

# COMMANDER'S QUICK LEGAL REFERENCE GUIDE



**CGJAG**  
**1906**  
2013 Edition

## Judge Advocate General's Note

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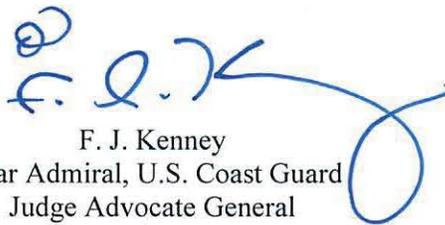
Law governs every aspect of the Coast Guard. Every function, service and action taken by the Coast Guard and its personnel is influenced by the authority granted to the Service by Congress. Actions taken by commanders are often guided or mandated by law, regulation, or policy, which requires awareness and understanding of those authorities and their intent. CGJAG presents this Commander's Quick Legal Reference Guide to assist commanders as they sort through their many responsibilities. It reflects our commitment to provide units and their commanders with practical tools that will better inform the decisions you must make, and the discussions that you will have with your Servicing Legal Office in making those decisions.

I recognize and appreciate that commanders and leaders at all levels look to CGJAG to help ensure that the management of your most precious assets, your people and your resources, is done legally, ethically, prudently, and to the greatest effect. This guide represents one tool that will help develop and enhance your ability to achieve those goals. It can help you identify potential issues that are best addressed early with your Servicing Legal Office and introduce you to certain legal concepts that should guide your decision making.

As you read and apply this guide, I encourage you to get to know your Servicing Legal Office and the lawyer or lawyers assigned to support your unit. I expect them to actively build and maintain an effective and proactive relationship with you. As a team, we can prevent many legal issues from becoming legal problems and quickly address problems that inevitably arise. Our goal is to ensure every commander has an effective and rewarding command experience.

The issues presented in this guide often sit at the intersection of Coast Guard operations and support. However, this guide does not address operational law issues directly. Legal guidance for operations can be found in the foundational operational publications such as the Marine Safety Manual, the Maritime Law Enforcement Manual, etc. A listing of operational law guidance can be found on the CG Portal at: <https://cgportal2.uscg.mil/Pages/CG-0941.aspx>.

Whether you need legal guidance or you just want to explore various decision paths, remember that CGJAG is available to you 24/7, either by calling your servicing legal office, or by contacting us through your command center. We stand ready to provide you with comprehensive advice for any issues you face.



F. J. Kenney  
Rear Admiral, U.S. Coast Guard  
Judge Advocate General

# Chapter 7

## **Military Justice: Command Advice**

### Sections

- A. Alcohol Incident
- B. Article 31(b)/Rights Warning
- C. Civil Arrests of Coast Guard Members
  - \* Civilian Civil Arrests discussed in Chapter 9
- D. Courts-Martial Basics
- E. Freedom of Expression
- F. Hazing
- G. Lautenberg Amendment (Access to Firearms)
- H. Mandatory Reporting to CGIS
- I. Mental Health Evaluations (MHE)
- J. Pretrial Restraint (PTR)
- K. Request Mast and Redress of Wrongs
  - \* Equal Opportunity/ Equal Employment Opportunity discussed in Chapter 9
- L. Search and Seizure
- M. Sexual Assault
  - \*Sexual Harassment discussed in Chapter 9
- N. Transitional Compensation for Abused Dependents

### A. REFERENCES

1. [Coast Guard Drug and Alcohol Abuse Program](#), COMDTINST M1000.10, Chapter 2
2. CG Health Promotion Manual, COMDTINST M6200.1A
3. [Military Separations](#), COMDTINST M1001.4
4. [Military Justice Manual](#), COMDTINST M5810.1E

### B. FORMS

1. [Coast Guard Form 3307 \(CG-3307\)](#). Administrative Remarks Form or Page 7s located at <http://www.uscg.mil/ppc/3307s.asp>

### C. DEFINITIONS

1. **Alcohol Incident.** Any behavior, in which alcohol is determined, by the CO, to be a significant or causative factor to an incident.
2. **Alcohol Screening.** An evaluation by a physician or physician assistant who has requisite training to determine the nature and extent of alcohol abuse.
3. **Self-Referral.** A choice by a member to seek assistance for a potential alcohol dependency without being ordered by the Command.

### D. REQUIREMENTS

Alcohol tends to play a key role in other Command legal concerns. It is important that Commands understand how to identify and process Alcohol Incidents.

1. **Alcohol Screening.**
  - a. Any member involved in an Alcohol Incident or otherwise showing signs of alcohol abuse shall be screened.
  - b. The results of an Alcohol Screening shall be recorded and acknowledged in the member's PDR.
  - c. An evaluation by a Collateral Duty Alcohol Representative (CDAR) does not satisfy the screening requirement.
2. **Self Referral.**
  - a. Self-referral to alcohol treatment, by itself, is not considered an Alcohol Incident.
  - b. The documentation of screening and treatment of members who self-refer shall be handled in accordance with [Reference 1](#) above.
  - c. A member may request removal of the screening letter and treatment plan from his or her PDR after successfully completing the prescribed aftercare.
  - d. A permanent record of the screening and treatment will be kept in the member's medical record.
3. **Alcohol Incident.**
  - a. Any behavior, in which alcohol is determined, by the CO, to be a significant or causative factor that results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ), Federal, State, or local laws is considered an Alcohol Incident.
  - b. The member does not need to be found guilty at Court-Martial, in a civilian court, or be awarded Non-Judicial Punishment (NJP) for the behavior to be considered an Alcohol Incident.
  - c. The member must actually consume alcohol for an Alcohol Incident to have occurred. Simply being present where alcohol is consumed does not constitute an Alcohol Incident.
  - d. Any member involved in an Alcohol Incident must be screened. The results of the screening must be recorded and acknowledged on an Administrative Remarks Form.
  - e. Underage drinking is considered an Alcohol Incident. After three years a member may request that an Alcohol Incident, based solely on underage drinking, be removed from his or her record.

### 4. Separation.

- a. Following one alcohol incident, enlisted members who have not advanced beyond E-2 and have more than 2 years of CG service shall normally be separated by reason of unsuitability due to alcohol abuse.
- b. Officers shall be processed in accordance with [Reference 3](#) following a second Alcohol Incident.
- c. Enlisted members involved in a second Alcohol Incident will normally be processed for separation in accordance with [Reference 3](#) above except:
  1. **Request for retention.** A CO can request retention of those enlisted members who they believe warrant such exception.
  2. **Enlisted Members Entitled to an Administrative Discharge Board.** For those enlisted members entitled to an Administrative Discharge Board the Command will initiate the board process.
- d. Any enlisted member involved in a third Alcohol Incident shall be processed for separation.

### E. IMPORTANT DOS AND DON'TS

**DO** properly document Alcohol Incidents in the member's record.

**DO** contact your SLO if you have a member with over 8 years and a second Alcohol Incident.

**DO** immediately refer a member to screening if you determine that he or she was involved in an Alcohol Incident.

**DON'T** avoid documenting an Alcohol Incident because of the potential harm to the member's career.

**DON'T** discourage members from seeking help for alcohol dependency.

**DON'T** discipline a member for a civilian DUI while State charges for the same offense are pending. Consult your SLO.

### F. EXAMPLES OF POTENTIAL ALCOHOL INCIDENTS

1. A unit's 18 year old member consumes several beers while hanging out with other members of the unit. All of the beer is provided by the unit's Chief. This behavior is reported to the CO. The CO has two different issues to consider: The Chief's situation may not be an Alcohol Incident if he did not consume alcohol but his behavior may still violate the UCMJ. The 18 year old member's behavior represents an Alcohol Incident because she consumed alcohol underage.
2. A member is pulled over and charged with DUI. The member has a court date in 3 weeks. The Command should send the member for screening and then contact the SLO for guidance on potential disciplinary action.
3. A member is at a bar having a drink when a fight breaks out. During the fight someone comes over and hits the member. The police are called. The Command should contact the SLO for advice. This may not be an Alcohol Incident because the member's consumption of alcohol was not the causative factor of the incident.

### A. REFERENCES

1. [Uniform Code of Military Justice \(UCMJ\)](#), Article 31 (2012 edition)
2. [Military Justice Manual](#), COMDTINST M5810.1E, Chapter 1

### B. FORMS

1. [Coast Guard Form 5810E \(CG-5810E\)](#). UCMJ and Miranda/Tempia Rights, Article 31(b) Form located at [https://cgportal2.uscg.mil/sites/externaldata/Forms/CG\\_5810E.PDF](https://cgportal2.uscg.mil/sites/externaldata/Forms/CG_5810E.PDF)

### C. DEFINITIONS

1. **Article 31(b)/Rights Warning.** A military member suspected of an offense may not be questioned unless he or she is informed of (a) the nature of the offense, (b) advised that he or she does not have to make a statement, (c) informed that any statement made may be used as evidence and (d) right to counsel.
2. **Cleansing Warning.** A warning given to a person suspected of an offense that was previously questioned but was not provided his or her rights warning.
3. **Interrogation.** Any formal or informal questioning in which an incriminating response is either sought or is a reasonable consequence of such questioning. Interrogation does not have to involve actual questions. Sometimes actions alone are enough to be considered an interrogation.
4. **Offense.** Any action or omission that is a violation of the UCMJ or state law.
5. **Miranda.** A warning given by police to a criminal suspect in police custody warning that the criminal suspect has (1) the right to remain silent, (2) anything they say may be used against them in court, (3) they have a right to consult with an attorney, (4) have the attorney present during questioning and (5) if they are indigent an attorney will be provided at no cost to them.

### D. REQUIREMENTS

There are many protections within the Military Justice System and it is important that Commands afford members all of the protections to which they are entitled. One example of a member protection is the Rights Warning. Commands should be aware of the following:

1. **Providing Article 31(b)/Rights Warnings.**
  - a. Any person subject to the UCMJ must advise another individual or their Article 31(b)/Rights Warnings if they suspect that person of a criminal offense and they are going to question that person as part of an official law enforcement investigation or disciplinary inquiry.
  - b. Commands and supervisors are presumed to be acting in a disciplinary capacity when questioning subordinates.
  - c. The rights must be understood and acknowledged by the suspect. A Command should use CG-5810E when giving a member his or her Rights Warning.
  - d. Consent to make a statement cannot be obtained by coercion, threats, promises or trickery.
  - e. If the member indicates his or her desire to remain silent, stop questioning.
  - f. If the member requests counsel, stop questioning.
2. **Miranda v. Article 31 rights**
  - a. Under Miranda, a suspect must be in custody before triggering the advisement rights.
  - b. Under Article 31, anyone who is subject to the UCMJ, whether or not they are a designated law enforcement officer, must advise a military suspect of his or her rights.
3. **Cleansing Warning.** If a member was previously questioned without receiving Rights Warning:
  - a. The member should be informed that their prior statement cannot be used against him or her.
  - b. The member should receive their rights warning.
  - c. The member should be informed that even though he or she made an earlier statement he or she can still chose to remain silent or request a lawyer.

4. **New Offense.** If during the questioning/interrogation you begin to suspect the member of a new or different offense, you must stop the questioning immediately and complete a new warning form, identifying the new offense.
5. **Questioning by Supervisors.** If a supervisor is going to discuss a member's potential violation of an offense the supervisor must provide the member their rights warning.
6. **Statement before Questioning.** A Command or supervisor is not required to provide rights statements if the member is not being questioned. (e.g., if the member comes into the supervisor's office and starts to confess to an offense the supervisor is not required to stop the member and provide him or her warnings. If the supervisor starts to interact in the conversation by asking questions or soliciting more information, rights warnings must be given.)

### E. IMPORTANT DOS AND DON'TS

**DO** have the member complete the Rights Warning sheet before questioning a member suspected of committing an offense.

**DO** re-warn a member if there is a break in the questioning. A break is considered more than 10-15 minutes.

**DO** ensure that confessions are voluntary.

**DO** ensure that a member is in a condition to understand their rights (e.g., intoxicated members are not in a condition to understand and waive their rights).

