

Pretrial Restraint

Stabilization

Communication

Investigation

Disposition

Adjudication

Resolution

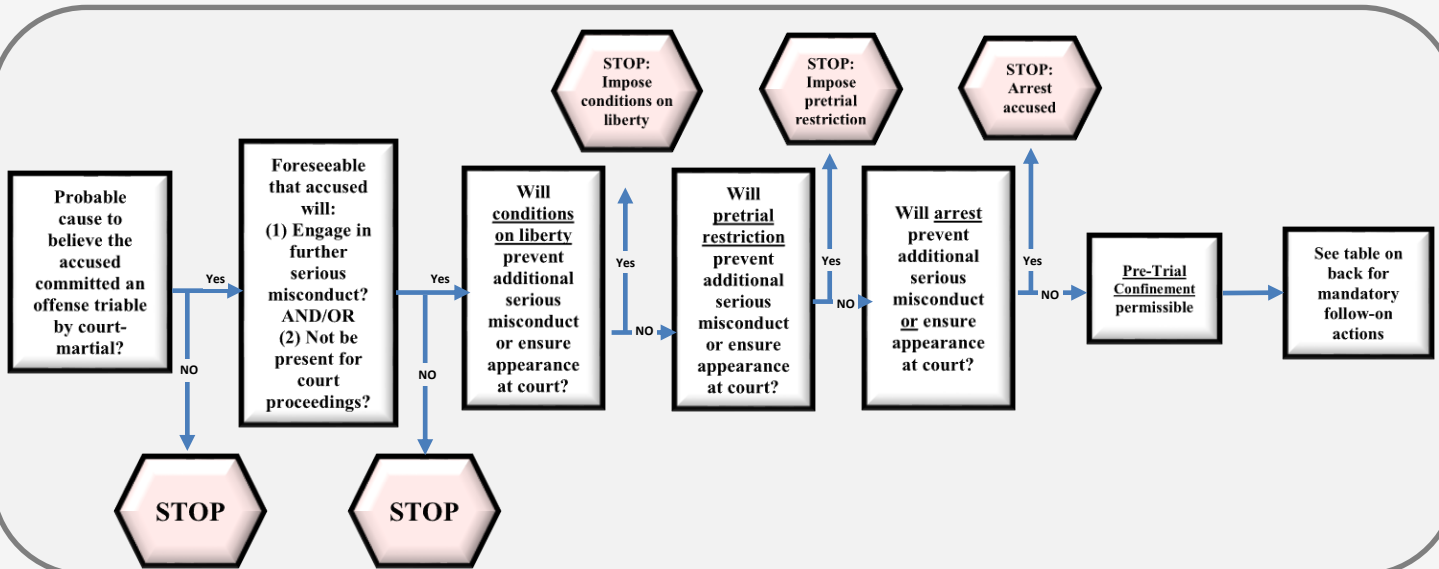
References

R.C.M. 304, 305, 707; Articles 9, 10, 13, UCMJ; JAGMAN Section 0127; SECNAVINST M-1640.1

Introduction

Pretrial restraint is moral or physical restraint on an accused's liberty pending the disposition of court-martial charges. The four forms of pretrial restraint are: (1) conditions on liberty; (2) restriction; (3) arrest; and (4) confinement.

A form of restraint may only be imposed if there is probable cause (i.e., a reasonable belief) that: (1) an accused committed an offense triable by court-martial; (2) it is foreseeable that the accused will commit further serious misconduct or will not appear at a future hearing or trial; and (3) any potential lesser restraint would be inadequate. The level of restraint imposed should not be more rigorous than required by the circumstances.



Acceptable & Unacceptable Reasons to Use Pretrial Confinement

Reasons PTC is Acceptable

- It is foreseeable that the accused will commit further serious misconduct and lesser restraint will not prevent that misconduct.
- It is foreseeable the accused will flee to avoid court-martial and lesser restraint is inadequate to ensure accused appears at trial (e.g., flight risk).

PTC is Unacceptable Because:

- The offense you suspect the accused of having committed is serious.
- It is more convenient to put the accused in confinement than to enforce conditions on liberty, pretrial restriction, etc.
- You want to set an example for the unit.
- You want to immediately punish the accused.
- You want to protect accused from self-harm.

	Conditions on Liberty	Pretrial Restriction	Arrest	Pretrial Confinement
Definition	Orders directing a person to do or refrain from doing specified acts.	Restraint of a person by oral or written orders directing the person to remain within specified limits. Accused <u>must</u> perform full military duties.	Restraint of a person by oral or written order directing the person to remain within specified limits. Accused <u>may not</u> be required to perform full military duties.	Physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of charges.
Example	Order not to go to the scene of the alleged offense or an order not to associate with potential witnesses or alleged victims.	Order restricting accused to military installation and directing periodic muster. (Note: do not muster with those serving restriction imposed at NJP or court-martial)	Order restricting accused to barracks room and suspension from performing full military duties, such as commanding or supervising personnel, serving as guard, or bearing arms.	Order to confinement facility.
Who May Impose	Authority depends on <u>accused's status</u> :	<u>Active Enlisted</u> : <u>Active Officer</u> : <u>Reserve</u> :	(1) Any commissioned officer (recommend CO, unless CO provides other guidance) (2) Warrant/petty/noncommissioned officers, if accused's CO delegates authority Only a commanding officer with authority over the accused. Special rules apply – contact a judge advocate before authorizing pretrial restraint.	
Review of Decisions	A Military Judge possesses authority to review decisions to impose restraints and to review any conditions of restraint.			Decision to impose pretrial confinement <u>must</u> be reviewed by: <ol style="list-style-type: none"> 1. A Commander within 48 hours to review the probable cause determination. 2. A Commander within 72 hours to determine whether continued confinement is appropriate. 3. A neutral/detached officer within 7 days (IRO hearing). <p>Later, the decision <u>may</u> also be reviewed by a Military Judge.</p>
Speedy Trial Clock	<i>Imposition of pretrial restriction, arrest, and pretrial confinement start the Commander's obligation to bring an accused to trial within 120 days (i.e., "Speedy Trial Clock"). Contact your staff judge advocate <u>immediately</u> if you are considering imposing any of these restraints.</i>			