rule, an individual is attached to that unit which carries their records, except in the following cases:

(1) A person who absents them self or deserts while assigned on board a Coast Guard cutter for transportation between stations is considered attached to the transporting cutter.

(2) A person who absents them self or deserts while en route to the next Coast Guard unit to which ordered to report is considered attached to the unit to which ordered to report.

1.C.3. Return of Absentee or Deserter

1.C.3.a. General Information

When reporting the return of an absentee or deserter, the following general provisions apply.

(1) Surrender or apprehension of an individual at a unit within regularly assigned district: Should an individual surrender to or be apprehended at a unit within their regularly assigned district, the district commander will take whatever action deemed necessary to return the member to their place of duty, including the issuance and funding of travel order numbers if appropriate. This is considered part of the district commander's discretionary authority, and there is no need to refer to the Commandant for other than information purposes.

(2) Surrender of an Individual to a Unit Outside Regularly Assigned District: If an individual surrenders to a unit outside their regularly assigned district, the district commander in which the member's regular unit is located will order the member's return, issuing a travel order number chargeable to the member's pay account if required. Again, the Commandant is advised for information purposes only.

(3) Apprehension of an Individual Outside Regularly Assigned District: Commander (CG PSC-EPM) will take the necessary action in all cases to return an individual who is apprehended outside their regularly assigned district, issuing and funding travel order numbers as necessary for the apprehended individual and escort.

1.C.3.b. Return of an Absentee or Deserter to a Unit Not Having Adequate Facilities for Retention

When an absentee or deserter surrenders to, or is apprehended by, or delivered to a cutter or shore unit, which does not have adequate facilities for the retention of the absentee or deserter; e.g., general mess and quarters, or safekeeping facilities in the case of apprehension or delivery, disposition will be requested from the officer having operational control of the area or the district commander, as appropriate, and custody of the absentee or deserter will not be accepted until receipt of instructions in the specific instance. The minimal facilities of a shore unit must be equal to or exceed those of a fully operative Coast Guard station, and those afloat must be equal to or exceed those of a WLM class cutter in order to be considered as adequate facilities for retention of absentees or deserters.

1.C.3.c. Action by Commander of District from Which Absent

Upon receipt of notification of the surrender of an absentee or deserter, the commander of the district from which absent shall issue a travel order number chargeable to the individual's pay account and direct the individual's return to a selected unit in their district for disciplinary action. The unit chosen to take disciplinary action shall be at the discretion of the district commander. If the member has been temporarily assigned to a unit other than their regular unit for disciplinary action, assignment instructions shall be requested from Commander (CG PSC-EPM) for all enlisted members.

1.C.3.d. Reporting Return of Absentee or Deserter

Commands are responsible for following the procedures in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series), when reporting the return of an absentee or deserter in the following categories.

(1) Return to unit from which absent.

(2) Return to unit within the same district from which absent.

(3) Surrender of absentee or deserter to unit outside of the district from which absent.

(4) Apprehension or delivery of absentee or deserter to unit outside of the district from which absent.

(5) Return of absentee or deserter to a unit of a section or group.

(6) Return of an absentee or deserter to a unit not having adequate facilities for retention.

1.C.3.e. Payment of Reward or Reimbursement of Expenses

Instructions concerning the procedures to be followed and conditions under which payments of rewards or reimbursement of expenses incurred incidental to the return to military control of absentees, deserters, or escaped military prisoners are contained in the Comptroller Manual Volume I (Accounting), COMDTINST M7300.4 (series).

1.C.4. Absentees and Deserters from other Branches of the Armed Forces

1.C.4.a. When a Form DD-553 Received

When copies of Deserter/Absentee Wanted by the Armed Forces, Form DD-553, are received by the Coast Guard from other branches of the Armed Forces, commanding officers will utilize available personnel and facilities to the maximum extent practical to effect apprehension, with emphasis on persons who have been absent less than 30 days.

1.C.4.b. When a Member Surrenders or is Delivered

When an absentee or deserter from the Army, Navy, Air Force, or Marine Corps surrenders, is delivered to, or apprehended by a Coast Guard unit follow the procedures in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series).

1.C.5. Delivery by Civil Authorities

1.C.5.a. Prior to Accepting an Absentee or Deserter

Before accepting delivery of an absentee or deserter by civil authorities, the commanding officer will obtain satisfactory assurance from the appropriate civil authorities, as well as the member, that no criminal charges are pending and will so report in the message prepared in accordance

with procedures in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series). When charges are pending in any court a full report with copies of all correspondence with civil authorities shall be forwarded to Commander (CG PSC-EPM-2), and no action will be taken pending receipt of instructions.

1.C.5.b. When Civil Charges are Made after Custody of Member

When civil charges are made after custody of an absentee or deserter has been accepted, the provisions of the Manual for Courts-Marial (MCM), United States (current edition), will apply.

1.C.5.c. Information Provided to Civil Authorities

No assurance shall be given civil authorities that an absentee or deserter will be tried by military court for violations of Federal or State laws, or that any particular individual will be retained in, or discharged from, the Service.

1.C.6. Removal of Marks of Desertion

1.C.6.a. Mark of Desertion

An enlisted member of the Coast Guard is not a deserter until they have legally been found guilty by a court-martial on the charge of desertion. Entry of a mark of desertion in an enlisted member's PDR is merely a matter of administration and is not intended to constitute a conclusive determination of the fact as to whether or not they are a deserter. Further, the Coast Guard may bring a person to trial by court-martial for unauthorized absence which resulted in a mark of desertion being entered in their PDR.

1.C.6.b. When Removal is Authorized

Commanding officers shall remove, as an erroneous entry, the mark of desertion from the enlisted member's PDR whose record was closed for desertion but who subsequently has been tried and convicted of unauthorized absence, or has been acquitted. All other cases regarding the removal of marks of desertion shall be referred to Commander (CG PSC-EPM-2) for action. Cases falling in this category are:

(1) Mentally Incompetent. Determination by a medical board that the individual was mentally incompetent at the time of absence.

(2) Error of Fact or Law. Determination by the Commandant that the entry of the mark of desertion was the result of an error of fact or law.

1.C.7. Disposition of Personal Effects of Absentees or Deserters

1.C.7.a. Held at Member's Unit

The personal effects of an absentee or deserter shall be held at the member's unit, or at the unit to which transferred under Article 1.C.2. of this Manual, for three months. After three months, they are to be disposed of in accordance with Article 1.C.7.c. of this Manual.

1.C.7.b. When Member Returns

An absentee or deserter, who returns within three months, may have personal effects returned at their own expense. If the absentee or deserter returns after three months, the personal effects may be forwarded to them at their own expense, provided the effects are at the time still in Coast Guard custody.

1.C.7.c. Disposition of Personnel Effects

If an absentee or deserter has not returned at the end of three months, the personal effects will be disposed of by one of the following methods:

(1) Next of Kin Can Be Determined. If the next of kin, heir, or legal representative can be determined per Article 1.K.2.h. of reference (g), Military Casualties and Decedent Affairs, COMDTINST M1770.9 (series), personal effects may be shipped to the next of kin, heir, or legal representative at no expense to the Government on a collect on delivery basis on a commercial Bill of Lading. However, shipment on a collect on delivery basis will be made only upon receipt of the ultimate consignee's agreement to accept the shipment on a collect on delivery basis. If the ultimate consignee fails to accept or to call for the collect on delivery shipment, the transportation agency then will be advised by the cognizant command to dispose of the shipment in accordance with the transportation agency's tariff regulations without recourse to payment by the Coast Guard.

(2) Next of Kin Cannot Be Determined. If the next of kin, heir, or legal representative cannot be determined, or if that individual has not agreed to accept the personal effects on a collect on delivery basis, the effects will be shipped to the Coast Guard Supply Center, Baltimore, MD, on a Government Bill of Lading. The cost of the shipment will be charged against the pay account of the absentee or deserter. The officer issuing the Government Bill of Lading will ascertain the cost of the shipment and will prepare a Pay Adjustment Authorization, Form DD-139, against the pay account of the owner of the effects. A notation of the request for checkage and to whom forwarded will be entered on the original and all copies of the Government Bill of Lading. The Pay Adjustment Authorization, Form DD-139, and a copy of the Government Bill Lading will be forwarded to the Pay and Personnel Center. A copy of the accomplished DD-139 will be forwarded to the office effecting payment of the shipment under the Government Bill of Lading.

1.C.8. Reduction of Absenteeism Problems

1.C.8.a. Establish a Program of Education

Since unauthorized absenteeism is one of the most costly problems with which the Coast Guard must contend, it is essential that this type of offense be kept to an absolute minimum. Each commanding officer shall study this problem in his or her own command and establish a positive and continuing program of education and indoctrination to combat it. The absentee rate may be reduced appreciably by assuring, at all levels, that certain well established principles of leadership are soundly applied. Officers and petty officers must know and treat their people as individuals. No request, no matter how trivial, should be disapproved without an explanation of the reasons therefore. Members must be made to feel they can discuss their problems with their

superiors at any time, since domestic and marital troubles, both real and imagined, are frequent causes of unauthorized absence. All members should be informed of available facilities of the Red Cross, Coast Guard Mutual Assistance, and other social agencies for assistance in alleviating family difficulties. All members must be taught to realize that by absenting themselves they do a great disservice to themselves and their families. They should be impressed with the seriousness of unauthorized absenteeism as regards loss of possible privileges, pay, and future promotion.

1.C.8.b. Action Taken

Commanding officers shall take prompt, consistent, and uniform disciplinary action in accordance with prescribed procedures and standards. For most minor absence offenses, a liberal application of nonjudicial punishment, administered promptly, has a highly beneficial effect.

1.D. Dissident and Protest Activities

1.D.1. Policy

The right of expression of a member of the Coast Guard should be preserved to the maximum extent possible, consistent with good order, discipline, and the national security. On the other hand, no commanding officer should be indifferent to conduct which, if allowed to proceed unchecked, would destroy the effectiveness of the unit. The proper balancing of these interests will depend largely upon the calm and prudent judgment of the responsible commanding officer.

1.D.2. Specific Guidelines

1.D.2.a. Possession and Distribution of Printed Materials

(1) Authority of the Commanding Officer. The commanding officer is not authorized to prohibit the distribution of a specific issue of publication distributed through official outlets such as post exchanges and military libraries. In the case of distribution of publications through other than official outlets, a commanding officer may require that prior approval be obtained for any distribution on a military installation in order that he or she may determine whether there is a clear danger to the loyalty, discipline, or morale of military personnel, or if the distribution of the publication would materially interfere with the accomplishment of a Coast Guard mission. When he or she makes such a determination, the distribution will be prohibited.

(2) Impounding Prohibited Material. While the mere possession of unauthorized printed material may not be prohibited, printed material which is prohibited from distribution shall be impounded if the commanding officer determines that an attempt will be made to distribute.

(3) Criticism of Government Policy. The fact that a publication is critical of Government policies or officials is not, in itself, a ground upon which distribution may be prohibited.

1.D.2.b. Off-Post Gathering Places

(1) Establishing “Off-Limits” Areas. In accordance with reference (h), joint Army Regulation 190-24 which encompasses Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, COMDTINST 1620.1 (series) of the same title, commanding officers shall establish “off-limits” areas to help maintain good order and discipline, health, morale, safety, and welfare of service members.

(2) Establishing Temporary “Off-Limits” Areas. As per this joint regulation, commanders retain substantial discretion to declare establishments or areas temporarily off-limits to personnel of their respective command in emergency situations. Temporary off-limits restrictions issued by Commands in emergency situations will be acted upon by reference (h), Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, COMDTINST M 1620.1 (series) as a first priority. As a matter of policy, a change in ownership, management, or name of any off-limits establishment does not, in and of itself, revoke the off-limits restriction.

(3) Maintaining an "Off-Limits" List and Violations of "Off-Limits" Policy. In addition, service members are prohibited from entering establishments or areas declared off-limits. Violations of this regulation may subject the member to disciplinary action under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946. Commands shall maintain an established listing of "off-limits" locations and service members shall be made aware of these locations.

1.D.2.c. Servicemen's Organizations

Commanding officers are not authorized to recognize or to bargain with a so-called "servicemen's union".

1.D.2.d. Publication of "Underground Newspapers"

Members writing for publication may not be pursued during duty hours, or accomplished by the use of Government or non-appropriated fund property. While publication of "underground newspapers" by military personnel off-post, on their own time and with their own money and equipment, is not prohibited, if such a publication contains language, the utterance of which is punishable under Federal law, those involved in the printing, publication, or distribution may be disciplined for such infractions.

1.D.2.e. On-Post Demonstrations and Similar Activities

The commanding officer of a Coast Guard unit shall prohibit any demonstration or activity at the unit which could result in interference with or prevention of orderly accomplishment of the mission of the unit, or present a clear danger to loyalty, discipline, or morale of the troops. It is a crime for any person to enter a military reservation for any purpose prohibited by law or lawful regulations, or for any person to enter or re-enter an installation after having been barred by order of the commanding officer. (18 U.S.C. § 1382)

1.D.2.f. Off-Post Demonstrations by Members

Members of the Armed Forces are prohibited from participating in off-post demonstrations when they are on duty, or in a foreign country, or when their activities constitute a breach of law and order, or when violence is likely to result, or when they are in uniform in violation of the Uniform Regulations, COMDTINST M1020.6 (series).

1.D.2.g. Grievances

The right of members to complain and request redress of grievances against actions of their commanding officers is protected by Article 138 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946. In addition, a member may petition or present any grievance to any member of Congress (10 U.S.C. § 1034). An open door policy for complaints is a basic principle of good leadership, and commanding officers should personally assure themselves that adequate procedures exist for identifying valid complaints and taking corrective action.

1.D.3. Prohibition on Extremist and Criminal Gang Activity

1.D.3.a. Extremist Activity

(1) Advocacy. Coast Guard military personnel must not actively advocate supremacist doctrine, ideology, or causes, including those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, national origin or that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights.

(2) Participation. Coast Guard military personnel must reject active participation in criminal gangs pursuant to section 544 of Public Law 110-181 and in other organizations that advocate supremacist doctrine, ideology, or causes; attempt to create illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin; advocate the use of or use force, violence, or criminal activity; or otherwise engage in efforts to deprive individuals of their civil rights. Active participation in such gangs or organizations is prohibited. Active participation includes the prohibitions in Article 1.D.3.c. of this Manual or otherwise engaging in activities in furtherance of the objective of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service.

1.D.3.b. Extremist Organizations and Criminal Gangs

Extremist organizations and activities are ones that advocate racial, gender, or ethnic hatred or intolerance; advocate, create, or engage in illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin; or advocate the use of or use force or violence or unlawful means to deprive individuals of their rights under the United States Constitution or the laws of the United States, or any State, by unlawful means. A criminal gang means an ongoing group, club, organization, or association of multiple persons that has among its primary purposes the commission of one or more criminal offenses under Federal or State law, or the laws of the jurisdiction in which it operated, or whose members engage or have engaged within the past five years in a continuing series of offenses. An extremist organization may but need not be a criminal gang, and a criminal gang may but need not be an extremist organization.

1.D.3.c Prohibitions

Coast Guard military personnel are prohibited from taking any of the following actions in support of criminal gangs and extremist organizations or activities. Penalties for violations of these prohibitions include the full range of statutory and regulatory sanctions, both criminal (reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946) and administrative. These prohibitions are punitive in nature and constitute a lawful general order. Failure to comply with these prohibitions can result in disciplinary action, including nonjudicial punishment or court-martial, for violation of Article 92 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946:

(1) Participating in public demonstrations or rallies or attending a meeting or activity with the knowledge that the demonstration, rally, meeting or activity involves a criminal gang or extremist organization or cause when on duty, when in uniform, when in a foreign country

(whether on or off duty or in or out of uniform), when it constitutes a breach of law and order, when it is likely to result in violence, or when in violation of off limits sanctions or a commanding officer's order.

(2) Fund raising activities.

(3) Recruiting or training members (including encouraging other military personnel to join).

(4) Creating, organizing, or taking a visible leadership role in such an organization or activity.

(5) Distributing literature on or off a military installation, including the internet, the primary purpose and content of which concerns advocacy or support of criminal gangs or extremist causes, organizations, or activities; and the literature presents a clear danger to the loyalty, discipline, or morale of Coast Guard or other Armed Forces personnel, or the distribution would materially interfere with the accomplishment of a Coast Guard or other military mission.

(6) Prohibited conduct:

(a) Committing any intentional act, including conduct or speech, when on duty, when in uniform, at any time when aboard a military vessel or installation, when utilizing a government communications system, or when communicating with another member of the armed forces, which:

[1] Is motivated, in whole or in part, by the offender's bias against the race, color, sex, religion, national origin, disability, or sexual orientation of a person or persons; and

[2] Places a person having such status in reasonable apprehension of bodily harm, or reasonably interferes with efficient performance of military duties, or the maintenance of good order and discipline within the Coast Guard; and

[3] Intentionally selects a person or persons motivated by the offender's bias in paragraph 1.D.3.c.6.a.[1], or, under the circumstances, is reasonably perceived by the person or persons having such status to be intentionally selecting them based on that bias.

(b) For the purposes of paragraph 1.D.3.c.6.a., conduct or speech may include but are not limited to the display, presentation, creation or depiction of:

[1] A noose, a swastika, or any other symbol widely identified with oppression or hatred, irrespective of size, type or how it is displayed or presented;

[2] Other symbols that would reasonably be construed to encourage oppression or hatred; or

[3] Photographs, images, or other printed or electronic material that would reasonably be construed to be evidence of oppression or hatred.

1.D.3.d Command Authority Regarding Extremist and Criminal Gang Activity

Commanding Officers have the authority to prohibit military personnel from engaging in or participating in any other activities that the commanding officer determines will adversely affect good order and discipline or morale within the command. This includes, but is not limited to, the authority to order the removal of symbols, flags, posters, or other displays from unaccompanied personnel housing, to place areas or activities off-limits (see reference (h), Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, COMDTINST 1620.1 (series)), or to order military personnel not to participate in those activities that are contrary to good order and discipline or morale of the unit or pose a threat to health, safety, and security of Coast Guard or other Armed Forces personnel or a Coast Guard or other military installation. Commanding Officers should consult their servicing Staff Judge Advocate before imposing such sanctions unless consultation would cause an unreasonable delay in the circumstances.

1.D.3.e Command Options for Dealing with Extremist or Criminal Gang Activity

In addition to reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946 (as amended), action under Article 92 – violation for failure to obey a lawful general order or regulation for a violation of the prohibitions, a Commanding Officer's options for dealing with extremist or criminal gang activity include:

(1) UCMJ Action. Possible violations depending on the circumstances include the following:

(a) Article 116—Riot or breach of peace.

(b) Article 117—Provoking speeches or gestures.

(c) Article 134—General article, specifically, conduct which is prejudicial to good order and discipline or service discrediting.

(2) Separation from Service. Involuntary separation for unsatisfactory performance or misconduct.

(3) Reenlistment. Bar to reenlistment.

(4) Other. Other appropriate administrative or disciplinary action.

1.D.3.f Command Responsibility Regarding Extremist Organizations and Criminal Gangs

Any military personnel's involvement with or in a criminal gang or extremist organization or activity (such as membership, receipt of literature, or presence at an event) could threaten the good order and discipline of a unit. In any case of apparent military personnel involvement with or in criminal gangs or extremist organizations or activities, whether or not violative of the prohibitions in Article 1.D.3.c above, commanding officers must take positive actions to educate military personnel, putting them on notice of the potential adverse effects that participation in violation of Coast Guard policy may have upon good order and discipline in the unit and upon their military service. These positive actions include:

(1) Educating. Educating Coast Guard military personnel regarding the Coast Guard's equal opportunity policy. Commanding Officers will advise members of their command that criminal gangs' and extremist organizations' goals are inconsistent with Coast Guard core values and with the service's goals, beliefs, and values concerning equal opportunity.

(2) Negative Consequences. Advising military personnel that participation prohibited by this order in criminal gangs or extremist organizations or activities may:

(a) be taken into consideration when evaluating their overall duty performance, to include appropriate remarks on evaluation reports;

(b) be taken into consideration when selections for positions of leadership and responsibility are made;

(c) result in removal of security clearances, where appropriate;

(d) result in a bar to reenlistment, where appropriate.

1.E. Court Memorandums, Punitive Letters of Censure, and Administrative Corrective Letters

1.E.1. Censure

Censure is a general term applicable to any form of adverse reflection upon individual character, conduct, performance, or appearance. Censure is a prerogative of command or administrative superiority, but certain exercises of the power of censure are governed by statute, regulations, and instructions. Censure includes both punitive and non-punitive measures.

1.E.2. Punitive Letters of Censure

1.E.2.a. Disposition

Instructions for the issuance of punitive letters of censure, as a result of Article l5 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, are contained in reference (b), Military Justice Manual, COMDTINST M5810.1 (series). One copy of the punitive letter of censure, issued under Article l5 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, with a copy of the individual's acknowledgment of receipt, shall be forwarded to Commander (CG PSC-OPM) or (CG PSC-EPM), as appropriate. This punitive letter shall be held until the appeal period specified by Part V, Paragraph 7 of reference (e), Manual for Courts-Martial (MCM), United States (current edition) expires. Upon expiration of the appeal period, the punitive letter shall be inserted into the member's CG Personnel Service Center (PSC) electronically imaged personnel data record (EI-PDR).

1.E.2.b. Appeals

If the member receiving the punitive letter of censure chooses to appeal, Commander (CG PSC-OPM) or (CG PSC-EPM) shall be notified by the officer who imposes punishment. The letter shall not be entered into the member's official Headquarters record until the appeal has been decided. If after action on the appeal, a punitive letter of censure remains effective, the authority who acts on the appeal shall forward a copy of the action on the appeal to Commander (CG PSC-OPM) or (CG PSC-EPM), as appropriate, for attachment to the Headquarters copy of the punitive letter of censure, and filing in the member's official Headquarters record. If the appeal is granted, and a punitive letter of censure no longer remains effective, a copy of the action on appeal shall be forwarded to Commander (CG PSC-OPM) or (CG PSC-EPM), as appropriate, and the punitive letter of censure shall not be placed in the Headquarters record.

1.E.3. Court Memorandums

Commanding officers shall forward the original of all Court Memorandums to Commander (CG PSC-OPM) or (CG PSC-EPM) as appropriate. (See reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series).) The original of all Supplemental Court Memorandums shall be similarly forwarded. The Court Memorandums shall be subsequently filed in the individual's official record.

1.E.4. Administrative Letters of Censure

1.E.4.a. Purpose

Administrative letters of censure are intended to serve as a corrective measure. Commanding officers and warrant officers are authorized to use administrative measures of censure in furthering the efficiency of their commands and such censure may be administered either orally or in writing. It is not to be considered as punishment for an offense.

1.E.4.b. For Officers

Administrative letters of censure shall not be included in the unit files or in any of the official records of the recipient, nor shall they be quoted in nor appended to fitness reports. No command shall forward any non-punitive censure, or copy thereof, to the Commandant or district commander. However, the facts upon which an administrative letter is based may be the basis for adverse marking or comments in the next fitness report of an officer.

1.E.4.c. For Enlisted

Although not forbidden by law or regulation, it is felt that administrative letters of censure to enlisted members are not appropriate since more practical methods of correction are available.

1.F. Military Corrections and Confinement

1.F.1. Purpose and Nature of Military Corrections

1.F.1.a. Definition

The term "Military Corrections" as used in this section refers to the entire array of formal programs committed to the confinement, care, and rehabilitation of military members awaiting trial or serving Courts-Martial sentences to confinement, along with the resources and administrative support comprising those programs. The system of formal correctional programs established by the Armed Forces is conducted within military correctional or confinement facilities. l0 U.S.C. § 95l authorizes the Secretaries of the Armed Forces to establish and staff military correctional facilities for the purpose of punishing and rehabilitating military offenders. The philosophy of military corrections is based on recognition of the fact that punishment alone, whether it be confinement or some other form, is seldom corrective. Since Federal law makes rehabilitation a mandatory mission of military correctional centers, the highly-professional correctional programs developed by the Departments of the Navy, Army, and Air Force commonly provide for intensive counseling, specialized work assignments, medical and psychiatric counseling, training and education, and an achievement and conduct incentive system. The Armed Forces provide these correctional programs and resources in response to the task assigned to them by Congress, namely to establish within military confinement facilities corrections programs designed to assist willing offenders to reform their conduct by providing the opportunity to achieve either honorable restoration to duty or return to civilian life as useful citizens. Nevertheless, confinement remains first and foremost a punishment. Offenders leave the military correctional center with Federal conviction and prisoner records. Confinement is punishment because it denies the prisoner liberty and privileges and imposes separation from family, friends, and most normal activities. It further implies a loss of social status and inevitable post confinement social and professional handicaps. This section deals primarily with confinement imposed as a court-martial sentence-the administration of which is the purpose of the Military Corrections System. That system is staffed by both military and civilian career correctional specialists.

1.F.1.b. DoD Military Correctional System

Because the number of Coast Guard prisoners serving confinement at any given time is relatively small, the Secretary of the Department of Homeland Security has not invoked the statutory authority to establish a military corrections system within the Coast Guard. Accordingly, the Coast Guard has no capability to administer confinement within the Service, but relies instead on the resources of the other Armed Forces, principally the Navy. This section provides guidance to Coast Guard commanding officers and convening authorities who become participants in the DoD Military Correctional System upon ordering offenders into military confinement. While the Departments of the Navy, Army, and Air Force have traditionally conducted their own separate military correctional programs and developed their own cadre of professional correctional specialists, the Secretary of Defense has directed the Armed Forces to strive for uniformity in the treatment of offenders, administration of military justice and in the conduct of military corrections programs. Nevertheless, full uniformity has yet to be achieved and the professional orientation of the Navy's military corrections program continues to conform most closely to Coast Guard requirements. Therefore, every effort will be made to confine Coast Guard

prisoners at Naval brigs whenever these facilities are reasonably available. This section will primarily deal with utilizing Naval brigs. The terms "Correctional Center" and "Correctional Facility" refer to other than Navy DoD Military correction programs and may be substituted by the reader in the place of "Naval brig" when utilizing other DoD facilities. Naval brigs will accept Coast Guard prisoners at no cost, without requiring reciprocal staff augmentation and without the need for joint-Service agreements provided space is available. Exhibit 1.F.l. of this Manual contains a Navy Confinement Designation Chart to facilitate selection of a Naval brig. Policy governing the designation of places of confinement when Navy or other DoD correctional facilities are not available is contained in Article 1.F.4. of this Manual.