**DO** contact your SLO if you have any questions about when to provide Rights Warning.

**DON'T** allow a non-law enforcement person to interrogate/question a member about any offense being forwarded to CGIS.

**DON'T** make false promises or threats during questioning.

**DON'T** promise members leniency in exchange for their statement unless you have the authority to make such a deal.

**DON'T** have Command cadre question a member about potential offenses. Assign an IO to preserve options for unbiased Command action.

### F. EXAMPLES OF POTENTIAL RIGHTS WARNING SITUATIONS

1. A member is suspected of harassing behavior against a subordinate. The CO wants to question the member about the behavior. The CO should assign an IO to interview the member.
2. A member storms into his supervisor's office and begins to tell the supervisor that he and a friend stole some items from the local store. The supervisor asks the member, "So what happened?" The supervisor must stop and give the member his Article 31(b) warnings because the supervisor is participating in the dialogue.
3. A Command suspects a member of rape. The Command may not question the member. The Command should contact CGIS immediately.
4. A Command is considering booking a member. Before the CO books the member the CO wants to have a conversation with the member. The CO will want to tread lightly. Command Cadres normally should not question a member so the CO should contact his SLO prior to speaking with the member.

### A. REFERENCES

1. [Discipline and Conduct Manual](#), COMDTINST M1600.2, Chapter 1
2. [Coast Guard Investigative Service Roles and Responsibilities](#), COMDTINST 5520.5F
3. [Military Justice Manual](#), COMDTINST M5810.1E
4. [Coast Guard Pay Manual](#), COMDTINST M7220.29B

### B. FORMS

1. [Coast Guard Form 5588 \(CG-5588\)](#). Personnel Security Action Form located at [https://cgportal2.uscg.mil/sites/externaldata/Forms/CG\\_5588.PDF](https://cgportal2.uscg.mil/sites/externaldata/Forms/CG_5588.PDF)

### C. DEFINITIONS

1. **Civil Arrest.** Detaining or placing a CG member into custody, outside of the Military Justice System, due to suspected involvement in criminal activity.
2. **Civilian Court.** A state or Federal court outside of the Military Justice System. Depending on location, these courts may be called District Court, County Court, Municipal Court, City Court, Justice Court, Superior Court, Circuit Court, Magistrate Court, or Court of Common Pleas. Some states may have a unique name for their criminal system not listed above.
3. **Conviction.** Finding a person guilty by a court of competent jurisdiction. The conviction may be the result of a jury trial, trial by judge alone, or guilty plea.
4. **Felony.** A crime with a possible sentence of one-year or more confinement. The actual sentence imposed, even if none, does not change the offense's classification as a felony.

### D. REQUIREMENTS

If a member is arrested or detained by civil authorities, the command should:

1. **Report Civil Arrest.** When any CG member is arrested or detained by civil authorities it should be reported on CG-5588. If final action by civil authorities will occur within a few days of the arrest, a single report may be submitted. If the case will be prolonged, an arrest report should be promptly made followed by a final action report. Interim reports should be made at 30-day intervals. CG-5588 should be filed with the appropriate security manager with a copy to Commander (CG PSC-OPM) or (CG PSC-EPM) as applicable, and Coast Guard Personnel Command (CG PSC-PSD-MR) as soon as the incident occurs. CG-5588 should cite the incident and date of occurrence.
2. **Notify CGIS.** When felony level violations are reported through CG-5588, CGIS must be notified. CGIS may conduct an investigation, act as a liaison with the civil authorities and/or monitor the case.
3. **Contact your SLO.** Before accepting custody of a person after civil arrest you should contact your SLO.
4. **Notify Next of Kin.** If an enlisted member over the age of 21 is awaiting trial in civilian court for commission of a felony, the CO should impress upon the member the desirability of informing his parents, spouse, guardian, or other close family of the circumstances. In accordance with Chapter 1.B.2.c. of [Reference 1](#) if any member under the age of 21 is involved in criminal proceedings, and if it appears that the member's parents, spouse or guardian will not otherwise be informed of the proceedings, the CO should inform the above persons of the pertinent and proper details considering the circumstances.
5. **Disciplinary Action.** Before taking disciplinary action against a member after civil arrest contact your SLO. Commands may not take NJP or administrative discharge measures prior to completion of the civil proceedings without approval from the Judge Advocate General.

### E. IMPORTANT DOS AND DON'TS

**DO** contact your SLO for advice before arranging for the release of a member to CG custody.

**DO** report the arrest on CG-5588.

**DO** follow [Reference 4](#) for pay issues surrounding civilian arrest.

**DO** allow performance evaluations to reflect civil court convictions.

**DON'T** authorize member leave to cover period of confinement by civil authorities but you **MAY** grant leave for a member to attend their civilian trial.

**DON'T** automatically consider a member arrested AWOL. Contact your SLO.

**DON'T** discipline a member after a civil arrest without advice from SLO.

### F. EXAMPLES OF POTENTIAL CIVIL ARREST OF CG MEMBERS

1. The local police respond to a domestic violence call at a CG member's personal, off-base residence. The CG member is handcuffed and taken to the police station where he is being held on felony charges for domestic violence. You should contact your SLO, contact CGIS, and report arrest on CG-5588.
2. A CG member is taken into custody by police after allegedly committing armed robbery of a convenience store. You should contact your SLO, contact CGIS, and report arrest on CG-5588.
3. A CG member is detained by local police after being arrested for driving under the influence. You should contact your SLO, contact CGIS, and report arrest on CG-5588.

### A. REFERENCES

1. [Military Justice Manual](#), COMDTINST M5810.1E, Chapters 2 and 3
2. [MANUAL FOR COURTS-MARTIAL](#) (MCM)
3. [The Uniform Code of Military Justice \(UCMJ\)](#)

### B. FORMS

1. [Department of Defense Form 458 \(DD-458\)](#). Charge Sheet located at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0458.pdf>

### C. DEFINITIONS

1. **Article 32 Hearing.** An investigation conducted to ensure there is a basis for prosecution at a GCM when the charges are of such a serious nature that trial by GCM may be warranted.
2. **Convening Authority (CA).** The person authorized to convene a Court-Martial and appoint military members to play a role in a Court-Martial.
3. **Convening Order.** Document by which a Court-Martial is created. It specifies the type of court and lists the time and place of meeting, names of the member's counsel, and authority by which the Court-Martial is created.
4. **Court-Martial.** A military court empowered to determine the guilt or innocence of members of the armed forces subject to military law and to decide upon punishment on those found guilty. There are three types of Court-Martial:
  - a. **Summary Court-Martial (SCM).** A Court-Martial composed of one officer who may or may not be a lawyer. The SCM handles minor crimes of enlisted members and has simple procedures. An enlisted member has an absolute right to refuse to be tried by a SCM. The maximum punishment depends on the rank of the accused and is limited to confinement for one month (for accused members E-4 and below), forfeiture of two-thirds of one month's pay, and reduction in grade. Officers cannot be tried by a SCM.
  - b. **Special Court-Martial (SpCM).** It consists of a military judge, a panel of at least three members (unless the accused waives the right to be tried by a panel), a trial counsel, and a defense counsel. The maximum sentence that can be awarded at SpCM is a bad conduct discharge, confinement for twelve months, forfeiture of two-thirds of one month's pay for up to 12 months, a reduction to the lowest enlisted grade, fine, and other lawful punishments.
  - c. **General Court-Martial (GCM).** The Court-Martial that tries the most serious offenses. It consists of a military judge, a panel of at least five members (unless accused waives the right to be tried by a panel), a trial counsel, and a defense counsel. The GCM may adjudge the most severe sentences authorized by law, including the death penalty.
5. **Preferral.** When a person subject to the UCMJ signs and swears out charges by executing a DD-458.
6. **Referral.** When the CA assigns charges to a specific Court-Martial.
7. **Special Victim's Counsel (SVC).** SVCs are active duty Judge Advocates who have also been trained and designated as Victim Advocates (VA) and will provide legal assistance to victims in a confidential VA relationship throughout the investigation and any related proceedings.
8. **Unlawful Command Influence (UCI).** When senior personnel, wittingly or unwittingly, act to influence court members, witnesses, or others participating in military justice cases.

### D. REQUIREMENTS

1. **Investigate.** Investigate allegations of misconduct or criminal wrongdoing. Depending on the severity of the alleged crime or allegations, investigation requirements may be different, e.g., CGIS Investigation or Command Investigation. Consult your SLO to determine the best course of action.

2. **Action.** Determine what course of action to take. Once evidence has been gathered and the inquiry is complete, an accused member's CO can choose to dispose of the charges by: taking no action; initiating administrative action; imposing non-judicial punishment (NJP); forwarding to a subordinate/higher authority for disposition; or referring charges for trial by Court-Martial. Consult your SLO to determine the best course of action.
3. **Prefer charges.** Prepare a charge sheet which lists in precise terms the crime with which an accused is charged and must defend against. Consult with the SLO before preferral of charges as preferral of charges starts the speedy trial clock.
4. **Notify the member.** Once charges are preferred the Command must notify the accused of the charges against him or her. This notification will put things in motion, including a request for defense counsel.
5. **Convening Order.** Before the CA signs a charge sheet they should create a Convening Order. The Convening Order should include the following: date; Convening Order number; authority to convene; type of court; names of members; and personal signature of the CA.
6. **Conduct an Article 32 hearing.** If the Command contemplates convening a GCM they must conduct an Article 32 hearing. The accused is entitled to be present at the proceeding and to examine/cross-examine the evidence against him with the assistance of counsel.

### E. IMPORTANT DOS AND DON'TS

**DO** consult your SLO early if you believe allegations received by the Command may warrant trial by Court-Martial.

**DO** consult your SLO for cases involving Dismissal, DD, or BCD.

**DO** provide assistance (e.g., Work-Life) to the accused and any victims if they are in your Command.

**DO** avoid having all-hands discussions about an ongoing or pending Court-Martial.

**DO** issue a Military Protective Order (MPO) when appropriate.

**DO** work with Work-Life to request a SVC when appropriate.

**DO** review the findings and the sentence once a Court-Martial has concluded. Failure to do so may have serious consequences.

**DON'T** set an inflexible policy on the disposition of a case or the punishment to be imposed.

**DON'T** attempt to influence the trial process in any way that may unlawfully influence the outcome of the trial or taint the public's perception of the Military Justice System.

**DON'T** decide the guilt or innocence of a member. The Court-Martial process will make that determination.

### F. EXAMPLES OF POTENTIAL COURTS-MARTIAL

1. A member is accused of inappropriately using his Government credit card over a 12 month period. He pays off the card after each use but the use was not in connection with official travel. A Command could decide to refer this case to a Court-Martial.
2. A member intentionally claims PCS to California, with dependents, even though her dependents remained in Virginia. A Command could decide to refer this case to a Court-Martial.
3. A member refuses mast for a drug incident. The Command could initiate a Court-Martial. Speak with your SLO to determine the best course of action.

### A. REFERENCES

1. [Discipline and Conduct](#), COMDTINST M1600.2, Chapter 1.D.
2. [Public Affairs Manual](#), COMDTINST M5728.2D
3. [Armed Forces Disciplinary Control Board and Off-Installation Liaison and Operations](#), COMDTINST 1620.1D
4. [Military Justice Manual](#), COMDTINST M5810.1E
5. [United States Coast Guard Regulations 1992](#), COMDTINST M5000.3B
6. [Uniform Regulations](#), COMDTINST M1020.6H, Chapter 1.B.2.
7. [Coast Guard Civil Rights Manual](#), COMDTINST M5350.4C, Chapter 2.C.

