

**SAMPLE NOTIFICATION OF PRETRIAL CONFINEMENT**

Subject: IMPOSITION OF PRETRIAL CONFINEMENT

Date: 25 May 2000  
5811

From: [AUTHORIZED OFFICIAL]

To: [MEMBER'S RATE, NAME, SERVICE]

Reply to  
Attn. of:

Ref: (a) Rules for Courts-Martial (R.C.M.) 304, 305, Manual for Courts-Martial  
(b) Article 13, UCMJ

1. Under the authority conferred upon be by reference (a) you are hereby ordered into pretrial confinement.
2. There is probable cause to believe that you committed the following offense(s) that may be tried at courts-martial: (DESCRIPTION OF THE OFFENSE(S) AND ARTICLE(S) OF THE UCMJ THE ACCUSED ALLEGEDLY VIOLATED)
3. Pretrial confinement is required by the following circumstances: (INDICATE THE FOLLOWING AS APPROPRIATE: THE NATURE AND CIRCUMSTANCES OF THE OFFENSE; WEIGHT, RELIABILITY OF EVIDENCE; ACCUSED'S CHARACTER; PAST RECORD OF CONDUCT; LIKELIHOOD OF FURTHER (SERIOUS) MISCONDUCT; LIKELIHOOD OF FLIGHT; TIES OF ACCUSED TO LOCALE; LESSER FORMS OF RESTRAINT CONSIDERED INADEQUATE)
4. Pretrial confinement will be served at (PLACE).
5. My decision to order you into pretrial confinement will be reviewed by an independent officer appointed by (PERSON APPOINTING IRO). This officer, called an Initial Review Officer (IRO), will consider all the information currently known, including a memorandum I will provide stating the reasons for the conclusion that pretrial confinement is necessary, and decide if there is probable cause to believe you committed these offenses and if your continued pretrial confinement is necessary.
6. You have the right to counsel. You may retain civilian counsel at no expense to the government or you may request the assignment of military counsel. Military counsel may be assigned for the limited purpose of representing you only during the pretrial confinement review.
7. You have the right to present information to the IRO. You also have the right to consult with counsel prior to the initial review and to make a statement.
8. You have the right to remain silent. Any statement you make may be used against you.

9. The IRO may extend the time for completion of the review to 10 days from the imposition of confinement. The IRO will prepare a written memorandum of the IRO's decision and you will receive a copy of that memorandum.

10. Reference (b) prohibits punishment prior to trial. Therefore, you should inform me if you are being required to perform duties with persons who have already been court-martialed and are being punished or if you are being subjected to conditions which amount to pretrial punishment.

11. Finally, should you be convicted and receive confinement as punishment at the court-martial, the period of pretrial confinement will be credited to your sentence.

12. If the IRO decides to leave you in pretrial confinement, you may request reconsideration of that decision based upon any significant information not previously considered. That request must be made in writing to the IRO.

5811  
25 May 2000

FIRST ENDORSEMENT on [NAME] memo 5811 dtd 25 May 2000

From: [MEMBER]

To: [COMMANDING OFFICER/OFFICER-IN-CHARGE]

Subj: IMPOSITION OF PRETRIAL CONFINEMENT

1. I have read and understand the above provisions. I [DO/DO NOT] desire assignment of military counsel.

2.

\_\_\_\_\_  
WITNESS' SIGNATURE

\_\_\_\_\_  
MEMBER'S SIGNATURE

**SAMPLE COMMANDING OFFICER'S 72-HOUR MEMORANDUM**

Subject: PRETRIAL CONFINEMENT OF [CONFINEE], USCG      Date: 27 May 2000  
1000

From: [COMMANDING OFFICER]

Reply to  
Attn. of:

To: Initial Review Officer

Ref: (a) Manual for Courts-Martial (1998 Ed.)  
(b) Military Justice Manual, COMDTINST M5810.1D  
(c) Personnel Manual, COMDTINST M1000.6A

1. This memorandum satisfies the requirements contained in reference (a) for a 48-hour probable cause determination by a neutral and detached officer as well as the requirement for a 72-hour review memorandum by the commanding officer.