1.F.1.c. Professional Correctional Programs

Contrary to myth, the professional correctional programs which have been evolving over recent years have not rendered military confinement a pleasant experience. The military correctional center remains first and foremost a Federal prison. It also should be realized that no correctional program - no matter how elaborate - can rehabilitate the prisoner who is unable or unwilling to undertake the substantial personal commitment and effort required to initiate his or her own rehabilitation. Nevertheless, the military correctional system can and does render a valuable service to the Armed Forces and to society. Court-Martial convening and reviewing authorities should be mindful of the purpose, capabilities and limitations of military corrections when acting on sentences to confinement at hard labor.

1.F.2. Definitions

1.F.2.a. Adjudged Prisoner

Person serving a sentence to confinement as adjudged by court-martial.

1.F.2.b. Aggregation of Sentences

When a prisoner has two or more sentences to confinement standing to be served, the several sentences will be aggregated to determine the rate of earning good conduct time and parole eligibility date.

1.F.2.c. Apprehension

The taking of a person into custody. A person who is lawfully apprehended may be subjected only to that degree of physical restraint necessary to secure custody.

1.F.2.d. Arrest

The moral restraint and suspension from duty imposed upon a person by oral or written orders of competent authority, limiting the person's personal liberty pending the disposition of charges. The restraint imposed is binding, not by physical force but by virtue of the moral and legal obligation to obey the order of arrest. A person in arrest cannot be required to perform full military duty or any duties involving the exercise of command or the bearing of arms. If placed on duty inconsistent with arrest status, the arrest is thereby terminated. Persons in arrest may be required to do ordinary cleaning or policing within the limits of arrest.

1.F.2.e. Beginning Date of Confinement

A term of confinement served as sentence of a court-martial begins to run from the date the sentence is adjudged by the court, whether or not the person is placed in confinement, except that any period for which a sentence to confinement has been suspended or deferred shall be excluded in computing the service of the term of confinement. The day of commitment and the day of release are both considered full days of confinement for sentence computation.

1.F.2.f. Brig

Within the Department of the Navy, a Naval brig is a place of confinement established at a local command of the shore establishment and approved by the Secretary of the Navy as a Naval place of confinement. Naval brigs normally can accommodate both pretrial and sentenced confinement. Also, a Naval place of confinement aboard ships of the Navy included in the original construction or added during an authorized conversion. Although some Coast Guard ships have spaces referred to as brigs, none are certified as places of confinement and hence shall not be employed for either pretrial or sentenced confinement.

1.F.2.g. Clemency

Clemency is that action - other than correction of legal error - of an officer responsible for taking

official action on the findings and sentence of courts-martial which results in the mitigation, remission, or suspension of all or any part of the unexecuted portion of a sentence. (See Article 1.F.6.d. of this Manual for a definitive policy.)

1.F.2.h. Clemency Board

The Clemency Board, as used herein, refers to a permanent group of senior commissioned officers who review the records of all courts-martial referred to the Commandant of the Coast Guard for residual clemency action. The Clemency Board renders nonbinding recommendations to the Commandant as to whether or not residual clemency should be granted.

1.F.2.i. Computation of Sentences

Sentences will be computed as provided for in the Department of the Navy Corrections Manual.

1.F.2.j. Confinement

The physical restraint of a person. As used herein, confinement normally means punishment imposed as a sentence of a court-martial. (See Article 1.F.3.a. of this Manual.)

1.F.2.k. Continuity of Sentences

A sentence to confinement is continuous until the term expires.

1.F.2.l. Correctional Centers or Facilities

A DoD confinement center or facility other than a Naval brig at which a formal correctional program for sentenced prisoners is conducted.

1.F.2.m. Correctional Custody

Correctional custody is a nonjudicial punishment imposed at mast under Article l5 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, which may extend to physical restraint of a person during duty hours, non-duty hours, or both and may include extra duty or hard labor.

1.F.2.n. Correctional Custody Unit (CCU)

Navy locally funded and staffed space in which to administer a program calculated to induce a modification in attitude and behavior upon minor or first-time offenders by use of a balanced program of punitive measures, directive counseling, restraining, and work assignments. (See Article 1.F.10. of this Manual.)

1.F.2.o. Detention

Detention is a term used in some instances to refer to pretrial confinement, confinement awaiting rehearing, or emergency short-term restraint imposed by a commanding officer.

1.F.2.p. Detention Center

A confinement facility operated by a Service of the DoD specifically for detention of persons. Detention centers are not designated as correctional centers or facilities or Naval brigs, meaning that these facilities may not be designated as the place of confinement for sentenced prisoners. When detention centers are utilized for emergency detention of personnel, the provisions of Article 1.F.9. of this Manual shall be followed.

1.F.2.q. Dischargee

A prisoner sentenced to a discharge which is not suspended, or who will be separated administratively after completion of confinement or of the appeals process, as appropriate. (See Article 1.F.8.b. of this Manual.)

1.F.2.r. Disposition Boards

These boards, also referred to as local boards, are internal review boards established within Naval brigs and comprised of designated staff members of the brig. These boards consider for appropriate institutional endorsement the parole and/or clemency petitions from eligible prisoners confined at the specific Naval brig. (See Article 1.F.6.d. of this Manual.)

1.F.2.s. Extra Good Time (in Confinement)

A deduction from the term of a prisoner's sentence to confinement based on a genuine offer of exceptionally meritorious service in the performance of duty connected with institutional operations.

1.F.2.t. Full Term

The entire sentence to confinement without reduction for good conduct time.

1.F.2.u. Good Conduct Time in Confinement

A deduction made from the term of a prisoner's sentence for good conduct based on faithful observance of all the rules and regulations of the brig. (See Article 1.F.6.c. of this Manual.)

1.F.2.v. Magistrate (Military)

A commissioned officer appointed by a district commander to hold a neutral and detached hearing in each case of pretrial confinement to determine whether an accused may and should be retained in pretrial confinement. Definitive guidance is contained in reference (b), Military Justice Manual, COMDTINST M5810.1 (series).

1.F.2.w. Naval Clemency and Parole Board

The Naval Clemency and Parole Board is a permanent board established by precept of, and reporting to, the Secretary of the Navy. The Board's composition includes representatives from the Bureau of Naval Personnel, Marine Corps, Navy Judge Advocate General, and the Bureau of

Medicine and Surgery. The Board is authorized to render only parole determinations for Coast Guard offenders. The Board has no authority to adjudicate Coast Guard clemency cases, but may render advisory recommendations.

1.F.2.x. Parole

Parole, as authorized by l0 U.S.C. § 952, is a form of conditional release from confinement granted to carefully selected individuals who have served a portion of their sentences in confinement and whose release under supervision is considered to be in the best interest of the prisoner, the Service and society. (See Article 1.F.6.e. of this Manual.)

1.F.2.y. Parole Officer

An officer assigned to the Naval brig charged with the investigation, evaluation, and processing of requests for parole and the maintenance of necessary records of parolees.

1.F.2.z. Parolee

A prisoner conditionally released from confinement on parole as defined above.

1.F.2.aa. Parole Violator Term

The unexpired term of a sentence to confinement to be served by a prisoner who has violated parole. This term will be the difference in days between the actual date of release on parole and the full term date of sentence adjusted for good conduct time earned after return to confinement.

1.F.2.bb. Probation

Probation constitutes the set of conditions under which competent authority agrees to suspend execution of a sentence. As such, probation amounts to specification of the reciprocal terms of conduct, performance, and achievement with which an accused must comply to justify continuance of suspension.

1.F.2.cc. Probation Violator Term

The unexpired term of a confinement sentence remaining to be served by a person whose suspension of execution of sentence has been duly vacated. This term will be the difference in days between the actual date of release on probation and the full-term release date of the sentence adjusted for good conduct time earned after return to confinement.

1.F.2.dd. Probation Officer

An officer of the Federal Probation Service who has supervision over a prisoner on parole for the purpose of helping the parolee make a socially acceptable adjustment.

1.F.2.ee. Restoree

A prisoner not sentenced to or scheduled for discharge, and who will be restored to full duty

status upon release from confinement.

1.F.2.ff. Restriction

Moral restraint imposed upon a person by oral or written order of competent authority limiting the person's freedom to a specific area. Restriction may or may not include suspension from duty.

1.F.2.gg. Sentenced Prisoner

A prisoner whose sentence has been ordered into execution following the appropriate level of review. (See rules 1101 and 1113 of reference (e), Manual for Courts-Martial (MCM), United States (current edition).)

1.F.2.hh. Notification of Next of Kin

In cases where a member is to be tried by general court-martial or special court-martial, the commanding officer should impress upon the member the desirability of informing his/her parents, spouse, or guardian, as appropriate, of the circumstances. In those cases where a member is under 21 years of age, the commanding officer, when deemed appropriate, should inform the parents, spouse, or guardian, by letter or other form of communication, of the details considered pertinent and proper under the circumstances.

1.F.3. Pretrial Confinement

1.F.3.a. Policy

Pretrial confinement should be ordered only after careful consideration of and strict compliance with the provisions of Rules of Courts-Martial 304 and 305 of reference (e), Manual for Courts-Martial (MCM), United States (current edition). The decision to order personnel into pretrial confinement is an important decision. A person shall not be retained in confinement solely on the basis of impending administrative discharge proceedings. Confinement pending trial should be ordered only when deemed necessary to ensure the presence of the accused at the trial, or because of the presence of factors making it probable that failure to confine awaiting trial would endanger life or property. These are the only grounds for pretrial confinement. Safekeeping is not an authorized reason for the imposition of pretrial confinement. Pretrial confinement amounts to punishment (physical restraint) imposed prior to conviction. Because of this, its use must be limited to cases fully justifiable and wherein no alternative action is practicable or appropriate. Use of Naval brigs merely to warehouse offenders is contrary to both the letter and spirit of the law. Pretrial confinement normally should not be ordered in the case of an absentee who surrenders or of an absentee who, even though apprehended, shows no inclination toward renewed absence. Similarly, senior enlisted personnel facing charges after previously unblemished records, and obviously stable individuals facing minor charges should not be confined. Under normal circumstances, it is not necessary to confine an individual who is to be tried by a summary court-martial.

(1) Article l0, Uniform Code of Military Justice, 10 U.S.C. § 801-946 Restrictions. A person will not be ordered into pretrial confinement without first being informed of the specific

wrong of which he or she is accused. Upon confinement, every effort should be exerted either to bring the member to trial without delay or to dismiss the charges and release the person. It should be noted that the continuance of a person in pretrial confinement is in every case subject to the provisions of the Coast Guard Military Magistrate Program. (See Article1.F.3.b. of this Manual.)

(2) Restraint of Persons Charged with Offenses. Article l3 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, prohibits punishment for alleged offenses prior to trial and conviction thereon. In practice, the U. S. Court of Military Appeals has held that when a person is confined awaiting trial, Article l3 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, also prohibits co-mingling of that person with sentenced prisoners for a given work program or activity, thereby requiring Naval brigs to segregate these two categories of confinees. Pretrial confinement therefore serves no corrective purpose. Article l3 also prohibits the use of excessive measures of restraint upon persons awaiting trial. Because segregation often amounts to solitary confinement, brigs sometimes permit pretrial confinees to waive their Article l3 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, rights thereby enabling the person's participation in the correctional programs and activities conducted (for sentenced persons) at the brig. Waiver is a serious step which should not be undertaken without careful consideration. Prior to departure for pretrial confinement, the offender should be advised of the nature and purpose of his or her Article l3 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946, rights and the implications of waiving those rights.

1.F.3.b. Military Magistrate Program

A neutral and detached magistrate must hold a hearing in each case of pretrial confinement to determine whether an accused should be retained in pretrial confinement. Compliance with the provisions of the Military Magistrate Program as contained in Section 2-C-4 of reference (b), Military Justice Manual, COMDTINST M5810.1 (series), is mandatory.

1.F.3.c. Places of Confinement for Persons Awaiting Trial

The proper place for restraining persons awaiting trial by court-martial is a military correctional or detention center operated by any of the Department of Defense services. Facilities of the Navy will be employed whenever possible. When operational or logistical circumstances prohibit this, the commanding officers may request authority from Commandant (CG-122) to confine the member on a short-term basis (72 hours or less) in a civilian facility as provided for in Article 1.F.4.c. of this Manual. (See Article 2.C.4.m.. of reference (b), Military Justice Manual, COMDTINST M5810.1 (series)). It is the responsibility of the commanding officer or convening authority to determine the degree of restraint to which an accused should be subjected prior to trial. This determination should reflect careful observance of the provisions of Article 9(d), l0 and l3, UCMJ , and Rules 304 and 305 of reference (e), Manual for Courts-Martial (MCM), United States (current edition). Suitable alternatives may include: no restraint, arrest, or restriction in lieu of arrest. In certain cases non-judicial punishment may serve military discipline just as effectively as trial by court-martial.

1.F.3.d. Short Term Confinement Facilities

Certain DoD services operate short-term confinement facilities (usually for restraint for periods of 30 days or less) devoted solely to detention of persons awaiting trial. Coast Guard commanding officers are authorized to use such facilities only for pretrial confinement on a space-available basis. These facilities are neither staffed nor operated as military correctional centers or brigs and for this reason will never be designated as places of confinement for persons sentenced to confinement by courts-martial. These facilities are known in the Navy as detention centers.

1.F.4. The Preconfinement Phase - Designating Places of Confinement and Duty Status of Personnel Undergoing Disciplinary Action

1.F.4.a. General

Whenever confinement is ordered by an appropriate authority (i.e., an officer empowered to order a court-martial sentence to confinement into execution) that officer shall designate a military correctional center or facility as the place of confinement. An appropriate brig of the Navy is preferred. Naval Brig, Naval Station Norfolk, Virginia will be designated as the place of confinement in every case in which enlisted members are sentenced by court-martial to periods of confinement exceeding one year. Officers sentenced to confinement are normally confined at the Disciplinary Barracks, Ft. Leavenworth, KS. These prisoners will be transferred to U. S. Coast Guard Support Center (T&A), Portsmouth, Virginia for temporary duty for discipline or confinement purposes. Coast Guard personnel confined awaiting trial or serving court-martial sentences to confinement will not be confined on board Coast Guard units ashore or afloat.

1.F.4.b. Pre-Designation Liaison with Military Confinement Facility

(1) Use of U. S. Navy Brigs. Prior to designating a place of confinement, the offender's commanding officer should establish informal telephone liaison with the commanding officer of the desired Naval brig in order to ascertain whether space will be available. (See Article 1.F.4.d. of this Manual.) If the response is in the negative, similar inquiries should be directed to all other Navy or Marine Corps brigs within reasonable travel distance. Should this still fail to secure space, assistance shall be requested from Commandant (CG-122).

(2) Joint-Service Agreements for Use of Army or Air Force Facilities. In locations where Navy or Marine Corps brig facilities are nonexistent or subject to frequent shortfalls, district commanders, overseas commanders and commanding officers of Headquarters units are authorized to enter into local joint-Service agreements for military confinement center or facility services (for confinement of one year or less) with the appropriate Army or Air Force commander in their area. Statutory authority is contained in Articles ll(a) and 58(a) of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Copies of any written agreements shall be furnished to Commandant (CG-122). Before executing agreements to provide for confinement of Coast Guard prisoners in Army or Air Force facilities, it should be ascertained whether the orientation of the correctional program and regimen conducted are suitable for Coast Guard personnel. When designating Army or Air Force facilities as the place of confinement, it is particularly important during pre-designation liaison to determine whether the correctional facility commanding officer has

established special requirements or preferences concerning prisoner escort or transport, prisoner estimated time of arrival, required clothing, personal health and comfort items, the confinement order, and records. No joint-Service agreement entered into under the provisions of this Article shall commit the Coast Guard to augment the staff of DoD correctional centers as a precondition for providing correctional services. In the absence of a local joint-Service agreement, Army and Air Force correctional centers or facilities (and some Marine Corps brigs) will ordinarily accept Coast Guard prisoners only if space and resources are available and consistent in every case with the discretion of the unit commander involved. Whenever a member of the Coast Guard is confined pending trial (pretrial confinement), the provisions of reference (b), Military Justice Manual, COMDTINST M5810.1 (series), shall be followed even though a non-Navy facility may have been designated as the place of confinement (detention). Coast Guard personnel confined in facilities of another Service become subject to the military control of that Service and shall be subject to the regulations prescribed by that Service for its own prisoners under the same confinement circumstances.

1.F.4.c. Confinement in Civilian Facilities

Commanding officers may find it necessary to confine military personnel in civilian facilities under either of two following circumstances:

(1) Pretrial Confinement. When a commanding officer deems pretrial confinement necessary but no military correctional or detention facility is available, authority may be requested from Commandant (CG-122) to confine the accused in a civilian jail or prison. Requests shall be made by message and shall include the identity of the offender and alleged offense, the estimated duration of confinement being requested and identity of the civilian facility preferred, if any. Authority will ordinarily be granted provided the civilian facility requested has been certified by the U. S. Bureau of Prisons as approved for the confinement of Federal offenders. This authority will ordinarily permit confinement of the prisoner at the civilian facility until the military magistrate has reviewed the case as provided for in Article 1.F.3.b. of this Manual. Each case of this nature shall be made the subject of a separate request. Authority granted to confine one individual in a civilian jail or prison shall not be construed as authorization for confinement of any other persons. In certain other situations, it may also be necessary for civil authorities to retain Coast Guard personnel not under Coast Guard control (stragglers, deserters, those with civil charges pending) for longer periods in jail. The return of these individuals to Coast Guard control as soon as practicable is desirable, except where the return would be contrary to safety or good order and discipline. Prolonged confinement in a civilian jail is particularly undesirable.

(2) Emergency Situations. Situations arise periodically which demand that a commanding officer immediately restrain a member to prevent loss of life, injury to their person or others or serious loss of property. Where local circumstances warrant such short-term (normally not more than 24 hours) restraint may be accomplished in a civilian jail.

1.F.4.d. Designation of Places of Confinement for Adjudged Prisoners

When a convening authority orders a sentence to confinement at hard labor into execution-including temporary confinement pending final disposition of the case upon completion of

review under Article 66 or Article 69(a) of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended) - his or her action will designate the place of confinement on the basis of the time remaining to be served to fulfill the sentence. Designation shall be a brig selected in accordance with the Confinement Designation Chart which is contained in Exhibit 1.F.l. The chart is based on an evaluation of each brig's capability for confining prisoners with varying lengths of sentences. These capability evaluations have been made by the Chief of Naval Personnel on the basis of area needs, space, and staffing of support facilities availability.

1.F.4.e. Re-designation and Transfer

The majority of instances involving re-designation of the place of confinement or the transfer of a prisoner to a different confinement facility are routine in nature. Illustrative is the situation following a change in the reason for confinement occurring upon adjudgement of a sentence to confinement against a member had been held in pretrial confinement prior to court-martial proceedings. Transfers both in and outside the continental United States (OCONUS) will proceed at the earliest practicable time following the convening authority action, and from outside CONUS following convening authority action. Transfers will not be made when internal disciplinary action by the correctional facility is pending. Unnecessary delay in prisoner transfer should be avoided and will not be a basis for re-designation of the place for confinement. When a prisoner is transferred from a cutter to a shore brig, care should be taken to ensure simultaneous transfer of appropriate records and belongings. Non-routine re-designations and transfers, by contrast, are those not deriving from the normal sequence of trial events or execution of sentence, but rather from special circumstances arising during the course of confinement. Requests for non-routine re-designation or transfer may be initiated by the convening authority or commanding officer of the prisoner, by the prisoner personally, by the commanding officer of the brig, Commandant (CG-122) or the Chief of Naval Personnel. Non-routine re-designation or transfer actions will be coordinated by Commandant (CG-122). Upon learning of a need or request for non-routine re-designation or transfer, convening authorities or commanding officers shall transmit a request to Commandant (CG-122). The transmittal shall include all pertinent background and justification for the change along with a recommendation for an alternate place of confinement selected from the current Confinement Designation Chart.

1.F.4.f. Women

Women service members are subject to confinement according to the same guidelines and under the same circumstances warranting confinement of male service members. Women service members shall not be confined in a military facility designated for male personnel only. Those brigs capable of confining women service members are indicated in Exhibit 1.F.1. Entry into correctional centers operated by the Army and Air Force is coordinated by Commandant (CG-122). In certain cases, it may be necessary to resort to civilian facilities. Commandant (CG-122) maintains a list of local civilian facilities approved by the U. S. Bureau of Prisoners for the confinement of women. Local commanding officers desiring to effect either pretrial or sentenced confinement of women prisoners shall contact Commandant (CG-122) by message for advice as to the appropriate military or civilian facility to be used in an individual case. All costs associated with confinement in a civilian facility will be borne by the district of the command making the request.

1.F.4.g. Officers

Officers shall not be confined in close company with enlisted prisoners. If it is necessary to confine an officer awaiting trial or under exigent circumstances, the restraint should be carried out through confinement to quarters or other suitable place. If required, an adequate guard may be posted. An officer sentenced to confinement shall normally be confined to facilities within the jurisdiction of the officer convening the court-martial until the sentence is ordered executed. Where local facilities are inadequate, a message for designation of a place of confinement shall be forwarded to Commandant (CG-122) furnishing justification for an exception to policy. The message should also indicate whether deferment of confinement has been requested and the action thereon. When an approved sentence to dismissal has been executed, the individual may be confined with and otherwise handled as an enlisted prisoner.

1.F.4.h. Military Duty Status of Personnel Awaiting Trial by Court-Martial

(1) Accused persons awaiting trial by court-martial (whether or not pretrial confinement is ordered) shall remain attached to their parent command unless the parent command:

(a) is an operational unit whose scheduled deployment would delay trial preparations and preclude access to the accused's records;

(b) is a small command lacking the administrative capability to prepare for trial; or

(c) is a remote command whose distance from necessary military justice services would hamper timely preparation for trial.

(2) When one or more of the foregoing situations exist, the command having assignment authority over the accused may direct his or her transfer for TDY for disciplinary action to an appropriate command which can accommodate temporary duty status personnel. It is stressed, however, the temporary transfer of persons awaiting trial is intended to facilitate preparation for trial. Transfer must not be used as an excuse to delay preparations for trial, consistent with the right of an accused to speedy trial. When it is known at the time of transfer or subsequently becomes apparent that extraordinary circumstances will prohibit bringing an accused person transferred in accordance with this Article to trial in less than 60 days, the command having assignment authority over the accused will designate the accused member's duty status as TEMDUINS for disciplinary action. Similarly, should it be known at the time such transfer is ordered that the person awaiting trial is unlikely to be returned to the parent command after trial, transfer will be ordered as TEMDUINS for disciplinary action. Competent authority to order TDY or TEMDUINS transfers of persons awaiting trial is the command normally having transfer authority over that person. Competent authority is Commander (CG PSC-EPM). For officer personnel, competent authority is Commander (CG PSC-OPM). When apprehended or surrendering deserters are returned to Coast Guard custody, Commander (CG PSC-EPM) will designate the individual's command assignment and duty status in accordance with the provisions of Article 1.C.3. of this Manual. When the apprehended or surrendering deserter is an officer, Commander (CG PSC-OPM) will so designate. The authority under which persons may be ordered into TDY or TEMDUINS status and/or transferred while awaiting trial pursuant to this article terminates effective with completion of a court-martial or resolution of the charges by other means. Persons found

guilty and sentenced to confinement and/or punitive discharge shall be administered as provided for in Article 1.F.4.i. of this Manual. All others will be ordered to a permanent unit to resume regular duties.

1.F.4.i. Military Duty Status of Persons Sentenced to Confinement by Court-Martial

(1) Sentences Less Than 90 Days. Persons sentenced to confinement of less than 90 days shall normally be placed in a TDY status for the duration of confinement unless:

(a) The member was also sentenced to a punitive discharge, or

(b) The assignment authority otherwise considers it unlikely that the offender will be ordered to return to his or her parent command after release from confinement.

(2) Sentences 90 Days or More. Coast Guard members with sentences to confinement of 90 days or more, or with an unsuspended punitive discharge approved by the convening authority shall be assigned to:

Unit	OPFAC	Servicing SPO
Commanding Officer U. S. Coast Guard Pay & Personnel Center 444 S.E. Quincy Street Topeka, KS 66683-3591 Toll Free 1-866-772-8724	53-47400	53-47400-02

(3) Convening Authority Responsibilities. Assignment to PPC (SES) does not alter, expand, or reduce the convening authority's responsibilities under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended) with respect to the member, see R.C.M 1107(a) of reference (e), Manual for Courts-Martial (MCM), United States (current edition).

(4) Required Appellate Leave Procedures. The procedures for required appellate leave are found in Article 2.A.21.e. of reference (c), Military Assignments and Authorized Absences, COMDTINST M1000.8 (series).

1.F.4.j. Changes in Status

Whenever the reason for placing a person in TDY or TEMDUINS status changes, the command having assignment authority over the person will, upon notification by the individual's command, reevaluate the situation and order a change in status and/or assignment if appropriate. For example, should an accused person who had been transferred on TDY to another unit pending trial subsequently be convicted by court-martial and sentenced to three months confinement, the status would be changed to TEMDUINS, and transfer to a different unit for post-trial administrative processing may be ordered if warranted. The commanding officer holding a member's Personnel Data Record will be his or her commanding officer for all administrative functions and purposes.

1.F.4.k. Action Required Prior to Delivery of Prisoners

Delivery of prisoners to Naval brigs should be planned to provide for the prisoner's arrival at the brig during working hours. Should exceptional circumstances preclude this, appropriate prior liaison with the commanding officer of the designated brig will be initiated by the controlling Coast Guard command. Upon designation of place of confinement, a designation message confirming all details shall be transmitted to the appropriate brig, listing as information addressees: Commandant (CG-122) and Commander (CG PSC-OPM) or (CG PSC-EPM) as appropriate; the Coast Guard and Naval districts involved; the parent command of the designated brig; and all Coast Guard commands having administrative responsibility for the member (including the member's servicing SPO and ACO). An estimated time of arrival (ETA) for the prisoner should be included and updated by message or telephone as necessary. The message should also specifically detail the prisoner's pay status, (e.g., whether or not an adjudged automatic forfeiture of pay and allowances is in effect), and shall identify the servicing SPO who maintains the member's pay and personnel records. If a non-duty-hour ETA has been agreed to by the brig, details should be confirmed in the designation message.

1.F.4.l. Movement and Escort of Prisoners and Offenders

The movement and escort of persons undergoing disciplinary action, or of newly apprehended offenders, shall be accomplished in strict compliance with the provisions of Articles 1.G.4 and 1.G.5. of this Manual.

1.F.4.m. Pre-Confinement Physical Examination

Prior to accepting members for confinement, Navy policy requires certification that the member is physically fit for confinement. Specifically, the signature of a medical officer attesting to a prospective prisoner's fitness for confinement is required at the bottom of the Confinement Order, Form DD-2707. (See Article 1.F.5.a. of this Manual.) Normally, the certification may be rendered by the medical facility tasked to provide routine medical support to the command. When this is not possible, the nearest available military medical officer or contract physician should certify fitness for confinement. When emergency circumstances preclude conduct of a pre-confinement physical examination, details should be discussed with the commanding officer of the brig during the pre-designation telephone liaison required by Article 1.F.4.b. of this Manual. This liaison should be used to clarify details of the certification of fitness for confinement in every case.