### B. FORMS

1. N/A

### C. DEFINITIONS

1. **Balancing Test.** The test used by the CO to determine how to handle conduct that **may** be prohibited.
2. **Freedom of Expression.** The right to express one's ideas and opinions freely through speech, writing, and other forms of communication without deliberately causing harm to others' character and/or reputation by false or misleading statements.
3. **Prohibited Conduct.** Activities that are always prohibited regardless of the outcome of the balancing test.
4. **Hate Incident.** Intentional acts (conduct or speech) of intolerance committed against a person, a group of individuals or property which is motivated, in whole or in part, by bias against a protected group and which is intended to or is more likely than not to have the effect of intimidating others to similar conduct.

### D. REQUIREMENTS

When a CO encounters questionable communications the CO should consider whether or not the communication is prohibited. The following information will help with the CO's consideration:

1. **Conduct that IS prohibited.** If the CO encounters conduct that is prohibited the CO should take action immediately. Prohibited conduct includes:
  - a. Military unions, strikes, slowdowns, picketing, etc.
  - b. Contemptuous (hateful or scornful) words regarding senior leaders. (Uniform Code of Military Justice (UCMJ), Article 88)
  - c. Participation in extremist or criminal gang activity.
  - d. Possession of child pornography.
  - e. Entering an "off-limits" establishment.
  - f. Hate Incidents
2. **Conduct that MAY BE prohibited.** Some activity may be controlled, limited, or prohibited depending on the outcome of the balancing test. If in doubt, contact your SLO. Conduct that may be prohibited includes:
  - a. The distribution of handbills, posters, leaflets, newsletters, papers, and/or notices on CG property.
  - b. On-base or off-base gatherings if there is a clear danger to loyalty, morale, good order and discipline or interference with mission accomplishment. They also may be prohibited if violence is likely or an illegal march will occur.
  - c. The display and/or distribution of pornography.
3. **Conduct that IS NOT prohibited.** Some activity cannot be prohibited. These activities include, but are not limited to:
  - a. The practice of religion.
  - b. The right to petition for redress of grievances.
  - c. Private possession of pornography.

4. **Conduct that must be reviewed.** Some activity must be reviewed by Public Affairs. This includes Publication by a military member that pertains to military matters.
5. **Balancing Test.** If the CO encounters conduct that may be prohibited they should conduct the following balancing test:
  - a. On the one hand the CO should preserve a member's Freedom of Expression to the maximum extent possible, consistent with good order, discipline, and national security.
  - b. On the other hand, a CO should prohibit conduct which, if allowed to proceed unchecked, would destroy the effectiveness of the unit.

**\*Special Note.** The balancing of these interests will depend largely upon the calm and prudent judgment of the responsible CO.

### E. IMPORTANT DOS AND DON'TS

- DO** use the Balancing Test for conduct that may be prohibited.
- DO** contact your SLO when you are unsure of what to do with the questionable communications.
- DO** review [Reference 6](#) for the proper occasion for uniform wear.
- DON'T** make blanket rules that restrict the freedom of expression.

### F. EXAMPLES OF POTENTIAL FREEDOM OF EXPRESSION SITUATIONS

1. SN Jones attends an off-post demonstration. SN Jones is allowed to attend the demonstration as long as she is not in uniform, the demonstration does not take place in a foreign country, the activities do not constitute a breach of law and order, and violence is not a likely result of the demonstration.
2. LT Author is writing a journal article in his personal capacity that he hopes to get published. The article, titled Coast Guard Drones, discusses the capabilities and limitations of drones operating from CG cutters. LT Author must have the article reviewed by Public Affairs.
3. MK2 Smith works with civilian employees who are part of a union. Fed up with how he is being treated, he wants to join a union. MK2 Smith can be prohibited from joining the union.
4. A CG member ties what looks like a noose in another member's space. This incident may be considered a hate incident and should be reported to your SLO.

### A. REFERENCES

1. [Discipline and Conduct](#), COMDTINST M1600.2, Chapter 2.C.
2. [United States Coast Guard Regulations 1992](#), COMDTINST M5000.3B
3. [CG Shipboard Regulations](#), COMDTINST M5000.7A
4. [Hazing Awareness Training](#), COMDTINST 1610.1

### B. FORMS

1. N/A

### C. DEFINITIONS

1. **Consent.** The acceptance or approval of what is planned or done by another. Members cannot consent (actual or implied) to hazing.
2. **Hazing.** Hazing is the subjection of an individual to harassment or ridicule. More specifically, hazing is any conduct whereby a military member without proper authority causes another military member or members to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful, regardless of the Service or rank of the perpetrator and recipient.
3. **Physical Contact.** Hazing need not involve physical contact among or between members; it can be verbal or psychological in nature.
4. **Soliciting.** Soliciting or coercing another to perpetrate any such activity is also considered hazing.

### D. REQUIREMENTS

If a Command receives notice of a hazing incident they should take action immediately.

1. **Types of Hazing.**
  - a. Playing abusive or mean-spirited tricks intended to ridicule, humiliate, or ostracize.
  - b. Throwing personnel over the side of a ship or pier.
  - c. Forcing consumption of or encouraging the consumption of substances not normally prepared for or suitable for consumption.
  - d. Encouraging members to consume excessive amounts of alcohol or requiring the consumption of alcohol in any amount.
2. **NOT considered Hazing.** Hazing does not include traditional service initiation ceremonies such as:
  - a. Chief's Initiations and events recognizing crossing the equator, the international dateline, and the Arctic or Antarctic Circles provided such ceremonies are conducted in accordance with [Reference 1](#).
  - b. 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.
3. **Reporting Responsibilities.** Unit CO and supervisors will be held accountable for ensuring that reports of hazing are promptly and fully investigated, and that verified allegations of violations of this policy are resolved in an appropriate manner.
4. **Condoning Hazing.** Those within the chain of Command who violate this policy by overtly condoning hazing, by failing to investigate reports of hazing, or by implicitly approving of it through inaction when they know or reasonably should know that such activity is taking or has taken place shall also be held accountable.

### E. IMPORTANT DOS AND DON'TS

- DO** contact your SLO immediately if your Command has concerns about a possible hazing incident.
- DO** ensure an atmosphere that encourages members to report incidents of hazing.

- DO** know that a member **cannot** consent to being hazed.
- DO** be wary of any incident that could involve anything sexual.
- DO** know that hazing can be both physical and verbal.
- DO** take appropriate action when you receive notice of hazing.
- DON'T** ignore potential hazing incidents or allegations of a hazing incident.

### F. EXAMPLES OF POTENTIAL HAZING INCIDENTS

1. A Chief initiates new members of the Command by smacking the member on the butt, in front of other members of the crew, while the member is forced to do pushups.
2. A First Class orders a SN to lie on the ground and do flutter kicks until the First Class tells her to stop. Five minutes later the SN is still doing flutter kicks. Initially, the action **may** relate to disciplinary concerns but the length of the exercise moves it from justifiable to hazing.
3. The LCDR takes all of the JOs out to the bar. The LCDR orders everyone to take a shot; his treat. He makes it clear that no one is leaving the bar until everyone takes at least one shot. This is hazing because the officer is ordering everyone to drink.

# Lautenberg Amendment (Access to Firearms)

## Chapter 7, Section G

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### A. REFERENCES

1. [Coast Guard Policy on the Possession of Firearms and/or Ammunition by Coast Guard Military Personnel](#), COMDTINST 10100.1
2. Gun Control Act of 1968, [18 U.S.C. § 921–928](#)
3. The “Lautenberg Amendment” to the Brady Handgun Violence Prevention Act, [18 U.S.C. § 922\(d\)\(9\)](#), [922\(g\)\(9\)](#), and [925\(a\)\(1\)](#)

### B. FORMS

1. [Department of Defense Form 2760 \(DD-2760\)](#). Qualification to Possess Firearms or Ammunition Form located at [http://www.dia.mil/careers/pre-employment/Fire%20Arms%20Forms%20\\_DD%20Form%202760%20.pdf](http://www.dia.mil/careers/pre-employment/Fire%20Arms%20Forms%20_DD%20Form%202760%20.pdf)
2. [Coast Guard Form 3307 \(CG-3307\)](#). Administrative Remarks for Member w/Qualifying Restraining Order template in Enclosure (2) of Reference 1
3. [Coast Guard Form 3307 \(CG-3307\)](#). Administrative Remarks for Member w/Qualifying Conviction template in Enclosure (3) of Reference 1

### C. DEFINITIONS

1. **Lautenberg Amendment.** Denies members access to weapons and ammunition following a qualifying conviction and/or for the duration of a restraining order.
2. **Qualifying Conviction.**
  - a. Any state or Federal conviction for a misdemeanor crime of domestic violence and any General or Special Courts-Martial conviction for the same.
  - b. By CG policy, a qualifying conviction also includes felony domestic violence convictions.
  - c. A qualifying conviction does not include Summary Courts-Martial or Non-judicial Punishment.
  - d. A domestic violence crime
    1. Involves the use or attempted use of force, or the threat of a deadly weapon, and
    2. Is committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
3. **Restraining Order.** Any military protective order; or, a civil court order issued after a hearing where such person received actual notice and had the opportunity to participate in a hearing and a finding was made that such person represents a credible threat to the physical custody of an intimate partner or child.
4. **Firearm.** The term firearm means
  - a. Any weapon (including a starter gun) which will, is designed to, or may readily be converted to, expel a projectile by the action of an explosive;
  - b. The frame or receiver of any such weapon;
  - c. Any firearm muffler or firearm silencer; or
  - d. Any destructive device. Firearm does not apply to the operation and maintenance of fixed or crew-served weapons systems and ammunition.

### D. REQUIREMENTS

Commands have a responsibility to ensure that access to weapons and ammunition is denied to appropriate members and employees as follows:

1. **Notice.** Commands shall post notices about the Lautenberg Amendment in all facilities where firearms and/or ammunition are stored.

# Lautenberg Amendment (Access to Firearms)

## Chapter 7, Section G

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2. **Military Members.** Commands should ensure that members complete DD-2760 upon accession into the military, upon report to the unit, and thereafter, at least annually.
3. **Contractors.** Commands that employ contractors should work closely with the Contracting Officer's Technical Representative (COTR) to ensure compliance with the Lautenberg Amendment.
4. **Issuing and Retrieving Firearms.** Commands will not issue firearms and/or ammunition to any Lautenberg Amendment-affected member. Likewise, Commands must immediately retrieve all government-owned firearms and ammunition from any Lautenberg Amendment-affected member.
5. **Counseling.** Commands must counsel Lautenberg Amendment-affected members using either enclosure (2) or (3) of [Reference 1](#).
6. **Action.** Commands should consult with their SLO to consider temporary reassignment, administrative separation, or any other legal action associated with a Lautenberg Amendment-affected member.

### E. IMPORTANT DOS AND DON'TS

**DO** identify your Lautenberg Amendment-affected members, civilian employees and Contractors.

**DO** retrieve all Government-owned firearms and ammunition from any Lautenberg Amendment affected members, civilian employees and Contractors.

**DO** know that violation of the Lautenberg Amendment is a Federal felony.

**DO** know that the provider of the weapon and/or ammunition, (a Commander, Officer-in-Charge) can be federally prosecuted under the Lautenberg Amendment.

**DON'T** give access to weapons or ammunition to any Lautenberg Amendment-affected member, civilian employee or Contractor.

### F. EXAMPLES OF POTENTIAL LAUTENBERG AMENDMENT-AFFECTED MEMBER, CIVILIAN EMPLOYEE, OR CONTRACTOR

1. A Member's spouse gets a protective order against him for a domestic violence incident. The Command should temporarily deny the member access to weapons until the Protective Order is resolved. Once the situation is resolved the Command should contact their SLO if it appears that the situation will become permanent or long term.
2. A contractor working in the armory is convicted of threatening to shoot her child's father. The Command needs to coordinate with the Contracting Officer and their SLO to ensure proper disposition of the situation.

