



# Department of Defense

## DIRECTIVE

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USD(P&R)

SUBJECT: Confinement of Military Prisoners and Administration of Military Correctional Programs and Facilities

References: (a) DoD Directive 1325.4, subject as above, September 28, 1999 (hereby canceled)  
(b) Title 10, United States Code  
(c) DoD Directive 2310.01E, "*Department of Defense* Detainee Program,"  
*September 5, 2006*  
(d) Manual for Courts-Martial, United States, 2000 Edition  
(e) through (g), see enclosure 1

### 1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a) to update policy and responsibilities for the administration and operation of military correctional programs and facilities under reference (b).

1.2. Deletes automatic classification of officers and cadets as Level III prisoners.

1.3. Updates references and makes other administration corrections.

### 2. APPLICABILITY AND SCOPE

This Directive applies to:

2.1. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as "the DoD Components").

2.2. The operation of places of confinement worldwide.

2.3. The confinement of military prisoners for offenses committed in violation of Chapter 47, Sections 877-934 of 10 U.S.C. (reference (b)), who have been sentenced by court-martial or are in pretrial confinement pending court-martial.

2.4. U.S. military personnel confined under a status of forces agreement or other international agreement.

### 3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

### 4. POLICY

It is DoD policy that:

4.1. Corrections programs shall promote uniformity in and among the Military Services in the treatment of prisoners, the operation and administration of correctional facilities and programs, and the consideration of prisoners for return to duty, clemency, or parole.

4.2. Post-trial confinement of military prisoners shall serve the purposes of the incapacitation, rehabilitation, deterrence, and punishment of prisoners.

4.3. No member of the U.S. Armed Forces may be placed in military confinement in immediate association with enemy prisoners or other foreign nationals not members of the U.S. Armed Forces (Chapter 47, Section 812, of reference (b)).

4.4. Prisoners of war and other detainees shall be treated in accordance with DoD Directive 2310.01E (reference (c)).

4.5. The Secretaries of the Military Departments shall comply with Chapter 48 of reference (b).

4.6. In executing their clemency and parole authority, the Secretaries of the Military Departments may do the following:

4.6.1. Adjust significant disparities in approved sentences.

4.6.2. Modify sentences when consistent with the maintenance of good order and discipline in the Armed Forces and in the best interest of society and the prisoner.

4.6.3. Consider release of eligible prisoners from confinement under parole supervision consistent with the ends of justice and public safety.

4.6.4. Restore to duty or reenlist individuals convicted by a court-martial who satisfactorily shall have demonstrated both potential for military service and that their return to military service is in the best interest of the Services.

4.7. For economy and efficient administration, confinement facilities of any Military Service shall be used for the confinement of prisoners of other Military Services. Pretrial confinement of military prisoners normally shall be on a non-reimbursable basis at a confinement facility nearest to the place of the court-martial proceedings. The Military Services may enter into agreements or Memoranda of Understanding to address costs and terms for post-trial confinement. Prisoners confined in military correctional facilities shall be subject to the rules and regulations of the confining facility regardless of the Service affiliation of the prisoner.

4.8. On execution of the discharge of a prisoner, primary jurisdiction for offenses committed in violation of Chapter 47, Sections 877-934 of 10 U.S.C. (reference (b)), by a military prisoner in confinement is vested in the Service commander exercising general court-martial authority over the confining facility in which the prisoner is confined.

4.9. To the greatest extent possible, national accreditation standards issued by the American Correctional Association shall be followed in determining corrections policies and administering correctional facilities and functions.

## 5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Personnel and Readiness shall:

5.1.1. As far as practical, in accordance with Chapter 47, Sections 801-946, and Chapter 48 of reference (b); DoD Directive 2301.01E; and the Manual for Courts-Martial (MCM), (references (c) and (d)), promote uniformity among the Military Services in the administration of correctional programs and operation of correctional facilities.

5.1.2. Serve as the focal point in the OSD for confinement matters, correctional programs, and clemency and parole policies and procedures.

5.1.3. Appoint a senior staff member to Chair the DoD Corrections Council (enclosure 3).

5.2.. The Secretary of the Army, as the DoD Executive Agent for DoD Level III corrections, shall:

5.2.1. Operate, fund, and staff facilities for the incarceration of all members of the Armed Forces, who are classified as "Level III prisoners" based on length of sentence to confinement, except those transferred to the Federal Bureau of Prisons (FBOP).

5.2.2. Act as the single point of contact with the FBOP for the transfer of all military prisoners in Army custody to other Federal facilities.

5.2.3. Obtain the concurrence of the Secretary of the Military Department concerned, or designee, before the transfer of military prisoners in Army custody to Federal facilities.

5.2.4. Coordinate with other Military Departments, as applicable, on significant agreements involving military prisoners with the FBOP.

5.2.5. Provide a facility to carry out executions of military prisoners with approved sentences to death.

5.3.. The Secretaries of the Military Departments shall:

5.3.1. Issue regulations on the confinement of military prisoners and administration of military corrections programs and facilities that are consistent with this Directive.

5.3.2. Designate a senior officer for each Military Service to administer military correctional facilities.

5.3.3. Provide military correctional facilities or enter into such agreements as are necessary to provide for the incarceration of members of the Military Departments who have been ordered into pretrial confinement or who have received sentences to confinement as a result of court-martial.