1.F.5. Confinement Orders and the Process of Confinement

1.F.5.a. Confinement Order

(1) General. The brigs listed on the current Confinement Designation Chart (Exhibit 1.F.1.of this Manual) will receive Coast Guard prisoners provided space is available. Commanding officers of brigs are authorized to establish a maximum prisoner population that shall not be exceeded. Coast Guard units using the brig are obliged to comply with the brig's local administrative and operational instructions. The officer ordering confinement must in every case provide a written order of confinement, with offenses indicated and properly signed. Form NAVPERS l640/4 will be used for this purpose. The signed order should specify the

nature of the offense(s) charged against the prisoner and reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), article under which each offense is charged for confinement.

(2) Contents of the Confinement Order. A Confinement Order may be prepared by or signed by the member's commanding officer or other officer designated for that purpose by the commanding officer. The "Remarks" section of the Confinement Order should note specifically any physical or behavioral abnormalities of which the brig should be aware. Examples would be: Diagnosed or suspected suicidal tendencies or any limitations to normal activity. The "Remarks" section should also identify by name and phone number, the commanding officer of the prisoner's reporting unit. Care should be taken in completing the offense portion of the order since the details thereof will assist the brig in proper evaluation of the prisoner and may influence the custody classification assigned. The term safekeeping is not a reason for confinement and shall not be used as a substitute for an offense. When the reason for confinement changes; e.g., when a prisoner who has been confined pending trial (pretrial) for an alleged violation of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), subsequently is convicted by court-martial and sentenced to confinement, a new confinement order shall be prepared reflecting the change of status. This confinement order shall be delivered to the brig at the time the prisoner is reconfined. When a place of confinement is redesignated or a transfer is authorized as provided in Article 1.F.4.e. of this Manual, a new confinement order may be required as determined by the circumstances and the desires of the commanding officer of the brig.

(3) Confinement Start Date. If confined by sentence of court-martial, the order shall show the date confinement begins (if other than date adjudged) and by what authority imposed.

1.F.5.b. Notification of Confinement Status

Following trial, the convening authority shall notify the commanding officer operating the brig, in writing, of the charges and specifications of which the accused has been convicted, and the sentence. Likewise, the convening and supervisory authorities shall promptly inform the commanding officer of the brig by certified true copies of their action in the case. Complete and current official information concerning a prisoner's legal status is essential to the brig's planning for adequate security measures and program participation. When an action is promulgated by a court-martial order or supplementary order, a certified true copy thereof will serve as the written notice required above.

1.F.5.c. DNA Collection and Analysis Requirements

(1) Authority. Section 10 U.S.C. § 1565 requires the Military Departments and the Department of Homeland Security to collect DNA sample from each member of the armed forces under their jurisdiction who has been convicted of a “qualifying military offense” (QMO) listed in Exhibit 1.F.3. This requirement does not include any member in the custody of the Federal Bureau of Prisons or under the supervision of a Federal probation office. The U. S. Army Criminal Investigation Laboratory (USACIL) will analyze the sample and send the results to the Federal Bureau of Investigation for inclusion in its Combined DNA Index System (CODIS).

(2) Definition. A QMO conviction is defined as the findings of guilty by a general or special court-martial that include a QMO after the court-martial convening authority has taken action under Article 60 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). The requirement to collect DNA samples does not apply to the findings of a summary court-martial or a proceeding under Article 15 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).

(3) Staff Judge Advocate Responsibilities. Staff Judge Advocates (SJA) shall determine if a member has been convicted of a QMO. A list of UCMJ offenses determined to be a QMO is contained in Exhibit 1.F.3. Every convening authority action containing QMO's must have "DNA processing required IAW 10 U.S.C. § 1565" annotated in bold on the top of the first page of the initial promulgating order. SJAs shall ensure that a copy of each annotated promulgated order is provided to the USACIL and, as applicable, the correctional facility and/or unit to which the convicted member is assigned.

Send promulgating orders to:

U. S. Army Criminal Investigation Laboratory ATTN: CODIS Lab 4553 N. 2nd Street Forrest Park, GA 30297-5122

(4) Collecting DNA Samples from Members Already in Confinement. Members in confinement at the time the convening authority's promulgating order is signed will have their blood extracted either at the correctional facility or be taken to a local dispensary. Each DoD correctional facility will identify and collect DNA samples from all of its prisoners who have a QMO conviction regardless of Service affiliation. The correctional facility will ensure that the member's confinement file reflects that a DNA sample has been collected.

(5) Collecting DNA Samples from Members on Appellate Leave. For members who have been released from confinement and remain on active duty, the cognizant Staff Judge Advocate will coordinate with the nearest correctional facility and service member's parent command to ensure they are sent to have their DNA sample extracted.

(6) Collecting DNA Samples from Members Not in Confinement. The statute requires DNA extraction from all members convicted of a QMO who remain subject to military jurisdiction as established by Article 2 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). For those members still on active duty, and not in confinement, the member's command must identify whether they have been convicted of a QMO, then coordinate with the nearest correctional facility or dispensary to secure a DNA sample.

(7) Correctional Representatives or Command Representatives will ensure that all DNA samples are collected by qualified medical personnel using the kits provided by USACIL and in accordance with the accompanying instructions. The sample must be sent to USACIL to be analyzed and the results will be sent to the Federal Bureau of Investigation for inclusion in its CODIS. The sender will notify the USACIL by letter that the sample has been mailed. The notification shall include only the name of the individual from whom the sample was taken, the kit number, and the location from which the sample is being mailed. The USACIL will

confirm receipt of the sample and notify the sender if problems are encountered that require the DNA sample to be redrawn. The USACIL can be contacted at (404) 469-7023. The correctional facility or command representative responsible for ensuring that a DNA sample is collected from a member with a QMO conviction will ensure that the member is given a card informing him or her that if the conviction for each QMO is reversed during appellate review, the member may request, via chain of command, that the USACIL expunge the DNA analysis from CODIS. The USACIL will provide preprinted cards as part of the collection kit.

(8) Processing of Expungement Request. Upon receipt of expungement request, the USACIL will, for each QMO conviction, request the member's command or representative to provide a certified copy of a final order establishing that the conviction was overturned. Additionally, the USACIL will determine whether the requester has a conviction for qualifying Federal offense (42 U.S.C. § 14135a), or qualifying District of Columbia offense (42 U.S.C. § 14135b) before taking action to expunge the record based on a QMO. Only in those cases where the USACIL has verified that the requester has no other qualifying military, Federal, or District of Columbia conviction will it expunge the DNA analysis from CODIS. When a DNA analysis is expunged, the DNA sample maintained at the USACIL will be destroyed.

(9) Questions. Any question concerning the above policy shall be directed to Commandant (CG-122).

1.F.5.d. Records

A prisoner shall be transferred with his or her health record, prescribed court records, including the report of trial, and copies of any Personnel Data Record (PDR) pages which may be requested by the commanding officer of the brig at the time of the predesignation liaison. In all court-martial cases certified true copies of his or her court-martial order will be forwarded to the designated place of confinement as required by reference (b), Military Justice Manual, COMDTINST M5810.1 (series). The report of trial shall include a statement of the number of days of pretrial confinement, any judicially ordered credit for unlawful pretrial confinement, and the provisions of any pretrial agreement binding upon the convening authority. Whenever a convening authority or Officer Exercising General Court-Martial Jurisdiction deems that PDR information which has been requested by the brig is essential to the Coast Guard's review of the case, copies of the appropriate pages will be retained for the review, vice the PDR itself.

1.F.5.e. Uniforms

Prisoners shall be delivered in the appropriate Service Dress uniform. During the pre-designation telephone liaison, the officer ordering (or arranging for) confinement should determine the requirements of the commanding officer of the brig concerning the items and amount of clothing to accompany the prisoner on delivery. As a guide, however, the regular prison uniform at Navy and Marine Corps brigs is the properly marked working uniform of the prisoner's own Service, including protective footwear. The Navy considers bath towels and handkerchiefs as part of the prisoner's seabag. Accordingly, an adequate supply of each should accompany the prisoner upon delivery. It should be noted that brigs are unable to provide spare items for the Coast Guard uniform. Accordingly, it is important that the prisoner be delivered

with a sufficiently full seabag to sustain his/her needs during the anticipated period of confinement. A prisoner delivered without the proper uniforms will be required to purchase whatever Navy or Marine Corps uniform items may happen to be available, provided the prisoner is in a pay status. The prisoner will have the option of paying cash or having the purchase charged against his or her pay account, whether or not the charge will result in overpayment. Prisoners in non-pay status who are delivered to the brig without the necessary prisoner uniforms will be loaned whatever Navy or Marine Corps items of clothing can be provided.

1.F.5.f. Health and Comfort

While Naval brigs will provide enlisted prisoners in a non-pay status with health and comfort issues at Government expense; e.g., toilet articles, laundry items, grooming items, tobacco, postage, writing materials, and other necessities to maintain personal comfort, hygiene, and military appearance, all other prisoners will be required to purchase these items. A prisoner is considered to be in a non-pay status if:

(1) All pay has been stopped either as the result of an adjudged sentence or by operation of the automatic forfeiture provisions of Article 58B of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).

(2) Confined awaiting trial by a foreign court under the conditions set forth in reference (d), Coast Guard Pay Manual, COMDTINST M7220.29 (series).

(3) The member is serving post-trial confinement and his or her enlistment has expired. (reference (d), Coast Guard Pay Manual, COMDTINST M7220.29 (series)).

(4) The member is awaiting determination of separation because of fraudulent enlistment. Commanding officers and convening authorities should identify the health and comfort items that should accompany a prisoner upon delivery at the time of the pre-designation liaison. If the prisoner has these items, or is confined during working hours and can obtain them, the items should accompany the prisoner upon delivery to confinement. It is the responsibility of the prisoner's commanding officer to ensure that prisoners have an adequate supply of health and comfort items upon commitment. When exigent circumstances require that a prisoner be confined without the necessary health and comfort items, the brig will issue essential items during processing for commitment. Thereafter, the brig will provide each prisoner with a periodic resupply of consumable items. The initial supply should be adequate for one month's average use, but may be prorated if the regular replacement, or the prisoner's release, will be in less than a month. Any items on the following list will normally be approved in adequate quantities:

Laundry Bag	Comb	Soap, Bath
Blades, Razor	Deodorant, Stick Type	Soap or Powder, Laundry
Box, Soap	*Handkerchiefs	Toothpaste or Powder
Brush, Shaving	Razor, Safety or Electric	*Towels, Bath
Brush, Tooth	Sandals, Bath	Writing Materials and Postage
Clipper, Nail	Shoe shining Gear	
Cloths, Face	Smoking Material and Matches	

*Handkerchiefs and bath towels are available in Navy retail clothing stores and are considered as items of clothing for Navy prisoners, rather than as health and comfort items.

1.F.5.g. Military Pay and Allowances

While in military confinement, the prisoner's pay and personnel records shall be maintained by the appropriate servicing SPO. The designation message required by Article 1.F.4.k. of this Manual shall indicate the prisoner's pay status and identify the SPO who handles the prisoner's pay and personnel records. The commanding officer of the brig must be advised of changes in a prisoner's pay status, such as automatic forfeiture or execution of an adjudged sentence to forfeiture. The member's SPO must be kept appraised of the member's confinement status so that appropriate pay and confinement-related documents can be prepared.

1.F.5.h. Delivery of Prisoners

Delivery of prisoners to brigs should be planned to provide for the prisoner's arrival at the brig during working hours. Should exceptional circumstances preclude this, appropriate prior liaison will be initiated by the controlling Coast Guard commanding officer with the commanding officer of the brig.

1.F.5.i. Prisoner Escorts and Transportation of Prisoners

Members designated to serve as prisoner escort should be mature, responsible officers, chief warrant officers, or petty officers, who are well qualified by training and/or experience for the assignment, as required by Chapter 1.G. The appointment and conduct of escorts and the movement of prisoners shall be in strict compliance with the policy contained in Article 1.G.

1.F.6. The Corrections Phase

1.F.6.a. Policy

Upon arrival of a sentenced prisoner at a brig, the military corrections process discussed in Article 1.F.1. of this Manual comes fully into play. Congress has tasked the military corrections system to strive toward both punitive and rehabilitative goals. For rehabilitative purposes, the Armed Force operating the correctional center or Naval brig is responsible for conducting an adequately supported corrections program designed to enhance the offender's ability to reorient his or her own behavior, at least to the extent of preparation for successful and productive integration back into either military or civilian society. Inasmuch as the Coast Guard does not operate its own brigs, this Article deals primarily with command responsibilities relating to Coast Guard prisoners confined in Naval brigs and with the avenues to statutory and administrative relief which are open to the offender.

1.F.6.b. Command Responsibilities during Confinement: Command Visits

Naval brigs are authorized and funded primarily to rehabilitate offenders for resumption of productive service in the case of restorees, or for productive integration back into society at large in the case of dischargees. Accordingly, contemporary military corrections programs place a heavy emphasis on rehabilitation through provisions of specialized, incentive weighted

counseling and training conducted in an environment oriented toward rehabilitation. As part of the rehabilitative process the Navy makes involvement and support of the parent organization mandatory. Regular Service visitation and/or contact is required by all commands, including Coast Guard and Marine Corps commands, utilizing Naval brigs for either pretrial or sentence confinement. Command visitation is encouraged where Army or Air Force facilities may be utilized as well. Specifically:

(1) Pre-trial Confinement and Confinement Less Than 90 Days.

(a) Commanding officers will establish a visitation program to provide for visiting offenders in confinement at least weekly pre-trial and monthly post-trial. The commanding officer may designate a commissioned officer or senior petty officer to act in his or her behalf. When the parent command is a Coast Guard operational command which is deployed, the district commander or shoreside operational commander, as appropriate, should arrange for the visits to be conducted by a commissioned or senior petty officer from his or her staff. If the commanding officer deems appropriate, he or she may augment the command visitation program by calling on the capabilities of special program personnel such as a chaplain, the senior enlisted advisor, or civil rights counselor. The requirement for command visitation applies to all Coast Guard commands ordering prisoners into confinement, whether the confinee is attached only for TEMDUINS or is a member of the permanent party.

(b) The prisoner visitation requirement potentially imposes an unreasonable travel burden on some Coast Guard commands. As a general guide, commanding officers are authorized to waive physical visitation when the one-way travel time between the unit and the brig normally exceeds 2 hours, or when genuine operational or administrative priorities preclude visitation. The command, however, must ensure that the prisoner is visited at least monthly by a Coast Guard representative and that the brig has the name of a reliable, single point of contact both for the prisoner and for the needs of the brig. In between visits, the command should maintain a liaison with the prisoner and the commanding officer of the brig by mail, telephone, or both.

(2) Confinement Greater Than 90 Days and Prisoners with Unsuspended Punitive Discharges. It is a very rare circumstance that a member awarded long-term confinement returns to his or her unit. While the prisoner is entitled to certain administrative support from the parent Service, the rehabilitation process does not require the same level of face-to-face contact with the prisoner.

(a) Upon entry into confinement, the prisoner is transferred PCS to PPC. Prior to releasing the prisoner to PPC, the member's parent command or the convening authority shall ensure that the following data is available:

[1] The prisoner's expected release date (assuming good behavior).

[2] A determination of the prisoner's post-release transportation entitlement (e.g., to the last point of active service, home of record, place of enlistment, or home of selection).

[3] Other entitlements authorized to the prisoner (i.e., movement of household goods, dependent travel).

[4] An accounting line for travel and transportation for the prisoner, any dependents and any personal effects authorized for relocation. Where the prisoner's sentence is likely to span multiple fiscal years, the convening authority shall provide a point of contact for obtaining a current accounting line to be used at the time of release.

(b) The primary source of on-site rehabilitative assistance for long-term prisoners will be the commanding officer of the confinement facility to which the prisoner is assigned. Commanding Officer, PPC shall make a representative of his or her command available on-site within 24 hours of receiving a request from the commanding officer of the confinement facility. Commanding Officer, PPC shall respond to any need for administrative support immediately upon receiving such a request from the commanding officer of the confinement facility.

(c) Commanding Officer, PPC will function as the long-term prisoner's commanding officer for the purpose of the Article 138 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), complaint process and will so inform the prisoner in writing during the prisoner's first week assigned to confinement. The prisoner shall be informed of the procedure for contacting PPC to address personal or logistical concerns (pay, obtaining health and wellbeing items, uniform availability, movement of personal effects and dependent support). Commanding Officer, PPC, or his or her representative shall maintain contact with the prisoner by mail or telephone weekly during the first month of confinement and at least monthly thereafter for the duration of the confinement. Commanding Officer, PPC shall seek targets of opportunity (e.g., extending the TDY of any PPC military member who is on temporary duty in close proximity to a brig housing a long-term Coast Guard prisoner) to achieve a target of visiting each of PPC's prisoners at least quarterly.

(3) Appellate Process. Commanding Officer, PPC's designation as Commanding Officer for prisoners in long-term confinement remains primarily administrative for the purposes of providing logistics support. This designation does not alter the responsibility of the convening authority or the Chief Counsel to perform such duties as are necessary to bring the case to an orderly conclusion under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), and the Federal appellate process.

(4) Command Visitation. Command visitation of all prisoners or offenders will be made at least weekly in all cases where confinement in a civilian facility has been authorized.

1.F.6.c. Reduction in Confinement by Reason of Good Conduct

(1) Good Conduct Time. Coast Guard prisoners serving confinement sentences in Naval brigs automatically have the opportunity to earn reduction-in-sentence (to confinement) as a reward for satisfactory conduct during confinement. To secure uniformity in computing this reduction for all prisoners in the Navy Correctional Program, the policy of the Department of the Navy shall be followed and Coast Guard prisoners accorded the same opportunity to earn good conduct time as those from the Navy Department. Good conduct time shall be

computed beginning on the day the sentence commences to run, to be credited as earned and computed monthly as follows:

(a) Five days for each month of the sentence if the sentence is less than one year.

(b) Six days for each month of the sentence, if the sentence is at least one year but less than three years.

(c) Seven days for each month of the sentence, if the sentence is at least three years but less than five years.

(d) Eight days for each month of the sentence, if the sentence is at least five years but less than ten years.

(e) Ten days for each month if the sentence is ten years or more.

(2) Crediting Good Conduct Time. The law provides that each sentenced prisoner may earn a specified number of days per month according to the total length of the sentence.

(3) Forfeiture and Restoration of Good Conduct Time. The commanding officer of the brig may direct forfeiture of any or all of the good conduct time previously credited pursuant to a prisoner's misconduct in confinement. Similarly, the commanding officer of a brig may restore all or any part, except time forfeited because of parole or probation violation, of the good conduct time previously ordered forfeited either by him or herself or by a previous commanding officer.

(4) Extra Good Conduct Time. The commanding officer of the Naval brig may reduce the term of a prisoner's sentence for good conduct based on faithful observance of all the rules and regulations of the brig.

(5) Credit for Pretrial Confinement. The correctional facility will reduce the sentence to confinement by applying the appropriate credit required both by administrative regulation and judicial order for pretrial confinement in accordance with its regulations.

1.F.6.d. Suspension or Remission of Unexecuted Portion of Sentence

Provisions relating to the powers of court-martial convening authorities and of supervisory authorities to remit or to suspend unexecuted portions of sentences are set forth in Rule 1108 of reference (e), Manual for Courts-Martial (MCM), United States (current edition).

(1) Clemency. Clemency is an action taken by duly constituted authority to reduce the amount or severity of a court-martial sentence. It is the Commandant's policy to extend to persons convicted by courts-martial whatever clemency may represent the best interests of the Coast Guard and the individual. Clemency may consist of mitigation, remission, or suspension of a sentence in whole or in part. Mitigation usually is a reduction in the amount of the sentence. It may also take the form of a change in the kind of punishment from that adjudged to another authorized punishment which is another authorized punishment which is less severe (confinement to restriction, forfeiture of pay to detention of pay, dishonorable discharge to

bad conduct discharge). An adjudged punishment can never be increased in severity. Remission of punishment amounts to a reduction or cancellation of unexecuted portions of a sentence, but not to a change in the nature thereof. Suspensions are stays of execution of unexecuted portions of a sentence with provisions for automatic remission at the successful completion of a specified term of probation. It should be noted that clemency in no way affects an approved conviction. Rather, a grant of clemency merely represents an administrative relaxation of the terms of an adjudged sentence. The following commanding officers are authorized to remit, mitigate, or suspend any part or amount of the unexecuted part of any sentence (grant clemency) under the authority of Article 74(a) of the Code:

(a) The Commandant, except while a case is being reviewed by the Coast Guard Court of Criminal Appeals or the U. S. Court of Appeals for the Armed Forces.

(b) The officer exercising general court-martial jurisdiction over the accused, but only to those parts of a sentence which do not include a punitive discharge, except while a case is being reviewed by a supervisory authority other than him or herself, the Coast Guard Court of Criminal Appeals, or the U. S. Court of Appeals for the Armed Forces.

(c) In addition to his or her authority contained in reference (e), Manual for Courts-Martial (MCM), United States (current edition),the immediate commanding officer of the accused, in cases where a punitive discharge has previously been approved, but only as to those parts of the sentence which do not include the punitive discharge, except while a case is being reviewed by the supervisory authority, the Coast Guard Court of Criminal Appeals, or the U.S. Court of Appeals for the Armed Forces.

(2) Clemency Action by the Convening Authority. When acting on the findings and sentence of a court-martial, the Convening Authority is authorized by Article 60 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), reference (e), Manual for Courts-Martial (MCM), United States (current edition), and reference (b), Military Justice Manual, COMDTINST M5810.1 (series), in his or her sole discretion, to set aside findings of guilty, change findings to guilty of a lesser included offense, and to approve, disapprove, commute, or suspend any part of the sentence.

(3) Clemency Action by the Commanding Officer or Officer Exercising General Courts-Martial Jurisdiction over the Member. Except while the member's case is being reviewed by the Coast Guard Court of Criminal Appeals or the Court of Appeals of the Armed Forces, any Officer Exercising General Court-Martial Jurisdiction over a member is authorized to remit or suspend any unexecuted part of that member's sentence, other than a punitive discharge or a sentence approved by the President. If a punitive discharge has been previously approved, the immediate commanding officer of the member may also exercise the authority described above, subject to the same limitations. See Enclosure (9) of reference (b), Military Justice Manual, COMDTINST M5810.1 (series).

(4) Clemency Power of the Coast Guard Commandant. The Secretary of Homeland Security has delegated to the Commandant of the Coast Guard the authority contained in Article 74(a) of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), to grant residual clemency, as provided in Enclosure (9) of reference (b), Military Justice Manual, COMDTINST M5810.1 (series). The Secretary reserves this authority in cases in

which appellate review is not complete. Pursuant to authority in 10 U.S.C. § 953, a Coast Guard Clemency Board automatically reviews courts-martial cases that include an unsuspended punitive discharge to determine whether they merit remission or suspension of any unexecuted portions of a court-martial sentence. When an enlisted member sentenced to a punitive discharge waives appellate review of his or her court-martial conviction in accordance with RCM 1110 of reference (e), Manual for Courts-Martial (MCM), United States (current edition), the punitive discharge may be executed by the Officer Exercising General Court-Martial Jurisdiction (OEGCMJ) if the record is forwarded to the OEGCMJ in accordance with RCMs 1112(e) and 1113 and the execution of the sentence is approved. In all other cases no court-martial sentence to a punitive discharge may be executed before the Coast Guard Clemency Board, Commandant, or Secretary as appropriate has reviewed it. Reviewing authorities recommend or determine clemency on the basis of equity and good conscience. Factors affecting clemency include: the nature and circumstances of the offense(s); the defendant's military and civilian history; potential value to the Service or society at large; conduct in confinement; contrition; sincerity in motivation for rehabilitation; social factors including hardship, psychological or personality factors; sentence disparity; and pure mercy.

(a) Residual Clemency Review. In keeping with the delegation of clemency authority under Article 74(a) of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), when appellate review is complete, the Clemency Board will review every court-martial record whose sentence includes an unsuspended punitive discharge to determine whether that sentence should be executed (no clemency) or to recommend remitting, mitigating, or suspending the punitive discharge sentence (granting residual clemency). The Clemency Board's review also automatically embraces consideration for clemency of any other remaining unexecuted portions of the sentence, such as the remainder of a term of confinement, as well as any petition for clemency provided to it for consideration. Residual clemency review normally will immediately follow completion of the legal review process.

(b) Petitions for Clemency. Petitions for clemency are not required, and exhaustion of the appellate process and other remedies under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended) must occur before the Clemency Board will consider such a petition. Nevertheless, persons convicted by courts-martial may petition for clemency of the unexecuted portions of their sentences, even if their approved sentences do not extend to punitive discharge. Any petition will generally be considered simultaneously with the automatic clemency review, if applicable. Although no specific form for such petitions is required, petitions need not be considered, and may be returned to the member without action, if they do not meet the following minimum requirements:

[1] Petitions must be forwarded to Commandant (CG-122) and must arrive within 60 days after the sentence and conviction is final under Rule for Court-Martial 1209 of reference (e), Manual for Courts-Martial (MCM) United States (current edition).

[2] Petitions must state the specific relief requested, and the specific reasons why the member believes such relief to be appropriate.

[3] Where the case has been previously reviewed by the Clemency Board, the petition must identify new facts or circumstances justifying a second review or reconsideration.

[4] Petitions must include sufficient evidence to support the request. Such evidence must be in writing and may include documents and citations to specific sections of the record of trial.

(c) Commandant (CG-122):

[1] Will review all petitions for clemency to insure compliance with Article1.F.6.d.(4)(b) of this Manual.

[2] Will establish a Clemency Board in accordance with Article 1.F.2.h. of this Manual consisting of a panel of at least three senior officers.

[3] Will forward all petitions that are in compliance with this Article, and all records of trial received that include an unsuspended punitive discharge, to the Clemency Board or to other appropriate officials.

[4] May return petitions that are not in compliance with this Article to the member.

[5] May forward other matters, as appropriate, to the Clemency Board.

[6] Will, in any case in which the review required by this section has been completed and clemency action has not been ordered, issue a statement to that effect, and forward the record of trial to Commandant (CG-0946) for further processing.

[7] Will, in any case in which clemency action has been ordered, take action as necessary to implement that order.

[8] Will ensure compliance with crime victims' rights to information about convicting, sentencing, incarcerating, and releasing offenders, as mandated by law, throughout the clemency process. See Article 2-R of reference (b), Military Justice Manual, COMDTINST M5810.1 (series).

(d) The Coast Guard Clemency Board. The Coast Guard Clemency Board shall:

[1] Will review all court-martial cases or petition submitted to it for a recommendation by proper authority.

