

52ND MILITARY JUDGE COURSE

CORRECTIONS, CLEMENCY, & PAROLE

Table of Contents

I.	INTRODUCTION	1
II.	REFERENCES	1
III.	CORRECTIONS	3
IV.	CLEMENCY & PAROLE	9
V.	OFFICER RESIGNATIONS FOR THE GOOD OF THE SERVICE (RFGOS), AR 600-8-24, PARA. 3-13	12
VI.	DISMISSAL/DROP FROM THE ROLLS/SEPARATION AFTER SIX MONTHS CONFINEMENT	13
VII.	RESOURCES	14
VIII.	CONCLUSION	15

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CORRECTIONS, CLEMENCY, & PAROLE

I. INTRODUCTION

The military, as well as society recognizes five principal reasons when determining an appropriate sentence once an individual has been convicted. Those reasons are rehabilitation, punishment, protection of society, preservation of good order and discipline, and deterrence. The types of sentences that a court-martial panel member or military judge may impose include no action, reduction in rank, forfeitures, fine, hard labor without confinement, confinement, punitive discharge or in the case of an officer a dismissal.

II. REFERENCES

- A. Chapter 47 -- *Uniform Code of Military Justice*, 10 U.S.C. §§ 801 -- 946.
- B. Chapter 48 -- *Military Correctional Facilities*, 10 U.S.C. §§ 951 -- 956.
- C. Chapter 59 -- *Commissioned officers: limitations on dismissal*, 10 U.S.C. §1161.
- D. Chapter 59 -- *Members under confinement by sentence of court-martial: separation after six months confinement*, 10 U.S.C. §1167
- E. Chapter 79 -- *Correction of Military Records*, 10 U.S.C. §1552 -- *Correction of military records: claims incident thereto*.
- F. Chapter 79 -- *Correction of Military Records*, 10 U.S.C. §1553 -- *Review of discharge or dismissal*.
- G. 28 *CFR* 2.1 -2.220, Parole, Release, Supervision and Recommitment of Prisoners Judicial Administration, Department of Justice (U.S. Parole Commission Rules).
- H. DoD Directive 1325.4, *Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities*, August 17, 2001.

- I. DoD Directive 1332.30, *Separation of Regular and Reserve Commissioned Officers*, March 14, 1997.
- J. DoD Directive 1332.41, *Boards for Correction of Military Records (BCMRs) and Discharge Review Boards (DRBs)*, March 8, 2004.
- K. DoD Instruction 1325.7, *Administration of Military Correctional Facilities and Clemency and Parole*, July 17, 2001; C1, June 10, 2003.
- L. DoD Instruction 1332.28, *Discharge Review Boards (DRB) Procedures and Standards*, April 4, 2004.
- M. DoD Instruction 1332.40, *Separation Procedures for Regular and Reserve Commissioned Officers*, September 16, 1997.
- N. DoD 1325.7-M, *DoD Sentence Computation Manual*, July 27, 2004.
- O. AR 15-80, *Army Grade Determination Review Board and Grade Determinations*, 12 July 2002.
- P. AR 15-130, *Army Clemency and Parole Board*, 23 October 1998 (under revision).
- Q. AR 15-180, *Army Discharge Review Board*, 15 October 1984, Change 1, 20 March 1998.
- R. AR 15-185, *Army Board for Correction of Military Records*, 31 March 2006.
- S. AR 27-10, *Military Justice*, 16 November 2005.
- T. AR 190-47, *The Army Corrections System*, 15 June 2006.
- U. AR 600-8-24, *Officer Transfers and Discharges*, 12 April 2006.
- V. AR 633-30, AFR 125-30, *Military Sentences to Confinement*, 28 February 1989.