### A. REFERENCES

1. [Coast Guard Investigative Service Roles and Responsibilities](#), COMDTINST 5520.5F
2. [Discipline and Conduct](#), COMDTINST M1600.2
3. [Military Justice Manual](#), COMDTINST M5810.1E
4. [Sexual Assault Prevention and Response Program \(SAPR\)](#), COMDTINST M1754.10D

### B. FORMS

1. [Department of Defense Form 553 \(DD-553\)](#). Deserter/Absentee Wanted by the Armed Forces Form located at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0553.pdf>
2. [Coast Guard Form 5588 \(CG-5588\)](#). Personnel Security Action Form located at [http://www.uscg.mil/forms/cg/CG\\_5588.pdf](http://www.uscg.mil/forms/cg/CG_5588.pdf)

### C. DEFINITIONS

1. **Article 120.** A punitive article of the Uniform Code of Military Justice (UCMJ) dealing with rape and carnal knowledge.
2. **Coast Guard Investigative Service (CGIS).** The criminal investigative arm of the CG that is responsible for providing investigative support to commanders for maintenance of good order and discipline, protection of CG personnel and property, and successful mission execution.
3. **Covered Person.** A person is covered if they are active duty CG personnel; Reserve CG personnel on active duty; Auxiliary CG personnel while assigned to duty; Civilian CG employees; Public Health Service (USPHS) personnel assigned to the CG; Department of Defense (DOD) military and General Defense Intelligence Program (GDIP) civilian personnel assigned to the CG; and visitors to CG facilities.
4. **Felony Violation.** Any UCMJ violation that could result in confinement exceeding one (1) year. A maximum punishment chart for UCMJ offenses can be located in Appendix 12 of [Reference 3](#). Any Federal violation or crime punishable by death or imprisonment in excess of 1 year. This includes drug use violations uncovered by a urinalysis.

### D. REQUIREMENTS

CGIS **shall be** notified immediately upon occurrence of any of the following:

1. **Felony Violations of the UCMJ.** All actual, alleged or suspected felony violations of the UCMJ, when the suspect/accused is:
  - a. A CG member on active duty, a reserve member serving on active duty, or a former CG member who was on active duty when the offense was committed;
  - b. A DOD active duty or reserve member serving on active duty assigned to the CG or attending training at a CG facility; or
  - c. A USPHS member assigned to the CG.
2. **Felony Violations of Federal Criminal Law.** All actual, alleged or suspected felony violations of Federal criminal law, when:
  - a. The suspect is a covered person;
  - b. The Federal offense occurred on CG property; or,
  - c. The CG has law enforcement authority over the offense.
3. **Victim.** All actual, alleged or suspected felony violations of the UCMJ or Federal criminal law, when the victim is a covered person.
4. **Article 120.** All unrestricted reports of rape, sexual assault, or any other UCMJ, Article 120 offense
5. **Child/ Spousal Physical Abuse.** All actual, alleged or suspected incidents of child or spouse physical abuse involving injury, to include child sex abuse.

6. **Child Pornography.** All actual, alleged, or suspected incidents of child pornography involving covered persons.
7. **Computer-Related Crime.** All actual, alleged, or suspected incidents of computer-related crime, such as unauthorized access, intrusion, and intentional data destruction involving CG computer systems. (Such incidents must also be reported to the Telecommunication and Information Systems Command (TISCOM) and the Computer Incident Response Team (CIRT)).
8. **Security Violations.** Incidents of Security violations when the incident is related to suspected espionage, or the actual or possible theft of classified and sensitive-but-unclassified (SBU) information.
9. **Deserters.** Notification upon issuance of Deserter Form (DD-553).
10. **Disappearance of CG members.** All disappearances of CG members under unusual circumstances, not believed to be desertion/AWOL.
11. **Government Property.** Reports of lost, stolen or misappropriated Government property as outlined below:
  - a. Government/CG owned firearms, munitions, explosives, pyrotechnics or restricted law enforcement equipment such as body armor or vehicle lights and sirens;
  - b. Government/CG owned or leased vehicles and license plates;
  - c. Government/CG monies, instrumentalities, purchase cards, and property in excess of \$5000.00 in value, either aggregate or individually.
    1. All actual, alleged or suspected incidents of fraud, waste or abuse involving Government funds or property by a covered person, or by persons or companies contracted to provide services or material to the CG.
    2. Incidents or potential incidents of workplace violence or threatening behavior at CG facilities. (See the Workplace Violence Section beginning on page 110 of this guide for more information.)
    3. All reports of Suspected Homicide/Apparent Suicide.
12. **Civilian Arrests.** Report on CG-5588 all CG member arrests or detentions by civil authorities.

CGIS **does NOT** need to be notified upon occurrence of any of the following:

1. **Adultery or fraternization.** Cases involving adultery or fraternization between adults, where there are no other allegations of additional offenses.
2. **Civil Rights.** Alleged civil rights violations.
3. **Harassment.** Cases of sexual harassment, other harassment, and/or hostile workplace allegations unless it overlaps with sexual assault.

### E. IMPORTANT DOS AND DON'TS

**DO** notify CGIS **after final case disposition** takes place by the unit (to include NJP or other action) or by the legal office handling the matter (Declination Letters, Results of Trial, or other action).

**DO** report any of the listed incidents to CGIS immediately.

**DO** contact your SLO if you have questions about reporting requirements.

**DON'T** take any (formal or informal) investigative action into actual, suspected, or alleged incidents of rape and/or sexual assault. Report the incident to CGIS immediately.

### F. EXAMPLES OF POTENTIAL REQUIRED REPORTS

1. A member is accused of adultery. While the Command is conducting their investigation information surfaces that the member may also be engaging in child physical abuse. Contact CGIS.
2. A member is accused of searching pornography on their workstation. The Command should contact CGIS before taking any action, including moving the workstation.
3. A Command receives an unrestricted report of sexual assault. The Command should contact CGIS immediately.
4. A member's urinalysis comes back positive. Because drug use is a felony, CGIS must be notified.

### A. REFERENCES

1. [Coast Guard Medical Manual](#), COMDTINST M6000.1E, Chapter 5.C.

### B. FORMS

1. [Command Referral for Mental Health Evaluation](#). Template located in Reference 1.
2. [Sample Service Member Notification of Commanding Officer Referral for MHE](#). Template located in Reference 1.

### C. DEFINITIONS

1. **Mental Health Evaluation (MHE)**. A medical and psychological evaluation, and prognosis, from a military physician and a licensed clinical psychologist or psychiatrist.
2. **Mental Health Care Provider (MHCP)**. Usually a military physician and licensed clinical psychologist or psychiatrist. If a military physician is not available, you may refer the member to a non-Federal physician for a medical evaluation, and if appropriate, a consult-referral to a licensed clinical psychologist or psychiatrist of an initial evaluation and treatment plan.

### D. REQUIREMENTS

The CG's policy allows COs to use discretionary authority to make Command referrals for MHEs, but provides some safeguard procedures to prevent improper Command referrals.

1. **Emergency Evaluations**. You should direct an emergency MHE when a member indicates intent to cause harm to themselves or others and when the member appears to have a severe mental disorder. Make every effort to consult with the health care provider in advance, but if this is not possible, you must consult with the MHCP as soon as possible afterward. You must also:
  - a. Complete the Command Referral for MHE memorandum with as many details as possible.
  - b. Provide one copy of the memorandum to the service member.
  - c. Have an escort carry the memorandum for delivery to the MHCP.
2. **Non-emergent Evaluations**. You may give a lawful order requiring a non-emergent MHE when a member shows changes in mood, behavior, or thinking that interferes with normal functioning. If you think a MHE is necessary:
  - a. Contact the Servicing clinic. Speak directly with the MHCP to clarify the issue and urgency.
  - b. Provide a Command Referral for MHE memorandum directly to the Senior Health Services Officer.
  - c. Counsel the Member on the reasons for the referral and provide written notice of your referral. You must include the date and time of MHE, description of behavior, and names of MHCP you have consulted.
  - d. Request the Service Member sign the notice to report for MHE. If the member refuses, note this.
  - e. Provide the member an escort to medical.
3. **Service Member Rights**. Provide a copy of the following rights to members whom you refer to MHEs:
  - a. The member has a right to get a second opinion at their own expense, within a reasonable amount of time (usually 10 days).
  - b. No person may restrict the member from communicating with others about the referral.
  - c. The member will have at least **2 workdays** before the appointment to meet with chaplain, attorney, or other appropriate person. (If the need for MHE is immediate, state so in request for evaluation.)
  - d. If the member's military duties prevent the above, you should articulate the reasons in a memo.
4. **Non-Command Directed MHEs**. Active duty members may self refer for MHEs, or can be directly referred by medical personnel, to a Federal treatment facility. However, patients who wish to receive

nonfederal care must be approved through HSWL. Active duty members who undergo non-emergency, nonfederal care without prior approval are responsible for all incurred costs.

5. **Records.** All records and correspondence regarding mental health care is privileged information. The mental health care provider, whether Federal or nonfederal, must provide the Command with the following information for inclusion in the member's health record:
  - a. A copy of the initial evaluation, diagnosis, treatment plan and prognosis with and without treatment;
  - b. A summary of all treatment administered; and
  - c. An assessment of physical and mental capabilities and limitations.

**\*Special Note.** The health care provider may not automatically share this information with the Command, so it may be necessary for the Command, or CG medical personnel to request this information.

### E. IMPORTANT DOS AND DON'TS

**DO** be prepared to assess persons who express concerns regarding mental health or exhibit unusual behavior, including suicidal or homicidal ideations, hallucinations, delusions, or other potentially harmful behavior.

**DO** apply the above requirements for Command directed MHEs.

**DO** treat Command directed MHEs differently than self-referrals, criminal and competency inquiries under [Rule for Courts-Martial \(R.C.M.\) 706](#), security clearances, referrals to Alcohol and Drug Abuse Prevention and Control Programs, diagnostic referrals from other health care providers, or non-discretionary referrals.

**DON'T** hesitate to contact your SLO if you have any questions.

**DON'T** restrict a member from lawfully communicating with an attorney, Congress member, or other person about the appropriateness of a MHE referral.

**DON'T** refer a member for a MHE as a reprisal for making or preparing a lawful communication to a member of Congress, the Chain of Command, or others.

### F. EXAMPLES OF POTENTIAL MHE REFERRALS

1. A CG member comes to HSWL to report a claim of sexual harassment. During the course of his complaint, he presents evidence of mental instability, and you think that a MHE may be necessary. You should contact your SLO. Your response should be sensitive to the nature of the member's claim. Do not delay an investigation of the member's allegations. Do not act in such a way that the referral may be construed as punishment or reprisal for making the report.
2. One of your subordinates has been showing up to work late, has found it hard to focus at work, and has seemed slightly shaky. You are not sure whether these behavioral changes are related to mental illness, drug use, or another cause. You would like to conduct a urinalysis and refer the member for a MHE. You should see the CG Drug and Alcohol Abuse Program Manual for whether the member's behavior meets standards for a urinalysis. You may also simultaneously pursue a non-emergent MHE by following the procedures summarized above and detailed in [Reference 1](#). Contact your SLO for assistance in articulating the reasons for the MHE and the notification to the member.