[2] Will forward its recommendation to Commandant (CG-12) via Commandant (CG-122).

(e) Commandant (CG-12). Commandant (CG-12):

[1] may take final action to approve a recommendation to deny residual clemency and will then return the record to Commandant (CG-0946). If Commandant (CG-12)

does not concur with a Clemency Board recommendation to grant clemency Commandant (CG-12) will provide an endorsement and forward the matter to Commandant for final action.

[2] will forward a case or petition to the Commandant or to the Secretary, with an appropriate endorsement, if:

[a] The Secretary or Commandant has indicated a desire to make the clemency decision personally.

[b] Law or regulation reserves authority to act in the case to higher officials. These include cases that are still pending completion of appellate review or cases where the sentence extends to death or the dismissal of an officer or Academy cadet.

[c] The case involves violations of national security.

[d] The Clemency Board or Commandant (CG-12) recommends clemency action or personal consideration by the Secretary or Commandant.

(5) Clemency Consideration for Persons in Confinement. The Coast Guard retains clemency authority over all Coast Guard offenders, including Coast Guard prisoners confined in military correctional centers or facilities, including Naval brigs, of the Department of Defense. Nevertheless, the prisoner's conduct in confinement, attitude, and rehabilitation progress represent valuable information to a Coast Guard convening or reviewing authority considering clemency. Accordingly, Navy or Marine Corps commanding officers of Naval brigs are prepared to act on requests of any Coast Guard convening or reviewing authority or of the prisoner personally to provide a Prisoner Evaluation Report, NAVPERS 1640/13, concerning the accused in question. In the event the brig considers clemency warranted with respect to any unexecuted portion of the sentence including an unsuspended sentence to punitive discharge, the brig's non-binding report will recommend accordingly. Prisoner Evaluation Reports are ordinarily prepared annually for all prisoners in long-term confinement (exceeding six months), but can be provided at any time upon request.

1.F.6.e. Parole

Parole, as defined in Article 1.F.2.x. of this Manual, may be granted to carefully selected individuals. l0 U.S.C. § 952 authorizes the Secretaries of the respective Armed Forces to establish a system of parole for prisoners in military confinement facilities. Parole as a modification of the conditions under which a sentence to confinement may be administered constitutes an element of military corrections process. The Coast Guard has not established a military corrections (confinement) system of its own but relies rather on support from the U. S. Navy for long-term confinement. It is nevertheless desirable that the parole opportunities for Coast Guard prisoners confined in Naval brigs be equal to and consistent with those accorded the Navy and Marine Corps prisoners with whom they share the confinement experience. Accordingly, the Secretary of Homeland Security has delegated the authority to the Secretary of the Navy to adjudicate parole requests and to administer parole for Coast Guard prisoners confined in Naval brigs in precisely the same manner as for prisoners from the Navy

Department. It is stressed in this regard, that parolees remain in the legal custody and under the control of the commanding officer of the Naval brig until the expiration of the full-term or aggregate terms of the sentence to confinement, without credit for good time allowance. Within the Navy Department, the Secretary of the Navy has tasked the Naval Clemency and Parole Board with responsibility for determination of parole requests. Petitioners for parole have appeal rights to the Director, Navy Council of Review Boards. Note that these provisions permit Navy determination of Coast Guard prisoners' parole requests only. Clemency powers on the contrary remain resident in appropriate Coast Guard authorities as provided for in Article 1.F.6.d. of this Manual.

(1) Eligibility. A military prisoner with an unsuspended sentence to punitive discharge or dismissal shall be eligible for parole consideration by the Naval Clemency and Parole Board as follows:

(a) Sentence or aggregate sentence of:

[1] More than one year and not more than three years, who has served one-third of the term of confinement, but in no case less than six months; or

[2] More than three years who has served not less than one year. If not considered earlier, the prisoner will become eligible for consideration after serving one-third of the approved or affirmed sentence or aggregate sentence, or not more than ten years when the sentence is life or in excess of 30 years.

(b) Good time allowance will be excluded in computing eligibility for parole consideration.

(c) With respect to parole consideration of a prisoner whose sentence provides for contingent additional confinement in the event an approved sentence to fine is not paid, eligibility for parole shall be based on the basic term of confinement plus any additional contingent confinement incurred through failure to pay the fine. If the approved sentence provides for confinement only if a fine is not paid, a prisoner confined in lieu of payment will become eligible for parole consideration after having served 6 months of the sentence to confinement in lieu of payment of the fine, and annually thereafter.

(d) Prisoners reconfined after revocation of parole may not ordinarily be considered again for parole until completing one year in reconfined status unless the brig commanding officer recommends earlier consideration.

(2) Preliminary Parole Consideration Procedures. Prior to becoming eligible for parole consideration, each prisoner is accorded the opportunity to request parole consideration by the parole officer within 90 days of the date of eligibility. The parole officer will provide the prisoner with the necessary assistance to develop a satisfactory tentative parole plan. Prisoners who do not desire parole when eligible, or prisoners whose previous requests for parole were disapproved, may request consideration prior to their next annual eligibility date with the approval of the commanding officer of the brig.

(3) Clemency and Parole Board Action.

(a) Requests for parole will be considered by a local clemency and parole board which is established within the brig. Following the local board's consideration and notwithstanding their recommendation, requests are forwarded to the Naval Clemency and Parole Board to arrive not less than 30 days prior to the prisoner's parole eligibility date. Requests may be considered as much as l20 days in advance of the eligibility date when that action will permit concurrent consideration of parole with annual Prisoner Evaluation Reports for clemency prepared in accordance with the provisions of Article 1.F.6 d.(5) of this Manual. In all cases the local board will forward the request along with a Court-Martial Progress Report. The recommendation of the local clemency and parole board will be endorsed by the commanding officer of the brig with such recommendation for approval or disapproval as he or she deems appropriate.

(b) Authority to approve or disapprove parole rests with the Naval Clemency and Parole Board.

(c) All parole determinations (favorable and unfavorable) will be published by the Naval Clemency and Parole Board

(d) Approval of parole is conditioned upon completion of a parole plan considered to be satisfactory by the commanding officer of the brig and acceptable to the probation officer.

(e) The Naval Clemency and Parole Board will provide prisoners denied parole with written notification of the reasons for denial.

(f) The prisoner may file a written appeal of the Naval Clemency and Parole Board's decision to the Director, Navy Council of Review Boards.

(4) Completion of Parole Plan. Prior to release of a prisoner on parole, the commanding officer of the brig will:

(a) Request the probation officer to establish the validity of the residence arrangement, employment, and other elements of the tentative parole plan.

(b) Send a letter to the prospective employer requesting the execution of a Tender of Employment, and upon receipt thereof, provide a copy to the probation officer.

(5) Employment Requirements. Unless a waiver is granted for justifiable reasons, no prisoner will be released on parole until satisfactory evidence has been furnished that he or she will be engaged in a reputable business or occupation. If every effort to obtain employment has been made without success, a waiver of employment may be granted for good and sufficient reasons.

(6) Supervision of Parolees.

(a) Normally, all official communication to a parolee should be addressed to or through the Federal probation officer supervising the parolee.

(b) The probation officer may authorize temporary leave for travel outside the established parole limits, not to exceed 20 days and may also extend or further restrict the parole limits as required for the adjustment and supervision of the parolee. Authority for travel which will take the parolee outside the continental limits of the United States, or the territory to which paroled, will not be given without prior approval of the Commandant.

(7) Clemency Consideration. Parolees are eligible for and will continue to receive clemency consideration on their annual review dates. The Federal probation officer's report of the parolee's adjustment will be considered in these instances. This information will be included in the recommendation submitted to the Commandant for consideration.

1.F.7. The Release Phase

1.F.7.a Final Release

The proper authority to release a member from confinement in a military correctional facility is the commanding officer of the correctional facility. Once a prisoner is confined, the prisoner passes beyond the control and power of release of the officer who initially ordered the confinement. Accordingly, it is important that Coast Guard commands utilizing a Naval brig be aware of the prisoner release authority vested in that facility's commanding officer by the Chief of Naval Personnel. The commanding officer of a Naval brig is authorized to effect the final release of a prisoner:

(1) When requested by the prisoner's commanding officer or convening authority.

(2) When ordered by a Coast Guard Military Magistrate as provided for in reference (b), Military Justice Manual, COMDTINST M5810.1 (series).

(3) When the reason for confinement no longer exists.

(4) For transfer to another brig, or to a medical facility when directed by proper authority.

(5) Upon expiration of the term of confinement adjusted to reflect clemency, remission, or other action and further reduced by good conduct time earned.

(6) When pretrial confinement exceeds 30 days and the continued confinement has not been approved in writing by the officer exercising general court-martial jurisdiction over the command which ordered the pretrial confinement.

1.F.7.b. Release Order

A Inmate’s Release Order, Form DD-2718, shall be prepared, signed by the prisoner's commanding officer or his or her designee, and presented to the brig to request the final release of a prisoner. Upon release, this form will constitute the brig's receipt for the prisoner.

1.F.7.c. Temporary Absence

Upon written request of the prisoner's commanding officer or convening authority, Coast Guard

prisoners will be released by brigs for periods of temporary absence without presentation of a Prisoner's Release Order for such purposes as investigation, trial, and medical or psychiatric evaluation. Similarly, a new Confinement Order is not required to effect return of a prisoner from temporary absence but a written receipt is required. The Receipt for Inmate or Detained Person, Form DD-2708, shall be used for this purpose.

1.F.7.d. Release Date

(1) Computation and Request for Release. The release date is the day confinement is completed. It is arrived at by reducing the full-term of all sentences to confinement by proper credits and adjustments as described in Article 1.F.6.c. of this Manual. Commanding officers should request the release of prisoners only during normal working hours except under exigent circumstances. The purpose for this is to permit the brig to ensure that the individual receives adequate instruction and consideration for proper return to duty and to facilitate travel.

(2) Release Dates on Weekend or Holidays. Similarly, except in genuine emergencies, brigs will effect the release of prisoners whose release dates fall on a Saturday, Sunday, or national holiday on the workday immediately preceding such non-workday(s). Where exceptions are necessary, telephone liaison with the commanding officer of the brig is appropriate.

(3) Retention Beyond Release Date. A prisoner shall not be held in confinement beyond his or her release date in order to complete administrative actions, to await transportation, to complete payment of forfeiture of pay or because of indebtedness to the Government.

1.F.7.e. Return of Personal Effects

Upon release or transfer the brig will return a prisoner's valuables and other personal effects to the released prisoner or the escort(s), as appropriate.

1.F.8. Confinement in Federal Institutions

1.F.8.a. Transfer to a Federal Institution

Sentenced prisoners may upon the completion of appellate review and provided the remaining unexecuted portions of the sentence include both an unsuspended punitive discharge and confinement of not less than l8 months be transferred to a Federal penal institution upon execution of the discharge. Action to transfer prisoners to a Federal penal or correctional institution normally will be initiated by the Department of the Navy, Commander, Navy Personnel Command (PERS-84) via the Department of the Army. Long-term confinement sentences will be served at U. S. Naval Brig, (Charleston or Miramar), or the Disciplinary Barracks, Ft. Leavenworth, KS by enlisted members and at the Disciplinary Barracks, Ft. Leavenworth, KS by officers.

1.F.8.b. Preparation of Discharge

Prisoners transferred to Federal institutions will be discharged from the Coast Guard in accordance with the provisions of the court-martial sentence. When Commander (CG PSC-

EPM) orders the punitive discharge sentence executed (or Commander (CG PSCOPM) for officer prisoners), the command to which the prisoner has been administratively attached shall prepare the discharge to become effective on the date provided by the Commanding Officer/Commandant of the Navy or Army confinement facility. The senior guard or escort will deliver the discharge certificate to the Commanding Officer or Commandant of the Navy or Army confinement facility. At that time the prisoner becomes the responsibility of the Department of the Navy or Army for confinement purposes, but the Coast Guard remains administratively responsible for the prisoner until final release from confinement.

1.F.8.c. Final Court-Martial Promulgating Order

The Commandant will furnish certified copies of the final court-martial promulgating order, to the prisoner's commanding officer.

1.F.9. Local Restraint and Detention of Military Personnel

1.F.9.a. Difference between Confinement and Restraint

There is an important distinction to be made between confinement as used in this section and short-term, emergency restraint or detention. Coast Guard military personnel may be confined only pursuant either to a convening authority's approval of an adjudged court-martial sentence or when ordered into lawful pretrial confinement. In either of these cases, confinement will be carried out in Naval brigs or correctional centers of the other Armed Forces. (See Articles 1.F.3. and 1.F.4. of this Manual.)

1.F.9.b. Exigent Situations

Commanding officers nevertheless retain authority to order the local, temporary physical restraint or detention of military members in exigent situations. Exigent situations would normally include those in which a member's immediate physical restraint is essential to protect the individual, others, or property from serious harm or injury. Commanding officers may also detain persons accused or suspected of serious offenses to ensure their presence until transportation to a designated Naval brig can be arranged. Persons ordered into physical restraint, as provided for in this paragraph, shall be restrained in a space providing adequate habitability features, and provided with necessary health and comfort items. In the unusual circumstance in which a command envisions the compelling need to restrain a person locally for a period exceeding 48 hours, a specific message request for extension will be transmitted to Commandant (CG-122) stating the circumstances and justification for extension. Exceptions are granted only under grave circumstances.

1.F.10. Correctional Custody

1.F.10.a. General

It is Coast Guard policy that correctional custody as defined in Article 1.F.2. of this Manual constitutes a malleable tool of discipline by which commanding officers may impose upon minor or first-time offenders a balanced program of punitive measures, directive counseling, restraining, and work assignments which collectively are calculated to induce a modification in

attitude and behavior. Wholly punitive elements of correctional custody including actual physical restraint, extra duties, and hard labor should be imposed only to the extent that these measures are calculated to enhance the rehabilitative aims of the punishment. While the exact combination of punitive and rehabilitative measures imposed is flexible, correctional custody must include both a punitive restriction of the offender's liberty and a program of rehabilitative counseling or restraining intended to correct the behavior or attitude defect which caused the offense. This unique combination distinguishes correctional custody from other non-judicial punishments and renders correctional custody similar in several respects to probation programs administered under civilian court systems. In both cases, a supervised offender is called upon personally to make the major rehabilitative effort while being involuntarily restricted to an environment intended to enhance that effort. Administration of correctional custody requires the availability of two command representatives: a supervisor (MAA) to maintain custody and supervise work details, hard labor or extra duties; and a counselor to guide and monitor the rehabilitative effort. The officer imposing correctional custody will monitor its administration through these designated command representatives. The administration of correctional custody imposes an acknowledged burden on the offender's command. Offenders not considered likely to benefit from that effort should not be awarded correctional custody.

1.F.10.b. Jurisdiction

The jurisdictional authority to impose correctional custody is no different than that governing the imposition of any other non-judicial punishment under Article 15 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Correctional custody will, however, be imposed only upon enlisted members in pay grade E-3 or below and subject to the limitations contained in Article 15(b) of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). It bears repeating that correctional custody is a non-judicial punishment option available to the officer imposing punishment. If factors such as unit size, operational requirements or unavailability of qualified supervisory personnel will preclude administration of correctional custody in the manner prescribed by this Article, the punishment should not be imposed. When circumstances such as unit size or prior involvement on the part of the officer having immediate Article 15 authority under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), over an offender prompt his/her referral of the charges for disposition to the next superior in the chain of command, the provisions of reference (b), Military Justice Manual, COMDTINST M5810.1 (series), will apply.

1.F.10.c. Guidelines for the Imposition and Administration of Correctional Custody

(1) Command Responsibility. Correctional custody (except when imposed upon recruit trainees) should be administered under conditions permitting the individual to continue his or her career field related duties while being subjected to intensive counseling and guidance, both on the job and after working hours. The total resources available to the command must be brought to bear in the effort to counsel and guide the offender in the discovery and correction of the behavior defects leading to the offense.

(2) Correctional Custody Administered Similar to Parole. When deemed warranted by the situation, the officer imposing correctional custody may relax the conditions of restraint to a sufficient degree to permit the offender's duty hour or non-duty hour participation in a specific program of either military or civilian rehabilitation or retraining, excepting those

programs prohibited by Article 1.F.l0.c.(3) below. Examples of authorized programs might include: local alcohol or drug treatment or education programs, driver retraining programs, special military drill and motivational counseling, or group therapy programs. As a specific example, participation in meetings of a local chapter of Alcoholics Anonymous may be beneficial to offenders whose offenses have been alcohol-related and who desire to confront their problem. It must be stressed, however, that these various avenues to rehabilitation are just that and should not in themselves be cast in the light of punishment. Since correctional custody comprises both punitive and rehabilitative measures, a member ordered to participate in a rehabilitative program, on or off unit, as a part of correctional custody will nonetheless also be subjected to certain punitive measures such as restriction, extra duties, hard labor, or even physical segregation.

(3) Prohibited Programs. Under no circumstances will conditions imposed as elements of correctional custody order an offender's participation in any formal military rehabilitation program (such as the Alcohol Rehabilitation Program) requiring medical diagnosis and/or allocation of a quota for entry.

(4) Conditions To Be Defined Upon Imposition of Correctional Custody. It is required that the officer imposing correctional custody define the specific nature of the punitive and rehabilitative measures being imposed at the time the punishment is awarded.

(5) Restraint. Correctional custody is not to be awarded as a substitute for confinement, nor will it be administered in a manner amounting to confinement (See Article 1.F.2. of this Manual.) Custody may be effected by the presence of a designated supervisor. Note the distinction between supervisors and counselors: Supervisors for persons in correctional custody are master-at-arms (MAA) oriented personnel frequently assigned on a rotating watch basis. The primary requirement is for responsible continuity of supervision of custody and work. Counselors by contrast are responsible persons assigned (as a collateral duty) to guide an offender's rehabilitative course on an interpersonal level. A single counselor may be assigned to guide the rehabilitation of more than one person in correctional custody providing the interpersonal aspect of counseling is maintained. If the circumstances are sufficiently serious to warrant the offender's total physical isolation or deprivation of freedom, the charges might more appropriately be referred to trial by court-martial. It is also important not to confuse correctional custody with detention (See Article 1.F.9. of this Manual. Under no circumstances will correctional custody be imposed as physical incarceration in a detention cell. To the contrary, the degree of restraint imposed from case to case should be flexible, reflecting the circumstances in the case and representing only that degree appropriate to achieve the rehabilitative aims of the punishment. Correctional custody will not be imposed as a subterfuge to effect pretrial confinement for safekeeping. When segregation is imposed, the commanding officer may designate a space for the purpose which meets minimum standards of health, safety, and control including normal heating, lighting, ventilation, ready access to adequate drinking water and head facilities. A medical officer will inspect the space and certify in writing that it meets minimum standards.

1.F.10.d. Administration of the Punitive Aspects of Correctional Custody

(1) General Considerations. Correctional custody will normally be served within the command or under the supervision of the officer imposing the punishment. There are two exceptions to

this rule. One major exception to this rule applies to those relatively few Coast Guard commands enjoying access to centralized or institutional correctional custody services of a DoD service by virtue of geographical location and/or inter-Service agreement. The Navy authorizes commanding officers of major Navy shore commands to utilize their own resources to provide local correctional custody segregation centers operated on a shared support basis for Navy commands in the proximity. See Article 1.F.10.d. of this Manual for specific guidance. Institutionalized correctional custody services also may be available at major Army or Air Force installations. In most cases, these will be locally established and supported. When available, Army or Air Force correctional custody facilities may be utilized provided the proposed place of segregation will preclude co-mingling of persons in correctional custody and court-martial prisoners, either sentenced prisoners or persons awaiting trial. The option of offering space-available support to neighboring Coast Guard commands is solely within the discretion of the installation's commander. Navy and Marine Corps brigs will not accept persons serving correctional custody. Even when correctional custody is administered in a DoD centralized facility, the officer imposing the punishment retains responsibility for monitoring the offender's rehabilitation. Upon departure of a homeported vessel for other than local operations, individuals serving correctional custody at a local DoD facility must be returned to their ship.

NOTE: Special provisions apply to the administration of correctional custody imposed upon recruit trainees only at Training Center Cape May. (See Article 1.F.10.f. of this Manual.)

(2) Criteria for Selecting Place for Administration of Correctional Custody Imposed Upon Non-recruit Personnel. The proper administration of correctional custody on board the imposing unit presupposes the availability:

(a) of mature officers or petty officers to act as correctional custody counselors to guide and monitor the rehabilitative effort,

(b) of mature petty officers to act as supervisors to effect custody and ensure compliance with the terms of the punishment, and

(c) of space in which to administer the punishment.

(3) When Correctional Custody is not a Viable Option. In the absence of these resources, correctional custody is not a viable non-judicial punishment option. Many Coast Guard units, both shore units and afloat, lack the space for on board administration of correctional custody leaving either of two possible options to be explored: obtaining support from the Navy (or other DoD service) or from a larger Coast Guard command. These options will be discussed in the next subparagraphs.

(a) Administration in Local Centralized Facilities of the Navy. The Navy authorizes commanding officers of its shore commands to establish and operate centralized correctional custody units on a locally funded and staffed basis. The Secretary of the Navy has directed that these spaces adhere to prescribed habitability and supervision standards which shall not include special security features. These standards are the equivalent to those prescribed for Coast Guard commands in Article 1.F.10.d.(2) of this

Manual. Navy policy permits commanding officers operating centralized correctional custody units to extend participation to tenant and other local commands, including floating units homeported at or in the proximity and to assess participating commands for staff augmentation personnel and/or funds to share the burden of operation. Acceptance or refusal of Coast Guard offenders by such local Navy units is the sole prerogative of the Navy commanding officer. Commanding officers of Coast Guard commands located in close proximity to major Naval shore commands may, upon authorization of the Coast Guard district commander, seek participatory space-available use of Naval correctional custody units either on the basis of a local agreement or case-by-case. Any staffing assessment levied by the Navy for this participation will be borne by the command involved subject to concurrence of the district commander (or commanding officer of a Headquarters unit) out of existing resource levels. Staff augmentation of Naval correctional custody centers will be provided only for periods during which Coast Guard personnel remain in the physical custody of the center. Augmentation is authorized only for U. S. Navy local correctional custody units. Local agreements to utilize correctional custody units of the Navy or other Services will be strictly local in scope. Exhibit 1.F.2 is a table of U. S. Navy Correctional Custody Units. Persons ordered into correctional custody at any DoD facility will be placed on temporary duty for disciplinary purposes. Any travel costs will be borne by the imposing command or district, as applicable. To the end that the rehabilitative objectives of correctional custody are achieved, commanding officers will monitor the progress of persons in correctional custody even when the punishment is administered in a correctional custody center of another Armed Force. This may best be done by designation of a correctional custody counselor who will visit the offender not less than weekly in the same manner as prescribed for persons in confinement (See Article 1.F.6. of this Manual)

(b) Administration of Correctional Custody on Board Coast Guard Commands. In the vast majority of cases, Coast Guard commanding officers will be obliged to rely on Coast Guard resources to administer correctional custody. In assessing the capability of his or her resources and space, the commanding officer should remain aware that both the punitive and rehabilitative aspects of the punishment must be provided. With respect to punitive aspects of correctional custody, the officer imposing punishment should not permit the rehabilitative emphasis and objective of correctional custody to eclipse its purpose as punishment. Guidance is prescribed by the provisions of this subparagraph.

[1] Supervision. A supervisor will be designated to maintain custody of a person in correctional custody and to enhance the offender's adherence to all prescribed terms of the punishment. A supervisor will be assigned during non-duty hours, during any period in which the offender is serving the punishment in a special space or in segregation, and at any other time when the offender is not otherwise under continual, adequate supervision. A single supervisor may be designated to effect custody of several persons while in correctional custody (whereas correctional custody counselors will be assigned on a one-to-one basis). The presence of a supervisor is not required when adequate supervision is assured by virtue of assignment to a supervised work detail, training or counseling. Correctional custody supervisors normally will be assigned through the daily unit watch list and will report to the senior officer, officer of the day or chief master at arms, as appropriate. Commanding officers may deem it advisable to segregate persons in correctional

custody from their peers through separate berthing and messing arrangements. This may ordinarily be done by designating a separate barracks section in which the custody will be effected by the presence of the supervisor. The selection of mature, well qualified supervisors is therefore essential. Supervisors will not be armed but should wear a duty belt, brassard, or similar indication of official capacity. Whenever possible, correctional custody supervisors will be first class or chief petty officers but in every case must be senior in grade to any person in correctional custody. The supervisor will require compliance with local regulations governing persons serving correctional custody. The officer of the day or senior duty officer, as appropriate, shall make regular and unscheduled inspections of the space. Restraint of persons in correctional custody should not be maintained by force. The command's responsibility for preventing escape is limited to the designation of responsible full-time supervision. Where several Coast Guard commands are located in the same geographical area (such as commonly may be the case at support centers, large groups and air bases) the senior commanding officer may designate a single facility for multi-command use on a shared support basis and centralize the custody supervisory function. Shared support means that the commanding officer of the parent or senior command may assess participating commands to provide qualified personnel for supervisor watch list augmentation on an as needed basis. Upon departure of a homeported vessel for other than local operations, individuals serving correctional custody at the local centralized facility must be returned to their ship. All support for consolidated administration of correctional custody, however, will derive from existing workforce and funding levels. Persons serving correctional custody in a consolidated facility operated by a different command will be placed in a TDY status.

[2] Physical Facilities. Correctional custody in the very least implies restriction. When the situation warrants segregation of persons in correctional custody from other personnel of the unit during non-duty hours (or in the case of recruit trainees, during duty hours as well), the spaces designated for this purpose should be equivalent to those provided to other personnel of like pay grade on board the unit. The following guidelines apply: Under no circumstances will persons in correctional custody be incarcerated in a detention cell, whether on a full-time or part-time basis. The designation of spaces for segregation of personnel in correctional custody is a function of command but not extending to authority to construct places of confinement whether improvised or comprising permanent design features of the building. Correctional custody segregation should be imposed primarily because it is considered essential to effective administration of the rehabilitation program. Custody will not be accomplished in spaces employing special security features such as locked doors, wire screens, body restraints, guard dogs, or armed guards. Spaces so designated shall meet minimum standards of health, safety, and control including normal heating, lighting, ventilation, and ready access to adequate drinking water and head facilities. A medical officer will inspect the space and certify in writing that it meets these minimum standards. When segregation facilities are created by designating a block of rooms or wing of a barracks building, security usually may be provided by controlled access through assignment of a supervisor (master at arms). Under no circumstances will these spaces be employed for the confinement of persons awaiting trial by or sentenced to confinement pursuant to trial by court-martial.

