

MILPERSMAN 1620-020

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

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References	(a) Uniform Code of Military Justice (UCMJ) (b) JAGINST 5800.7E Manual of the Judge Advocate General (JAGMAN) (c) Manual for Courts-Martial (MCM), 2012
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1. Jurisdiction - General Rule

a. Members of a Reserve Component in Federal service on active duty (ACDU), as well as those in Federal service on inactive duty training (IDT) are subject to reference (a). Termination of a period of ACDU or IDT does not relieve them of amenability to reference (a) jurisdiction for an offense committed during such period, and they may later be involuntarily ordered to ACDU for the purpose of

- (1) investigation under reference (a), article 32;
- (2) trial by court-martial; or
- (3) nonjudicial punishment (NJP).

b. Reference (a); articles 2(a)(3), 2(d), 3(d) and reference (b) section 0123 provide further guidance. See, generally, **Willenbring v. Neurater, 48 M.J. 152 (Court of Appeals for the Armed Forces 1998)**, which may be accessed by using the following Web address:
www.armfor.uscourts.gov/newcaaf/opinions/1998Term.htm.

c. Authority to refer charges against retired personnel shall be approved by the Secretary of the Navy (SECNAV) per reference (c).

2. **Command Responsibilities**

a. COs of commissioned Reserve units have the same authority under reference (a) as that of ACDU commands.

b. COs of Reserve augmentation units do not have authority under reference (a). That authority lies with the ACDU supported command CO, the ACDU command to which the member was assigned when the offenses occurred, or the ACDU command or ACDU supported command to which the member has since been transferred.

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

a. Restraint-type punishment (e.g., confinement, restriction, extra duties) adjudged against reservists ordered to ACDU for disciplinary proceedings will not cause the specified period of ACDU to be extended for the purpose of serving the punishment absent Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA) approval. However, restraints on liberty may be carried over to later periods of IDT or ACDU.

b. If pretrial confinement is involved, see paragraph 15 below "Pretrial Confinement of IDT Reservists."

4. **Breach of Discipline**. A reservist under investigation with a view toward court-martial may be placed on legal hold and retained in present duty status until completion of the action. This is especially true in instances where a complete termination of military status is pending, or because of the gravity of the offense.

a. Legal hold considerations may include

(1) the nature of possible charges (e.g., capital offense);

(2) potential damage to national security;

(3) potential harm to others and or self; and

(4) risk of flight by the reservist under investigation to avoid jurisdiction.

b. Procedures for Placing a Reservist on Legal Hold. A reservist on ACDU orders will be placed on legal hold by extending current orders. Assistance may be provided by Commander, Naval Reserve Forces Command (COMNAVRESFOR), specifically COMNAVRESFOR's Judge Advocate Office (N00J), Navy Personnel Command (NAVPERSCOM) Career Management Department (PERS-4), or Reserve Personnel Management Department (PERS-9) (as appropriate), see paragraph 11 below.

c. Reservists may not be placed on legal hold to accomplish administrative measures or NJP punishment.

5. **Procedures for Involuntary Recall to ACDU - Introduction.**

Paragraphs 6 through 10 below detail procedures to be used for the involuntary recall of an inactive duty Reserve member to ACDU. The following topics are covered:

a. Who may request an order to involuntary ACDU of an inactive duty reservist;

b. Who the request should be submitted to;

c. How the request should be submitted;

d. Who has the authority to order to ACDU; and

e. How the request may be submitted under exigent circumstances.