### A. REFERENCES

1. [Military Justice Manual](#), COMDTINST M5810.1E, Chapter 3.C.
2. [Discipline and Conduct](#), COMDTINST M1600.2
3. U.S. Navy Memo 1640 of 18 Mar 10 (Prisoner Uniform and Health and Comfort Requirements)
4. [MANUAL FOR COURTS-MARTIAL](#) (MCM), Rules for Courts-martial (R.C.M.) 304 (2012 edition)

### B. FORMS

1. [Department of Defense Form 2707 \(DD-2707\)](#). Confinement Order Form located at <http://www.dtic.mil/whs/directives/infomgt/forms/>

### C. DEFINITIONS

1. **DD-2707**. It is used to order a person into confinement, (pretrial or otherwise). This form is required by Department of Defense (DOD) confinement facilities before they will accept a prisoner into confinement.
2. **Pretrial Restraint (PTR)**. Type of restraint, moral or physical, on a person's liberty and imposed before and during the disposition of UCMJ offenses. There are four types of PTR: (a) conditions on liberty, (b) restriction, (c) arrest, and (d) pretrial confinement.
  - a. **PTR Memo**. A standard memo used to place a person in a form of pretrial restraint less than confinement (e.g., conditions on liberty, arrest, restriction).
3. **Pretrial Confinement (PTC)**. Physical restraint of a person that deprives the person of his or her freedom pending disposition of Uniform Code of Military Justice (UCMJ) charges.
  - a. **PTC Notification Memo**. A standard memo that notifies the confinee of the offenses for which the confinee is held, the right to remain silent, the right to counsel, and the procedures used to review continued confinement. This notification is required by law.
  - b. **PTC Acknowledgement Memo**. A standard memo in which the confinee requests or declines counsel and acknowledges receipt and understanding of the notification memo.
  - c. **PTC 48 Hour Memo**. A memo in which a neutral and detached officer records his or her determination that probable cause exists to believe that the prisoner committed an offense under the UCMJ.
  - d. **PTC 72 Hour Memo**. A memo in which the prisoner's CO records his or her determination that probable cause exists to believe that the prisoner committed an offense under the UCMJ and that confinement is necessary under the circumstances. A CO, if neutral and detached, may write a single memo that doubles as both the 48 hour and the 72 hour memo.
  - e. **PTC Request Release Memo**. A standard memo used to initiate the release of a confinee

### D. REQUIREMENTS

**\*Special Note.** PTR, regardless of type, is a preventative measure. It should only be used when necessary to prevent a member from absenting himself from future UCMJ proceedings or when necessary to prevent a member from engaging in serious criminal misconduct in the future. PTR must never be used as punishment.

If you believe that a member has committed a UCMJ offense and you also believe that the member might not appear at UCMJ proceedings or might engage in serious criminal misconduct in the future, you should:

1. **Contact your SLO.** Imposing PTR is complicated, whether PTC or some lesser form, because it is closely intertwined with the act of filing UCMJ charges against a member. Thus, you should consult your SLO at the earliest opportunity.
2. **Accounting for the member.** While you are discouraged from placing a member in PTR without the advice of counsel, it might be prudent to establish positive control over the member while you seek such counsel.

3. **Prepare your administrative and logistics personnel.** Initiating PTR can be burdensome on a Command. For instance, restriction often requires temporary transfer to a unit that can facilitate restriction. Such relocation requires funding, orders, travel, escorts, and coordination with other Commands. PTC is even more taxing as USN confinement facilities require the prisoner's unit to ensure that the confinee has a physical exam and a full sea bag before arrival. For many CG units, moreover, confinement facilities are a great distance away, which often requires air travel for the prisoner and an escort and close coordination with brig chasers in the vicinity of the facility. For these reasons, imposing PTR typically requires contributions from administration, supply, medical, and Command cadre personnel.

### E. IMPORTANT DOS AND DON'TS

**DO** assess the need for PTR on a case by case basis.

**DO** consult your SLO at the earliest opportunity to assess the imposition of PTR.

**DO** ensure that any member ordered into PTC reports to the USN confinement facility after a physical exam.

**DO** ensure that any member ordered into PTC reports to the USN confinement facility with the needed sea-bag items.

**DO** ensure that any member ordered into PTC is visited weekly by a Command representative.

**DON'T** impose PTC when a lesser form of PTR would be adequate under the circumstances.

**DON'T** impose PTR as punishment.

**DON'T** terminate the pay of someone placed in PTC.

### F. EXAMPLES OF POTENTIAL PTR

1. **Example of liberty conditions.** To address the concerns that an assault and battery suspect may further harm the victim of the assault, a Command temporarily transfers the suspected assailant to another unit a fair distance away, places a Military Protective Order (MPO) on the suspected assailant, and directs the suspected assailant to muster in person with the receiving unit's OOD each day at 0700 and again at 1900.
2. **Example of PTR.** To ensure that a member suspected of selling cocaine does not engage in further drug sales or use, a cutter CO transfers the suspect to a nearby base Command and restricts the member to the confines of the base.
3. **Example of PTC.** After CGIS agents apprehend a member who has fled his cutter to avoid prosecution for larceny from the unit's galley funds, the cutter CO orders the member into PTC at a Navy brig to ensure that the member will appear for future court proceedings.

### A. REFERENCES

1. [Military Justice Manual](#), COMDTINST M5810.1E, Chapter 7.A.
2. [Uniform Code of Military Justice \(UCMJ\)](#), Article 138
3. [10 U.S.C. § 938](#)
4. [United States Coast Guard Regulations 1992](#), COMDTINST M5000.3B

### B. FORMS

1. N/A

### C. DEFINITIONS

1. **Article 138 Complaint.** Formal complaint by a member against their CO.
2. **Communicate.** Generally defined as an opportunity to appear personally in front of the CO and the right to correspond with that officer in writing or over the telephone.
3. **Redress.** Any lawful action taken that restores to the complainant the rights, privileges, property, or status he or she would have been entitled to had the wrong not occurred.
4. **Request Mast (Request and Complaint Mast).** Request by a CG member to communicate directly with their CO.
5. **Wrong.** A deprivation, restriction, or limitation of any right, privilege, benefit or entitlement which was unauthorized, unfair, or discriminatory.

### D. REQUIREMENTS

The CG policy is to resolve complaints at the lowest possible level. This generally means following the established chain of Command. The following mechanisms are intended for use in the instances when a member fails to obtain redress through the designated chain of Command:

1. **Request Mast.** COs are responsible for establishing instructions that describe the means by which members of the Command may make any request, report or statement to the CO. In addition to any unit specific procedures, members should be informed that:
  - a. All members are responsible for promptly forwarding any Request for Mast that he or she receives through the chain of Command to the proper level for decision. If a request is denied, the member requesting mast should be informed as to the reason.
  - b. Request Mast is not a mechanism to bypass the normal chain of Command and members should be encouraged to resolve matters at lower levels.
  - c. Request Mast may be denied if there is another avenue of redress available to the member. For example, a member may not use Request Mast to complain about the results of an NJP, where procedures are in place to file an appeal.
  - d. COs should not unduly restrict access of members to Request Mast. However, Commands may hold accountable those members whose complaints or concerns are found to be false, frivolous or brought to just be an annoyance.
  - e. Generally, COs do not need to seek the assistance of their SLO unless the subject of the Request Mast reveals a larger legal issue.
2. **Article 138, UCMJ.** The procedures for filing and processing an Article 138 complaint, include:
  - a. The complaining member must first submit a written request for redress through his or her chain of Command to the CO who has committed the alleged wrong. The complaint should explicitly state what the member is asking for, not just allege wrongdoing.
  - b. COs should contact their SLO immediately upon receipt of such a request; do not wait until a formal complaint is filed.

# Request Mast and Redress of Wrongs

## Chapter 7, Section K

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- c. The CO shall respond to the complaint in writing and without undue delay. CG regulations do not define undue delay, however, a good rule of thumb is to respond within **15 calendar days**.
- d. If the CO refuses to provide the requested redress, the member may then file a formal Article 138 complaint.
  - 1. Members should follow the guidelines set forth in [Reference 2](#) when drafting the formal complaint.
  - 2. Members may speak to legal counsel regarding a possible Article 138 complaint. Such members should visit the nearest Navy Defense Services Office (DSO) for assistance.
- e. Upon receipt of an Article 138 complaint, COs **must** forward all complaints to the responsible Officer Exercising General Court-Martial Jurisdiction (OEGCMJ). COs should not evaluate the complaint for substance or form; the OEGCMJ is responsible for returning deficient complaints to the complaining member.
- f. A complaining member may withdraw a complaint at any time. However, requests to withdraw a complaint must be in writing and forwarded up the chain of Command if the complaint has already been forwarded. If the complaint has not been endorsed or forwarded, the CO should document and preserve the withdrawal.

### E. IMPORTANT DOS AND DON'TS

**DO** establish procedures for Request Mast before a request is made.

**DO** ensure that all members of the Command are aware of their duty to forward requests for Mast up the chain of Command. In the end, the CO will be held responsible if a Request Mast is disregarded or not forwarded in accordance with CG policy.

**DO** ensure that all members of the Command are aware of their right to Request Mast. COs should view Request Mast as a valuable tool for maintaining good order and discipline as much as it is an avenue of redress for members.

**DO** ensure that retaliatory measures are not taken against any member who utilizes either the Request Mast or Article 138 complaint procedures.

**DON'T** discuss the subject matter of an active Article 138 complaint with the member without first contacting your SLO. Additionally, Commands should request assistance from their SLO before drafting a written response.

### F. EXAMPLES OF POTENTIAL REQUEST MAST OR ARTICLE 138 COMPLAINTS

- 1. Examples of circumstances where a member may **REQUEST MAST** include:
  - a. A member wants to report the illegal, improper or unethical activity of a superior officer or petty officer;
  - b. A member's report of harassment or abuse are ignored, or the harassment or abuse continues after the report.
- 2. Examples of circumstances where a member may submit an **ARTICLE 138** include:
  - a. A member believes that she was improperly removed from her leadership position;
  - b. A member in the brig wants to complain about the conditions of his confinement.
- 3. The following subjects are **NOT** normally appropriate for review under Request Mast or Article 138 procedures:
  - a. Complaints involving actions taken under the Uniform Code of Military Justice (UCMJ), including NJP.
  - b. Complaints regarding actions on officer fitness reports or enlisted marks.
  - c. Military Civil Rights complaints.
  - d. Administrative discharge actions.

### A. REFERENCES

1. [Military Justice Manual](#), COMDTINST M5810.1E, Chapter 7.C.
2. [Military Rules of Evidence \(MRE\)](#) 313-315

### B. FORMS

1. [Coast Guard Form 5810F \(CG-5810F\)](#). Application for Search Authorization Form located at [https://cgportal2.uscg.mil/sites/externaldata/Forms/CG\\_5810F.PDF](https://cgportal2.uscg.mil/sites/externaldata/Forms/CG_5810F.PDF)
2. [Coast Guard Form 5810G \(CG-5810G\)](#). Voluntary Consent to Search Form located at [https://cgportal2.uscg.mil/sites/externaldata/Forms/CG\\_5810G.PDF](https://cgportal2.uscg.mil/sites/externaldata/Forms/CG_5810G.PDF)

### C. DEFINITIONS

1. **Administrative Inspections.** A function of a Command which provides the CO the right to inspect people and property to ensure the Command is properly equipped, maintained, ready and/or fit for full duty with the requirements of a search authorization.
2. **Common Areas.** Area with no reasonable expectation of privacy, therefore no search authorization needed.
3. **Expectation of Privacy.** A person's established opinion that a certain place was private and there is an objective, legitimate societal belief that the place is private.
4. **Health and Readiness Inspection.** An examination of the whole or part of a unit, organization and installation, conducted as an incident of Command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization or installation.
5. **Probable Cause.** A reasonable belief that a crime has been committed and that evidence of the crime will be located at the place to be searched. The reasonable belief must be supported by a factual basis and information must be reliable and credible.
6. **Search.** To go or look through a place, area, etc, carefully, in order to find evidence of a crime.
7. **Search Authorization.** A document giving legal authorization to search a specific place for a specified object or objects and to seize the objects or objects if found.
8. **Securing the Scene.** Least intrusive method of keeping the pertinent evidence uncontaminated while a search authorization is sought.