- W. SECNAVINST 1640.9B, *Department of the Navy Corrections Manual*, 2 December 1996.
- X. SECNAVINST 1920.6B, *Administrative Separation of Officers*, 13 December 1999. See Enclosure (6), Guidelines on Recommendations – Grade at Retirement.
- Y. SECNAVINST 5420.193, *Board for Correction to Naval Records*, 19 November 1997.
- Z. SECNAVINST 5815.3J, *Department of the Navy Clemency and Parole Systems*, 12 June 2003.
- AA. AFI 31-205, *The Air Force Corrections System*, 7 April 2004.
- BB. AFI 36-2603, *Air Force Board for Correction of Military Records*, 1 March 1996.
- CC. AFI 36-3203, *Personnel – Service Retirements*, 12 September 2003. See Chapter 7 – Determining Retired Grade and Pay.
- DD. Coast Guard Personnel Manual, COMTINST M1000.6A, thru Change 40, 20 October 2005.

III. CORRECTIONS

- A. DoD policy states that the Military Services' correction programs should strive to achieve uniformity, effectiveness, and efficiency in the administration of corrections functions. Additionally, the Military Departments shall administer the clemency and parole programs to foster safe and appropriate release of military offenders under such terms and conditions that are consistent with the needs of society, the rights of victims, and the rehabilitation of the prisoner. DoD Instruction 1325.7, *Administration of Military Correctional Facilities and Clemency and Parole*, July 17, 2001; C1, June 10, 2003.
- B. Military corrections have three objectives:

1. Provide a safe and secure environment for the incarceration of military offenders;
 2. Protect the community from offenders;
 3. Prepare military prisoners for their release whether return to duty or civilian status with the prospect of becoming productive Soldier/citizens for conforming to military or civilian environments.
- C. DoD Correctional Facilities include confinement facilities, Regional Corrections Facilities (RCFs), and a centralized, long-term corrections facility, the United States Disciplinary Barracks (USDB).
1. Confinement facilities (Level 1) provide pretrial and short-term posttrial confinement support. Each service will determine the time limit for confinement at each of its level one facilities. The current norm for the Army is up to 90 days; when necessary the Level 1 facility may confine prisoners more than 90 days, but may not exceed 1 year. A Level 1 facility provides custody and control, administrative support, and limited counseling support for military prisoners. There are currently four Level 1 military facilities:
 - a) Mannheim, GE Correctional Facility,
 - b) Camp Humphries, Korea Correctional Facility,
 - c) Norfolk, VA, Naval Brig, and
 - d) Quantico, VA Marine Corps Brig .
 2. Regional Corrections Facilities (RCF) (Level 2) house prisoners sentenced to confinement of five (5) years or less. For sentences over five years, each Service must evaluate its prisoners to determine whether they can be appropriately confined at a RCF (Level 2 facility). A Level 2 facility provides multifaceted correctional treatment programs, vocational and military training, administrative support, basic educational opportunity, employment, selected mental health programs, custodial control, and training to prepare military prisoners for return to duty, if deemed suitable,

or to civilian society as a productive citizen. There are seven Level 2 RCFs:

- a) Fort Lewis, WA Regional Correctional Facility,
- b) Fort Knox, KY Regional Correctional Facility,
- c) Fort Sill, OK Regional Correctional Facility,
- d) Charleston, SC Naval Brig,
- e) Miramar, CA Naval Brig (also used as Level 2 & 3 for all women),
- f) Camp Lejeune, NC Marine Corps Brig, and
- g) Camp Pendleton, CA Marine Corps Brig.

D. Federal Bureau of Prisons (FBOP) Facilities.

1. Prisoners with approved sentences to confinement may be transferred to a FBOP facility with the concurrence or by direction of the appropriate Secretary of Military Department or designee.
2. Authority to transfer the prisoners to the FBOP confers no right on prisoners to request transfer.
3. Factors considered when determining whether to transfer a prisoner to a FBOP include:
 - a) The prisoner's demonstrated potential for return to military service or rehabilitation.
 - b) The nature and circumstances of the prisoner's offenses.

