

Chapter 2

Prisoners' Legal Requirements and Rights

Restraint or confinement of military personnel is governed by provisions in the Uniform Code of Military Justice, the Manual for Courts Martial, and local and service regulations. Throughout the entire confinement process, from pretrial confinement to termination of prisoner status, the Army correctional system provides for the legal, humane, and just treatment of US military prisoners.



CONFINEMENT REQUIREMENTS

Accused prisoners in pretrial confinement are informed of the nature of the offenses for which they are being confined. The accused prisoner is so informed at the time of his confinement. Within seven days of the prisoner's confinement, a neutral and detached military magistrate reviews the circumstances of the prisoner's confinement. The magistrate then determines whether continued pretrial confinement is necessary. Pretrial confinement over 30 days is allowed only when approved by the general court-martial-convening authority. Such approval is made on a case-by-case basis.

Individuals are accepted for confinement only on receipt of a court-martial order, a report of the result of trial, or a confinement order. The court-martial order must be issued by the convening authority ordering the execution of the individual's sentence. If a commissioned officer or a warrant officer is to be placed in pretrial confinement, the

confinement order must originate with the officer's commanding officer. The confinement order is read to the confinee in person by a commissioned officer. According to the UCMJ, an enlisted soldier may be confined prior to a trial on the confinement order of his commanding officer or of any warrant or noncommissioned officer to whom the commanding officer has delegated his authority to do so. In addition, an enlisted soldier may be confined on the order of any commissioned officer who has personal knowledge of the offense or has made inquiry into it. Specific procedures for pretrial confinement can be found in local SOPs and local supplements to AR 27-10. A new confinement order is not needed to reconfine a soldier who is convicted at a trial by court-martial following pretrial confinement. A commander or the trial counsel, if such authority is delegated to him, can order the soldier into posttrial confinement through a report of the result of trial.

PRISONER STATUS

Determination of a prisoner's status is made as soon as he enters a confinement facility. A prisoner's status is revised as necessary in response to judicial proceedings and other actions that affect his status.

A prisoner's status falls into one of six categories: casual, detained, adjudged, approved adjudged, sentenced, and officer. A casual prisoner is in confinement awaiting another command or military service to give

further instructions on his disposition or is waiting to be transferred to another facility or back to his unit. A detained prisoner is an enlisted service member in confinement awaiting the filing of charges, the disposition of charges, a trial by court-martial, or a trial by a foreign court. An adjudged prisoner is a prisoner who has been sentenced in open court, but the convening authority has not yet approved the sentence. An approved adjudged prisoner is a prisoner in confinement whose sentence has been adjudged and approved but not yet ordered into execution. A sentenced prisoner is a prisoner who is serving a sentence already ordered into execution. An officer prisoner is any commissioned or warrant officer on active duty who has been placed in confinement but has not yet had his sentence ordered into execution.

A prisoner's status changes during his term of confinement as the judicial process moves to completion. A prisoner's status changes from detained to adjudged when the sentence has been adjudged by a court-martial but the convening authority has not yet approved the sentence. A prisoner's status changes from adjudged to approved adjudged when the sentence has been approved by the convening authority but the sentence has not yet been ordered into execution. A prisoner's status changes from officer or approved adjudged prisoner to sentenced prisoner when the sentence is ordered into execution. And a prisoner's status can change from sentenced prisoner to civilian. This occurs when the prisoner's discharge has been executed and his sentence has expired, but he remains under military jurisdiction pending further legal, administrative, or medical actions.

SEGREGATION REQUIREMENTS

In accord with the requirements imposed by law and regulation, some categories of prisoners are kept and housed separately from other prisoners.

