**Section 400.210 Confinement of Persons Charged with Offenses**

a) *Any person subject to* the *Code charged with an offense under* the *Code may be ordered into arrest or confinement, as circumstances require. When any person subject to* the *Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.* (Code Section 10)

b) Requirements for Confinement. The commander shall direct the prisoner's release from pretrial confinement unless the commander believes, upon probable cause, that reasonable grounds exist that:

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

2) The prisoner committed it;

3) Confinement is necessary because it is foreseeable that:

A) The prisoner will not appear at trial, pretrial hearing, or investigation; or

B) The prisoner will engage in serious criminal misconduct; and

4) Less severe forms of restraint are inadequate.

c) A person should not be confined as a mere matter of convenience or expedience. Some of the factors that should be considered under this subsection (c) are:

1) The nature and circumstances of the offenses charged or suspected, including extenuating circumstances;

2) The weight of the evidence against the accused;

3) The accused's ties to the locale, including family, off-duty employment, financial resources, and length of residence;

4) The accused's character and mental condition;

5) The accused's service record, including any record of previous misconduct;

6) The accused's record of appearance at or flight from other pretrial investigations, trials and similar proceedings; and

7) The likelihood that the accused can and will commit further serious criminal misconduct if allowed to remain at liberty.

d) Although the Illinois Military Rules of Evidence (Subpart F) are not applicable at this stage, the commander should judge the reliability of the information available. Before relying on the reports of others, the commander must have a reasonable belief that the information is believable and has a factual basis. The information may be received orally or in writing. Information need not be received under oath, but an oath may add to its reliability. A commander may examine the prisoner's personnel records and police records and may consider the recommendations of others.

e) Less serious forms of restraint must always be considered before pretrial confinement is approved.

f) Review of Confinement. No later than 48-hours after confinement is ordered, that confinement shall be reviewed by a military judge as a "neutral and detached officer" under RCM 305.