(c) Administration of the Punitive Aspects of Correctional Custody on Board Ship. There is no bar to administration of correctional custody when underway. In fact, a major floating unit underway may well provide a most suitable environment for administration of this non-judicial punishment by virtue of the 24-hour availability of officers and senior petty officers qualified to serve as correctional custody counselors. It is recognized that restriction to limits has little meaning on board a ship underway. Commanding officers may nevertheless withhold privileges (such as the freedom to move about the ship, attendance at movies or happy hours, or berthing and messing with shipmates) and impose a specific regimen of extra duty, fatigue duty, hard labor, or some combination thereof. Inasmuch as persons in correctional custody remain in a duty status, they may be required to perform duty excepting that involving watchstanding, the bearing of arms or supervision of others. Physical segregation may be imposed, provided the ship has a space suitable for the purpose meeting humane standards for heat, light, ventilation, and physical amenities. This authority does not extend to imposition of solitary, full-time confinement in a locked space. Spaces employed should be neither less habitable nor substantially better than those provided all other persons in like pay grade on board the ship. Some older Coast Guard ships have spaces originally designed or identified as brigs. None of these spaces meet contemporary standards for humane incarceration and will not be employed to segregate persons in correctional custody. Prior to segregating a person in correctional custody aboard ship, the commanding officer will obtain the written certification from the embarked medical doctor to the effect that the space concerned meets acceptable habitability standards. If no medical doctor is embarked, the executive officer (as ship's medical officer) shall so certify. Segregation of persons undergoing correctional custody on board ship in no way diminishes the requirement for complying with the requirements to administer a rehabilitative program and to specify work or retraining assignments. In every instance, a mature member of the command will be assigned as correctional custody counselor. The ship's chief master at arms or designee may serve as supervisor consistent with the guidance contained in Article 1.F.10.d. of this Manual. Participation of persons undergoing correctional custody in unit drills and evolutions shall be determined by the commanding officer on the basis of recommendations made by the offender's counselor and with due regard for the specific duties to which the offender is tasked by the Watch, Quarter, and Station Bill.

1.F.10.e. Administration of the Correctional Aspects of Correctional Custody

The requirements for proper administration of the correctional (rehabilitative) aspects of the punishment are the same regardless of the place chosen for administration of the punitive measures. Accordingly, the provisions of this subparagraph apply equally whether the punishment is administered at a facility of another Armed Force, on board a Coast Guard shore unit, or afloat. It is a responsibility of command to monitor the offender's progress while in correctional custody through reports from the designated counselor.

(1) Correctional Custody Counselor. Each offender will be assigned a correctional custody counselor, who may be assigned on a collateral duty basis. Mature petty officers in pay grades E-6 and above, as well as commissioned officers, may be appointed as counselors. The assigned counselor should interview the person, observe and keep an informal record of progress, and make recommendations to the commanding officer regarding eventual disposition. The counselor will be accorded the assistance of any other members of the

command if their specialized assistance is needed in correcting the offender's behavior. Should the counselor conclude that a special training or a rehabilitation program external to the command is warranted, an appropriate recommendation shall be made to the commanding officer. (Every effort should be made to obtain these services if warranted.)

(2) Work Assignments. A suitable work assignment will be selected in the form of continuation of normal duties, a temporary assignment or both. Work assignments may take the form of training or military duty but if the latter, may not include duty as a watchstander, the bearing of arms or supervision of others. The counselor should ensure that any work assignments which amount in fact to extra duties or hard labor are ordered only to the extent specifically imposed by the commanding officer at the time the punishment was awarded.

(3) After-Hours Activities. A schedule of after-hours activities shall be established for persons in correctional custody. To the extent practical, these activities shall include assigned study, appropriate recreation, physical training, and participation in attitude building training and discussions. All activities selected should contribute toward the correctional objective.

1.F.10.f. Administration of Correctional Custody Imposed Upon Recruit Trainees at Training Centers

It should be borne in mind that correctional custody is an authorized but optional nonjudicial punishment which may be imposed upon military members charged with violations of the UCMJ pursuant to proceedings under Article 15 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), at captain's mast. As non-judicial punishment, correctional custody may be imposed only pursuant to NJP proceedings at mast, regardless of the fact that the accused member may not have completed recruit training. In short this paragraph concerns only those recruit offenders who are brought to mast for proceedings under Article 15 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). The case of recruit offenders against the UCMJ is somewhat unique, the rehabilitative task of non-judicial punishment being primarily orienting the offender to the Coast Guard and to the responsibilities inherent in military service, rather than correction of established military behavior traits. This concept is consistent with the overall philosophy of recruit training preferably accomplished as a valuable adjunct to training conducted in seclusion from peers and normal activities. Accordingly, it is appropriate to modify the correctional custody environment prescribed for non-recruit offenders to one which enhances intensive counseling and training on a full-time basis. In practical terms this contrasts with the policy for non-recruits who are considered to remain in a duty status while undergoing command custody. Commanding officer, Training Center Cape May is authorized to establish and operate formal correctional custody within the existing physical plant to administer the punishment when imposed upon recruit personnel. Staff supervisory, counseling, and training personnel will be designated members from the training center permanent party. Recurrent operating expenses incident to this function are elements of the Operating Expense Budget. Standards pertaining to supervision, physical space, habitability, security feature limitations, and mandatory rehabilitation program are the full equivalent of those prescribed for non-recruit personnel meaning that the spaces so designed will be no less habitable than the equivalent spaces provided (non-offender) recruit personnel. Most important, custody of recruits undergoing the punishment will be effected by the presence of the supervisory staff and not by confinement in locked cells or secure spaces. Neither corporal punishment nor the use of hand or leg restraining devices are authorized. A specialized

correctional custody program is a mission within the capabilities of the permanent training staff. One mature member of the training staff shall be assigned to act as correctional custody counselor for each recruit upon whom the punishment is imposed, with duties as prescribed in Article 1.F.10.e. of this Manual. Under no circumstances will offenders awaiting trial (whether recruit or non-recruit) or prisoners serving court martial sentences to confinement be confined in correctional custody spaces authorized by this Article.

Exhibit 1.F.1. Confinement Designation Chart

U. S. NAVAL BRIGS

	Length of Sentence:			
	90-180 Days		**181 Days - One Year**	
Sentence Category Disposition of Prisoner:	**Duty**	**Discharge**	**Duty**	**Discharge**
Brig:				
Charleston	X	X	/3	/3
Corpus Christi	X	X	/6	/6
Great Lakes	X	X	X	X
Guam *	/2, 5	/2, 5	/5	/5
Guantanamo Bay *	/1, 3	/1, 3	/1, 3	/1, 3
Jacksonville	X	X	/3	/3
New London	/7	/7	/3	/3
Newport	X	X	/3	/3
Norfolk * *	X	X	X	X
Pearl Harbor *	X	X	/5	/5
Pensacola	X	X	/6	/6
Rota	/3	/3	/3	/3
San Diego	X	X	X	X
Seattle	X	X	/5	/5
Yokosuka	X	/2, 5	/5	/5
Camp Lejune	(Transfer personnel in accordance with joint-Service Agreement)			
Camp Pendleton				
Quantico				

Legend:

1. All Brigs may accept prisoners for sentences for less than 90 days.
2. * Indicates facilities for females; normally only pretrial at Guam and Guantanamo.
3. ** Indicates long term facility for all sentences over one year.
4. X Indicates prisoners are accepted in the sentence category.
5. Numbers Indicate brigs to which prisoners originating in that geographic area are to be transferred.

/1	- Norfolk	/5	- Treasure Island
/2	- Pearl Harbor	/6	- Great Lakes
/3	– Philadelphia	/7	- Newport
/4	- San Diego		

Exhibit 1.F.2. U. S. Navy Correctional Custody Units (CCUs)

This exhibit provides the short title, mailing address, and commercial telephone number (unless indicated otherwise) for all U. S. Navy CCU's. If you need assistance with the confinement of a Coast Guard member, contact Commandant (CG-122).

Short Title	Mailing Address	Telephone
CCU NAS Jacksonville	Commanding Officer Naval Brig Box 64 Naval Air Station Jacksonville, FL 32212-0064	(904) 542-3314
NAVCONBRIG Charleston	Commanding Officer Naval Consolidated Brig 1050 Remount Rd Bldg. 3107 Charleston, SC 29406-3515	(843) 743-0306
Great Lakes Brig	Commanding Officer Navy Brig 2706 Sheridan Rd Bldg 914 Great Lakes, IL 60088-5130	(847) 688-2157
Guam Detention Facility	Senior Chief Petty Officer in Charge Naval Station Detention Facility Guam PSC 455 Box 199 FPO AP 96540-2900	011-671-339-2927
Guantanamo Bay PCF	Chief Petty Officer in Charge Naval Station Pretrial Confinement Facility GTMO PSC 1005 Box 98 FPO AE 09593-0098	011-53-99-2228
NAVCONBRIG Miramar	Commanding Officer Naval Consolidated Brig Miramar Suite 1 San Diego, CA 92145-5499	(619) 577-7000

CCU Norfolk	Commanding Officer Naval Brig 8251 Ingersill Street Norfolk, VA 23511-2699	(757) 444-5413
CCU Pearl Harbor	Commanding Officer Naval Brig Ford Island Box 56 Pearl Harbor, HI 96860-6050	(808) 472-9410
CCU Pensacola	Officer in Charge Naval Brig/CCU 541 John H Tower Rd Pensacola, FL 32508-5315	(850) 452-3620
CCU Puget Sound	Commanding Officer Naval Submarine Base Bangor 2020 Guardfish St Silverdale, WA 98315-5000	(360) 315-4402
CCU Yokosuka	Officer in Charge U. S. Naval Brig PSC 473 Box 9 FPO AP 96349-1101	011-81-0468-21-1911 Ext. 7015

Exhibit 1.F.3. Qualifying Military Offenses under 10 U.S.C. § 1565

Court Martial Conviction. The findings of a general court-martial (10 U.S.C. § 818) or special court-martial (10 U.S.C. § 819) at the time of action of the court-martial convening authority pursuant to 10 U.S.C. § 860.

Offenses:	UCMJ Article	Title 10 Section
Murder	118	918
Voluntary Manslaughter	119	919
Rape	120	920
Carnal Knowledge	120	920
Forcible Sodomy	125	925
Sodomy With a Child	125	925
Aggravated Assault (with a dangerous weapon or other means or force likely to produce death or grievous bodily harm)	128	928
Aggravated Assault (in which grievous bodily harm was intentionally inflicted)	128	928
Indecent Assault	134	934
Indecent Acts With Another	134	934
Indecent Acts With a Child	134	934
Indecent Language to a Child	134	934
Pandering (By compelling or by arranging or by receiving consideration for arranging)	134	934
Prostitution Involving a Minor	134	934
Kidnapping	134	934
Robbery	122	922
Burglary	129	929
Housebreaking	130	930
Maiming	124	924
Arson	126	926
Assault With Intent to Commit Murder	134	934
Assault With Intent to Commit Rape	134	934
Assault With Intent to Commit Voluntary Manslaughter	134	934
Assault With Intent to Commit Robbery	134	934
Assault With Intent to Commit Sodomy	134	934
Assault With Intent to Commit Arson	134	934
Assault With Intent to Commit Burglary	134	934
Assault With Intent to Commit Housebreaking	134	934
Solicitation of Another To Commit a Qualifying Offense	134	934

1.G. Shore Patrol and Escort of Prisoners

1.G.1. Joint Control by Military Police and Shore Patrol

1.G.1.a. Agreement among the Services

By agreement between the Secretaries having jurisdiction over the military services, members of Navy, Coast Guard, and Marine Shore Patrols, Military Police, Air Police, and commissioned, noncommissioned, and petty officers of the Armed Services are authorized and directed to take corrective measures, including arrest if necessary, in the case of any member of the Armed Forces committing a breach of the peace, disorderly conduct, or an offense which reflects discredit upon the Service. Personnel arrested shall be returned to the jurisdiction of their respective Service as soon as practical.

1.G.1.b. Use of Judgment

Those exercising authority hereunder are enjoined to do so with judgment and tact. Particularly, arrest should not be resorted to when corrective measures will suffice.

1.G.1.c. Details for Coordination

The details for effecting this coordination shall be worked out jointly by the military and naval authorities in the various areas concerned. All commands are instructed to ensure that personnel are familiar with the provisions of this agreement.

1.G.2. Unit Shore Patrol

1.G.2.a. Definition

A shore patrol is a force of petty officers landed during liberty hours to maintain good order and discipline among personnel ashore, to render appropriate assistance to members of the Armed Forces, and to report to proper authority conditions or practices observed ashore which appear prejudicial to the welfare of personnel.

1.G.2.b. Guidance

A shore patrol shall be landed at the discretion of the senior officer present afloat, subject to any instructions issued by the senior military commander in the area. In general, a shore patrol should be landed whenever a large number of personnel are granted liberty in a foreign port or in a small United States port where there are limited civil police. The shore patrol should be landed at or prior to the time the majority of the liberty party is permitted ashore, and should be withdrawn after the expiration of regular liberty or the period of maximum activity.

1.G.2.c. Composition

The shore patrol should be composed of one mature petty officer for every 20 personnel, or fraction thereof, in the liberty party. A shore patrol officer may be designated at the discretion of the commanding officer. The uniform for shore patrol enlisted personnel shall be the uniform of

the day, shore patrol brassard, web belt, first-aid pack, nightstick, and whistle. Officers shall wear the uniform of the day and shore patrol brassard.

1.G.2.d. Assignments

The shore patrol shall report to the senior shore patrol officer, Armed Forces Police Department Duty Officer, military or air police officer present, and shall be assigned in accordance with his or her instructions. In the event that there is no permanent shore patrol, military or air police, or Armed Forces Police Detachment Duty Officer, in the area, the commanding officer shall contact the civil law enforcement authorities and assign patrols after receiving their advice.

1.G.2.e. Jurisdiction

The shore patrol has jurisdiction over Coast Guard, Navy, Marine Corps, Army, and Air Force personnel unless otherwise prescribed by competent authority. The shore patrol has no jurisdiction over civilians and no authority to arrest or assist in the arrest of anyone not in the United States military or naval service. A person in the uniform of an Armed Service may be presumed to be in that Service; however, if he or she denies so being, the civil police shall be asked to detain the person until his or her status can be determined. The shore patrol shall cooperate fully with local, State, and Federal civil authorities in cases involving military personnel in infractions of civil laws and local ordinances. However, it has no authority to release to civil authority any person in the service placed under arrest by the shore patrol. The release of personnel to civil authority in all cases shall be effected in accordance with the provisions of reference (b), Military Justice Manual, COMDTINST M5810.1 (series). The shore patrol shall not enter private establishments, including dwellings and hotel rooms, in the performance of official duties unless accompanied by civil authorities who are authorized to make such entries, except under unusual circumstances when specifically requested by the owner or lessee or in an emergency involving the safety of life or the good of the community, and then only when Service personnel may be involved.

1.G.3. General Instructions to Shore Patrol

1.G.3.a. Military Conduct and Etiquette

When on duty, members of the shore patrol are representatives of the Commandant and the commanding officer insofar as their appearance before the public is concerned. They shall be smart in appearance and adhere to all regulations and all customs of military etiquette and conduct.

1.G.3.b. Use of Alcohol

Members of the shore patrol are forbidden to partake of any intoxicating liquor, including beer and wine, at any time while on duty.

1.G.3.c. Liberty Parties

The shore patrol must always be mindful that liberty parties ashore are on liberty in the fullest sense of the word. Any demands upon liberty time which become necessary in the performance

of shore patrol duties should be made courteously and promptly. Care should be used not to provoke arguments which may lead to subsequent trouble.

1.G.3.d. Purpose

The purpose of the shore patrol is as much to assist members on liberty as it is to apprehend offenders. Members should not be arrested for minor violations of regulations. In cases where a warning will suffice, the offender will be given such warning and it shall not be given in the form of a reprimand. The patrol should always strive to anticipate events and prevent members from becoming involved in situations which result in trouble. The shore patrol shall take the indicated action before arrest becomes necessary. When necessary, arrest should be made quickly and quietly and the offender should be removed at once to some spot away from the public attention. When making an arrest, the patrol should place a hand on the arm or shoulder of the offender and say in a clear voice:

"You are under arrest."

1.G.3.e. Use of Nightstick

The patrol shall not mistreat or abuse members in its charge. The nightstick shall be used only for self protection or when the offender cannot be subdued otherwise, and then, except in unusual circumstances, it shall be used to strike only the back of the legs, arms, or shoulders.

1.G.3.f. Confiscation of Identification Cards

Whenever identification cards are taken from personnel arrested by the patrol, they shall not be returned to the offender but shall be returned to the offender's commanding officer, with an arrest report if such is indicated.

1.G.3.g. Search of Prisoners

When necessary for the shore patrol to search a prisoner, two patrolmen shall be present, one of whom should be a chief petty officer or a commissioned officer. A statement listing the prisoner's effects, including the amount of cash, shall be made and signed by both parties.

1.G.4. Transport of Prisoners

1.G.4.a. General

(1) Definition of Prisoner. The term "prisoner," as used herein and in Article 1.G.5. of this Manual, will be conveyed to mean either persons who are currently subject to a valid confinement order, or persons being transported to a military facility after surrender or apprehension as suspects in alleged violations of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Persons are considered "prisoners" for the purpose of this section only if transported under escort. Situations involving transport of military members as prisoners under escort generally fall under one of two categories:

(a) transport of absentees, deserters or other suspected offenders either back to their own

commands or to such other commands as may be designated by competent authority, and

(b) transport of persons already under the physical and/or administrative control of their own commanding officer or a court-martial convening authority to, from, or between correctional centers.

(2) Actions Upon Apprehension or Surrender of Absentees or Deserters. The actions required following the apprehension or surrender of absentees or deserters are contained in Articles 1.C.3. and 1.C.4. of this Manual. Absentees or deserters who voluntarily surrender at a unit other than their own command ordinarily will be permitted to proceed back to their own or designated command under their own recognizance, unless in the judgment of the commanding officer of the unit reporting the surrender, transport under escort is warranted because of a likely risk of danger to life or property or of renewed escape from Coast Guard jurisdiction. In the latter case, the commanding officer of the command to which an absentee or deserter surrendered or was apprehended shall include escort recommendations as an element of his or her message notification to competent authority as designated in Article 1.C.7. of this Manual. This information should include a specific statement indicating whether escorts are deemed necessary, and whether multiple escorts, handcuff restraint, and/or armed escort is warranted pursuant to the guidance contained in this section. The provisions of this section do not apply to overseas activities and sections in Europe and Asia, or to operational units when on special detached duty with another Armed Force. Such cases frequently involve special considerations deriving from policies of the senior Armed Forces commander in the area, allied treaty requirements, and complex travel constraints. Whenever a requirement for escort of a Coast Guard prisoner arises in such cases, the commanding officer involved will promptly transmit a message to Commander (CG PSC-EPM) or (CG PSC-OPM) noting all relevant details and requesting advice. In all other situations, competent authority to order a person transported as a prisoner under escort in the case of an apprehended or surrendered absentee or deserter will be the command entity from which instructions are requested as provided for in Article 1.C.7. of this Manual. Such competent authority in the case of a member already under the control of his or her own command is the commanding officer of that command or the applicable court-martial convening authority. The Coast Guard command issuing the orders for transport of prisoners under escort shall be responsible for ensuring compliance with the provisions of this section. In cases where a prisoner is to be transported by means other than Government vehicle, commanding officers of Headquarters units may request the district commander (a) within whose district the Headquarters unit is geographically located to make appropriate transportation and escort arrangements. District commanders will be advised in any event, of the planned transport of prisoners entering, leaving, or traveling within the district confines, whether or not the district commander is the controlling command. In all cases, the transfer of prisoners will be accomplished in the most inconspicuous manner possible. The officer authorizing transport of a prisoner under escort shall prescribe the degree of security necessary to ensure the safe delivery of a prisoner in transit based on the recommendations of the local commanding officer presently having control or custody of the prisoner. The majority of military prisoners are offenders against military discipline and not vicious criminals posing a threat to personal safety of others or posing an ever-present escape threat. The presence of escorts and guards is usually sufficient to ensure safe delivery without incident. When the local commanding officer determines that the prisoner is a definite escape risk, the officer ordering transport may authorize the escort to use handcuffs. Under no circumstances shall this or any

other restraint device be employed to fasten prisoners to fixed or stationary equipment such as a seat arm, strap, stanchion, or berth railing of any vehicle or conveyance.

1.G.4.b. Means of Travel

(1) Government-Owned Bus or Other Vehicle. This is the preferred mode of transport wherever the distances involved permit. A single prisoner escort will never be required to act also as the driver. Vehicles employed should be in good mechanical condition to minimize the likelihood of breakdown while prisoners are embarked. If possible, the vehicle should be equipped with security screens for protection of the escorts and driver and to reduce the number of escorts required. Prisoners and escorts will be seated in adjoining seating positions and never in the same seat as the vehicle operator. Box lunches are recommended to minimize meal stops.

(2) Government Air. Maximum use shall be made of spaces available on military aircraft including Military Airlift Command, administrative, proficiency, and Reserve training flights. Escort requirements and restrictions of the agency or command operating the flight will be adhered to.

(3) Commercial Rail and Bus. While this mode of transport is authorized, it is considered the least desirable because of the transit time involved, need for additional escorts, the undesirability of exposing the prisoner to public view, and the security risk encountered at stops. Box lunches are advised to eliminate the need to escort the prisoner to public dining facilities. Prisoners and escorts will occupy adjoining seats. Where commercial bus is used for transport, passage should be arranged if possible on a conveyance having on-board toilet facilities. Prisoners should be seated in the rearmost passenger seat not adjoining any emergency exit, lounge area, or having access to any vital equipment, such as emergency brakes, of the conveyance unless directed to the contrary by the bus driver or train personnel. An escort shall always occupy the aisle seat.

(4) Commercial Air. Prisoners who may become violent, abusive, or who may require handcuffing and armed escort will not be transported by commercial airline except as provided for below. The command which will issue the official travel orders for transport of a prisoner by commercial air will coordinate travel details with the applicable airlines in advance. Frequently, this will be the district commander, in which case commercial air travel arrangements will be initiated by the district commander (a). Foreign-flag commercial airlines will not be employed to transport prisoners of the United States. The Federal Aviation Administration (FAA) has promulgated rules and regulations pertaining to the transporting of firearms and prisoners aboard commercial aircraft which govern prisoner transport by this method. The Commandant's policy is consistent with these regulations which may not be contested by Coast Guard personnel. That policy is summarized in the following paragraphs which apply to all cases where prisoners under escort are transported by commercial airline. In addition, however, the policy contained in Article 1.G.5. of this Manual applies to those uncommon cases where the security threat posed by a prisoner being transported by commercial air is sufficiently grave to warrant arming the escorts.

(a) FAA rules and regulations prohibit certified, commercial airlines from transporting a person in custody unless:

[1] The airline had been notified at least one hour, or in an emergency, as soon as possible, before departure of the identity of the escorted person, the flight on which he or she will be carried, and whether the escorted person in considered dangerous by the Governmental entity having custody.

[2] The escort has assured the airline that the escorted person does not have on or about his or her person any Article that could be used as a deadly or dangerous weapon which would be accessible to the prisoner while on board the aircraft. Additionally, the escort must ensure the airline that adequate restraining devices are readily available to be used in the event the escort determines that restraint becomes necessary.

[3] The escorted person and escorts shall be boarded before all other enplaning passengers board, and deplaned after all other deplaning passengers have left the aircraft. The prisoner and the escorts will be seated in the rearmost passenger seats that are neither located in any lounge area, nor located next to or directly across from any aircraft exit.

[4] At least one escort shall be seated between the escorted person and any aisle, and at all times accompany the escorted person and keep him or her under surveillance.

[5] The airline is prohibited from carrying more than one escorted person who it has been notified is considered dangerous on an aircraft carrying other passengers. The airline is prohibited from serving food or beverages, or providing metal eating utensils to an escorted person unless authorized by the escort.

[6] No prisoner or accompanying escort may drink any alcoholic beverage while on board the aircraft during a prisoner-transport flight.

(b) In order to minimize circumstances which lead to confusion of or disputes with on-site airline personnel, it is desirable to formalize arrangements well in advance of the transport. The recommendations of the airline concerning preferable flights for prisoner transfer, check-in procedures, etc., should be solicited and followed whenever practicable.

1.G.5. Prisoner Escorts

1.G.5.a. Prisoner Escorts

Prisoner escorts should be mature, responsible petty officers or in unusual situations, commissioned or chief warrant officers who are well-qualified by training and/or experience for the assignment. Escorts should travel under official orders in all cases and be well-briefed prior to departure. Escorts will present a smart appearance and, except when special agents of Coast Guard intelligence serve as escorts, will wear the appropriate uniform. In cases when escorts are not special agents of Coast Guard intelligence, but a commercial carrier nonetheless specifically requests that escorts wear civilian attire, a business suit or sport coat with necktie may be authorized. Under no conditions will the prisoner or accompanying escorts consume any alcoholic beverage during the duration of the transport. Escorts are responsible for the

appearance and conduct of prisoners in their custody. Stopovers should be avoided whenever possible. When unforeseen circumstances render stopover unavoidable, escorts are authorized to request temporary detention of the prisoner at any United States Military Correctional Facility, or Armed Forces Police or Shore Patrol organization having prisoner detention spaces available. As a last resort, temporary detention of the prisoner during an unavoidable stopover may be requested from local civilian law enforcement officials, in which case the escort shall promptly notify the commanding officer of the circumstances. Whenever the prisoner is turned over to a detention or confinement facility as provided for in this Article, the escort shall obtain a receipt for the prisoner.

1.G.5.b. Escort to Prisoner Ratio

The Coast Guard rarely has occasion to move groups of prisoners. The number of escorts required in any given case is a matter of command discretion. As a general rule, a minimum-risk prisoner being transported by Government vehicle for a short distance may be escorted by a single guard. Trips by Government vehicle of sufficient length to require escort relief, and all prisoner movements by any other means will require at least two, and possibly more escorts, with the exact number depending on the circumstances, and the regulations governing the operation of the carrier. If the prisoner being escorted is a female, at least one escort shall be a female commissioned, chief warrant, or petty officer.

1.G.5.c. Arming of Escorts

(1) General. Consistent with the rationale contained in Article 1.G.3. of this Manual, escorts need be armed only under rare, extreme cases involving maximum custody prisoners whose escape would pose a proximate threat to life or personal safety. As used in this section, "armed" is intended to convey the carriage of firearms. It should be noted that while in the performance of official duties, military members of the United States Armed Forces may carry firearms, including concealed weapons, when expressly authorized to do so by an appropriate military authority regardless of state or local laws. The inherent authority of the sovereign as to its military services has long been recognized by case law. Additionally, limited statutory authority exists for Coast Guard military members to carry firearms. For example, commissioned, chief warrant, and petty officers of the Coast Guard, while performing customs duty, are "officers of the customs" by definition (19 U.S.C. § 1401 (1)), and as such, may carry firearms (26 U.S.C. § 7607). The general authority for commissioned, chief warrant or petty officers of the Coast Guard to carry and use firearms including concealed weapons while performing official duties, such as those incumbent on special agents of Coast Guard intelligence and designated prisoner escorts, however, rests in the fact that the Coast Guard is a military Service.