### D. REQUIREMENTS

If you feel a search may be necessary:

1. **Contact your SLO.** Prior to conducting a search or requesting a search authorization contact your SLO and/or CGIS. There may be reasons why conducting an immediate search is not the best alternative, including the possibility of narrowing future options.  
**\*Special Note.** Even though either a CO or a Military Judge may authorize a search, the preference is normally to have a Military Judge grant a search authorization. Your SLO can assist you in locating a Military Judge.
2. **Imminent Threat.** Determine whether there is an imminent threat to life, property, and/or the destruction of evidence. If there is imminent danger, take appropriate action to ensure the safety of the crew and/or protection of the evidence.
3. **Probable Cause.** Gather facts and statements to support obtaining a search authorization. Consider the following:
  - a. Do you have jurisdiction over the person or area?
  - b. Do you have facts to support that the location or property being searched is actually located on the person or place being searched?
  - c. Do you need any additional information to provide grounds for a search?
  - d. Do you believe the information you have is reliable?
4. **Authorizing Authority.** Determine who is going to provide the search authorization:

- a. On Base Property. With probable cause, Military Judge or CO may authorize the search or seizure of any person or property.  
**\*Special Note.** The authority to approve a search authorization is a Non-Delegable Authority. The CO or OIC must make the probable cause determination with a personal knowledge of the facts and circumstances.
  - b. Off Base/Non-Military Property. Must work with local law enforcement through CGIS to obtain search warrant; Military Judges and COs do not have authority to authorize search or seizure of non-military property/private residence.
5. **Inspections.** Inspections do not require probable cause.
- a. Inspections include: Health and Welfare inspections, urinalysis, inspection of barracks, gate inspections, inventories etc.
  - b. An inspection must have a primary administrative purpose. For example, inspections to ensure security, readiness, cleanliness, order, and discipline are permissible. **\* Special note.** An inspection conducted with the primary purpose of obtaining evidence of a violation of the UCMJ is not permissible, and any evidence discovered will be inadmissible.
  - c. The scope of an inspection must reflect its purpose. If the purpose is broad (general security, readiness, fitness for duty) then the intrusion may be broad (unroll sleeping bags, check inside pockets, unlock containers). If the purpose of the inspection is narrow (for example, only to check helmet accountability), then one cannot inspect beyond that purpose.

### E. IMPORTANT DOS AND DON'TS

- DO** ask for consent from the property owner prior to conducting a search (they may say yes).
- DO** contact your SLO if you feel that a Search is warranted.
- DO** contact CGIS if you believe that felony level misconduct has taken place.
- DO** secure the scene until a search authorization is obtained.
- DO** describe the place to be searched and items to be seized with specificity on CO search authorization.
- DO** know that a drug dog alert in common area may provide probable cause to search a private space.
- DON'T** search without consent or a search authorization if criminal charges are being considered.
- DON'T** delegate probable cause determinations.
- DON'T** search an area where there is a reasonable expectation of privacy without search authorization.
- DON'T** forget to contact your SLO.

### F. EXAMPLES OF WHEN A POTENTIAL SEARCH AUTHORIZATION MAY BE NECESSARY

1. Entering an office to search for evidence relating to an offense. A person will not have an expectation of privacy to most places within the office, but lockers and drawers containing only personal items probably create an expectation of privacy in those spaces.
2. Searching a barracks room in response to information that an offense has occurred. This is different than a routine inspection.
3. Searching a vehicle in response to a K-9 alert during an inspection. The alert is probably enough probable cause to grant a search authorization.
4. Individual urinalysis based on information relating to drug use and/or possession or holding an unscheduled unit-wide urinalysis as a result of information relating to possible drug use by members of the Command. This is different from a routine, random unit urinalysis.

### A. REFERENCES

1. [Sexual Assault Prevention and Response \(SAPR\) Program](#), COMDTINST M1754.10D
2. [Uniform Code of Military Justice \(UCMJ\)](#), Article 120 (2012 edition)
3. [Coast Guard Investigative Service Roles and Responsibilities](#), COMDTINST 5520.5F
4. ALCOAST 308/12, [Withholding Initial Disposition Authority Under UCMJ in Certain Sexual Assault Cases](#)

### B. FORMS

1. **Unit Commander's Checklist for Unrestricted Reports of Sexual Assault.** Located in Enclosure (3) of Reference 1

### C. DEFINITIONS

1. Reports of Sexual Assault.
    - a. **Restricted Report.** Allows a sexual assault victim to confidentially disclose the details of his or her assault to specific categories of individuals and receive advocacy, medical treatment and counseling without triggering the official CG investigative process and notification of the victim's Command. **\*Special Note.** A restricted report may only be made to:
      1. An Employee Assistance Program Coordinator (EAPC)/Sexual Assault Response Coordinator (SARC),
      2. Family Advocacy Specialist (FAS),
      3. A Victim Advocate (VA), or
      4. A CG/Department of Defense (DOD) health care provider.
    - b. **Unrestricted Report.** Any report of sexual assault that is **not** made through a restricted report. If anyone other than those authorized to receive a restricted report are aware of the sexual assault, it must be an unrestricted report and reported to CGIS.
  2. **Sexual Assault.** The intentional touching or causing another to touch, either directly or through the clothing:
    - a. Any area of a person's body that would be covered by a bathing suit; or,
    - b. Any body part of any person, if done with intent to arouse or gratify the sexual desire of any person.
- \*Special note.** Sexual Assault is different than Sexual Harassment. See the Sexual Harassment Section on page 106 for more information.
3. **Special Victims Counsel (SVC).** Active duty judge advocates who have also been trained and designated as a VA and will provide legal assistance to victims in a confidential VA relationship throughout the investigation and any related proceedings.
  4. **Victim Advocate (VA).** Individuals trained to support victims of a crime. VA offer victims information, emotional support, and help finding resources and filling out paperwork. Sometimes, VA go to court with the victims.

### D. REQUIREMENTS

It is important that COs be able to identify the elements of a sexual assault and take proper actions.

1. **Ensure Safety.** Safety of the victim is paramount. All steps should be taken to ensure the safety of the victim, and may include: removal from the unit, issuance of a Military Protective Order (MPO), seeking medical treatment for the victim and other actions.
2. **Use the Commander's Checklist.** The checklist in Enclosure (3) of [Reference 1](#) provides a comprehensive guide on how to respond to a report of sexual assault.

3. **Contact CGIS, SARC, and SLO.** A report of sexual assault must be immediately reported to CGIS, the local SARC, and the unit's SLO.
  - a. Only CGIS is authorized to conduct an investigation of a report of sexual assault.
  - b. Work with the SARC to:
    1. Provide proper support services to both the victim and the alleged perpetrator;
    2. Determine whether the victim and/or alleged perpetrator should be removed from the unit.
  - c. Discuss the investigation process with CGIS and your SLO.
  - d. Discuss administrative actions with your SLO prior to acting.
4. **If Deployed, Contact Operational Commander (OPCON).** If you are deployed and receive a report of a Sexual Assault notify OPCON as the investigation may affect operational availability and OPCON relationships with foreign authorities may come into play.
5. **Inform Proper Disposition Authority.** In [Reference 4](#), the Commandant reserved initial disposition authority on all sexual assault cases. Only the following commanders have initial disposition authority:
  - a. Flag Officers designated as General Court-Martial Convening Authority;
  - b. Training Center commanders with an assigned Staff Judge Advocate (SJA); and
  - c. Base Commanders in paygrade O-6.

### E. IMPORTANT DOS AND DON'TS

**DO** use the Commander's Checklist.

**DO** offer support services to both the victim and the alleged perpetrator, including offering the victim the services of a trained VA.

**DO** report an incident of Sexual Assault even if the report comes from a third party (e.g., family or friends).

**DO** contact your SLO when dealing with a report of Sexual Assault.

**DO** make sure you know the difference between Sexual Assault and Sexual Harassment.

**DON'T** interview anyone regarding the report of a sexual assault; only CGIS is authorized to investigate.

**DON'T** spread word of the report of sexual assault beyond those that need to know; if word spreads, it could compromise the CGIS investigation or a later prosecution.

**DON'T** make judgments about the truthfulness of a report of sexual assault (the CGIS Investigation and subsequent events are used to get to the truth).

**DON'T** hold Command-wide all hands to discuss the incident. If something needs to be said to all hands in order to maintain good order and discipline contact your SLO in advance.

### F. EXAMPLES OF POTENTIAL SEXUAL ASSAULT REPORTS

1. A female member reports that she was being forced to have sex against her will by a shipmate. This report was made to a VA. The VA will determine if this is a restricted or unrestricted report.
2. A male member reports that another male shipmate attempted to "check his oil" (attempting to push a thumb into his anus through his clothes). This may sound like Hazing but it fits the definition of sexual assault and should be reported to CGIS.
3. A female member reports that a male shipmate approached her from behind while she sat in a chair; rubbed her shoulders and moaned. Report the situation to CGIS.
4. A male member reports that he saw a male shipmate grope the breasts of a civilian female while on liberty. Report the situation to CGIS.
5. A female member reports that she went out with a male shipmate, had a lot to drink, and doesn't remember what occurred the rest of the night. In the morning, she woke up in bed with her male shipmate. She was not wearing any clothes when she woke up and feels like he may have had sex with her during the night. Report the situation to CGIS.
6. A male member reports that a female shipmate pushed his hand onto the groin of a male shipmate, causing him to touch his shipmate's penis through his ODU pants. Report the situation to CGIS.
7. A female member reports that after a mooring evolution on the bridge, her male BMC told her good job and slapped her on the butt. This should be reported to CGIS.

# Transitional Compensation for Abused Dependents

## Chapter 7, Section N

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### A. REFERENCES

1. [Transitional Compensation and other Benefits for Abused Dependents](#), COMDTINST 1754.16A
2. [10 U.S.C. § 1059](#)
3. [38 U.S.C. § 1311](#)

### B. FORMS

1. [Coast Guard Form 1754.1 \(CG-1754.1\)](#). Application for Transitional Compensation Form located at [https://cgportal2.uscg.mil/sites/externaldata/Forms/CG\\_1754\\_1.PDF](https://cgportal2.uscg.mil/sites/externaldata/Forms/CG_1754_1.PDF)

### C. DEFINITIONS

1. **Transitional Compensation.** A monthly benefit given to dependents of CG members separated for dependent abuse.
2. **Dependent Abuse.** Involves the abuse of the spouse or dependent child of the member. Abuse of the spouse or dependent child of the member may include, but is not limited to, sexual assault, rape, sodomy, assault, battery, child sexual abuse, child physical abuse, attempted murder, manslaughter and murder.

### D. REQUIREMENTS

The Legal Service Command (LSC) will conduct a legal review of applications for transitional compensation and the HSWL CO is the deciding official. Commands should be aware of the following:

1. **Eligibility.** Transitional compensation payments are authorized for dependents of CG members who have been on active duty for more than 30 days and is
  - a. Convicted of a dependent-abuse offense that results in the member (1) being separated from active duty pursuant to a sentence of a Court-Martial or (2) forfeiting all pay and allowances pursuant to a sentence of a Court-Martial.
  - b. Administratively separated, voluntarily or involuntarily, from active duty if the basis for separation includes a dependent-abuse offense.
2. **Duration of Payments.** Duration of payments will be 36 months except if the member's obligated active duty service is less than 36 months then the duration of payment will be the greater of the unserved portion or 12 months.
3. **Other Benefits.** In addition to monthly payments the spouse and/or dependent children will receive commissary and exchange privileges, medical and dental benefits and possible relocation expenses.

### E. IMPORTANT DOS AND DON'TS

**DO** contact the LSC or Work-Life office if you believe you are separating a member due to dependent abuse.

**DO** know that the authorized amount is determined by [Reference 3](#) above.

**DO** contact your SLO if you have any questions.

**DON'T** promise a dependent they will receive Transitional Compensation. A legal review must be conducted before Transitional Compensation is authorized.

### F. EXAMPLES OF POTENTIAL TRANSITIONAL COMPENSATION SITUATIONS

1. A member is convicted at a Court-Martial for physically abusing his 10 year old son. He received a Bad-conduct discharge. The member is married with three children. The family may be entitled to Transitional Compensation Benefits.
2. A member is administratively separated for physically abusing her husband. They have no children. The husband may be entitled to Transitional Compensation.