- c) The prisoner's incarceration record, including participation in rehabilitation programs.
 - d) The status of the prisoner's court-martial appeal and involvement in other legal proceedings.
 - e) The nature and circumstances of the prisoner's sentence, including length of sentence to confinement.
 - f) The prisoner's age.
 - g) Any other special circumstances relating to the prisoner, the needs of the Service, or the interests of national security.
4. Commitments based on lack of mental capacity to stand trial or acquittal because of lack of mental capacity at time of offense are transferred to the FBOP. See AR 190-47, para 3-4, R.C.M 706, R.C.M. 909, and 18 U.S.C. §§ 4241(d) & 4246.
- E. The Department of the Army, Provost Marshal General determines the place of incarceration for prisoners who are sentenced to more than 30 days based on operational requirements and programs.
- F. Prisoner Status.
- 1. Pretrial prisoner: a person subject to the UCMJ who is properly ordered to confinement pending preferral of charges, disposition of charges, or trial by court-martial, or a person properly ordered to confinement while awaiting trial by a foreign court is a pretrial prisoner.
 - 2. Adjudged prisoner: a person whose sentence to confinement has been announced in open court by not yet approved by the convening authority.
 - 3. Sentenced prisoner: occurs when the convening authority takes action to approve the confinement portion of the sentence.

4. Discharged prisoner: occurs upon completion of appellate review and execution of the punitive discharge.

G. Abatement of Confinement.

1. Good conduct time (GCT) is a deduction from a prisoner's release date for good conduct and faithful observance of all facility rules and regulations.

FOR SENTENCES ADJUDGED PRIOR TO 1 JANUARY 2005

<u>Sentence</u>	<u>Rate</u>
< 12 months	5 days per month
1 < 3 years	6 days per month
3 < 5 years	7 days per month
5 < 10 years	8 days per month
10 years or more	10 days per month
Life or death	None

FOR SENTENCES ADJUDGED ON OR AFTER 1 JANUARY 2005

Five days for each month of confinement, and 1 day for each 6-day portion of a month, regardless of sentence or multiple sentence length.

2. Extra good conduct time (EGCT) or earned time (ET) is a deduction from a prisoner's release date earned for participation and graded effort in the areas of work, offense-related or other rehabilitation programs, education, self-improvement and personal growth, and support activities. This credit is awarded only when overall evaluations are average or higher.
3. **New rule: Maximum of 8 days earned time may be awarded per month.** Old rule: During first year of confinement, not to exceed 3 days per month; thereafter, not to exceed 5 days per month.
4. Special acts abatement (SAA) is a deduction from a prisoner's release date earned for a specific act of heroism, humanitarianism, or extraordinary institutional or community support deemed appropriate by the correctional facility commander. Prisoner without a release date (e.g. live with out

parole, death) may earn SAA, but it shall be held in abeyance and only awarded if the sentence is reduced to a determinate sentence length.

Maximum award of 2 days of SAA per month for a period not to exceed 12 months for a single act. Additional special acts may only extend period of abatement, not the monthly rate of earning.

5. Total of GCT, ET, and SAA awarded for any one month shall not exceed 15 days.
 6. Minimum release date is calculated upon arrival at facility based on good conduct time that could be earned for entire period of sentence. Inmate is released at minimum release date absent parole or forfeiture of good conduct time or extra good conduct time, if any.
 7. A reduction in confinement by clemency will adjust the minimum release date.
 8. Inmates accepting parole waive all time abatements and remain on parole until maximum release date.
 9. Prisoners who have an approved finding of guilty for an offense that occurred after 1 October 2004, the award of good conduct time, earned time, and special act abatement shall be conditioned on the prisoner submitting an acceptable release plan and fully cooperating in all other respects with the mandatory supervised release policy, if directed to do so.
 10. Forfeiture and restoration of abatements. As a consequence of violations of institutional rules or the UCMJ, a facility commander may direct forfeiture of GCT, ET, and SAA. Discipline and Adjustment Boards are used to ensure due process. Forfeited time can be reinstated at the discretion of the facility commander.
- H. Mandatory Supervised Release. Prisoners who are not granted parole prior to their MRD (minimum release date) can be ordered on a supervised release.