(2) Limitations. The Commandant's policy and standards governing the carriage and use of weapons by authorized personnel are consistent with the policy and standards prescribed by the Secretary of Homeland Security governing the carriage and use of weapons by all authorized Department of Homeland Security (DHS) personnel, military and civilian, and by DHS contractor personnel providing law enforcement and security service to DHS facilities. That policy concerning the carriage of firearms provides that no personnel shall be authorized to carry or use a firearm in performing official law enforcement and security duties until that person has been adequately trained and understands official policy and

standards. The Commandant's policy on the use of firearms by commissioned, chief warrant or petty officers assigned to security duties including armed escort of prisoners is similar to that prescribed for the use of firearms by special agents of Coast Guard intelligence and is as follows:

(a) A firearm may be discharged only as a last resort when in the considered opinion of the escort a danger of loss of life or serious bodily injury exists to him or herself or to another person.

(b) Firing a weapon should be with the intent of rendering the person at whom the weapon is discharged incapable of continuing the activity prompting the escort to shoot.

(c) Firing at a fleeing person will not be considered justified unless the escort has a reasonable cause to believe that the person considered for shooting poses a real threat to the life of the escort or others.

(d) Firing from a moving vehicle or at a fleeing vehicle is prohibited.

(e) Firing warning shots is prohibited. A firearm should be drawn only when the escort has a sufficient cause to expect it will be used and the escort is preparing for its use.

(f) The authority to bear firearms carries with it an obligation and responsibility to exercise discipline, restraint, and good judgment when using firearms. The escort must keep in mind that, when firing a weapon, a danger always exists to innocent parties.

(g) Whenever a firearm is drawn under operational conditions, a letter report shall be immediately furnished to Commandant (CG-2). Whenever a firearm is discharged under operational conditions, accidentally or otherwise, a board of investigation shall be convened. In cases where a special agent of Coast Guard intelligence is involved, the district commander (ole) should not act as investigating officer. (See Article 1.G.5.d.(3) of this Manual.)

(3) Carrying of Firearms Aboard Commercial Aircraft. The Commandant's policy concerning the carrying of firearms aboard commercial aircraft is consistent with FAA rules and regulations, and may not be contested by Coast Guard personnel. Those elements of the FAA rules and regulations which are applicable to officials and employees of the United States prohibit a certified airline from permitting any person to have on or about his or her person or property, a dangerous or deadly weapon - either concealed or unconcealed - which is available to him or her while aboard an aircraft unless the following conditions are met:

(a) The person having the weapon is an official or employee of the United States.

(b) The person having the weapon must be authorized to carry it and need to have the weapon available in connection with the performance of duty during the period between baggage check-in for the flight and baggage claim following deplaning

(c) The airline must be notified of the flight on which the armed person intends to have the weapon accessible at least one hour before departure, and in an emergency as soon as

practicable before departure.

(d) The armed person must identify him or herself to the airline by presenting credentials that include a clear, full-face picture, signature, and the signature of the authorizing official of his or her Service or the official seal of Service. Badges, shields, or similar devices may not be accepted by airlines as the sole means of identification.

(e) The FAA rules and regulations further require the airline to ensure that the armed person is familiar with its procedures for the carriage of a deadly or dangerous weapon aboard its aircraft prior to the time such person boards the aircraft. Further, the airline is required to ensure that the identity of the armed person is known to each law enforcement officer and each airline employee responsible for aircraft boarding security, and that the pilot in command of the aircraft is notified that the armed person will be on board and of the armed person's seat location in the cabin.

(f) FAA Rules and Regulations also prohibit an airline from knowingly permitting any passenger to carry a deadly or dangerous weapon on board an aircraft in checked baggage, and similarly prohibits any passenger from checking baggage containing a deadly or dangerous weapon unless the passenger first has notified the airline that the weapon is in the baggage, that it is unloaded, and that the baggage is locked with the passenger retaining the only key. The airline is then required to carry such baggage in a space other than the flight crew compartment which is inaccessible to the passengers.

(g) FAA Rules and Regulations prohibit any person having a deadly or dangerous weapon available from drinking alcoholic beverages while on board the aircraft.

1.G.5.d. Action by District Commanders Authorizing the Arming of Prisoner Escorts

The policy contained below applies only in those extraordinary cases in which a district commander ordering transport of a prisoner or a commanding officer or convening authority requesting such transport has determined that the prisoner's escape would pose a grave threat to life or personal safety. Such maximum custody prisoners may be transported under armed escort, in addition to which, no less than two escorts will be assigned and the prisoner restrained in handcuffs. Commanding officers of Headquarters units in the continental United States (INCONUS) deeming it necessary to transport a prisoner under armed escort will request that transportation arrangements and designation of escorts be accomplished by the district commander of the district within whose geographical limits the Headquarters unit is located. When a prisoner is transported under armed escort, at least one of the escorts must be qualified to serve as armed escort in accordance with the provisions of this Article, but only the qualified escort will in fact be armed. Escorts should not be armed when the necessary security can be ensured instead by assigning additional escorts or authorizing handcuff restraint, in that order. The use of handcuffs or arming escorts requires the written order of the officer ordering the transport. Armed prisoner escorts will not carry loaded weapons except when actually escorting prisoners. When prisoners are being escorted, weapons will be loaded but ammunition will not be carried in the chamber of the weapon. Armed prisoner escorts will take every precaution against providing the prisoner access to the weapon.

(1) <u>Procedures for Designating Armed Prisoner Escorts</u>.

(a) Responsibility for Determining Whether Armed Escorts Are Required. The transport of prisoners under armed escort shall in no case be arranged or controlled by any level of command below the district level. Where more than one district is involved, that district which issues orders for transport under armed escort will be the controlling district. When doubt exists as to which of two districts should initiate such action, Commander (CG PSC-EPM) or (CG PSC-OPM) will direct appropriate action. Frequently, in cases where transport of a maximum custody prisoner is contemplated, the prisoner's own district commander or convening authority will already have physical and/or administrative custody over the prisoner. Illustrative could be the case of a member who has been convicted of a violent felony by a military court-martial and who is awaiting transportation to the designated correctional facility. In such cases, the district commander (a) will be in a position to determine directly whether the degree of security needed will require transport under armed escort. In other cases, however, a remote district commander or commanding officer, who may or may not be located in the offender's own district will have physical custody of a prisoner whose return or movement has been directed. In such cases, the local commanding officer stands in the best position to judge the degree of security warranted during transport. Should the local commanding officer deem it necessary, consistent with the provisions of this Article, that the prisoner be transported under armed escort, he or she shall promptly transmit a message to the competent authority requesting advice and assistance. Commander (CG PSC-OPM) or (CG PSC-EPM) and any other district commander and commanding officer concerned shall be listed as information addressees. The message shall identify the prisoner, the anticipated travel, and plainly state that escort under armed escort is deemed essential to prevent grave risk to life or personal safety. The message shall additionally state whether the local commanding officer has access to personnel who are qualified in accordance with the provisions of Article 1.G.5.d.(2) of this Manual to serve as armed escort. If so, the message will identify the proposed escort(s) and list the qualifications possessed.

(b) Actions of the District Commander. The district commander (a) shall be responsible for arranging the transport of prisoners under armed escort in compliance with the provisions of this Article. District commander (a) will conduct necessary liaison with the district commander (ole) with respect to the identification and certification of personnel to be designated to serve as armed prisoner escort. (See Article 1.G.5.d.(3) of this Manual.) When transport of a prisoner under armed escort is necessary, district commander (a) will determine and arrange for transport by the most advantageous mode of transportation consistent with the provisions of Article 1.G.4.b. of this Manual. In addition, the district commander (a) will attempt to identify any available personnel qualified to serve as armed prisoner escort in accordance with the provisions of Article 1.G.5.d.(2). of this Manual. In cases where a local commanding officer has been able to identify potential and available armed escort personnel, the local commanding officer's recommendations may be included for consideration. The list of possible armed escorts, together with documentation of their qualifications will be referred to the district commander (ole) for review and approval. Should district commander (a) be unable to identify any possible escorts, assistance shall be requested from the district commander (ole). Upon approval or designation of armed escort personnel by district commander (ole), the district commander (a) can finalize travel arrangements and issue appropriate travel orders.

(2) Sources for Armed Prisoner Escorts. Compliance with the Commandant's policy concerning the carriage and use of firearms, as well as with the regulations binding on armed escorts on board commercial aircraft as contained in Article 1.G.5.c.(3) of this Manual places a tremendous responsibility on personnel assigned as armed escort. Most personnel, notwithstanding their maturity, dependability, and leadership abilities cannot reasonably be expected to possess the training and experience required to qualify them for armed prisoner escort duty in the context of current regulations and policy. Accordingly, armed prisoner escorts will be obtained from the following sources in descending order of preference:

(a) Pursuant to a request made to an organized Armed Forces Police Detachment or Shore Patrol Organization, if available in the area;

(b) A Coast Guard commissioned, chief warrant, or petty officer, who in the past has served as a fully-qualified special agent of Coast Guard intelligence, but who presently is serving in non-intelligence career specialty;

(c) A mature commissioned, chief warrant or petty officer in pay grade E-6 or above, of demonstrated sound judgment, who is now or has at some prior time been assigned to official security police or law enforcement duties, and who has successfully completed firearms qualification at the Air Force OSI or Treasury Schools;

(d) Such other specially-qualified commissioned, chief warrant or petty officer as may be designated by the district commander (ole).

(3) Verification of Armed Prisoner Escort Qualifications. The district commander (ole) will verify whether Coast Guard personnel to be designated as armed prisoner escort possess the qualifications stipulated above. These qualifications are similar to those prescribed for special agents of Coast Guard intelligence as contained in the Coast Guard Investigations Manual, COMDTINST M5527.1 (series). Further, the district commander (a) in proposing a member for armed escort duty will be considered to have stipulated to the district commander (ole) that the proposed escort is familiar with and can be expected to comply with the policy contained in Article 1.G.5.c. of this Manual. In the event the district commander (a) can identify no available and qualified personnel to serve as armed prisoner escort, the district commander (ole) may at his or her discretion detail a special agent of Coast Guard intelligence, if available, request escort assistance from the U. S. Department of Justice, or designate some other specially-qualified commissioned, chief warrant or petty officer whose training and experience, although different, is equivalent to that prescribed above.

(4) Commanding Officer Judgment. It is stressed that the mere availability of personnel qualified to serve as prisoner escort does not justify the imposition of that degree of security. The decision to arm escorts should rest solely on the commanding officer's judgment that the prisoner's transport must be treated as a maximum custody case. Whenever Coast Guard personnel are detailed as armed prisoner escort, they shall be briefed thoroughly concerning the policy, rules, and regulations contained in this section.

CHAPTER 2 CONDUCT

2.A. Interpersonal Relationships within the Coast Guard

2.A.1. General

2.A.1.a. Coast Guard Values

The Coast Guard attracts and retains highly qualified people with commonly shared values of honor, respect and devotion to duty. These values anchor our cultural and Service norms and serve as a common foundation for our interpersonal relationships within the Coast Guard.

2.A.1.b. Mission Success

We interact, communicate and work together as teams to accomplish our missions. Indeed, mission success depends on cultivating positive, professional relationships among our personnel. An environment of mutual respect and trust inspires teamwork, assures equal treatment, and grants Service members the opportunity to excel.

2.A.1.c. Leadership and Military Discipline

Professional interpersonal relationships always acknowledge military rank and reinforce respect for authority. Good leaders understand the privilege of holding rank requires exercising impartiality and objectivity. Interpersonal relationships which raise even a perception of unfairness undermine good leadership and military discipline.

2.A.1.d. Custom and Tradition

The Coast Guard has relied on custom and tradition to establish boundaries of appropriate behavior in interpersonal relationships. Proper social interaction is encouraged to enhance unit morale and esprit de corps. Proper behavior between seniors and juniors, particularly between officers and enlisted personnel, enhances teamwork and strengthens respect for authority.

2.A.1.e. Officers and Senior Enlisted

By long standing custom and tradition, commissioned officers, including warrant officers, have leadership responsibilities extending across the Service. Likewise, chief petty officers (E-7 to E-9) have a distinct leadership role, particularly within their assigned command. Both provide leadership not just within the direct chain of command, but for a broader spectrum of the Service. Due to these broad leadership responsibilities, relationships involving officers or chief petty officers merit close attention.

2.A.2. Policy

2.A.2.a. Professional Work Environment

Coast Guard policy is to sustain a professional work environment which fosters mutual respect

among all personnel, and in which decisions affecting personnel, in appearance and actuality, are based on sound leadership principles. Commanding Officers, officers-in-charge, and supervisors are expected to provide an environment which enhances positive interaction among all personnel through education, human relations training, and adherence to core values.

2.A.2.b. Positive Social Interaction

Coast Guard policy on interpersonal relationships has been crafted to be as gender-neutral as possible. However, this approach may obscure one important issue: the fundamental principle that interpersonal activities which are appropriate among men or among women are likewise appropriate among men and women. Positive social interaction among men has proved beneficial to the individuals and the organization in the past, and women should be afforded equal opportunity to participate in these activities. Women must not be insulated or isolated from proper professional and social activities if the Coast Guard is to benefit from the full measure of their contributions.

2.A.2.c. Acceptable Personal Relationships

As people work together, different types of relationships arise. Professional relationships sometimes develop into personal relationships. Service custom recognizes that personal relationships are acceptable provided they do not, either in actuality or in appearance:

(1) Jeopardize the members' impartiality,

(2) Undermine the respect for authority inherent in a member's rank or position,

(3) Result in members improperly using the relationship for personal gain or favor, or

(4) Violate a punitive Article of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).

2.A.2.d. Assessing the Propriety

The great variety of interpersonal relationships precludes listing every specific situation that members and commands may encounter. While some situations are clearly discernible and appropriate action is easily identified, others are more complex and do not lend themselves to simple solutions. Evaluating interpersonal relationships requires sound judgment by all personnel. Factors to consider in assessing the propriety of a relationship include:

(1) The organizational relationship between the individuals: whether one member can influence another's personnel or disciplinary actions, assignments, benefits or privileges;

(2) The relative rank and status of the individuals: peers, officer and enlisted, CPO and junior enlisted, supervisor and subordinate, military and civilian, instructor and student; and

(3) The character of the relationship; e.g., personal, romantic, marital.

(a) Personal relationship: Non-intimate, non-romantic association between two or more

people such as occasional attendance at recreational or entertainment events (movies, ball games, concerts, etc.) or meals. (Does not involve conduct which violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended)).

(b) Romantic relationship: Sexual or amorous relationship. (Does not involve conduct which violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended)).

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(c) Unacceptable relationship: Inappropriate and not allowed under Service policy. Resolution normally administrative. Relationship must be terminated or otherwise resolved once recognized.

(d) Prohibited relationship: Violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Resolution may be either administrative, punitive, or both as circumstances warrant.

Note: Exhibit 2.A.1 contains a matrix depicting common interpersonal relationships.

2.A.2.e. Violation of Service Policy

A relationship, including marriage, does not violate Service policy unless the relationship or the members' conduct fails to meet the standards set by this section, standards of conduct set by reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), or other regulations.

2.A.2.f. Unacceptable Romantic Relationships

Romantic relationships between members are unacceptable when:

(1) Members have a supervisor and subordinate relationship (including periodic supervision of duty section or watchstanding personnel), or

(2) Members are assigned to the same small shore unit (less than 60 members), or

(3) Members are assigned to the same cutter (see note below), or

(4) The relationship is between chief petty officers (E-7/8/9) and junior enlisted personnel (E-4 and below), or

(5) The relationship is manifested in the work environment in a way which disrupts the effective conduct of daily business.

Note: The nature of operations and personnel interactions on cutters and small shore units makes romantic relationships between members assigned to such units the equivalent of relationships in the chain of command and, therefore, unacceptable. This policy applies regardless of rank, grade, or position. This policy applies to Reservists in an active status, whether or not on duty.

2.A.2.g. Prohibited Relationships

(1) Policy. Coast Guard policy prohibits the following relationships or conduct, regardless of rank, grade, or position of the persons involved:

(a) Engaging in sexually intimate behavior aboard any Coast Guard vessel, or in any Coast Guard-controlled work place,

(b) Romantic relationships outside of marriage between commissioned officers and enlisted personnel. For the purposes of this paragraph, Coast Guard Academy cadets and officer candidates (both OCS and ROCI) are considered officers.

(c) Personal and romantic relationships between instructors at training commands and students.

(2) Punitive Application. This provision is a punitive general regulation, applicable to all personnel subject to reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended) without further implementation. A violation of this provision is punishable in accordance with reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).

2.A.2.h. Family Relationships

Service members married to Service members, or otherwise closely related; e.g., parent and child, siblings, etc., shall maintain requisite respect and decorum attending the official military relationship between them while either is on duty or in uniform in public. Members married to members or otherwise closely related shall not be assigned in the same chain of command.

2.A.3. Examples of Acceptable and Unacceptable Relationships and Conduct

2.A.3.a. Acceptable Relationships

Examples of acceptable personal relationships:

(1) Two crewmembers going to an occasional movie, dinner, concert, or other social event.

(2) Members jogging or participating in wellness or recreational activities together.

2.A.3.b. Unacceptable Relationships

Examples of unacceptable relationships:

(1) Supervisors and subordinates in private business together.

(2) Supervisors and subordinates in a romantic relationship.

2.A.3.c. Unacceptable Conduct

Examples of unacceptable conduct:

(1) Supervisors and subordinates gambling together.

(2) Giving or receiving gifts, except gifts of nominal value on special occasions.

(3) Changing duty rosters or work schedules to the benefit of one or more members in a relationship when other members of the command are not afforded the same consideration.

2.A.4. Fraternization

2.A.4.a. Definition

Fraternization describes the criminal prohibition of certain conduct between officer and enlisted personnel set out in reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Interpersonal relationships between officer and enlisted personnel and fraternization are not synonymous. Fraternization does not apply exclusively to male-female relationships, but a much broader range of inappropriate conduct. (While not an exhaustive listing, see Article 2.A.3. of this Manual.) The elements of the offense of fraternization specified in reference (e), Manual for Courts-Martial (MCM), United States (current edition), are:

(1) The accused is a commissioned or warrant officer, and

(2) The accused officer fraternized on terms of military equality with one or more enlisted members in a certain manner, and

(3) The accused knew the person to be an enlisted member, and

(4) The association violated the custom of the Service that officers shall not fraternize with enlisted members on terms of military equality, and

(5) That, under the circumstances, the conduct of the member was prejudicial to good order and discipline in the Armed Forces, or was of a nature to bring discredit upon the Armed Forces.

2.A.4.b. Personal Relationships between Officer and Enlisted

The custom of the Service accepts personal relationships between officer and enlisted personnel if they do not violate the provisions of Article 2.A.2.c. of this Manual. Relationships in conflict with those provisions violate the custom of the Service.

2.A.4.c. Romantic Relationships between Officer and Enlisted

The custom of the Service prohibits romantic relationships outside of marriage between officer and enlisted personnel. This includes such relationships with members of other military services. Officer and enlisted romantic relationships undermine the respect for authority which is essential for the Coast Guard to accomplish its military mission.

2.A.4.d. Marriage between Officer and Enlisted

The custom of the Service accepts officer and enlisted marriages which occur before the officer receives a commission. Lawful marriage between an officer and enlisted service member does not create a presumption of misconduct or fraternization. However, misconduct, including fraternization, is neither excused nor mitigated by subsequent marriage.

2.A.5. Responsibility

2.A.5.a. Primary Responsibility

All personnel are responsible for avoiding unacceptable or prohibited relationships. Primary responsibility rests with the senior member. Seniors throughout the chain of command shall attend to their associations and ensure they support the chain of command, good order and discipline.

2.A.5.b. Early Resolution

Personnel finding themselves involved in or contemplating unacceptable relationships should report the situation and seek early resolution from their supervisor, commanding officer, officer in charge, command enlisted advisor, or Coast Guard chaplain. Any potential conflict with Coast Guard policy should be addressed promptly. Commands are expected to assist members in understanding Coast Guard policy requirements and resolving conflicts. Bringing an unacceptable relationship to early Command attention will increase the opportunity for early, positive resolution.

2.A.5.c. Commanding Officer Responsibility

Reference (j), United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series) specifically charge commanding officers and officers-in-charge with responsibility for their command's safety, efficiency, discipline, and well-being. They should take prompt, appropriate action to resolve conduct which does not comply with the provisions of this section.

2.A.5.d. Academy and Training Center Staff

Interpersonal relationships involving Academy and Training Center staff and students are particularly susceptible to abuse by the senior member. The Superintendent of the Academy and commanding officers of training commands may issue local directives further restricting or prohibiting such relationships as they deem appropriate. The Superintendent of the Academy may issue supplemental regulations addressing cadet relationships, including when cadets are in training situations aboard other Coast Guard units.

2.A.5.e. Violation by Commanding Officer

If a member's superior or immediate commanding officer is the subject of a report of misconduct under this Article, procedures outlined in Section 9-2-2 of reference (j), United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), (Oppression or Other Misconduct by a Superior) shall be followed.

2.A.6. Resolving Unacceptable Relationships

2.A.6.a. General

Avoiding unacceptable personal relationships is in the best interest of all concerned. Training, counseling, and administrative actions help prevent unacceptable personal relationships or minimize detrimental effects when unacceptable relationships develop. Prompt resolution at the lowest level possible is desirable.

2.A.6.b. Training

Avoiding unacceptable and prohibited interpersonal relationships requires that personnel clearly understand Coast Guard policy and its application. The unit training program is an ideal forum to accomplish this. Training on "FRATERNIZATION AND INTERPERSONAL RELATIONSHIPS" shall be conducted at all officer and enlisted accession points and at resident training courses; e.g., leadership school, "A" and "C" Schools, etc. Training at other units is strongly encouraged.

2.A.6.c. Counseling

Early counseling often can resolve potential concerns about the characteristics of a relationship and appropriate actions to ensure the relationship develops in a manner consistent with Service custom. Counseling may be informal or more formal, including written documentation by Administrative Remarks, Form CG-3307, entry or an Administrative Letter of Censure. (See Article 2.E.4. of this Manual.) Counseling may include a direct order to terminate a relationship.

2.A.6.d. Personnel Reassignment

Members may request or a command may recommend reassignment of a member involved in a questionable relationship. However, reassignment is not a preferred option. The Coast Guard is not obligated to reassign personnel due to members' desires or based solely on a relationship. When reassignment is not an option, members may be directed to end a relationship.

2.A.6.e. Evaluations

When members do not respond favorably to counseling, comments and marks in officer and enlisted evaluations may be appropriate.

2.A.6.f. Other Administrative Actions

As warranted, commands may recommend separation, removal or withdrawal of advancement recommendations, appointment to another status, or promotions. See reference (k), Military Separations, COMDTINST M1000.4 (series), for additional administrative actions which may be considered.

2.A.6.g. Disciplinary Action

Non-judicial punishment or courts-martial may address fraternization or other unlawful or

prohibited relationships or conduct.

2.A.7. Action

Commanding officers and officers in charge are responsible for ensuring that all members of their commands are familiar with these provisions.

Exhibit 2.A.1. Interpersonal Relationships

Organizational Relationship	Character of Relationship				
	Personal	Romantic			Married/Family
Separate Units	1-4 A	1-2 A	3 U	4 P	1-4 A
Same Large Shore Unit or Co-Located Units	1-4 A	1-2 A	3 U	4 P	1-4 A
Same Chain of Command, Same Afloat Unit, Small Shore Unit	1-4 A	1-2 U	3 U	4 P	1-4 U (for assignment purposes)

Legend:

<u>Member Status:</u>

1. Peers: (Very similar in rank or position, e.g., officers; CPOs; POs; non-rated personnel; etc.)
2. Military and Civilian CG employee
3. CPO and Junior Enlisted (E-4 and below)
4. Officer (including cadets and officer candidates) and Enlisted

<u>Character of Relationship:</u>

Personal: Non-intimate, non-romantic associations between two or more people, e.g. occasional attendance at recreational or entertainment events (movies, ball games, concerts, etc.) or meals. (Does not include conduct which constitutes fraternization.)

Romantic: Sexual or amorous relationship. (Does not include conduct which violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).)

Married/Family: Service members married to service member, or otherwise closely related; e.g., parent and child, or siblings, etc.

<u>Service Policy:</u>

A = Acceptable: Permissible provided conduct meets Service standards. (See Article 2.A.2.c. of this Manual.)

U = Unacceptable: Inappropriate; not allowed under Service policy. Relationship must be terminated or otherwise resolved once recognized. Resolution is normally administrative.

P = Prohibited: The relationship violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).

2.B. Discrimination

2.B.1. General

2.B.1.a. Definition

The Coast Guard is committed to maintaining a work environment free from unlawful discriminatory practices and inappropriate behavior. For the purpose of this section, illegal discrimination is any intentional action or omission that results in the adverse treatment of a person because of that person's race, color, religion, national origin, disability, handicap, age or gender, including sexual harassment or intentional actions or omissions in reprisal.

2.B.1.b. Policy

(1) Accountability. The Coast Guard must hold persons accountable for illegal discriminatory conduct and track those persons through the personnel records system. Laws and regulations prohibiting illegal discrimination may be enforced through administrative or disciplinary action under both military and civilian personnel systems.

(2) Disciplinary or Administrative Action. Disciplinary or administrative action shall be taken only where the discriminatory conduct is intentional. Although law and policy prohibit intentional and unintentional discrimination, only those persons who discriminate intentionally are included within the scope of this Section. If the discriminatory conduct is unintentional, disciplinary and administrative action is inappropriate and unjustified. However, counseling would be appropriate to draw attention to the discriminatory impact of the unintentional conduct or the application of a policy.

2.B.1.c. Prohibitions

Illegal discrimination in the Coast Guard is prohibited. No individual in the Coast Guard shall:

(1) Engage in illegal discriminatory conduct as defined in Article 2.B.1.a. of this Manual;

(2) Take reprisal action against a person who raises an allegation or discrimination, who assists another in raising an allegation or who provides information related to an alleged incident of discrimination; or

(3) While in a supervisory or command position, condone or ignore discrimination of which he or she has knowledge or of which he or she should reasonably have knowledge.

2.B.1.d. Violation of Provisions

The prohibitions in Article 2.B.1.c. above are punitive general and regulatory orders and apply to all military personnel individually. A violation of these provisions by military personnel is punishable under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended).