# Chapter 8

## **Military Justice: Good Order and Discipline**

### Sections

- A. Barment
- B. Military Protective Orders (MPO)
- C. Non-Judicial Punishment (NJP)
- D. NJP: Maximum Punishment Chart
- E. Relief for Cause (RFC)

### A. REFERENCES

1. [18 U.S.C. § 1382](#)
2. [18 U.S.C. § 3571](#)

### B. FORMS

1. N/A

### C. DEFINITIONS

1. **Barment.** The denial of access, removal, or exclusion of an individual from an installation by the installation commander for the purpose of protecting personnel and property under his or her jurisdiction, and/or for maintaining order.
2. **Barment Letter.** The document by which the installation commander prohibits the entry of an individual to an installation. A Barment Letter is effective upon delivery.

### D. REQUIREMENTS

If the Command determines that a Barment is necessary the Command should ensure that the Barment Letter contains the following information:

1. **Authority.** The Barment Letter should indicate the authority ([18 U.S.C. § 1382](#)) under which the Barment is being ordered.
2. **Person authorized to issue Barment.** The Officer in Command or in Charge of the installation, at the time of the Barment, may issue the letter.
3. **Subject to be Barred.** The letter must clearly state the individual to be barred. A general policy to exclude a certain group or classification of individuals is normally inappropriate.
4. **Reason for Barment.** The reason for the Barment should be clearly stated. Great detail is not required, but it should cover the incident or conduct giving rise to the Barment.
5. **Area of Barment.** The individual must know the area he/she is being barred from. The area can be the entire military installation or a specific area within the installation.
6. **Length of Barment.** State the length of time for the Barment, specifically noting if it is permanent or until future notice.
7. **Limitations of Barment.** If any limitations to the Barment exist, they should be noted. For example, permissible entry for a retiree to use medical services, permissible entry with 24 hours notice, etc. If there are conditions on the permissible entry (being subject to search, escorts while on base, etc.), those should also be noted.
8. **Penalties for Violating the Order.** State the effect of violating the order, including apprehension and detainment by the military, possible delivery to appropriate civilian authorities, as well as potential prosecution for a violation of Federal law. The Federal penalty can include confinement for six months and a fine.
9. **Reconsideration.** State the procedure the individual is to follow to have the Barment action reconsidered.

### E. IMPORTANT DOS AND DON'TS

- DO** verify that you have jurisdiction over the reservation, post, fort, arsenal, yard, station, or installation.
- DO** ensure there is a basis for the Barment.
- DO** ensure that the purpose of the Barment is to protect personnel and property or to maintain order.
- DO** ensure that the Barment letter includes all the necessary components.
- DO** ensure that the subject receives proper notice of the order. Personal delivery with a signed acknowledgement is preferred to ensure notice to the individual. If the individual does not provide

signature of receipt, complete an affidavit documenting personal delivery. If sent via mail, use certified mail with a return receipt acknowledgement and complete an affidavit documenting mailing.

**DON'T** bar someone on the basis of a constitutionally protected status (race, religion, sex, age, etc.) or on the basis of a constitutionally protected right (freedom of speech, religion, etc.).

**DON'T** hesitate to contact your SLO to request a legal review or to request additional assistance.

**DON'T** identify the maximum fine within the Barment Letter because state laws could affect the maximum fines imposed.

### F. EXAMPLES OF POTENTIAL BARMENT SITUATIONS

1. A civilian employee displayed unusual behavior during a CG Day celebration held on the installation. The civilian employee's behavior made several CG members uncomfortable and apprehensive. This incident, coupled with a history of disruptive incidents with coworkers during working hours, lead the CO to bar the civilian employee from the base. This Barment Letter was issued in addition to employment paperwork, suspending the employee.
2. A retiree, visiting the base gym, caused a rather large disturbance. This disturbance made members fearful. As a result of these actions the CO barred the retiree from using the gym facilities. All other base privileges were maintained by the retiree, including use of the medical facility and the exchange.
3. A CG member, discharged at a Special Court-Martial for use and distribution of drugs, continued to visit the base. (Military members continue to maintain base privileges during the Court-Martial Appeals process.) His presence undermined the good order and discipline of the base. The CO barred the member from visiting the base for the duration of the appeals process. (Since the member had access to other, nearby facilities, the bar did not interfere with his ability to get medical treatment during the appeals process.)

### A. REFERENCES

1. [10 U.S.C. § 1567](#)
2. [10 U.S.C. § 1567a](#)
3. [The Uniform Code of Military Justice \(UCMJ\)](#), Articles 90, 91 and 92

### B. FORMS

1. **Coast Guard Form 6070 (CG-6070)**. Military Protective Order

### C. DEFINITIONS

1. **Civilian Protection Order (CPO)**. A CPO includes any injunction or other order issued for the purpose of protecting another person from: violent or threatening acts, harassment, contact or communication, or physical proximity. This includes any temporary or final order issued by a civil and criminal court.
2. **Military Protective Order**. An order issued by a CO or the commander exercising control over an active duty member for the purpose of protecting a person from: violent or threatening acts, harassment, contact or communication, or physical proximity. A MPO may be specifically tailored by the issuing authority to meet the needs of the protected person.

### D. REQUIREMENTS

It is important that Commands maintain good order and discipline. At times it may be necessary for Commands to protect one person from another person to ensure safety, good order and discipline. To do this a CO may issue a MPO following the below guidance.

1. **Authorizing Official**. A CO of the member in question may issue a MPO.
2. **Content of MPO**. It is recommended that MPOs be documented on CG-6070. The order must contain directions that the member named in the MPO must:
  - a. Stay away from designated person(s);
  - b. Stay out of and away from designated areas or places, including military housing, the family home, schools, place of employment and day care centers, leave a public place if the victim and offender find themselves in the same location or facility;
  - c. Refrain from contacting, harassing, stalking or touching certain named persons. This can include restrictions of phone conversations, third party communications, and orders to remain outside a geographical location; and/or
  - d. Do or refrain from doing certain activities pending further direction.
3. **Duration**. A MPO stays in effect until terminated, a replacement order is issued or the member changes Commands. MPOs should contain a termination date.
4. **Notice**. Notify civilian authorities of the issuance of the MPO and the individuals involved in the MPO. Civilian authorities should also be notified of any change made in MPO and when the MPO is terminated.
5. **Format of the MPO**.
  - a. The order may be issued verbally or in writing. It is preferred that all MPOs are issued in writing and on CG-6070.
  - b. The order must relate to military duties and must be a lawful order.
  - c. MPOs should be narrowly tailored to fit the circumstance.
  - d. MPOs should explicitly state what the member is to do, or not do.
  - e. MPOs should contain a termination date.
6. **Issuing a MPO**.
  - a. MPOs are aimed at stabilizing the situation and providing additional time for investigation, while taking into account any hardship that may be imposed on both victims and offenders.

- b. A MPO can be issued if the CO determines it is necessary to ensure the safety and protection of person(s) for whom it is issued.
  - c. A MPO may be issued after hearing only one side of the story but the duration should be limited, normally not more than 10 days.
  - d. If the MPO is for longer than 10 days, victim(s) and the suspected offender should be given an opportunity to be heard and to respond to allegations.
7. **Authority of MPO.**
- a. COs may issue MPOs even if CPO is in place, but the terms of the MPO should not contradict the terms of the CPO. However, the terms may be more restrictive.
  - b. COs may enforce a MPO whether or not the service member is on Government property.
  - c. Violations of MPOs may be prosecuted under Article 90, 91 or 92 of the UCMJ.
8. **SLO.** Prior to issuing a MPO, Commands should consult their SLO.

### E. IMPORTANT DOS AND DON'TS

**DO** contact your SLO prior to issuing a MPO, especially if the conduct has already taken place.

**DO** place MPOs in writing and document the member's receipt of the MPO.

**DO** specifically state what the member can and cannot do.

**DO** tailor the MPO to the specific facts surrounding a case.

**DO** narrowly tailor the MPO to ensure the safety of all parties.

**DO** communicate with each party of the MPO individually and not in each other's presence.

**DON'T** question a member about the actions leading up to the issuance of the MPO without providing the member Article 31(b) warnings.

**DON'T** issue overly harsh provisions that could be construed as punitive or pre-trial restraint.

**DON'T** forget to issue members a Page 7 addressing a member's access to weapons, when appropriate. A template can be found on PPC's website addressing members with Protective Orders or Domestic Violence Convictions. (See the Lautenberg Amendment Section on page 68 for more information.)

### F. EXAMPLES OF POTENTIAL NEEDS FOR MPO

- 1. A member living in Government housing is accused of physically abusing her husband. The Command determines that a MPO requiring the member to have no communication with her husband for 5 days and to remain 100 feet away is appropriate. The Command will revisit the MPO in 5 days.
- 2. A member is accused of sexual assault. The member receives a MPO requiring him to stay 100 feet away from the victim and have no communication with the victim.

### A. REFERENCES

1. [Military Justice Manual](#), COMDTINST M5810.1E, Chapter 1
2. [MANUAL FOR COURTS-MARTIAL](#) (MCM), Part V (2012 Edition)
3. [The Uniform Code of Military Justice \(UCMJ\)](#), Article 15
4. [Coast Guard Investigative Service Roles and Responsibilities](#), COMDTINST 5520.5F

### B. FORMS

1. [Coast Guard Form 4910 \(CG-4910\)](#). Report of Offenses and Disposition Form (booking or report chit) located at [https://cgportal2.uscg.mil/sites/externaldata/Forms/CG\\_4910.PDF](https://cgportal2.uscg.mil/sites/externaldata/Forms/CG_4910.PDF)

### C. DEFINITIONS

1. **Fundamental Fairness.** Respecting all legal rights that are owed a person to ensure that a process/proceeding is fair.
2. **Non-Judicial Punishment (NJP).** Limited punishments which can be awarded for minor disciplinary offenses by a CO or Officer-in-Charge to members of his or her Command. Also referred to as Captain's Mast, Mast, or Article 15.
3. **Preponderance of the Evidence.** The standard that it is more likely than not that the offenses occurred given the evidence presented. It is based on the persuasiveness of the evidence in addition to the evidence's probable truth or accuracy.
4. **Remission.** Cancels out unexecuted portions of punishment. End of current enlistment or discharge automatically remits unexecuted punishment.
5. **Suspension.** Punishment held in abeyance during a probationary period. Any type of NJP may be suspended. The period of suspension must be specified in writing and can be no more than **6 months**.
6. **Set Aside.** When all rights, privileges, and property are restored to the member. Only used to correct a clear injustice. Equivalent to a member never having been punished at NJP.

### D. REQUIREMENTS

Before a Command decides to NJP a member they should consider the following information:

1. **Initial Report.**
  - a. Although not required, completion of a CG-4910 is often the first step in the NJP process.
  - b. Normally, upon receiving a report of misconduct, the Command should designate a member of the Command to conduct a preliminary inquiry into the facts surrounding the offense(s) allegedly committed.
  - c. Offenses no older than **two years** can be disposed of at NJP.
  - d. NJP is prohibited when the offenses have been previously adjudicated in the Federal court system, including at Court-Martial. NJP is **NOT** prohibited prior to or pending state/local/foreign court action. However, COs must request permission from the Judge Advocate General (TJAG) to conduct a NJP at the conclusion of a state/local/foreign adjudication.
2. **Member's Rights before Mast.**
  - a. Before interviewing a member suspected of committing a violation of the UCMJ, military members must be advised of their rights found in Enclosure (5) of [Reference 1](#).
  - b. A member has a right to consult with an attorney before deciding whether to accept NJP.
  - c. Generally, a member has a right to refuse NJP and demand trial by Court-Martial when stationed at a Command ashore. When a member is attached to or embarked on a vessel, they typically do not have the right to refuse NJP.

- d. Prior to imposition of NJP, the member must be allowed to examine documents and other evidence that the NJP authority will examine and consider in determining whether to impose NJP.

**\*Special Note.** The regional CGIS office should be consulted prior to the disclosure of a CGIS Report of Investigation.