6. **Procedures for Involuntary Recall to ACDU - Who May Request**

a. Only officers who exercise court-martial convening authority may submit a request for an order to involuntary recall to ACDU an inactive duty reservist for disciplinary action.

b. The submitting command may be the accused's Reserve command if that command is exercising court-martial convening

authority, the accused's ACDU supported command, or the ACDU command or activity to which the accused was assigned at the time of the commission of the offense. Consultation with the cognizant staff judge advocate (if reasonably available) prior to submitting a request is required. In addition, consultation with COMNAVRESFOR (N00J) or cognizant region Reserve Component command staff judge advocate is strongly encouraged. Since situations will arise on weekends, the following duty office telephone numbers are provided:

DUTY OFFICE	TELEPHONE NUMBERS
COMNAVRESFORCOM	DSN: 322-8500 COMM: (757) 445-8500
NAVPERSCOM	DSN: 882-3163 COMM: (901) 874-3163
NAVY JAG OFFICE HOURS PAGER (24 HRS)	DSN: 325-5190 COMM: (202) 685-5190
Expeditionary Combat Readiness Center (ECRC), Joint Expeditionary Base Little Creek- Fort Story, 1213 5th Street, Virginia Beach, VA 23459-2316	DSN: 253-8640 COMM: (757) 763-8640

7. Procedures for Involuntary Recall to ACDU - To Whom Submitted

a. Pursuant to reference (b), section 0123 e(4), the request should be addressed to a general court-martial convening authority (GCMCA) in the chain of command of the accused at the time of its submission, as designated in section 0120 of reference (b), and who is superior in grade to the submitting officer or to SECNAV if confinement authority is requested.

b. The GCMCA above will approve or disapprove the request and forward approved requests to NAVPERSCOM (PERS-9), see paragraph 9 below as the order issuing authority.

c. The GCMCA will copy COMNAVRESFOR (N00J), Office of the Judge Advocate General (OJAG) (Code 20) and other interested commands (as appropriate).

8. **Procedures to Submit Involuntary Recall To ACDU - Substantive Contents of the Recall.** Depending upon the circumstances and any necessity to expedite the recall request, the submitting command may present the request via letter, message, electronic mail, or telephone, and the request shall include the following information:

Step	Action
1	Contain the complete identity of the accused (grade and full name to ensure positive identification and accused's designator (as applicable).
2	Include a detailed summary of the contemplated charges and specifications or a copy of the charge sheet (if available). Care should be exercised to avoid triggering the speedy trial provisions of reference (c), R.C.M. 707.
3	Provide a summary of evidence in the case.
4	State facts showing amenability to trial by court-martial or imposition of NJP.
5	Indicate the military status, unit to which assigned at the time of submission and at the time of commission of the alleged offenses, and location and home address of the accused.
6	Indicate where the accused should be ordered to ACDU and why the order to ACDU at the desired location is advisable.
7	State whether or not the accused is in pretrial confinement, whether or not the accused will be placed in pretrial confinement upon being ordered to ACDU, and (if appropriate) whether or not confinement as a punishment should be authorized and ASN (M&RA) approval obtained.
8	Indicate the appropriation used on the original set of orders during which the event necessitating recall occurred.

Note: If submission of the recall request is made telephonically, the submitting command shall inform, via telephone, all the commands which would otherwise receive copies of the request as indicated in paragraph 7 above "Procedures for Involuntary Recall to ACDU - To Whom Submitted."

9. **Procedures for Involuntary Recall to ACDU - Authority to Order to ACDU**

a. The GCMCA to which a request is submitted is authorized to approve the request to order the reservist to ACDU for disciplinary action. For administrative and centralized accounting purposes, and pursuant to the statutory requirement for a GCMCA in the Regular Component to issue orders, NAVPERSCOM will issue orders. Reservists must be ordered to ACDU for disciplinary purposes using the same type of funding as was used when the alleged misconduct occurred. NAVPERSCOM (PERS-9) will

be the order issuing authority and will coordinate with the appropriate staff organization to secure funding for the orders.

b. If ASN (M&RA) approval for the orders is requested, the GCMCA shall coordinate with COMNAVRESFOR and NAVPERSCOM to affect the submission process to ASN (M&RA).

c. NAVPERSCOM shall coordinate delivery of the orders with the requesting command and COMNAVRESFOR (N00J) (as appropriate).