2.B.1.e. Allegation Awareness

When area commanders, district commanders, commanding officers, officers-in-charge, chiefs of Headquarters offices and special staff divisions, become aware of allegations of illegal discriminatory conduct of personnel under their command, they shall investigate the basis for those allegations. Upon determining that illegal discrimination probably occurred; i.e., more probable than not, they shall initiate administrative or disciplinary action or formal disciplinary action as appropriate. In determining whether informal action or formal disciplinary action is appropriate, they must evaluate the severity of the alleged conduct with the reliability and veracity of the evidence presented.

2.B.2. Sexual Harassment

2.B.2.a. Policy

All acts of sexual harassment are degrading to the offended individual and detrimental to the military profession.

2.B.2.b. Administrative and Criminal Sanctions

Commanding officers and officers in charge have a responsibility to look into all allegations of sexual harassment and to take prompt and effective action. They must be aware of all courses of action available to them to deal with sexual harassment allegations. They generally fall into three categories - discrimination complaint processes, administrative processes, and reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), provisions. These actions are not mutually exclusive and two or all three of them may be pursued simultaneously. The actions taken by a command in a particular case will depend upon the severity of the conduct, the state of the evidence, the limits of the commander's authority, and other such factors. Specific questions regarding prosecuting offenders should be addressed to the command's servicing legal office.

(1) Sexual Harassment. Reference (l), Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series), establishes the sexual harassment prevention system for the Coast Guard. It is intended to provide a single point of focus for the Coast Guard's efforts to prevent sexual harassment.

(2) Sexual Discrimination. Reference (l), Coast Guard Civil Rights Manual, COMDTINST M5350.4 (series), provides detailed information on processing complaints of discrimination based upon gender. The primary purpose of the process is to ensure the complainant obtains an appropriate remedy or redress for any wrong he or she may have suffered.

(3) Administrative Action. Prompt, appropriate administrative action should be taken simultaneously with discrimination complaint processes, with respect to sexual harassment offenders, when a command has sufficient information to reasonably believe an incident has occurred. It is not necessary to await the completion of the procedures set forth in the above paragraph. Commands have a wide variety of actions available which include but are not limited to informal or formal counseling, evaluation in performance reports, and formal performance reviews, which could lead to separation.

(4) Criminal Offense. Specific acts of sexual harassment may amount to criminal offenses punishable under various provisions of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). A review of the UCMJ and reference (e), Manual for Courts-Martial (MCM), United States (current edition) reveals numerous provisions well suited for prosecution of sexual harassment amounting to criminal conduct. Sexual harassment is a specifically listed example of conduct amenable to prosecution under Article 93 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801-946 (as amended), (Cruelty and maltreatment). However, considering the wide range of conduct that could be characterized as sexual harassment, the following article of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), have provisions suitable for prosecuting sexual harassment cases depending on the facts of the case:

UCMJ	
Article 78	Accessory after the Fact
Article 80	Attempt to Commit an Offense
Article 81	Conspiracy
Article 89	Disrespect to a Superior Commissioned Officer
Article 90	Assaulting a Superior Commissioned Officer
Article 91	Insubordinate Conduct toward a Warrant Officer, Noncommissioned Officer, or Petty Officer
Article 92	Failure to Obey an Order or Regulation
Article 93	Cruelty and Maltreatment
Article 120	Rape and Carnal Knowledge
Article 125	Sodomy
Article 127	Extortion
Article 128	Assault
Article 133	Conduct Unbecoming an Officer
Article 134	Twelve Specifications, including: Indecent Acts, Assault, Exposure or Language; Communicating a Threat; Depositing or Causing to be Deposited Obscene Matters in the Mail; Disorderly Conduct; Fraternization; Misprision of a Serious Offense; and Soliciting Another to Commit an Offense

2.C. Hazing

2.C.1. Policy

(1) General. Hazing, subjecting an individual to harassment or ridicule is prohibited and will not be tolerated. No service member may engage in hazing or consent to being hazed. Its prevention is an all-hands responsibility. Under Article 4.1.15 of reference (j), United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), a commanding officer shall "prohibit unit introductory initiations or hazing of personnel."

(2) Prevention. Hazing serves no useful purpose and is contrary to our core values of honor, respect, and devotion to duty and has no place in our organization. The demeaning, abusive activities associated with hazing inhibit performance, debase personal dignity, and can result in serious injury. To prevent hazing, we must be aware of what constitutes hazing and understand these activities' negative impact. Our success as an organization depends on the positive and productive attitude and performance of our people. A healthy, positive, professional work environment is essential to enable all our personnel to contribute to mission success.

(3) Initiations. Some units have condoned hazing incidents at initiations as innocent jests without intent to harm. Although some observers may consider such actions or verbal harassment humorous, they often create a real fear in the victims' minds. Further, they undermine the very morale and esprit de corps they purport to advance.

(4) Investigations and Administrative/Disciplinary Action. The Coast Guard has no place for dehumanizing treatment. Commands shall investigate any hazing incident and initiate appropriate administrative or disciplinary action against the perpetrators and those in the chain of command who are determined to have tacitly condoned such practices, either by inaction or neglecting to investigate reported incidents.

2.C.2 Definition

2.C.2.a. Definition

Specifically, hazing is any conduct in which a military member without proper authority causes another military member(s) to suffer or be exposed to any cruel, abusive, humiliating, oppressive, demeaning, or harmful activity, regardless of the perpetrator's and recipient's Service or rank. Soliciting or coercing another to conduct such activity also constitutes hazing. Hazing need not involve physical contact among or between members; it can be verbal or psychological in nature. Activities meeting these criteria constitute impermissible hazing even if there is actual or implied consent to the acts. Hazing can include, among other things, the following activities:

(1) Playing abusive or mean-spirited tricks intended to ridicule, humiliate, or ostracize,

(2) Throwing personnel over the side from a ship or pier,

(3) Tacking on crows or other devices by forcibly applying them to a member's clothes or body,

(4) Forcing or encouraging the consumption of substances not normally prepared or suitable for consumption,

(5) Group wrestling matches targeting a particular member,

(6) Encouraging a member to consume excessive amounts of alcohol or requiring the consumption of alcohol in any amount,

(7) Forcibly cutting or shaving hair,

(8) Branding, tattooing, or painting another,

(9) Coercing or encouraging another member to fully or partially disrobe,

(10) Taping, tying, or otherwise restraining a member's arms, legs, or mouth,

(11) Handcuffing or otherwise securing a member to a fixed object or another member(s),

(12) Using law enforcement restraints or techniques on another member in other than an official capacity or a bona fide training session,

(13) Placing or pouring foreign substances or liquids on another member,

(14) Touching in an offensive manner,

(15) Striking, or slapping another member, or

(16) Threatening or offering violence or bodily harm to another.

2.C.2.b. Implied Consent

Personnel often attempt to disassociate their activities from "hazing" by stressing the voluntary nature of participation. Even genuinely voluntary participation can cause detrimental consequences. Often apparently willing participation is actually prompted by subtle compulsion, peer pressure, or a bid for acceptance and is not truly voluntary at all. As indicated in the definition of hazing, actual or implied consent does not eliminate the perpetrator's culpability. Personnel knowingly and voluntarily submitting to hazing may be held accountable as well.

2.C.2.c. Initiation Ceremonies

(1) General. Hazing typically occurs in connection with unofficial, impromptu, unsupervised "initiations" or other informal rites of passage. The personnel involved often view these activities as an amusing way to "let off steam," enhance unit morale, or bond with their peers and profess no intent to cause harm. However, these ceremonies are often demeaning or abusive and can result in physical injury to the participants. (See Article 1.K. of this Manual.)

(2) Traditional Ceremonies. Traditional service initiation ceremonies, including Chief's

Initiations and equator, international dateline, and Arctic and Antarctic Circle crossings, are authorized, provided commands comply with governing directives when conducting such ceremonies. However, commanding officers shall ensure these events do not include harassment of any kind that contains character degradation, sexual overtones, bodily harm or otherwise uncivilized behavior. Innocuous practical jokes, such as fetching "relative bearing grease" or "prop wash" do not constitute hazing as long as they are not intended to and actually do not humiliate, ridicule, or ostracize. Even otherwise innocuous jokes that are pervasive, repeated frequently, or disproportionately targeted toward selected individual(s) can cross the line and constitute impermissible hazing.

(3) Miscellaneous. Also excluded from the definition of hazing are command-authorized or operational evolutions, training in preparation for these evolutions, administrative corrective measures including extra military instruction administered in accordance with reference (b), Military Justice Manual, COMDTINST M5810.1 (series), command-authorized physical training or athletic events, and command-authorized competitions or contests. Commands should conduct these activities appropriately with proper command sanction and oversight, preserving proper chain of command roles at all times.

2.C.3 Responsibilities

2.C.3.a Training Centers

(1) Incorporate hazing awareness training into existing recruit, officer and leadership training curriculums for all new personnel. Incorporate hazing awareness training into the Prospective Commanding Officer/Executive Officer Course and the Officer-in-Charge/Executive Petty Officer Course.

(2) Incorporate hazing awareness training into the Officer-in-Charge/Executive Petty Officer Course, and the Officer and Senior Petty Officer Leadership and Management Courses, etc.

2.C.3.b Commanders

(1) Unit commanding officers and all supervisors are responsible for ensuring they administer their units in an environment of professionalism and mutual respect that does not tolerate hazing of individuals or groups.

(2) Commanding officers and supervisor may not by act, word, deed, or omission condone or ignore hazing if they know or reasonably should know hazing is occurring or has occurred.

(3) Commanding officers who receive complaints or information about hazing must investigate and take prompt, effective action. Unit commanding officers and supervisors must ensure reports of hazing are promptly and fully investigated and appropriately resolve verified instances of hazing. Those within the chain of command who violate this policy by overtly condoning hazing, failing to investigate reports of hazing, or implicitly approving it through inaction when they know or reasonably should know such activity is occurring or has occurred shall be held properly accountable.

(4) Commanding officers are responsible for ensuring traditional observances and legitimate

"initiation ceremonies" enjoy the full involvement and sponsorship of the command to ensure impermissible hazing does not occur.

(5) Commanders shall incorporate hazing awareness training into the annual unit training schedule.

2.C.3.c. Coast Guard Personnel

(1) Every member must ensure hazing does not occur in any form at any level.

(2) Every military member must inform the appropriate authorities of each suspected violation of this policy.

(3) Victims of actual or attempted hazing and witnesses to these activities must report it to the appropriate level of the chain of command.

2.C.4. Penalties

a. Applicability. This policy applies to all personnel at all times, on or off duty, at sea or ashore, on or off base. Any violation, attempted violation, or solicitation of another to violate this policy may subject involved members to appropriate administrative and/or disciplinary action.

b. Command Response to Hazing. In dealing with hazing, commands have a wide variety of procedures available, depending on an incident's specific circumstances. One function of command, and a challenge to its leadership capabilities, is to fit the appropriate command response to each particular situation. Available remedies range from counseling to administrative discharge proceedings.

c. Punitive Application. While this statement of policy does not qualify as a punitive general order, specific hazing acts and hazing incidents are punishable under various provisions of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended), specifically:

Article 92	Prohibits disobeying orders and regulations and dereliction of duty.
Article 93	Prohibits cruelty and maltreatment of a person subject to another's orders. This offense includes sexual harassment.
Article 128	Prohibits assault.
Article 134	Prohibits any conduct prejudicial to good order and discipline, including indecent language and acts. Any other degrading, humiliating, oppressive, etc., conduct could fall under this Article.

2.D. Indebtedness

2.D.1. General Policy

2.D.1.a. Military Duty

Members who fail to meet their financial obligations bring discredit upon the Service, burden the command administratively, and jeopardize their eligibility for a security clearance. Because of this, all members have a military duty to meet their financial obligations and cannot use military status as a pretext to avoid financial obligations. Despite the Coast Guard's interests in the matter, the Coast Guard has no authority to direct or control the pay of its personnel for the purpose of satisfying a private claim of indebtedness, except under the following circumstances:

(1) When a court has ordered garnishment of a member's military pay for the payment of child support or alimony. Article 7.G. of reference (d), Coast Guard Pay Manual, COMDTINST M7220.29 (series).

(2) When a court has ordered garnishment of a member's military pay for indebtedness. Claimant must comply with the Soldiers' and Sailor's Civil Relief Act to obtain a final judgment in a court of competent jurisdiction. (See 32 CFR, Parts 112 and 113.)

(3) Under Article 139 of reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Coast Guard Claims and Litigation Manual, COMDTINST M5890.9 (series).

2.D.1.b. Command Action

Law and regulations require members to pay just financial obligations in a proper and timely fashion, and favors amicable, informal resolution. However, law and regulations also provide for involuntary allotments when this fails. The Service is not required to assist in processing debt complaints when the claimant has not made bona fide efforts to collect the debt directly from the member or when the claim is patently false, misleading, or exorbitant. In cases where there appears to be a genuine dispute as to the validity of the claim or where the amount of the claim is disputed, the claimant should be advised to seek redress through the courts. Except as provided for in Article 1.L.1.d. of this Manual, a court judgment or court order must be presumed by the commanding officer to be just, fair, and binding.

2.D.1.c. Disputing the Claim

While a commanding officer is not authorized to adjudicate disputed cases, careful consideration should be given to the merits of the member's position for the purpose of determining whether the member's delinquency or nonpayment of a claim reflects a good faith dispute. If there are sufficient grounds for disputing the claim, the commanding officer is authorized to temporarily postpone initiation of the adverse disciplinary or administrative actions provided for in Article 2.D. of this Manual in order to afford the member a reasonable opportunity to resolve the matter.

2.D.1.d. Waiver of Military Obligation

In the rare case when the commanding officer concludes that a court judgment or court order is

being disputed in court, a temporary waiver of the member's military obligation to comply with the court judgment or court order is appropriate. The member must be able to provide firm information of the efforts to resolve the dispute in court.

(1) Convincing Information. The member concerned must present convincing information which attests to a good faith course of action as described below. Full compliance with the court order will be required when:

(a) The commanding officer does not consider that the member has provided convincing information that the dispute is pending in court, or

(b) The member's efforts to obtain legal relief from the court order are unsuccessful or are terminated.

(2) Good Faith. "Good faith" in such cases includes the member's failure to comply with the judgment or court order is due to a conscious, positive plan of court action recommended by the member's attorney, the intent of which is to seek a court hearing immediately for relief or final resolution of the dispute. Mere conferral with an attorney by the member is not convincing information to suspend the member's military obligation to comply with the court judgment or court order, unless followed by positive action on the member's part.

(3) Member Responsibility. Temporary waiver from the military obligation to liquidate indebtedness does not authorize the member to ignore the claim. On the contrary, the member must demonstrate the court action taken to resolve the matter. A member involved in a disputed claim should be advised to consult with a Coast Guard legal assistance officer in accordance with the provisions of reference (m), Legal Assistance Program, COMDTINST 5801.4 (series).

2.D.1.e. Insufficient Funds

Tendering a check drawn on a bank when the individual knows or reasonably should know that there will be insufficient funds available may constitute a criminal offense under the laws of the civil jurisdictions or reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Commanding officers shall investigate incidents of this nature and take disciplinary action when appropriate. While every instance of a check returned because of insufficient funds is not necessarily criminal, repeated incidents of this nature are indicative of financial irresponsibility and should be handled as provided for in Article 2.D.4. of this Manual.

2.D.1.f. Information Provided to Creditors

Commanding officers shall not furnish creditors with any information concerning the personal credit rating or financial responsibility of a member even if authorized by the member. Such information may be construed as approving or endorsing the extension of credit.

2.D.2. Command Indoctrination and Counseling

Commanding officers shall ensure that members of their command are instructed in the basic provisions of this section. Inclusion of this section in a unit organization manual will fulfill this

indoctrination requirement. For units below the sector level, training beyond initial indoctrination is the responsibility of the sector. The following points should be emphasized when discussing credit practices:

(1) Evidence of Irresponsibility. Failure to pay just debts or repeatedly incurring debts beyond a member's ability to pay is evidence of irresponsibility and may jeopardize the member's security clearance, advancement, duty assignment, qualification for reenlistment or extension of enlistment, and may become grounds for disciplinary action or administrative discharge.

(2) New Credit. Prior to accepting new credit, members should evaluate their financial capabilities and establish a budget which demonstrates the ability to repay the new debt.

(3) Large Purchases/Difficulty Paying Debt. Members should consult with a legal assistance officer when contemplating large purchases on credit, or when they encounter difficulties in paying their debts. (See reference (m), Legal Assistance Program, COMDTINST 5801.4 (series).)

(4) Counseling Services. The savings, counseling, and lending services provided by credit unions may offer substantial advantages over those of standard commercial institutions.

(5) Seek Advice. Be wary of the "high-pressure" salesman. Think carefully and seek advice before signing an agreement or contract. Never sign a blank contract and always determine the total payment in installment sales. Note particularly the penalty clauses.

(6) Bankruptcy. Bankruptcy is not an easy way out of indebtedness. The circumstances prompting bankruptcy proceedings may reflect adversely on the military character of the bankruptcy petitioner. If it appears that the offense of dishonorable failure to pay just debts has occurred prior to discharge of indebtedness through bankruptcy proceedings, the subsequent discharge in bankruptcy will not preclude action under reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended) even though the debts themselves may have been discharged by the bankruptcy action.

2.D.3. Action upon Receipt of Complaint of Indebtedness

2.D.3.a. Initial Complaint

Commanding officers receiving an initial complaint of indebtedness shall inquire into the complaint and take prompt action to resolve the controversy. Such action should support reference (j), United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), regarding the maintenance of discipline. Command action must also support the law which provides for the garnishment of a member’s pay as described in Article 2.D.1.a. of this Manual. All actions should be accomplished within 30 days of receipt of a complaint.

2.D.3.b. Retention of Receipts

The commanding officer should urge the individual to make payments on debts by U. S. postal money order, check, or by any other method providing an actual record of payment. The commanding officer should recommend that the member retain receipts in connection with all

business transactions. The member concerned should then be directed to correspond in a courteous manner to inform the claimant of his or her intentions in the matter.

2.D.3.c. Response to Correspondence

The commanding officer shall acknowledge all correspondence from persons claiming indebtedness by responding promptly and courteously to the complaint. Each reply should be couched in temperate language and reflect concern for resolution of the dispute. The reply should include a statement that the matter has been brought to the member's attention and that the member has been advised to communicate with the claimant. A sample letter is provided below:

Name
Address
City, State, Zip

Dear:

This is in response to your letter of <Date> concerning the alleged failure of <Name of Member> to pay the debt owed to you.

The Coast Guard expects its members to honor all just debts and comply fully with the orders of any court of competent jurisdiction not under appeal. Upon receipt of your letter, we referred the matter to <Name of member> and advised <him/her> to communicate with you concerning this indebtedness.

If you and <Name of member> are unable to resolve this issue in a mutually agreeable manner, you must comply with the procedures of the Soldiers' and Sailors' Civil Relief Act and the provisions of Title 32, Code of Federal Regulations, Parts 112 and 113, to obtain a final judgment and court order in a court of competent jurisdiction.

2.D.3.d. Waiver of Military Obligation

When authorizing a temporary waiver of the military obligation to liquidate debts, the commanding officer may periodically require a statement from the member that the effort to obtain relief remains active and an approximate date when a court hearing may be held. When a waiver is granted, additional complaints regarding the matter should be responded to by briefly informing the claimant of the following:

(1) The member has been granted a reasonable period in which to seek relief through the courts,

(2) The name of the member's attorney, and

(3) Questions on the merits of the case should be addressed to the member's attorney.

2.D.4. Repeated Indebtedness or Failure to Obey Court Orders

2.D.4.a. Administrative Responsibilities

When a unit receives a complaint of indebtedness, the commanding officer shall counsel the individual concerned. For units below the group level, all responses, Administrative Remarks, Form CG-3307, entries, and correspondence will be prepared by the group staff and copies provided to the unit CO or OIC. Unit COs or OICs will counsel the member and provide the details to the group point of contact, but the group is responsible for complying with the provisions of this Article. The unit CO or OIC may submit documentation in any informal method such as memorandum, rapidraft letter, or e-mail.

2.D.4.b. Financial Statements

When the commanding officer is convinced that a member is negligent or careless in regard to personal finances, the individual may be advised to submit a statement of monthly finances and outstanding obligations. Such a request should not be placed in the form of an order and failure to comply with the advice should not be the occasion for disciplinary action. In no event is this submission to be made mandatory.

2.D.4.c. Officers

When the commanding officer is convinced that an officer is negligent or careless in regard to their personal finances, an appropriate entry shall be made on the Officer Evaluation Report (OER) and other corrective action taken, if warranted.

2.D.4.d. Enlisted Personnel

Repeated complaints of indebtedness concerning an enlisted person, with no indication of satisfactory progress toward establishing an acceptable financial status, may be considered as evidence of unreliability. Commanding officers shall submit an Administrative Remarks, Form CG-3307, entry that the member is "Unreliable due to failure to pay debts." The entry shall also include a description of the circumstances surrounding the entry such as the dates, debts, and actions taken. Such an entry may be made for each succeeding marking period until the situation improves. Each time this entry is made, it will be considered when completing the member's next performance evaluation, particularly in the commanding officer’s advancement recommendation.

2.D.4.e. Transfers

If a member is transferred prior to satisfactory resolution of the problem, all current correspondence shall be forwarded to the member's new commanding officer.

2.D.4.f. Separation

Unsatisfactory progress toward resolution of financial difficulty should be considered as evidence of an unacceptable standard of conduct which warrants consideration for separation from the Coast Guard or for a recommendation against reenlistment. Articles 1.A.14, 1.B.15, or

1.B.17 (as appropriate) of reference (k), Military Separations, COMDTINST M1000.4 (series).

2.D.4.g. Security Clearances

Excessive indebtedness and unreliability are circumstances which may impinge on an individual's eligibility for a security clearance. Accordingly, when an individual who has or needs a security clearance in order to carry out assigned duties is considered under this Article, the member should also be evaluated in light of personnel security criteria. (See Personnel Security and Suitability Program, COMDTINST M5520.12 (series).)

2.D.5. Remission or Waiver of Indebtedness to the United States

2.D.5.a. Remissions

Only active duty enlisted personnel may request remissions of indebtedness. Collection of the outstanding debt may be suspended pending final decision on the remission. Debts collected prior to the commanding officer's endorsement on the remission request may not be refunded. Financial hardship may be considered in remitting a debt.

2.D.5.b. Waivers

All members and former members may apply for waivers of indebtedness. Collection of the debt continues while the application is being processed; however, money already collected may be refunded if the waiver is approved.

2.D.5.c. Applications

The policies for waiver or remission of indebtedness to the United States are contained in reference (d), Coast Guard Pay Manual, COMDTINST M7220.29 (series). Applications and procedures to be followed when submitting a waiver or remission are contained in reference (i), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series).

2.E. Support of Dependents

2.E.1. General

2.E.1.a. Policy

The Coast Guard will not be a haven or refuge for personnel who disregard or evade their obligations to their families. All members of the Coast Guard are expected to conduct their personal affairs honorably and lawfully. This obligation specifically includes the responsibility to provide adequate and continuous support for lawful dependents, and to comply with the terms of support clauses which may be contained in separation agreements and divorce decrees. When a member, despite counseling conducted in accordance with the requirements of Article 2.E.4. of this Manual, develops a pattern of conduct which demonstrates a dishonorable failure to contribute adequate support to dependents or failure to comply with the orders, decrees, or judgments of a civil court concerning support of dependents, such failure may lead to the member's separation for misconduct. When such failure is sufficiently notorious as to bring discredit upon the Coast Guard, none or inadequate support may as well become a proper subject for command consideration of court-martial proceedings or other disciplinary action. In addition, failure to provide adequate support to dependents may have implications with regard to a member's entitlement to basic allowance for housing, as discussed in Article 2.E.1.b. of this Manual. It should be noted that while the Coast Guard lacks the authority under federal law to compel members to support their dependents or to exercise discretion over a member's pay with the exception of garnishment orders, the obligation to support dependents is nonetheless considered binding on all members under penalty of administrative or disciplinary action, or both. (See Article 2.E.2.d. of this Manual.) Garnishment is action taken against a member's pay for money past due and does not substitute for nor relieve members of their obligation for support of their dependents.

2.E.1.b. Entitlement to Basic Allowance for Housing (BAH)

(1) Entitlement. Entitlement of members to BAH in behalf of dependents is provided by law, and in some instances is contingent upon the actual provision of more than 50 percent of the dependent's support. No member should be denied the right to submit a claim or application for BAH, nor should any command refuse or fail to forward any such claim or application. In cases involving a member's parents, the member should furnish an estimate of the dependency situation to the best of his or her knowledge. Commanding officers should not contact parents for dependency information to include in the member's application. This delays the application and serves no purpose as such cases are thoroughly investigated by the Pay and Personnel Center. Commander, Pay and Personnel Center, obtains dependency affidavits from the parents. Any person, including a service member or dependent, who obtains an allowance or allotment by fraudulent means is subject to criminal prosecution.

(2) Use of BAH. In the normal family situation, BAH will subsidize the member's ability to maintain a household. In cases of separation of husband and wife, the BAH should be employed to help provide support of the legal dependent(s) of the member until and unless legal or administrative relief from the obligation is granted. If the member's entitlement to BAH is contingent on actual dependency, as when based on the provision of support to parents or children, failure to provide adequate support will be grounds to reassess, and

possibly to terminate, that entitlement. In such cases, the pertinent facts shall be forwarded to Commander, Pay and Personnel Center via the chain of command for determination.

2.E.1.c. Support of a Lawful Spouse

Members of the Coast Guard have a military obligation to support their spouse unless they demonstrate that there is no civil obligation to provide support to their lawful spouse.

2.E.1.d. Adopted Children

The natural parents of an adopted child are relieved of the obligation to support the child, as such duty is normally imposed on the adoptive parents. A Coast Guard member who contemplates the adoption of a child should be aware of the legal obligation to provide continuous support for a minor child.

2.E.1.e. Command Responsibility

It is the responsibility of every commanding officer to ensure that all personnel under his or her command are informed of Coast Guard policy and expectation regarding support of dependents and the possible consequences of separation for misconduct for failure to discharge their just obligations. All personnel at sea or stationed overseas shall be counseled and encouraged to make provisions for continuous allotments to their dependents in amounts sufficient to enable them to meet the family obligations at home.

2.E.2 Support Requirement Pursuant to Court Order

2.E.2.a. Support of Spouse or Former Spouse

(1) Legal Separation. With respect to spousal support, a member who has been granted a legal separation by a court order remains obligated for support of his or her dependent spouse as provided for in Articles 2.E.1.c. and 2.E.3.c. of this Manual unless the court order either sets the spousal support obligation at some other level or specifically negates that obligation, or prevailing civil law makes termination of civil obligation for that spousal support an implicit element of a court order of legal separation. This question may be resolved by reference to the court which handed down the order.

