**Section 400.205 Imposition of Restraint**

a) Types of Pretrial Restraint. Pretrial restraint is moral or physical restraint on a person's liberty that is imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest or confinement.

1) Conditions on Liberty. Conditions on liberty are imposed by orders directing a person to do or refrain from doing specified acts. These conditions may be imposed in conjunction with other forms of restraint or separately.

2) Restriction in Lieu of Arrest. Restriction in lieu of arrest is the restraint of a person by oral or written orders directing the person to remain within specified limits. A restricted person shall, unless otherwise directed, perform full military duties while restricted.

3) Arrest. *Arrest is the restraint of a person by* oral or written *order not imposed as punishment, directing* the person *to remain within specified limits*. (Code Section 9(a)) A person in the status of arrest shall not be required to perform full military duties such as commanding or supervising personnel, serving as guard, or bearing arms. The status of arrest automatically ends when the person is placed, by the authority who ordered the arrest or a superior authority, on duty inconsistent with the status of arrest, but this shall not prevent requiring the person arrested to do ordinary cleaning or policing, or to take part in routine training and duties.

4) Confinement. Pretrial confinement is physical restraint, imposed by order of competent authority, depriving a person of freedom pending disposition of offenses. No person may be ordered into pretrial confinement, except upon determination of probable cause that the person committed an offense under the Code and with the concurrence of the NGIL-JA.

A) *An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to* the *Code.* *A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of the commanding officer's command or subject to the commanding officer's authority into arrest or confinement.* (Code Section 9(b))

B) *A commissioned officer, a warrant officer, or a civilian subject to* the *Code or to trial* under the *Code may be ordered into arrest or confinement only by a commanding officer to whose authority the person is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order the persons into arrest or confinement may* *not be delegated*. (Code Section 9(c))

b) *No person subject to* the *Code may be* placed in any sort of pretrial restraint, *except*:

1) *for probable cause*, as described in subsection (c), has been determined *after coordination with a judge advocate officer*; and

2) when holding the person without restraint is *impractical or not possible* (Code Section 9(d)).

c) Probable cause for pretrial restraint exists when there is a reasonable belief that:

1) An offense triable by courts-martial has been committed;

2) The person to be restrained committed it; and

3) The restraint order is reasonably required by the circumstances.

d) Each person ordered to pretrial restraint shall be promptly informed of:

1) The nature of the offenses for which the person is held;

2) The right to remain silent and that any statement made by the person may be used against the person; and

3) The right to retain civilian counsel at no expense to the State of Illinois and the right to request free assignment of trial defense counsel through Illinois National Guard trial defense services.

e) *This* Section *does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority* is *notified*. (Code Section 9(d))