10. **Procedures for Involuntary Recall to ACDU - Exigent Circumstances.** In exigent circumstances (e.g., national security matters and risk of grave bodily harm to another), the request may be submitted to any ACDU GCMCA for action. That GCMCA may act on the request after consultation with a judge advocate if reasonably available, and verbally order the reservist to ACDU and pretrial confinement if warranted. Notification to all concerned (i.e., ASN (M&RA), OJAG (Code 20), NAVPERSCOM (PERS-46), NAVPERSCOM (PERS 9), BUPERS (BUPERS-00J), and COMNAVRESFOR (N00J)), follow-up written orders, ASN (M&RA) approval (if required), and the time requirements of this article must be adhered to.

11. **Holdover in Current Status - an Inactive Duty Reservist Who is on ACDU.** Reservists who are on ACDU orders who are suspected of violating reference (a) should **not** normally be released from ACDU prior to the end date of current orders absent final disciplinary action by the ACDU command. Reservists mobilized in support of overseas contingency operations who are suspected of violating reference (a) may be transferred to an (ECRC) for administrative or disciplinary action in coordination with Navy Expeditionary Combat Command. An inactive duty reservist who is on ACDU, including annual training or active duty training (ADT), may be retained in that status provided:

a. The reservist committed an offense while in that status; and

b. The command has taken action with a view to trial by court-martial, see reference (c), R.C.M. 202(c). A reservist may not be held over for NJP.

Note: Prior approval for such retention is not required; however, the command effecting a holdover shall notify ASN (M&RA), OJAG (Code 20), COMNAVRESFOR (N00J), NAVPERSCOM (PERS-46 or PERS-9, and BUPERS-00J) of such action by the most expeditious means available, see "**Notice**" (paragraph 17) below.

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

a. There is probable cause to believe the reservist committed an offense punishable by death or more than 10 years confinement, as set forth and permitted in references (a) and (c) while in that status;

b. Approval is obtained to keep the member in that status prior to expiration of IDT, or as soon thereafter as is reasonably practicable under the circumstances, from the appropriate COMNAVRESFOR commander, or in exigent circumstances, any ACDU GCMCA;

c. Immediate action is taken to order the accused to ACDU; and

d. A judge advocate is consulted prior to effecting the holdover, or as soon as thereafter as is reasonably practicable.

Note 1: The requirement for holdover past IDT is similar to ordering the reservist to involuntary ACDU (i.e., judge advocate consultation (if reasonably available)) and ACDU GCMCA order. Consequently, the reservist may be ordered to ACDU rather than held over past IDT. The holdover provision allows the commander additional time to investigate the offense with a view toward court-martial. In most cases, the gravity of the offense is evident and the commander may directly order the reservist to ACDU.

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

Note 3: Under no circumstances may a reservist be held over to administer and process NJP.

13. Holdover in Current Status - Release from ACDU of IDT Reservists Held Under this Article

a. Except as provided in paragraph 14 of this article, inactive duty reservists held over on ACDU may be retained in that status until completion of the court-martial, execution by the convening authority of any adjudged sentence, consistent with references (a) and (c), and service of any sentence thereof. They must be released from ACDU no later than the close of business **1 full workday** after the completion of disciplinary proceedings, including service of punishment.

b. Except as provided in paragraph 14 of this article, inactive duty reservists held over on IDT and ordered to ACDU for disciplinary action

(1) must be released from ACDU no later than the close of business **1 full workday** after completion of disciplinary proceedings (i.e., announcement of the sentence by a court-martial) if the order to ACDU for disciplinary action was effected without ASN (M&RA) approval per reference (b), section 0123 e(5).

(2) may be retained on ACDU to serve a punishment to confinement or other restraint on liberty, the execution of which is not precluded by the terms of a pretrial agreement, if there is ASN (M&RA) approval. In such cases the reservist must be released from ACDU no later than the close of business **1 full workday** after the completion of disciplinary action, including service of punishment.