(2) Divorce. If a divorce decree specifies an amount to be provided for a former spouse, the alimony so specified constitutes the member's financial obligation to that former spouse. If a divorce decree is silent with respect to any financial obligation to the former spouse, the Coast Guard will consider that the member has no obligation to provide further spousal support.

(3) Dependency Status of a Former Spouse. The entitlement of members to BAH on behalf of dependents is defined by law. Similarly, federal law defines the entitlement of dependents to military benefits and privileges. Information concerning eligibility requirements is contained in Chapter 2 of Military Civil and Dependent Affairs, COMDTINST M1700.1 (series). A member is not entitled to payment of BAH at the with-dependents rate on behalf of a former spouse notwithstanding the fact that the divorce decree orders payment of alimony.

However, court ordered alimony is a binding legal obligation. Members are expected to comply with the terms of court orders or divorce decrees which adjudge payments of alimony even though BAH may not be payable. Failure to do so constitutes grounds for disciplinary or administrative action as provided for in Article 2.E.4. of this Manual. Garnishment of pay and allowances is discussed in Article 2.E.2.d. of this Manual.

2.E.2.b. Support of Children

(1) Legal Separation. Cases of legal separation are those in which separation of a member from his or her spouse has been recognized in the order of a civil court (usually in contemplation of divorce proceedings). Court orders of legal separation normally define the continuing child support obligations of the separated parents quite precisely. Provision on a timely basis of the amount of support required by a separation order will satisfy a member's military obligation to support the dependents affected. However, unless a separation order specifies an amount of child support to be provided, or specifically negates such an obligation, a member remains obligated to provide support for minor children of the marriage at the level prescribed in Article 2.E.3. of this Manual.

(2) Divorce. A final decree of divorce in most cases will establish the member's subsequent legal obligation concerning support of minor dependent children of the dissolved marriage. One of the following situations usually will be found to prevail:

(a) If the decree specifies a certain level of support to be provided for minor dependent children, the amount so specified represents the minimum support obligation of the member.

(b) If the language of the decree refers in any way to the existence of minor dependent children of the marriage, but remains silent as to any obligation of the member to provide support for such children, the member will be considered to have no military obligation to provide child support, provided, of course, that the member is not awarded custody of such children. A case in point would be one where the only language in the decree referring to children of the marriage awards the member's spouse custody. If the member is awarded custody of such minor dependent children, the obligation for their support and welfare continues undiminished from that existing prior to the divorce decree, regardless of any support obligation which may be assessed against the spouse.

(c) In the rare case where a final divorce decree makes no reference whatsoever to existent minor dependent children of the dissolved marriage, it is possible that the court may not have been cognizant of their existence, or may not have had jurisdiction over the child or children. In such cases, the member is obligated to continue provision of child support at a minimum level equivalent to that prescribed in Article 2.E.3.c. of this Manual.

(3) Special Circumstances. A commanding officer has discretion to withhold action against a member for failure to support a child under the following conditions:

(a) When the member cannot ascertain the whereabouts and welfare of the child; or

(b) When it is apparent that the person requesting support for a child does not have physical

custody of the child.

2.E.2.c. Temporary Waiver of Requirement to Support Dependents

A court order or divorce decree requiring the payment of a stipulated amount of child or spousal support or alimony will normally be presumed to be binding upon the individual concerned. However, if a member, acting on good faith and on the express advice of qualified legal counsel, disputes such a claim, the commanding officer may withhold disciplinary or administrative action against the member for a reasonable length of time to provide an opportunity to resolve the matter. "Good faith" in such cases means that the member's failure or partial failure to comply with the judgment or court order is of itself an element of a conscious, positive plan of action, as recommended by the member's attorney, the intent of which action is to seek a court hearing for relief or final resolution of a long-standing dispute. Mere conferral with an attorney, not followed by positive action on the member's part, is not sufficient to invoke this provision. In requesting consideration under this subparagraph, it falls to the member concerned to present substantive, documentary evidence which attests to a good faith course of action as described above. Should the commanding officer not consider that the member has provided convincing evidence justifying a waiver of compliance, or should the member's efforts to obtain legal relief from the court order prove unsuccessful or be terminated prior to resolution, full compliance with the court order will be required. In determining the period to be allotted for such deferrals, the commanding officer may periodically require a statement from the member or his or her attorney stipulating that the effort for obtaining relief remains active, and indicating an approximate date upon which a court hearing may be forthcoming. In such cases, additional complaints regarding the matter should be responded to by briefly informing the complainant that the member has been granted a reasonable period in which to seek relief through the courts, that the complainant will be advised further upon conclusion of that effort, and that questions on the merits of the case may be addressed to the member's attorney.

2.E.2.d. Garnishment of Pay

(1) Coast Guard Obligation to Comply with Civil Order. Under the provisions of the Social Services Amendments of 1974 (Public Law 93-647, 42 U.S.C. § 659) the Coast Guard is obliged to comply with the terms of a legally sufficient state or federal court order directing the garnishment of a member's federal pay for the purpose of child support or alimony, without regard for the merits of the case. A member who believes himself or herself entitled to relief from such an order must seek that relief through the civil court system. In this regard, members have available in most locations the advice and counsel of a legal assistance officer. In some cases, the circumstances may be found to justify the assistance of Coast Guard Mutual Assistance or other humanitarian consideration. Nothing contained in this Article, however, should be construed to imply that the Coast Guard has the authority to withhold action in complying with the terms of a legally sufficient garnishment order.

(2) Action Upon Receipt of Court Order. If a local command or person in authority therein receives any legal document or court order referring to or purporting to be a garnishment order, such document or order should be forwarded immediately to such legal reviewing authority and by such means as are provided for in current directives. Coast Guard officers, commanding officers, and officers in charge in receiving such orders should not take any steps to implement such order prior to its referral to the designated legal reviewing officer. If

upon legal review, the order is determined to be legally sufficient, the order will be transmitted via the chain of command to the member's commanding officer and to the authorized certifying officer having custody of the member's pay record for execution. The commanding officer upon such receipt shall immediately counsel the member. At a minimum, the member should be advised of the existence and terms of the order (including amounts ordered garnished, payees, duration of garnishment, etc.), of the availability in most locations of the advice and counsel of legal assistance officer, and that, until determined to the contrary by subsequent civil court order, the Coast Guard is obliged to consider the garnishment order valid and to effect immediately the required withholding of pay. The authorized certifying officer having custody of the member's pay record will upon receipt of the garnishment order commence withholding the stipulated amount of pay for transmittal to the designated payee.

(3) Garnishment Action. Garnishment action taken by the Coast Guard is not considered a substitute for support ordered by a court to be paid by the member. A garnishment order may be the result of a member failing to meet his or her legal obligations to provide dependent support. It may also be the result of a decision by the court to raise the amount of support a member is required to provide. Even though a portion of a member's pay may be disbursed to dependents as a result of garnishment, the member is not relieved of the obligation to comply with existent orders, decrees, or judgments of a civil court concerning support of dependents. Valid court orders must be complied with in all cases.

2.E.2.e. Advice Regarding Support Provisions for Children When Divorce is Contemplated

Members who have minor children and contemplate divorce should be informed of the advisability of having support provisions incorporated in the court order or divorce decree to preclude later disputes. Courts and attorneys are occasionally misled into placing provisions in separation agreements and divorce decrees to the effect that the member will pay whatever amount the Armed Forces pay or require to be paid for support of the child or children. Ambiguous phrases such as "whatever allowance is paid by the Coast Guard" or "whatever the Armed Services require to be provided" should be avoided. No attempt will be made to break down the housing allowance as to how much should be designated for a spouse, child, or other dependent. Such ambiguous orders of support or agreements will be considered the same as if they were silent with respect to the amount of support to be provided. The interests of all concerned will be better served if the amount of support to be provided is settled in fixed terms by agreement or court order at the time of separation.

2.E.3. Support Requirement in the Absence of a Court Order

2.E.3.a. Applicability

The provisions of this Article are applicable in disputed cases:

(1) when a member is separated from his or her spouse, yet remains legally married and is not subject to a court order either negating a support obligation or directing a payment of a fixed level of support, or

(2) in the rare case when a member is legally divorced, but the final decree of divorce makes no

mention whatsoever of existent children of the marriage. In cases of legal separation, when a court having jurisdiction has ordered a specified level of support, the level so specified will constitute the member's obligation. (See Article 2.E.2. of this Manual.)

Note: Within the meaning of this Article, members are considered as still legally married when a valid marriage has not been dissolved by a final decree of divorce, notwithstanding the fact that the member may no longer reside with his or her spouse and/or children. Similarly, the instructions contained herein apply also to members who stand legally separated from their spouses pursuant to a valid court order providing such court order is silent with respect to any support obligation in behalf of the member's spouse and/or children.

2.E.3.b. Basic Considerations

Every person has an inherent natural and moral obligation to support his or her dependents. What constitutes adequate or reasonably sufficient support is a highly complex and individual matter dependent on numerous factors which ultimately can be resolved only in the civil courts. Salient factors which must be taken into account concerning both service members and their dependents, however, include such matters as the following: total income from all sources, the cost of necessities and everyday living expenses, and other binding financial obligations, including those of the dependents. The Coast Guard does not and cannot act as a court in these matters. Whenever possible, it is desirable that the amount of support to be provided for dependents be established either by mutual understanding between the parties concerned or by adjudication in the civil courts.

2.E.3.c. Support Scale

(1) General. In disputed cases and in the absence of specific support provisions contained in a court order, commanding officers will resort to the support scale set forth below. The levels of support required by the scale are not intended to imply that the Coast Guard favors either side in a dispute, or that the Service takes any position on the merits of a dispute. Nor is any determination made pursuant to this support scale intended to serve as a substitute for proper adjudication of a particular case or as a permanent determination. Rather, the commanding officer's determination is intended only to provide for a reasonably equitable level of support for a member's dependents until such time as a final level of support time is established by mutual agreement of the parties or by court order. The mandatory and universal interim obligation contained in the following support scale is also intended to encourage members or their spouses in such cases to pursue final settlement in the civil courts. Unless otherwise specified by court order, married officer and enlisted personnel will, as a minimum, be considered obligated to provide support for their lawful dependents on a monthly basis as follows:

Situation	Level of Support
Spouse only	BAH difference plus 20 percent of basic pay
Spouse and one minor or handicapped child	BAH difference plus 25 percent of basic pay

Spouse and two or more minor or handicapped children	BAH difference plus 30 percent of basic pay
One minor or handicapped child	16.7 percent (1/6) of basic pay
Two minor or handicapped children	25 percent (1/4) of basic pay
Three or more minor or handicapped children	33 percent (1/3) of basic pay

Note: For this scale, BAH difference is defined as the difference between the BAH with dependents rate and the BAH without dependents rate as calculated for the member.

(2) Minimum Level of Support Expected. This support scale constitutes the minimum level of support expected of all members without regard to other financial obligations or other factors favorable to the spouse's financial situation. This minimum level of support is intended to serve as an equitable guide in cases where the member no longer resides with his or her spouse and children, even if the separation represents unilateral action on the part of the member's spouse. The provisions of this paragraph do not apply to an ordinary compatible marriage where the member lives with and supports his or her dependents. In such cases, the rendering of a definitive monthly payment to a spouse or other dependent is optional, although such an arrangement may well be helpful in cases where the family is subject to involuntary separation because of duty assignment. For disputed cases, however, the minimum obligation provided in this Article is binding on a member until such time as a court having jurisdiction may otherwise order. See Article 2.E.2. of this Manual for guidance concerning obligations under court order of legal separation and final decrees of divorce. A member may not escape the obligation to provide the minimum level of support prescribed here by terminating his or her BAH. The obligation for support at an equivalent level continues whether or not the member elects to claim the entitlement. It is emphasized that this support scale represents only a minimum obligation amount governed in general terms by pay grade (ability to pay) and number of dependents. In many instances a member may, out of moral responsibility or mutual agreement, provide support in excess of these limits.

2.E.3.d. Separation, Desertion, and/or Misconduct of Spouse

As noted above, the duty of a member to support his or her minor children is not diminished by informal separation of the parents, whether by mutual agreement to separate or by unilateral action on the part of one of the parents. Similarly, the member's obligation to provide such support is not diminished by virtue of the fact that his or her spouse may have retained custody of the children. Nor is the obligation of a member to support his or her minor children in any way diminished by virtue of desertion or misconduct on the part of the spouse. The member remains obligated in each of the above cases to provide, as a minimum, that level of child support specified in Article 2.E.3.c. of this Manual.

2.E.3.e. Special Circumstances

A commanding officer has discretion to withhold action against a member for failure to support a child under the following conditions:

(1) When the member cannot ascertain the whereabouts and welfare of the child; or

(2) When it is apparent that the person requesting support for a child does not have physical custody of the child.

2.E.4. Action upon Receipt of Complaints of Nonsupport and Insufficient Support of Dependents

2.E.4.a. Enlisted Personnel

Upon receipt of a complaint alleging that an enlisted person is not adequately supporting his or her lawful dependents (spouse and/or children), the member will be counseled and informed of the Coast Guard's policy concerning support of dependents. If there is a court order or divorce decree still existing in the case, the member will be expected to comply with its terms except as noted in Article 2.E.4.a.(3) of this Manual. In the absence of a determination by a civil court or a mutual agreement of the parties, the provisions of Article 2.E.3. of this Manual will apply. Members who are the subject of complaints about non or inadequate support of dependents will be advised of their legal rights in the matter, including the availability of legal assistance in most locations under the provisions of reference (m), Legal Assistance Program, COMDTINST 5801.4 (series). Such members should be counseled further that while the Coast Guard cannot directly compel payment of support to their dependents nor exercise discretion over their federal pay for that purpose except in cases of garnishment, their Coast Guard career may be in jeopardy if the failure to provide adequate support continues. (See Article 2.E.2.d. of this Manual.) Specifically, continued noncompliance with the obligation to provide adequate support to dependents, or failure to comply with court orders or decrees concerning support of dependents, may constitute grounds to withhold recommendation for reenlistment or extension of enlistment, or render the member subject to administrative or disciplinary action possibly leading to involuntary separation from the Coast Guard. Further, the member should be reminded that the entitlement to claim a dependent as an exemption for federal income tax purposes is contingent upon actual provision of 50 percent or more of that dependent's support during any tax year. The member should be encouraged to communicate with the complainant either directly or through an attorney in an effort to resolve the matter expeditiously. The counseling required by this Article should be undertaken promptly (within five working days of receipt of the complaint as a general guideline), and should be oriented toward helping the member to effect a permanent, equitable resolution of this problem. The member will be required to acknowledge in writing the following Performance and Discipline Entry Type on Administrative Remarks, Form CG-3307, entry in his or her Personnel Data Record (PDR):

> "Counseled concerning civil and moral obligations to provide continuous and adequate support of lawful dependents."

(1) Waiver of Support of Spouse. The Commandant may grant exemption from the military requirement to support a spouse, but not children, on the basis of evidence of desertion without cause, infidelity on the part of the spouse, or in some cases of spousal abuse inflicted on the member. Such an exemption does not affect any continuing civil obligation for spousal support which a member may have. Evidence of desertion or infidelity may consist of:

(a) An affidavit of the service member, relative, disinterested person, public official, or law enforcement officer. However, affidavits of the service member and relatives must be supported by other corroborative evidence. All affidavits must be based upon the personal knowledge of the facts. Statements of hearsay, opinion, and conclusion are not acceptable as evidence.

(b) Written admissions by the spouse contained in letters to the service member or other persons. The request for waiver of support of a spouse should be submitted to Commandant (CG-122) with a complete statement of the facts and substantiating evidence and comments or recommendation of the commanding officer.

(c) Waiver requests submitted on the grounds of abuse must be corroborated by evidence which may include the following types of documents: medical reports, police reports, affidavits of witnesses, chaplains, counselors or social workers, and Family Program Administrators.

(2) Waiver of Support of Children. A temporary waiver of the military requirement to support a child or children may be appropriate in certain limited circumstances. (See Articles 2.E.2.b.3 and 2.E.3.e. of this Manual.)

(3) Temporary Waiver of Compliance With Court Order. If a member, in failing to comply fully with the terms of a court order or divorce decree, is acting in good faith and upon the advice of qualified legal counsel in an effort to arrive at a permanent resolution of a disputed court decision, he or she may be entitled to a temporary waiver of the Coast Guard's requirement for the member to comply with such an order. (See Article 2.E.2.c. of this Manual.)

(4) Repeated or Unresolved Complaints of Nonsupport or Inadequate Support.

(a) A justifiable and unresolved complaint that an enlisted member is failing to support his or her dependents adequately may, in an aggravated case, be considered as evidence of unreliability. If the complaint remains unresolved after 30 days have elapsed since the member was counseled concerning the legal and moral obligations to provide support as required by sub-paragraph a. of this Article, the member will be counseled again concerning these obligations and required to acknowledge in writing the following Performance and Discipline Entry Type on Administrative Remarks, Form CG-3307, entry in the member's PDR:

> "Counseled, again, concerning civil and moral obligations to provide continuous and adequate support to lawful dependents."

(b) If, after not fewer than six months since the member was notified that the command has received complaint(s) alleging nonsupport or inadequate support, it is the commanding officer's judgment that the member has failed to demonstrate an acceptable degree of effort towards resolving the complaint, the commanding officer may enter the following Performance and Discipline Entry Type on Administrative Remarks, Form CG-3307, entry in the member's PDR:

> "Unreliable due to unsatisfactory conduct of personal affairs and support of

dependents."

(c) These entries will be considered when completing the member's next evaluation. The member shall be required to acknowledge these actions by signing the Administrative Remarks, Form CG-3307, entry. The entry in Article 2.E.4.a.(4)(b) above may be made after each succeeding 90-day period, during which, in the opinion of the commanding officer, the member continues to demonstrate inadequate effort towards resolving the complaint. Continued unsatisfactory effort on the part of the member to resolve the complaint may be considered to be unacceptable conduct warranting either consideration for separation or a recommendation against the member's reenlistment. Upon making the second consecutive Administrative Remarks, Form CG-3307, entry that the member is deemed unreliable, the commanding officer shall report the circumstances to Commander (CG PSC-EPM) and make a recommendation. If the recommendation is for administrative separation or to deny reenlistment, the applicable provisions of reference (k), Military Separations, COMDTINST M1000.4 (series), apply.

2.E.4.b. Commissioned Officers and Chief Warrant Officers

(1) Action of Commanding Officer:

(a) Upon receipt of a written complaint alleging that an officer of his or her command is not adequately supporting his or her legal dependents, the commanding officer will interview the officer for the purpose of emphasizing Coast Guard policy concerning support of dependents. The commanding officer will require submission of a written statement of the officer's position and intentions in the matter within the premises contained in Article 2.E.4.b.(2) of this below.

(b) When the complaint is received directly from the dependent concerned or the legal representative thereof, the commanding officer will obtain the officer's written statement. The commanding officer shall then promptly advise Commandant (CG-122) and provide a brief summary of the officer's contentions and intentions as contained in the officer's written statement.

(c) When a complaint is received via the Commandant, the commanding officer will obtain the officer's written statement and forward that statement, together with a summary of action taken or contemplated, to Commandant (CG-122). The commanding officer shall include in his or her endorsement such comments as deemed appropriate. This statement should normally be submitted to Commandant (CG-122) within 20 working days of receipt of the complaint.

(d) The provisions for waiver of spousal or child support and waiver of compliance with court orders, as set forth in Article 2.E.4.a. of this Manual are equally applicable to officer personnel.

(e) If, in the opinion of the commanding officer, it appears that the officer concerned has repeatedly and unjustifiably disregarded the provisions of a valid court order, the terms of a current mutual agreement, or the provisions of this section in a way that brings discredit upon the Coast Guard, the commanding officer should consider one or more of the

following as the appropriate disposition according to the merits of the individual case:

[1] Appropriate notation in the officer's next regular Officer Evaluation Report.

[2] Commanding officer's nonjudicial punishment.

[3] Recommendation for trial by court-martial.

Note: The mere fact that an officer is involved in a matter concerning the nonsupport of legal dependents should not, in itself, be the sole factor for considering the above action. However, when an officer's conduct in such a case does, in fact, become sufficiently negligent to bring discredit upon the Coast Guard, that officer's commanding officer is justified in invoking the provisions of this subparagraph, inasmuch as an officer must be morally, professionally, and physically qualified for retention in his or her present grade as well as for promotion to the next higher grade. As a general guideline, the above-listed action should be considered when six months have passed since receipt of the original complaint with no indication of satisfactory progress toward establishing an acceptable solution.

(2) Action of Officer Concerned.

(a) Upon receipt of correspondence alleging his or her failure to contribute adequately to the support of legal dependents (spouse and/or children) and on the request of the commanding officer, the officer concerned will submit a statement setting forth the following:

[1] Amount and method of contributions to legal dependents during a 12-month period preceding receipt of complaint.

[2] Amount being contributed monthly as of date of receipt of complaint.

[3] Amount to be contributed monthly in the future and the method by which payments will be made.

[4] If amounts 1, 2, and 3 above are less than that required by Article 2.E.3.c. of this Manual or the pertinent court order, the reasons therefore.

[5] Any further information pertinent to the matter which the officer desires to call to the attention of the Commandant.

(b) If practicable, a certified true copy of any pertinent court order or voluntary mutual agreement should be appended to the statement.

(c) In the absence of a determination by a civil court or a mutual agreement of the parties, the support scale in Article 2.E.3.c. of this Manual will apply.

2.E.4.c. Security Considerations

Irresponsibility or unreliability, as evidenced by consistent failure to provide for one's legal dependents, may have implications with regard to an individual's eligibility for a security clearance. Accordingly, when an individual who has or needs a security clearance in order to carry out assigned duties is considered under this Article, he or she should also be evaluated in light of personnel security criteria.

2.E.5. Determination of Paternity and Support of Illegitimate Children

2.E.5.a. General

With respect to determinations of paternity and support of illegitimate children, no complaint requires greater exercise of judgment and tact than the charge that an officer or enlisted member serving under one's command is the father of a child born out of wedlock. While the officer or enlisted man should not be left with the impression that either civil law or reference (j), United States Coast Guard Regulations 1992, COMDTINST M5000.3 (series), require that he marry the mother of the child, if the serviceman desires marriage, leave for this purpose is recommended whenever consistent with the needs of the Service. When the blood parents of an illegitimate child marry, the child is considered to be legitimized by the marriage and therefore eligible for the same allowances and benefits as any other legitimate child of a member. If the member does not marry the child's mother but nonetheless elects to provide support for the child, he may in certain circumstances, be qualified for BAH-Diff on behalf of that child. Whenever such an entitlement is claimed or appears justified, the pertinent facts will be forwarded to the Human Resources Service and Information Center (LGL) for determination via the chain of command.

2.E.5.b. Foreign Complaints

Complaints from various sources in foreign countries regarding alleged paternity, marriage, or related matters involving Coast Guard personnel during their service at a foreign station can be detrimental to the prestige of the United States Coast Guard and adversely affect international relationships if not promptly resolved. It is expected that commanding officers will address such complaints as expeditiously as possible. Commanding officers should feel free to seek the advice of local United States consular officials. If, in the judgment of the commanding officer, the situation cannot be satisfactorily or permanently resolved before departure from the foreign area in question, a report setting forth all pertinent facts should be made to appropriate higher authority.

2.E.5.c. Judicial Order or Decree of Paternity or Support

Normally, any order or decree which specifies the obligation to provide support of illegitimate children will include within it a determination of paternity of such children; however, some jurisdictions provide for determinations of the legal obligation to support illegitimate children without a determination of paternity. Either type of order or decree falls within the scope of this paragraph. If a judicial order or decree of paternity or support is issued against a member of the Coast Guard on active duty by a United States or foreign court having jurisdiction over him, he will be informed of his moral and legal obligations as well as his legal rights in the matter. He will be advised that he is expected to provide financial assistance to the child regardless of any

doubts of paternity that he may have. If the court order or decree specifies an amount of support to be provided, the officer or enlisted member will be expected to comply with the terms of such decree or court order. If no amount is specified, support should be provided in accordance with such reasonable agreement as may be made with the mother or legal guardian of the child. If no such agreement can be reached, the amount of support provided should bear a reasonable relationship to the support scale contained in Article 2.E.3.c. of this Manual, with due regard for any other support obligations of the member. If a member refuses to comply with the terms of a valid court order, except as provided in Article 2.E.5.d. below, administrative action will be taken as indicated in Articles 2.E.4.a. above for enlisted members and 2.E.4.b. above for officers.

2.E.5.d. Temporary Waiver of Compliance with Court Order

A court order establishing paternity and/or the obligation to provide support for an illegitimate child will normally be presumed to be binding upon the individual concerned. However, if a member, acting in good faith and upon the advice of qualified legal counsel, disputes either the equity of the judgment against him, he may be entitled to a temporary waiver of the Coast Guard's requirement that members comply with such an order. Requests for such waivers will be submitted and considered in accordance with the procedures in Article 2.E.2.c. of this Manual for disputed support of dependents cases.

2.E.5.e. Garnishment of Pay in Paternity Cases

Coast Guard's obligation to comply with valid garnishment orders is set forth in Article 2.E.2.c. of this Manual.

2.E.5.f. No Judicial Determination

In the absence of an adjudication of paternity or of a legal obligation to furnish support by a court having jurisdiction, the officer or enlisted member shall be consulted privately, advised of the legal and moral obligation to support illegitimate children, as well as his rights in the matter, and asked whether he admits either paternity of, or the legal obligation to support, the child or expected child. If the answer is affirmative, he shall be informed that he is expected to furnish support as set forth in Article 2.E.5.c. of this Manual. When paternity or the obligation to support is admitted, members should be informed of their moral obligation to assist in the payment of prenatal expenses.

2.E.5.g. Replies to Paternity Complaints

Replies to individuals concerning paternity cases should be as kind and sympathetic as the circumstances permit. The following example may be appropriate in certain cases:

> "Dear Miss Smith:
>
> This is in response to your letter of February 25 in which you indicate that Seaman John J. Jones, U. S. Coast Guard, is the father of your minor child. Seaman Jones has been privately consulted about his attitude and intentions in this matter. He has denied paternity of your minor child. While sympathetic with you, I know of no further action that I can take. The Coast Guard has neither the authority nor the adjudicative facilities

to render a judgment in a case of this kind. If Seaman Jones is adjudged by a civil court having jurisdiction over him to be the father of your child, he will be expected to contribute toward support of the child and to comply with the terms of the judicial decree. If he then refused to take satisfactory action, he would be subject to administrative or disciplinary action which, while jeopardizing his Coast Guard career, would still not have the effect of providing support for your child."

2.E.5.h. Members Not on Active Duty

Allegations of paternity against members of the Coast Guard who are not on active duty will be forwarded to the individual concerned in a way that ensures the charges are delivered to the addressee only. The correspondence should be forwarded via the commander of the Coast Guard district in which the member resides.