### 3. The Mast.

- a. Normally, the power to impose NJP belongs to the CO or the CO of military personnel and cannot be passed to another person. Any officer who succeeds in Command in the absence of the assigned CO because of death, incapacitation, illness, Temporary Additional Duty (TAD), Relief for Cause, or leave has the power of the assigned CO to impose punishment (except the maximum punishment which is limited by the rank of the successor.)
- b. A member has the right to:
  - 1. Be present. A member may waive personal appearance; however, the CO may require the member to appear. Normally, NJP cannot be imposed in absentia on a member whose absence is unauthorized;
  - 2. Remain silent;
  - 3. Have a mast representative;
  - 4. Examine evidence;
  - 5. Present matters in extenuation & mitigation (Matters in extenuation are matters presented that might explain why the charged offense(s) happened and furnish a partial excuse. Matters in mitigation are matters that indicate that the charged offense(s) ought not to be treated as seriously as they might be under normal circumstances.);
  - 6. The appearance of reasonably available witnesses; and
  - 7. A public hearing.
- c. The Military Rules of Evidence do not apply (except attorney-client privilege). The CO will instead apply a standard of fundamental fairness.
- d. The standard of proof is the preponderance of the evidence.

### 4. Disposition.

- a. A CO's options for disposition are:
  - 1. Dismissal – with or without warning;
  - 2. Impose authorized punishment;
  - 3. Refer to Court-Martial; or
  - 4. Postpone disposition.
- b. Once a CO finds that an offense was committed, he or she must consider the appropriate punishment. The following factors should be considered by the CO in choosing the appropriate punishment:
  - 1. Seriousness of the offense;
  - 2. Circumstances surrounding the offense;
  - 3. Member's prior performance and potential;
  - 4. Potential rehabilitative effect of punishment on the particular member;
  - 5. Mitigating and extenuating circumstances;
  - 6. Effect of offense upon the good order and discipline within the Command;
  - 7. Beneficial effect of immediate punishment;
  - 8. Deterrent effect of punishment on potential offenders;
  - 9. Recommendations from any subordinate commanders; and
  - 10. Potential adverse administrative consequences (e.g., loss of eligibility for good conduct award, eligibility for reenlistment or promotion, show cause board, recoupment of selective reenlistment bonus, administrative discharge).

**\*Special Note.** The maximum punishment that may be imposed depends upon the rank of the authority imposing punishment, the rank or grade of the member being punished, and in some situations by the combination of punishments awarded. (See the NJP: Maximum Punishment Chart Section beginning on page 93 of this guide for more information.)

5. **Publication of NJP.** The best course of action is to publish NJP Disposition in the Command's good order and discipline publication. The notification should include the date of the mast, paygrade of member, nature of the offense and punishment. Notify your SLO and copy the unit's chain of Command.
6. **Clemency & Corrective Action.** The CO who imposed the punishment, successors in Command, and superior COs have authority to remit, mitigate (reduce the quantity or quality of a punishment), suspend, or set aside punishments. The member must still be within the same Command to conduct these actions.
7. **TAD Personnel.** NJP may be imposed upon TAD personnel by the CO of the member's permanent unit or by the CO of the unit to which the member is temporarily assigned. **\*Special Note.** A member shall not be assigned TAD from a shore unit to a vessel for the primary purpose of thwarting the member's right to refuse NJP.

### E. IMPORTANT DOS AND DON'TS

- DO** consult [Reference 4](#) for a list of mandatory CGIS reporting requirements.
- DO** stop questioning a member if the member states that he or she desires to consult with an attorney.
- DO** advise members, suspected of any offense, of their rights before questioning them.
- DO** contact your SLO before proceeding with NJP based on the General Article (Article 134, UCMJ).
- DO** contact your SLO before initiating NJP in cases where a member has or had a case covering the same incident in a civilian court.
- DO** contact your SLO if a member refuses NJP.
- DO** notify a member in writing if the Command is considering vacating a suspended punishment.
- DO** place terms of a suspension in writing.
- DON'T** hesitate to contact your SLO if you have any questions or concerns.
- DON'T** take any formal or investigative action (including interviews or inquiries) for actual, suspected, or alleged incidents of rape or sexual assault.
- DON'T** retain a member past their Expiration of Active Obligated Service (EAOS) in order to serve NJP.
- DON'T** use the [General Article](#) (Article 134, UCMJ), in place of an enumerated UCMJ article (e.g., Articles 80-132).
- DON'T** use the General Article (Article 134, UCMJ) to create a new offense to cover misconduct.
- DON'T** criminalize conduct that is otherwise legal.

### F. EXAMPLES OF POTENTIAL NJPs

1. A member is suspected of habitually arriving late to duty. After continual counseling the behavior has failed to improve. The Command can initiate an investigation to determine if NJP is appropriate.
2. A member received a positive urinalysis report on her most recent urinalysis. The Command can consider taking the member to NJP. (In addition to considering NJP, contact your SLO for information on additional processing requirements).
3. A member misused her government credit card on one occasion. The Command could consider taking her to NJP.
4. A member TAD to the Sector conducts misconduct. The CO of the Sector confers with the member's permanent unit and they decide that it is best to address the behavior immediately so the Sector CO imposes NJP on the member.

# NJP: Maximum Punishment Chart

## Chapter 8, Section D

### A. REFERENCES

1. [Military Justice Manual](#), COMDINST M5810.1E, Chapter 1.E.1.
2. [MANUAL FOR COURTS-MARTIAL \(MCM\)](#), Part V (2012 edition)

Imposed by	Imposed upon	Arrest In Quarters	Forfeiture	Reduction	Extra Duties	Restriction	Admonition/ Reprimand In writing	Correctio nal Custody
<b>Flag Officers in Command</b>	Officers	30 days	½ one month pay for 2 months	NO	NO	60 days	YES	NO
	E-7 to E-9	NO	½ one month pay for 2 months	NO	NO	60 days	YES	NO
	E-4 to E-6	NO	½ one month pay for 2 months	1 pay grade	45 days	60 days	YES	NO
	E-1 to E-3	NO	½ one month pay for 2 months	1 pay grade	45 days	60 days	YES	30 days
<b>O-4 to O-6</b>	Officers	NO	NO	NO	NO	30 days	YES	NO
	E-7 to E-9	NO	½ one month pay for 2 months	NO	NO	60 days	YES	NO
	E-4 to E-6	NO	½ one month pay for 2 months	1 pay grade	45 days	60 days	YES	NO
	E-1 to E-3	NO	½ one month pay for 2 months	1 pay grade	45 days	60 days	YES	30 days
<b>O-3 and below</b>	Officers	NO	NO	NO	NO	15 days	YES	NO
	E-7 to E-9	NO	7 days	NO	NO	14 days	YES	NO
	E-4 to E-6	NO	7 days	1 pay grade	45 days	14 days	YES	NO
	E-1 to E-3	NO	7 days	1 pay grade	45 days	14 days	YES	7 days
<b>OIC</b>	Officers	NO	NO	NO	NO	NO	NO	NO
	E-7 to E-9	NO	3 days	NO	NO	14 days	NO	NO
	E-4 to E-6	NO	3 days	NO	14 days	14 days	NO	NO
	E-1 to E-3	NO	3 days	NO	14 days	14 days	NO	NO

\*Restriction and extra duties may be combined to run concurrently or consecutively but the combination may not exceed the maximum imposable for extra duties.

\* Forfeiture shall be expressed in whole dollars and cents or in number of days pay.

### A. REFERENCES

1. [Military Assignments and Authorized Absences](#), COMDTINST M1000.8, Chapter 1.F.
2. [ALCGPSC 052/12](#)

### B. FORMS

1. N/A

### C. DEFINITIONS

1. **Loss of Confidence.** An articulated, fact-supported determination by a member of the chain of Command regarding the member's judgment and ability to Command; his or her role in shaping morale, good order, and discipline in the unit; and his or her influence on mission requirements and Command readiness. A loss of confidence is usually because of unsatisfactory conduct or a period of unsatisfactory performance.
2. **Permanent Relief Authority.** The individual in the chain of Command with the authority to permanently relieve a CO, OIC, XPO, EPO, or a designated full-time CMC/CSC.
3. **Relief for Cause (RFC).** The administrative removal of a CO, OIC, XPO, EPO, or designated full-time CMC/CSC from his or her current duty assignment before the member's planned rotation date.
4. **Temporary Relief Authority.** The individual in the chain of Command with authority to temporarily relieve a CO, OIC, XPO, EPO, or designated full-time CMC/CSC and recommend whether a permanent relief for cause is warranted.

### D. REQUIREMENTS

If there is a loss of confidence based on unsatisfactory conduct or unsatisfactory performance, the Command should:

1. **Submit RFC packet.** Submit a Temporary RFC package to the appropriate Temporary Relief Authority. The package consists of a detailed summary of the facts. Mandatory information for inclusion in the summary can be found in [Reference 1](#).
2. Temporary Relief Authority belongs to the positions listed below and cannot be delegated.
  - a. **CO/OIC.** Director Chiefs for HQ units under their program; Area Commanders; District Commanders; Logistics/Service Center, Commanding Officers.
  - b. **XPO/EPO.** Sector Commanders.
  - c. **CMC/CSC.** The CMC/CSC's principal (Flag Officer or CO).
3. **Notice to Member.** Notify the member in writing if they have been temporarily relieved. Notice must provide the member an opportunity to submit a statement on his or her behalf within **5 working days** of the RFC.
4. **Remove the Member.** The relieved member will be temporarily assigned to a separate unit while the RFC action is pending. He or she must be removed from his or her permanent unit's rating chain.
5. **Notice to Permanent Relief Authority.** Notify the Permanent Relief Authority of the action taken if a member is temporarily removed. Permanent Relief Authority belongs to the positions as listed below:
  - a. COs not assigned by an O-5 or O-6 assignment panel. Personnel Service Center.
  - b. OIC/XPO/EPO. Personnel Service Center.
  - c. COs assigned by an O-5 or O-6 assignment panel. CCG, VCG; CG-01 (DCMS), CG-1, CG-12.
6. **Temporary Authority's Action.** As the Temporary Relief Authority, take final action on the Temporary RFC after reviewing the package. The Temporary Relief Authority can terminate the RFC process and return the member to his or her Command; terminate the RFC process and recommend a PCS transfer; or recommend a Permanent RFC.

7. **Relief.** If a Permanent RFC is warranted, submit a package to the Permanent Relief Authority. The package will include any updated information to the Temporary RFC package. **\*Special Note.** If the member is being recommended for RFC due to misconduct it is normal for the Command to take or be in the process of taking disciplinary action prior to approving a RFC.
8. **Member Statement.** Provide any member being relieved for cause the opportunity to submit a statement. The member may submit a statement on his or her behalf within **5 working days** of written notification of the RFC.
9. **Counsel.** The member being relieved for cause (Permanent or Temporary) must be afforded the opportunity to seek legal counsel.

### E. IMPORTANT DOS AND DON'TS

**DO** give the member the opportunity to seek legal counsel during the temporary RFC process. The member should be provided the phone number to the closest Navy Defense Service Office (DSO).

**DON'T** send a request for Permanent RFC to the Permanent Relief Authority until the member has had the opportunity to make a statement on his or her behalf. If the member fails to submit a statement within a reasonable time (**5 working days**), he or she waives the right to make such a statement.

**DO** contact your SLO for any questions regarding RFC.

**DO** attach an explanation of why disciplinary action was not warranted or taken when submitting a RFC for misconduct that does not contain disciplinary action.

**DO** take corrective action (including Command counseling, guidance, training, and performance evaluations) prior to submitting a RFC for substandard performance.

**DON'T** include administrative memorandums of censure or reprimand when submitting the RFC request to the Permanent Relief Authority.

**DON'T** submit a RFC for an individual instance of poor leadership that is not a substantial disregard of duty (e.g., an inappropriate remark).

**DO** consider whether a TAD assignment is an appropriate alternative to Temporary RFC while an investigation takes place.

### F. EXAMPLES OF POTENTIAL RFC

1. A CO is recommended for RFC due to an alcohol incident.
2. A XPO is recommended for RFC for financial irresponsibility.
3. An OIC is recommended for RFC for having a prohibited relationship.