Pretrial prisoners who are in a detained status are not treated the same as posttrial prisoners whose status is adjudged, approved adjudged, or sentenced. Detained prisoners have not been proven guilty of any offense. Their confinement is not a punishment; it is only a means of ensuring their presence for trial or of preventing further serious misconduct. Detained prisoners are segregated as much as possible from all other prisoners, both in their working and their living arrangements. A detained soldier can waive his right to segregation from the general prison population if the facility cannot provide full benefits, like recreation, to detained prisoners while they are segregated from the general prison population. Waiving this right is strictly voluntary. The waiver is made in writing on DA Form 3702-R (Request to Work With and Be Billeted With Sentenced Prisoners).

Officer prisoners whose sentences have not been ordered into execution are entitled to certain rights and privileges. These privileges end when an officer's sentence begins and his status changes from officer prisoner to sentenced prisoner. Until that change in status, officer prisoners are employed and housed separately from enlisted prisoners unless they want to waive these privileges.

Female prisoners may only be confined in facilities that have been approved for the housing of women. Approved facilities afford separate living accommodations for female prisoners. If on-post facilities are not available, arrangements may be made with local city or county officials who have federally-approved detention facilities for women. Civilian facilities may be used only for pretrial or short-term (30 days or less) posttrial confinement.

Female prisoners are segregated from male prisoners except when participating in supervised classes, training, and group counseling, or when dining. All men are

REQUEST TO WORK WITH AND BE BILLETED WITH SENTENCED PRISONERS

For use of this form, see AR 190-47; the proponent agency is
the ODCSPER

LAST NAME-FIRST NAME-MIDDLE INITIAL <i>LOWIS, DAVID J.</i>	GRADE <i>E-5</i>	SOCIAL SECURITY NUMBER <i>449-06-1095</i>
TO: Commanding Officer <i>Cpt. Smith</i>	CONFINEMENT FACILITY <i>US D.B.</i>	

LINE THROUGH UNAPPLICABLE PARAGRAPH

1. I have been advised that Army regulations require that prisoners work and train to the same extent as regular duty soldiers. I also understand that, as an unsentenced prisoner, I may not be commingled with sentenced prisoners in billets and employment, unless I specifically request it. I voluntarily waive my right to work and be billeted separately from sentenced prisoners, and I hereby request that I work with and be billeted with sentenced prisoners.

2. I have been advised that Army regulations require that prisoners work and train to the same extent as regular duty soldiers. I also understand that, as a noncommissioned officer in an unsentenced status, I may not be commingled with the general prisoner population in billets and employment, unless I specifically request it. I voluntarily waive my right to work and be billeted separately from the general prisoner population, and I hereby request that I work with and be billeted with the general prisoner population.

D.J.L.

SIGNATURE AND GRADE OF WITNESS AND DATE <i>J. Newkum, MSG</i>	SIGNATURE OF PRISONER AND DATE <i>David J. Lewis</i>
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DA Form 3702-R, 1 Oct 75 EDITION OF 1 MAR 71 IS OBSOLETE

Example of DA Form 3702-R

prohibited from female prisoner domicile areas unless a female corrections staff member is present. When female prisoners undergo administrative or disciplinary

segregation or have privacy needs, female corrections personnel supervise and control the female prisoners.

PRISONERS' RIGHTS

Soldiers do not automatically forfeit all of their rights upon confinement. Prisoners retain most of the rights guaranteed them by the US Constitution, although perhaps to a lesser degree. For soldiers in confinement, the most important of the constitutional rights are found in the first, fourth, fifth, sixth, and eighth amendments of the Constitution.

The first amendment guarantees freedom of religion. Prisoners have the right to embrace their religious beliefs and to be free from discrimination because of those beliefs. But the practice of their religious beliefs is subject to modification caused by the conditions and circumstances of their confinement. The Army provides for prisoners' religious rights in its correctional system. Chaplains minister to the needs of prisoners. Regularly scheduled religious services are held, But prisoners are not required to attend religious meetings or services. Prisoners in disciplinary segregation or close confinement are afforded visits from a chaplain. And prisoners are allowed to possess Bibles, scriptures appropriate to their faith, prayer books, and religious pamphlets.