2. In accordance with references (a), (b), and (c) I ordered pretrial confinement of [CONFINEE] on 25 May 2000. This confinement was ordered based upon probable cause after reviewing the matters discussed in subsection (h)(2)(B) R.C.M. 305 of reference (a). Confinement in this case should continue for the following reasons:

a. An offense triable by court-martial was committed. Specifically, violations of Article 120 – Rape, Article 125 – Sodomy, Article 128 – Assault and two specifications of Article 134 Indecent Assault.

b. [CONFINEE] committed the offense.

c. Confinement is necessary because it is foreseeable that the prisoner will not appear at trial, pretrial hearing, or investigation and the nature of these offenses indicate that he poses a serious threat to safety of women within this community.

d. Less severe forms of restraint are inadequate. No lesser restraint is sufficient to ensure that [CONFINEE] will not quit his unit or harm others.

3. [THE NATURE AND CIRCUMSTANCES OF THE OFFENSE; WEIGHT, RELIABILITY OF EVIDENCE; ACCUSED'S CHARACTER; PAST RECORD OF CONDUCT; FACTS THAT DEMONSTRATE LIKELIHOOD OF FURTHER (SERIOUS) MISCONDUCT AND LIKELIHOOD OF FLIGHT; TIES OF ACCUSED

**TO LOCALE; FACTS THAT DEMONSTRATE WHY LESSER FORMS OF RESTRAINT CONSIDERED INADEQUATE**

4. [CONFINEE] began pretrial confinement on 25 May 2000 at the [BRIG].
  
5. Because the charges pending against [CONFINEE] show a propensity for violence toward women, I consider him a serious threat to the safety of the community. Because the assaults were against shipmates, I consider lesser forms of pretrial restraint inadequate. In addition, in light of the likelihood of conviction on the rape and forcible sodomy charge, and the prospect of further confinement being ordered as a result, I consider [CONFINEE] a significant flight risk.

[COMMANDING OFFICER]

Copy: [SJA]  
[Brig]  
[Detailed Defense Counsel]

**INITIAL REVIEW PROCEDURE GUIDE****1. Introduction And Recitation Of Offense(s)**

**IRO:**I am (NAME OF INITIAL REVIEW OFFICER), an Initial Review Officer designated by the (NAME OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION). The purpose of this review is to determine whether you should continue in pretrial confinement.

I have been informed that you are suspected of committing the following offense(s): (INSERT OFFENSE(S)).

Prior to coming here today, I have reviewed the Commanding Officer's (LETTER TO YOU/MEMORANDUM IN SUPPORT OF CONFINEMENT) dated (DATE) and other documents and reports pertaining to your service and the suspected offense(s). In addition, I have discussed your case with (NAME OF COMMAND REPRESENTATIVE). (NAME OF COMMAND REPRESENTATIVE), from your unit, is present here and will act as the command representative.

**2. Advisement of Rights**

**IRO:** Under the law, you have the right:

- (a) To present information relative to the legality and appropriateness of your confinement;
- (b) To be provided military counsel;
- (c) To have civilian counsel obtained by you at no expense to the government;
- (d) To have an opportunity for you, or your counsel to present information and make a statement on your behalf;
- (e) To remain silent and make no statement;
- (f) To receive a copy of my decision; and
- (g) If confinement is continued, to petition for reconsideration based upon new circumstances which may arise after this initial review regarding the legality or appropriateness of the confinement.

**IRO:** Here is a form that explains your rights during the review. (PRESENT ACCUSED WITH RIGHTS FORM) Please read it and then sign at the bottom if you understand them fully. Do you have any questions concerning your rights?

**ACC:** (REPLY)

**IRO:** What have you decided about counsel?

**ACC:** (REPLY)

**IRO:** Please note that on the form I just gave you.

(IF THE ACCUSED WAIVES COUNSEL, CONDUCT A FURTHER INQUIRY TO ENSURE IT IS A KNOWING AND INTELLIGENT WAIVER)

### **3. Explanation of Procedure**

**IRO:** At this review, I am to determine:

(a) Whether there is probable cause to believe that you committed the offense(s) alleged, and

(b) Whether, under the circumstances, you should remain in pretrial confinement because you are a flight risk or a danger to engage in serious criminal misconduct and lesser forms of restraint are inadequate. This review is not governed by any rules of evidence. However, it is my duty to evaluate the reliability of the evidence presented.

### **4. Receipt of Additional Information From the Government**

**IRO:** You may present any information relative to the legality and the appropriateness of your confinement. I may also seek additional information. After the review is completed, I will prepare a written decision and will provide you with a copy. This decision will be final. However, you have the right to request a reconsideration if I do not order your release and new information arises that I did not consider here today. I will explain this right in greater detail, if it is necessary. You also have the right to contest the legality of your confinement at any subsequent court-martial proceeding. I am going to receive additional information from the Government at this time.

