



DEPARTMENT OF THE ARMY
HEADQUARTERS
U.S. ARMY MANEUVER SUPPORT CENTER AND FORT LEONARD WOOD
FORT LEONARD WOOD, MISSOURI 65473-5000

REPLY TO
ATTENTION OF:

ATZT-JA

30 OCT 2002

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Command Policy #11-02, Pretrial Confinement

1. PURPOSE: To establish policy and procedures for ordering pretrial confinement.
2. GENERAL. Commanders directing a soldier into pretrial confinement must have prior approval of the Summary Court-Martial Convening Authority (battalion-level commander) and concurrence of the Staff Judge Advocate, or, in the absence of the SJA, the Deputy Staff Judge Advocate, or the Chief, Military Justice Division.
3. DISCUSSION:
 - a. Company commanders considering pretrial confinement must consult with a trial counsel and must first consider imposing conditions on liberty or restrictions in lieu of arrest as lesser means of restraint. Commanders may order pretrial confinement only upon probable cause that the accused soldier violated the UCMJ and lesser means of restraint are inadequate to ensure presence for trial and/or to preclude further serious misconduct.
 - b. Commanders ordering pretrial confinement will work with a trial counsel to accomplish the necessary coordination and approvals from the Summary Court-Martial Convening Authority and SJA, and document preparation. Commanders may obtain telephonic approval/concurrence and, in such cases, will document this on the back of the DD Form 497 (Confinement Order).
 - c. Commanders ordering pretrial confinement will inform the accused of the following matters required by Rule for Court-Martial 305(e):
 - (1) The nature of the offenses for which the soldier is being confined;
 - (2) The right to remain silent and that any statement may be used against the soldier;
 - (3) The right to retain civilian counsel at no expense to the government and the right to request assignment of military counsel; and
 - (4) The procedures by which the confinement will be reviewed.

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d. Commanders ordering pretrial confinement will work with a trial counsel to prefer court - martial charges, inform the accused of the charges, and sign the confinement order and DA Form 5112-R (Checklist for Pretrial Confinement). The command, through coordination with the trial counsel, will arrange a pretrial confinement hearing before the Military Magistrate within 48 hours of ordering pretrial confinement. The command should not transport the accused soldier to a regional confinement facility prior to the Magistrate's hearing. In addition, commands may not hold a soldier in the local detention cell for longer than 72 hours without my prior written approval or that of the acting commander in my absence.

e. Because of the significance of the pretrial confinement decision and the time sensitive nature of the required actions accompanying the decision to order pretrial confinement, commanders will give priority to processing pretrial confinement cases.

4. SUPERSESSION. This memorandum supersedes previous policy dated 21 September 2001, subject as above.

5. PROPONENCY. The Staff Judge Advocate is the proponent for this policy. Direct questions concerning this policy to the Military Justice Division at 6-0630.


R. L. VAN ANTWERP
Major General, USA
Commanding

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