1. Policy of the DoD to use supervised release in all cases except where it is determined by the Service Clemency and Parole Boards to be in appropriate.
2. Terms and conditions are identified in the release plan. The prisoner acknowledges the receipt of the terms and conditions.
3. The Service Clemency and Parole Boards may modify or release any terms or conditions of supervision or may terminate supervision entirely.
4. A violation of the supervised release will be considered equivalent to a violation of the terms and conditions of parole and processed in the same manner.
5. *United States v. Pena*, 64 MJ 259 (2007) – The Air Force Clemency and Parole Board ordered Pena to participate in the Mandatory Supervised Release Program for seventy-two days –terminating on his maximum release date. The Board set forth twenty-five conditions to include participating in a community based sex offender treatment program and consent to periodic examinations of his computer. Prior to his release he submitted a declaration that noted a number of hardships his participation in the program created. The declaration did not describe his living circumstances, sources of support or overall financial condition. CAAF looked to see if his participation in the program constituted cruel or unusual punishment or otherwise violated an express prohibition in the UCMJ; unlawfully increased his punishment; or rendered his guilty plea improvident. CAAF held that the program did not constitute cruel or unusual punishment, that Pena did not demonstrate that the collateral consequences actually imposed increased his punishment; and that the plea agreement was provident. CAAF did leave open the possibility that in some cases the Mandatory Supervised Release program could be imposed in a manner that increases the punishment of the prisoner. The burden is on party challenging the conditions to demonstrate the increased punishment.

IV. CLEMENCY & PAROLE

A. Service Clemency & Parole Boards

1. Senior civilian employees and field grade officers.
2. Act for Service Secretaries, **except for** parole considerations for prisoners in FBOP facilities which are decided by U.S. Parole Commission.

B. Clemency Eligibility.

Unuspended Sentence
less than 12 months

Eligibility
No

Initial consideration for any sentence 12 months or more

NLT 9 months or within 30 days after action, whichever is later

After Initial Review

12 months to < 20 years

consideration is annually

20 years to < 30 years

annually after 3 years of confinement

> 30 years & life w/ parole

annually after 10 years of confinement

Life without parole once every three years after 20 years of confinement

Inmate may not waive clemency review. Death sentence cases are not eligible for review by boards.

C. Parole Eligibility.

Must have sentence of at least twelve (12) months confinement and a punitive discharge. Once considered, inmate will be considered annually by service board unless transferred to FBOP. Inmate may waive parole consideration.

Sentence

Eligibility

< 30 years

1/3 of sentence, but not < 6 mos.

30 years or more

10 years

Life w/parole

20 years

Life w/o parole & Death

Not eligible

D. Considerations.

1. Nature and circumstances of offenses.

2. Civilian and military history.
3. Confinement record.
4. Personal characteristics, such as age, education, marital and family status, and psychological profile.
5. Victim impact.
6. Protection and welfare of society.
7. Need for good order and discipline.
8. Other matters as appropriate.

E. Conditions for parole release.

1. Prisoner must submit a parole plan and agree to abide by the plan.
2. The plan must include:
 - a) A statement of where the prisoner plans to reside and with whom.
 - b) Guaranteed employment, an offer of effective assistance to obtain employment, or acceptance in a valid educational or vocational program.
 - c) A requirement that the prisoner shall comply with State and local registration requirements in the location the prisoner plans to reside.
 - d) Other requirements such as a restitution plan, completion of a substance abuse treatment, participation in counseling or therapy programs, etc.

3. The Board may establish and subsequently modify conditions or release as it considers reasonable or appropriate.
 4. Prisoners who accept parole waive all GCT and EGCT and serve parole till the expiration of their full sentence.
- F. Parole supervision: Individuals released on parole are under the direct supervision of Federal probation officers.
- G. Parole revocation.
1. Standard—violation of condition that warrants revocation.
 2. Suspension of parole.
 3. Preliminary interview.
 4. Parole revocation hearing.
 5. Forfeiture of credit for service of sentence on parole.
- H. Additional Opportunities for Clemency.
1. Discharge Review Boards can review discharges not given by general courts-martial.
 2. Boards for Correction of Military Records may grant clemency after Clemency & Parole Boards lose review authority; however, may not overturn conviction.
 3. Presidential Pardons.