(THE IRO SHALL HEAR ANY WITNESSES WHO MAY BE ABLE TO GIVE INFORMATION WHICH IS NEEDED BEFORE A RULING CAN BE MADE. THIS MIGHT INCLUDE WITNESSES FROM THE ACCUSED'S UNIT AND ANY REQUESTED BY THE ACCUSED. OFTEN, LIVE WITNESSES ARE NOT NEEDED FOR THE PURPOSE OF ESTABLISHING THE LEGALITY OR PROPRIETY OF CONFINEMENT. HOWEVER, THEY MAY BE NEEDED IN RESPONSE TO THE EVIDENCE OFFERED BY THE ACCUSED. ONCE THE IRO HAS FINISHED RECEIVING SUCH ADDITIONAL INFORMATION, THE ACCUSED AND THE ACCUSED'S COUNSEL HAVE AN OPPORTUNITY TO PRESENT THEIR CASE.)

### **5. Re-advisement Of Rights and Receipt Of Information from Accused**

**IRO:** Do you at this time remember the warning with respect to your rights I gave you earlier and the form you signed?

**ACC:** (REPLY)

**IRO:** Do you recall that I advised you that you have the right to produce information in your own behalf, including your own statement, written or oral? Anything said or submitted by you may be used against you at a subsequent proceeding. You also have the right to say nothing, and as I explained earlier, your silence will not be held against you. Do you understand these rights?

**ACC:** (REPLY)

(IF THE ACCUSED APPEARS UNCERTAIN OR CONFUSED CONCERNING THE RIGHTS ADVISEMENT, THE IRO SHOULD REITERATE THEM. REMIND THE ACCUSED THAT ANYTHING SAID CAN BE USED AGAINST HIM OR HER. ALSO, NOTE THAT THE IRO MAY ASK THE ACCUSED QUESTIONS IF THE ACCUSED VOLUNTARILY TALKS. IF THE ACCUSED DECIDES TO STOP TALKING AT ANY TIME, HOWEVER, THE IRO CANNOT COMPEL FURTHER ANSWERS.)

**IRO:** Do you have any information which you would like presented to me relevant to whether your pretrial confinement should be ordered to continue?

**ACC:** (REPLY)

## **6. IRO Determination and Conclusion**

(AT THE CONCLUSION OF THE REVIEW, OR AT A REASONABLE TIME AFTER CONCLUSION, THE IRO DETERMINES WHETHER CONTINUED CONFINEMENT IS APPROPRIATE AND ADVISES THE DETAINEE. INSERT THE FOLLOWING IF THE CONFINEMENT IS ORDERED TO CONTINUE.)

**IRO:** Finally, if circumstances change, or additional information develops that you believe would cause this decision to continue pretrial confinement to be reconsidered, you may request reconsideration. You would need to advise me, in writing, of your request for a reconsideration to be made. I want you to inform me if you are being required to perform duties with persons who have already been court-martialed and are being punished, or if you are being subjected to conditions which amount to pretrial punishment. Article 13, UCMJ, prohibits punishment prior to trial. Also, should you receive confinement at a court-martial the period of pretrial confinement will be credited to your sentence.



PRETRIAL CONFINEMENT ACKNOWLEDGMENT OF RIGHTS

	)	(DATE)
IN THE MATTER OF	)	
	)	INITIAL REVIEW OFFICER
(NAME)	)	
(RATE/RANK)	)	ACKNOWLEDGEMENT OF
(SERVICE)	)	RIGHTS
_____	)	

1. Pursuant to Article 31 of the UCMJ, I have been warned by the Initial Review Officer that I am suspected of having committed the following offense(s):

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

2. I have been advised of my right to present evidence as to whether my pretrial confinement should be continued and that such evidence may consist of my oral or written statement, any documentary evidence that I wish to present, and the oral or written statements of other individuals.

3. I understand that I have the right to remain silent and that any statement I make may be used as evidence against me in a trial by court-martial.

4. I understand that, if requested, military counsel will be provided to me for the limited purpose of representing me only during the pretrial confinement initial review. I further understand that I do not have the right to have military counsel of my own selection at this hearing. I also understand that I may retain civilian counsel at no expense to the government. Should I desire to retain civilian counsel for the purpose of this review, I agree to continue (postpone) this review until such time as civilian counsel can be present, knowing that this delay can result in my being subjected to continued pretrial confinement.

5. I also understand I may waive my right to counsel. My decision with respect to counsel is:

\_\_\_\_\_ I waive my right to counsel.