5.3.4. Ensure that their Military Department is represented on the DoD Corrections Council.

5.3.5. Provide programs for work, education, training, rehabilitation, the welfare of military prisoners, return to duty, and clemency and parole that are consistent with Chapter 47, Sections 801-946, and Chapter 48, of 10 U.S.C., and the MCM (references (b) and (d)).

5.3.6. Retain clemency and parole authority over a member of a Service in that Military Department, including when the member is located in a correctional facility operated by another Military Department.

5.3.7. Establish policies and procedures for conducting executions of members of their respective Services having approved sentences to death, and provide oversight responsibility, management, and resources for executions.

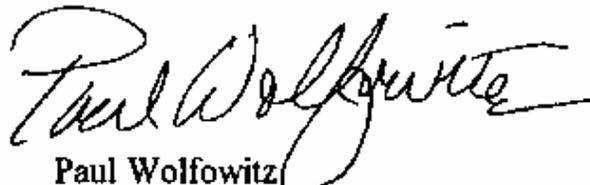
5.3.8. Establish policies and procedures to ensure that correctional facilities comply with Section 14071 of 42 U.S.C. (reference (e)) on DoD responsibilities in the crimes against children and sexually violent offender registration program.

5.3.9. Establish policies and procedures to ensure that correctional facilities report information on prisoners as required under DoD Directive 7730.47 and DoD 7730.47-M (references (f) and (g)).

5.3.10. Coordinate the proposed reduction, closure, or redesignation of any correctional facility regularly used to confine inmates from more than one Military Service with each of the Military Services and with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). At a minimum, the proposal to reduce, close, or redesignate the correctional facility should be staffed for comment at least 60 days before final approval.

## 6. EFFECTIVE DATE

This Directive is effective immediately.



**Paul Wolfowitz**  
Deputy Secretary of Defense

Enclosures - 3

- E1. References, continued
- E2. Definitions
- E3. DoD Corrections Council

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Title 42, United States Code
- (f) DoD Directive 7730.47, "Defense Incident-Based Reporting System," October 15, 1996
- (g) DoD 7730.47-M, "Manual for Defense Incident-Based Reporting System," *September 25, 2003*

E2. ENCLOSURE 2

DEFINITIONS

E2.1. DEFINITIONS USED IN THIS DIRECTIVE

E2.1.1. Confinement. Confinement is the physical restraint of a person imposed by order of competent authority, either pending disposition of charges (pretrial) or as a result of a sentence adjudged by court-martial or by operation of 10 U.S.C. 955(b) (reference (b)).

E2.1.2. Custody. The degree of supervision each prisoner or detainee requires.

E2.1.3. Detainee. A detainee is a person subject to the Uniform Code of Military Justice (UCMJ) Chapter 47, Sections 801-946, of reference (b), who legally has been ordered into confinement, is accused of violating the UCMJ, Chapter 47, Sections 877-934, of reference (b) and is awaiting trial or rehearing. That includes those persons who are pending the vacation of a suspended sentence that includes confinement or a punitive discharge.

E2.1.4. Level III Corrections. The operation and administration of correctional facilities and programs specifically designated and applicable for prisoners with sentences to confinement exceeding 5 years.

E2.1.5. Level III Prisoners. Prisoners with sentences to confinement exceeding 5 years.

E2.1.6. Parole. Conditional release from confinement under the guidance and supervision of a U.S. probation officer.

E2.1.7. Prisoner. A person sentenced by a court-martial to confinement or death and ordered into confinement by competent authority, whether or not the sentence has been approved by the convening authority. A person placed into confinement by competent authority pending trial by court-martial is a pretrial detainee.

E3. ENCLOSURE 3

DoD CORRECTIONS COUNCIL

E3.1. DoD CORRECTIONS COUNCIL GUIDANCE

E3.1.1. Purpose and Responsibilities. The DoD Corrections Council provides a regular forum for the interchange of information, the consideration of corrections and clemency and parole policy, and the review of issues on the administration, use, efficiency, and consolidation of military correctional facilities. The Council shall be responsible for the continuing review of this Directive; other applicable corrections, clemency, and parole guidance; and Service implementing regulations to promote uniformity in corrections programs consistent with the needs of the Military Services.

E3.1.2. Membership. The Council shall consist of members representing each Military Service, the USD(P&R), and the General Counsel of the Department of Defense. Each Military Service shall designate a member serving in a position with primary responsibility for the corrections policies. Each Military Department shall designate one additional member with a primary responsibility for parole and clemency matters.

E3.1.3. Functions. The Council may consider all matters involving military correctional programs and facilities, and clemency and parole policies and procedures. Specific issues or problems may be submitted to the Council for consideration by a Council member or by the Secretaries of the Military Departments. The Council shall attempt to resolve inter-Service differences in corrections policies and procedures, and to achieve uniformity through voluntary adjustments in policy or practice by the Service(s) concerned. Policy matters that require resolution at the OSD level shall be submitted to the USD(P&R) for decision.

E3.1.4. Administration. The USD(P&R) member shall Chair the Council and be responsible for setting meeting dates, developing the meeting agenda, preparing minutes of the meetings, and performing other administrative functions related to Council meetings.

E3.1.5. Meetings. The Council shall meet quarterly or at the call of the USD(P&R) Council Chair. Any Council member may request a special meeting to consider an urgent matter.

E3.1.6. Decisions. The Council shall endeavor to resolve issues, matters, and decisions through consensus of all members. If consensus cannot be reached on decisions or recommendations on matters in the area of responsibility of the Council, each Military Service shall have one vote on the issue, with the Chair having a vote only in cases of a tie.