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

15. Pretrial Confinement of IDT Reservists

a. Reservists on IDT may be placed in pretrial confinement if the circumstances of the offense warrant and an order to ACDU, which includes pretrial confinement and which has ASN (M&RA) approval, is sought and obtained not later than **2 full working days** past the end of the IDT period. Before placing a reservist performing IDT in pretrial confinement, consultation

with the cognizant staff judge advocate (if reasonably available) is required and coordinated with COMNAVRESFOR (code N00J) is highly encouraged. See the following:

(1) Reference (c), R.C.M. 304 and 305;

(2) Table below in this paragraph;

(3) Paragraph 6-9 of this article in regards to "Procedures for Involuntary Recall to ACDU;" and

(4) Paragraph 10 of this article "Procedures for Involuntary Recall to ACDU - Exigent Circumstances."

	IF...	THEN...
a	pretrial confinement is involved, confinement as a punishment or pretrial confinement is sought,	ASN (M&RA) must approve the order to ACDU, see paragraphs 5 through 10 of this article pertaining to the procedures for the involuntary recall of reservists to ACDU. The approving GCMCA shall coordinate with NAVPERSCOM (PERS-46 or PERS-9) and BUPERS-00J for such approval.
b	the case involves national security matters as defined in reference (b), section 0126a,	notice requirements and disposition limitations of reference (b), section 0126e apply. This does not, however, limit the authority to order the member to ACDU.

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

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

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

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

16. Release from ACDU

a. Inactive duty reservists ordered to ACDU without ASN(M&RA) approval must be released from ACDU no later than the close of business **1 full workday** after completion of disciplinary proceedings (i.e., announcement of the sentence by a court-martial or the award of punishment), unless retention on ACDU is authorized by other authority (commission of additional offenses). See reference (c), R.C.M. 202(c) and MILPERSMAN 1160-050.

b. Inactive duty reservists ordered to ACDU with ASN (M&RA) approval may be retained on ACDU to serve a punishment of confinement or other restraint on liberty, the execution of which is not precluded by the terms of a pretrial agreement. Unless retention on ACDU is authorized by other authority (commission of additional offenses), such persons must be released from ACDU no later than the close of business **1 full workday** after completion of disciplinary proceedings or service of the sentence of confinement or other restraint on liberty (as appropriate). See reference (a) article 2(d)(5), reference (c), R.C.M. 202(c), and MILPERSMAN 1160-050.

c. Release from ACDU orders must be coordinated with NAVPERSCOM (PERS-46) or (PERS-9), and ECRC (as appropriate).

17. Notice

a. Notify ASN (M&RA), OJAG (Code 20), COMNAVRESFOR (Code N00J), NAVPERSCOM (PERS-46 and BUPERS-00J), and others as may be required by local regulations; all instances where an inactive duty reservist has been held over past IDT, annual training, ADT, or has been placed in pretrial confinement without prior ASN (M&RA) approval. The notice shall include, at a minimum:

(1) Name and grade of the reservist to ensure adequate identification;

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

(3) Reason for holdover or pretrial confinement.

b. Notify the activities listed above as significant events occur (e.g., commission of an additional offense, court-martial results, dismissal or withdrawal of **all** charges, and release from ACDU, etc.).

18. **Delivery of Orders**

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

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

c. The member generally shall be given at least a **30 calendar days-notice** before the reporting date, regardless of the delivery means used. The day of notification is not counted in computing the 30-day period. The notification day is

(1) the day the member is personally given the orders;

(2) the day the member is notified by telephone of the orders; or

(3) the day the orders are deposited in the U.S. mail as first class certified mail to the member's last known address of record provided by the member, or held by the command to which the member is attached, whichever is earlier.

If the last day of the 30-day period falls on a Saturday, Sunday, or Federal holiday the next day is considered the last day of the 30-day period.

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