\_\_\_\_\_ I request military counsel. I have been advised that \_\_\_\_\_ has been made available to serve as my military counsel for the purposes of this review and I desire that officer to be present.

\_\_\_\_\_ I will be represented by civilian counsel.

I have read and understand the foregoing rights.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Accused

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**INITIAL REVIEW OFFICER RECORD OF PROCEEDINGS**

IN THE MATTER OF )  
 ) INITIAL REVIEW OFFICER  
 ) RECORD OF PROCEEDINGS  
NAME )  
RATE/RANK )  
SERVICE )  
\_\_\_\_\_ )

Time and Date of Confinement:

Committing Officer:

	<b>Level of Court/ Military or Civilian</b>	<b>Date</b>	<b>Offense(s)</b>	<b>Punishments</b>
1				
2				
3				

	<b>Previous Masts</b>	<b>Date</b>	<b>Offense(s)</b>	<b>Punishments</b>
1				
2				
3				

Pending Charged Offense(s):

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Stated Basis for Confinement:

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Hearing:

Place:

Date:

Time Commenced:

Counsel, if any:

Detainee Advised of Rights (Form Attached):

Personal Data:

Age:

Time in Service:

Marital Status:

Children:

Family in Area:

Other Information:

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Other Facts Developed Relevant to Release Determination (From All Sources, Including Detainee, If Any):

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Probable Cause:

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Necessity of Assuring Presence for Trial:

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Endangerment to Life or Property/Obstruction of Justice:

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Time and Date Hearing  
Completed

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Initial Review Officer



**SAMPLE INITIAL REVIEW OFFICER'S DECISION**

IN THE MATTER OF )  
 ) INITIAL REVIEW OFFICER  
 ) DECISION ON  
 ) PRETRIAL CONFINEMENT  
 NAME )  
 RATE/RANK )  
 SERVICE )  
 \_\_\_\_\_ )

1. On [DATE], I reviewed the circumstances relevant to the confinement of [DETAINEE RATE/RANK, NAME, BRANCH OF SERVICE] from [DETAINEE'S UNIT]. I determined that pretrial confinement in this case (is) (is not) warranted.

2. The reasons for my decision are:

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

\_\_\_\_\_  
 Date

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

Copy: SJA  
 COMMITTING OFFICER  
 DETAINEE'S UNIT  
 DETAINEE  
 DETAINEE'S COUNSEL

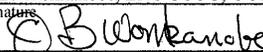


**SAMPLE CONFINEMENT ORDER  
(PRETRIAL)**

**CONFINEMENT ORDER**

Name (Last, First, M.I.) JACOBS, Michael L.	SSN 123 45 6789	Rate/Grade SN/E-3	Branch Service USCG
Ship or Organization USCGC TAMPA (WMEC 902)		Date 8 September 2000	

**STATUS**

Detained (Alleged violation of UCMJ Articles) V/UCMJ Article 86 UA 9 July - 8 Sept 00 (61 days)	Confined as result of <input type="checkbox"/> VACATED SUSPENSION <input type="checkbox"/> NJP <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM		
	Charges and Specification Convicted Of		
"I have been informed that I am being confined for the above alleged offense(s)"  8 SEP 2000      M L Jacobs Date                      Signature of Accused	Sentence Adjudged:		Date
	If Sentence Deferred, Date Deferment Terminated:		
Pre Trial Confinement Necessary -  <input checked="" type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED <input checked="" type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL	Remarks Section For Article 86 Offense Only <input checked="" type="checkbox"/> SURRENDERED (VOLUNTARY RETURN)  <input type="checkbox"/> APPREHENDED BY CIVIL/MILITARY AUTHORITIES		
	Confinement Directed At Hour                      Date 1630                      8 Sept 2000		Typed Name/Rank/Title O. B. Wonkanobe, ENS USCG, OOD Signature 

**MEDICAL CERTIFICATE**

The above named individual was examined by me at 1740 (Hour) on 8 Sept 2000 (Date) and found to be

FIT     UNFIT for Confinement. The following irregularities were noted during the examination; (if none, so state):

Typed Name/Rank/Title S. J. McCarthy, CAPT, USN(MC)	Signature 
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RECEIPT FOR PRISONER

The above named individual was received at \_\_\_\_\_ (Name of Correctional Center)

at \_\_\_\_\_ (Hour) on \_\_\_\_\_ (Date)

Typed Name/Rank/Title	Signature
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**BLANK CONFINEMENT ORDER**



**CONFINEMENT ORDER**

Name (Last, First, M.I.)	SSN	Rate/Grade	Branch Service
Ship or Organization		Date	