The first amendment also guarantees freedom of speech. For prisoners, however, some restrictions do apply. For example, prisoners may not give face-to-face interviews with the press. But they are allowed to make statements to the press through their attorneys. To prisoners the most significant aspect of any restrictions on their freedom of speech may be the degree to which limits are placed on their mail. The Army recognizes that frequent contact between prisoners and their families is vital to prisoner rehabilitation. Therefore, prisoners are allowed to enjoy mail privileges with a minimum of interference.

The correctional staff keeps a record of inspection of each prisoner's mail, correspondence, and authorized correspondents, on DD Form 499 (Prisoner's Mail and Correspondence Record). Generally, prisoners' mail is inspected but not read. Inspections are made to control traffic in contraband, money, and valuables. Both incoming and outgoing letters are inspected. But ordinary mail may be read, rejected, or censored if the facility commander has probable cause to believe that a letter contains plans for criminal activities or escapes, codes or plans for activities in violation of facility rules, requests for prohibited gifts or money, or obscenity. If a prisoner's mail is to be censored or rejected, the prisoner is notified of that decision. The author of the letter is given reasonable opportunity to appeal the decision. Appeals are decided by an official other than the person who originally disapproved the correspondence. The appellate official's decision is final. The guidelines for regulating prisoners' mail can be found in AR 190-47.

Different rules regarding the inspection and reading of mail apply to privileged mail. Privileged mail may be opened and inspected, but not read, to control contraband, money, or valuables and to verify authenticity. If a letter qualifies as privileged mail, it is usually delivered to the prisoner unopened. If privileged mail is opened, it must be opened in the presence of the prisoner and a commissioned officer. Mail between prisoners and the President and his representatives would qualify as privileged mail. So, too, would mail between prisoners and—

- The Vice President and his representatives.

- Members of Congress and their representatives.
- The US Attorney General and his representatives.
- The Judge Advocate General and his representatives.
- The prisoner's defense counsel or any attorney of record.
- Chaplains or clergy, when recommended by the installation chaplain.

The fourth amendment guarantees the right of people to be secure from unreasonable searches and seizures. However, in confinement facilities the rights of prisoners are diminished substantially in this respect. The Supreme Court has ruled that a prisoner has no reasonable expectation to privacy. Most searches within a confinement facility are deemed "reasonable" because they are necessary to control weapons and contraband. Visitors to a facility may not be physically searched unless probable cause to search exists. But they can be screened electronically. And they may be required to secure their handbags and parcels in lockers before their visit. If probable cause exists, correctional personnel should call other law enforcement officials to conduct the search.

Unlike the fourth amendment, the provisions of the fifth amendment, in conjunction with Article 31 of the UCMJ, apply with full force, in or out of confinement. A suspect or an accused person is protected from compulsory self-incrimination. Thus, a prisoner who is suspected of an offense must

be advised of his rights before being questioned. Failure to advise a prisoner of his rights renders any statement made by the prisoner inadmissible.

The sixth amendment guarantees an accused person the assistance of counsel for his defense. The government may not interfere with a legitimate attorney-client relationship when it relates to a criminal trial. The right to counsel, however, does not extend to representation by a lawyer at facility discipline and adjustment (D&A) board hearings.

The eighth amendment prohibits cruel and unusual punishments. This amendment also imposes the assurance of proper care and safety standards for prisoners. For example, prisoners must be assured adequate medical care and be protected from assaults. And, in accord with the principles of the eighth amendment, the Army prohibits the use of certain custody and control measures. Dogs are not used to guard prisoners. Patrol dogs, however, may be used to track escapees. Chemical agents other than CS riot control agents are not permitted. Machine guns, rifles, or automatic weapons are not permitted on guard towers or at fixed posts. Wire may not be electrically charged. Restraints securing a prisoner may not be attached to a fixed object. Pistols and revolvers may not be used to guard prisoners except when the prisoners are being transported from one place to another. The Army imposes these restrictions on all personnel through AR 190-47.