V. OFFICER RESIGNATIONS FOR THE GOOD OF THE SERVICE (RFGOS), AR 600-8-24, PARA. 3-13

- A. Eligibility Criteria—Officer under suspended sentence of dismissal or who has charges preferred with a view to trial by general court-martial.
- B. General Court-Martial Convening Authority (GCMCA) can proceed to trial or hold proceedings in abeyance pending decision on resignation.
- C. GCMCA can not take action on the findings and sentence until resignation has been approved or disapproved. However, note by definition an officer under a suspended sentence of dismissal can only submit a RFGOS after action is taken.
- D. Approval of resignation before action requires GCMCA to disapprove both the findings and sentence based on approval authority's expressed intent. *U.S. v. Woods*, 26 MJ 372 (CMA 1988) and AR 27-10, paragraph 5-18.
- E. Practice points: Send complete information about offenses – law enforcement investigations, victim/witness impact, Article 32 investigations, chain of command recommendations and rationale. Provide points of contact information for government and defense, preferably names, phone numbers, and email addresses.

VI. DISMISSAL/DROP FROM THE ROLLS/SEPARATION AFTER SIX MONTHS CONFINEMENT

- A. Commissioned Officers: limitations on dismissal. 10 U.S.C. §1161(a). No commissioned officer may be dismissed from any armed force except—
 - 1. By sentence of a general court-martial;
 - 2. In commutation of a sentence of a general court-martial; or
 - 3. In time of war, by order of the President.
- B. Drop From the Rolls (DFR) of the service. 10 U.S.C. §1161(b). The President may drop from the rolls of any armed force any commissioned officer—
 - 1. Who has been absent without authority for at least three months;

2. Who may be separated under 10 U.S.C. §1167 by reason of a sentence to confinement adjudged by a court-martial – must be sentenced to more than 6 months confinement, served at least six months, and sentence to confinement is final; or
 3. Who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.
- C. Practice points: This is not a drop from the rolls of the unit. This is a drop from the rolls of the service – the administrative equivalent of the death penalty. It severs benefits except for non-regular retirement at age 60 for reservists. Process is relatively easy compared to a full blown elimination action.

VII. RESOURCES

- A. Army Review Boards Agency (ARBA) Web page: <http://arba.army.mil>. Includes application form (DD Form 149), procedures, frequently asked questions, DoD Directive, Army Regulation, links to other web sites, and case status checker.
- B. ARBA Client Information & Quality Assurance Office, DSN 327- 1600, Commercial (703) 607-1600.
- C. ARBA Legal Office.
 1. Mr. Jan W. Serene, DSN 327-2031, Commercial (703) 607-2031, serenjw@hqda.army.mil.
 2. Mr. John P. Taitt, DSN 327-1878, Commercial (703) 607-1878, John.Taitt@hqda.army.mil.
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4. Mr. W. Sherwin Fulton III, paralegal, DSN 327-1838, Commercial (703) 607-1838, fultows@hqda.army.mil.
 5. FAX: Commercial (703) 607-0542.
- D. Army, Air Force, Navy, Coast Guard Boards Reading Rooms: <http://boards.law.af.mil>. Contains some past decisional documents for correction and Discharge Review Boards. Microfiche copies of all past decisional documents for which records are available are maintained at the Armed Forces Reading Room located at ARBA in Crystal City, Arlington, VA.
- E. Air Force Review Boards Office Web Page: <http://ask.afpc.randolph.af.mil/default.asp>. Click on Personnel Services tab, then Legal & Appeals, then Air Force Review Boards. Includes application form, procedures, frequently asked questions, and AF Instruction and Pamphlet for Discharge Review Board.
- F. Navy Clemency and Parole Board Web Page: http://www.hq.navy.mil/ncpb/NCPB/Clemency_Parole.htm
- G. Naval Council of Review Boards Web Page: <http://www.hq.navy.mil/ncpb/>. Includes information on Naval Clemency and Parole Board, Naval Discharge Review Board, and Physical Evaluation Board.
- H. Web Page for DoD Directives & Instructions, Army regulations, SECNAV Instructions, and Air Force regulations: <http://www.dtic.mil/whs/directives/>. Service regulations are available under “Other Agency Links.”

VIII. CONCLUSION