**STATUS**

Detained (Alleged violation of UCMJ Articles)	Confined as result of <input type="checkbox"/> VACATED SUSPENSION  <input type="checkbox"/> NJP <input type="checkbox"/> SCM <input type="checkbox"/> SPCM <input type="checkbox"/> GCM										
	Charges and Specification Convicted Of										
	Sentence Adjudged:	Date									
	If Sentence Deferred, Date Deferment Terminated:										
"I have been informed that I am being confined for the above alleged offense(s)"  <table style="width:100%; border: none;"> <tr> <td style="width:20%; border: none;">_____</td> <td style="border: none;">Date</td> <td style="width:60%; border: none;">_____</td> <td style="border: none;">Signature of Accused</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">Date</td> <td style="border: none;">_____</td> <td style="border: none;">Signature of Witness</td> </tr> </table>	_____	Date	_____	Signature of Accused	_____	Date	_____	Signature of Witness	SENTENCE APPROVED	APPROVED BY	DATE
	_____	Date	_____	Signature of Accused							
	_____	Date	_____	Signature of Witness							
		CA									
		SA									
	NCMR										
	USCMA										
	OTHER										

Pre Trial Confinement Necessary -  <input type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED  <input type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL	Remarks Section For Article 86 Offense Only <input type="checkbox"/> SURRENDERED (VOLUNTARY RETURN)  <input type="checkbox"/> APPREHENDED BY CIVIL/MILITARY AUTHORITIES						
Confinement Directed At	Typed Name/Rank/Title  Signature						
<table style="width:100%; border: none;"> <tr> <td style="width:20%; border: none;">Hour</td> <td style="border: none;">Date</td> </tr> <tr> <td style="border: none;">_____</td> <td style="border: none;">_____</td> </tr> </table>				Hour	Date	_____	_____
Hour	Date						
_____	_____						

**MEDICAL CERTIFICATE**

The above named individual was examined by me at \_\_\_\_\_ on \_\_\_\_\_ and found to be  
 (Hour) (Date)

FIT     UNFIT for Confinement. The following irregularities were noted during the examination; (if none, so state):

Typed Name/Rank/Title	Signature
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**RECEIPT FOR PRISONER**

The above named individual was received at \_\_\_\_\_  
 (Name of Correctional Center)

at \_\_\_\_\_ on \_\_\_\_\_  
 (Hour) (Date)

Typed Name/Rank/Title	Signature
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**INSTRUCTIONS FOR COMPLETING CONFINEMENT ORDER**

1. The Confinement Order (NAVPERS 1640/4 or DD 497) is a basic record for each brig. Except in emergency, no person shall be confined without a written order of confinement, with the offense(s) indicated, and signed by an individual authorized to direct confinement. If the confinement is initially effected without a written order, the written order shall immediately follow the confinement. [*See*, RCM 304(d).]

2. Procedures

a. No member of a brig staff shall refuse to receive or to keep any prisoner committed to his or her charge by an officer of the Armed Forces when the committing officer furnishes a statement, signed by him or her, of the offense(s) charged against the prisoner. A Confinement Order signed by the duty officer, officer of the day, or other officer designated by the CO may authorize confinement.

b. The order shall clearly identify the individual to be confined and show the offense(s) of which accused or convicted, such as:

“Art. 80 Attempted escape from confinement” “Art. 86 U/A 3 June-26 July 80 (53 days)”

“Art. 91 Strike CPO w/fist”

“Art. 92 Failed to obey lawful order”

“Art. 121 Larceny-\$51 from locker”

“Art. 134 Disorder and damage gov't property”

c. Confining commands must complete the offense portion of the order, since the offense often dictates security requirements.

d. “Safekeeping” and “protective custody” are not legal reasons for confinement, and no individual shall be accepted for confinement with either of these listed in lieu of a UCMJ charge.

e. When the results of a court-martial change the basis for confinement, a Report of Results of Trial signed by the trial counsel shall be prepared, as appropriate, reflecting the change of status. This Report of Results of Trial shall be delivered to the brig at the time the prisoner is returned to the brig from the court-martial.

f. Except for pretrial confinement, the confinement orders shall show the date confinement is directed, if other than the date adjudged, and by what authority imposed. If the confinement is imposed as a result of the sentence of a court-martial, the confinement order shall be accompanied by a Report of Results of Trial, signed by the trial counsel of the special or general court-martial, or the summary court-martial, that adjudged the sentence and will reflect any pretrial agreement reached.

