

- (1) An offense triable by court-martial has been committed;
- (2) The person confined committed it; and
- (3) Confinement is required by the circumstances.

(e) *Advice to the accused upon confinement.* Each person confined shall be promptly informed

of: (1) The nature of the offenses for which held;

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

(3) The right to retain civilian counsel at no expense to the United States, and the right to request assignment of military counsel; and

(4) The procedures by which pretrial confinement will be reviewed.

(f) *Notification to Special Trial Counsel.* If a person who is alleged to have committed a covered offense is ordered into or released from pretrial confinement, the individual ordering confinement or authorizing release shall immediately notify a special trial counsel in accordance with regulations prescribed by the Secretary concerned.

(g) *Military counsel.* If requested by the confinee and such request is made known to military authorities, military counsel shall be provided to the confinee before the initial review under R.C.M. 305(j) or within 72 hours of such a request being first communicated to military authorities, whichever occurs first. Counsel may be assigned for the limited purpose of representing the accused only during the pretrial confinement proceedings before charges are referred. If assignment is made for this limited purpose, the confinee shall be so informed.

Unless otherwise provided by regulations of the Secretary concerned, a confinee does not have a right under this rule to have military counsel of the confinee's own selection.

(h) *Who may direct release from confinement.* Any commander of a confinee, an officer appointed under regulations of the Secretary concerned to conduct the review under R.C.M. 305(j) or (k), or, once charges have been referred, a military judge detailed to the court-martial to which the charges against the accused have been referred, may direct release from pretrial confinement. For purposes of this subsection (R.C.M. 305(h)), “any commander” includes the immediate or higher commander of the confinee and the commander of the installation on which the confinement facility is located.

(i) *Notification and action by commander.*

(1) *Report.* Unless the commander of the confinee ordered the pretrial confinement, the commissioned, warrant, noncommissioned, or petty officer into whose charge the confinee was committed shall, within 24 hours after that commitment, cause a report to be made to the commander that shall contain the name of the confinee, the offenses charged against the confinee, and the name of the person who ordered or authorized confinement.

(2) *Action by commander.*

(A) *Decision.* Not later than 72 hours after the commander’s ordering of a confinee into pretrial confinement or, after receipt of a report that a member of the commander’s unit or organization has been confined, whichever situation is applicable, the commander shall decide whether pretrial confinement will continue. A commander’s compliance with this paragraph (R.C.M. 305(i)(2)) may also satisfy the 48-hour probable cause determination of R.C.M. 305(j)(1), provided the commander is a neutral and detached officer and acts within 48 hours of the imposition of confinement under military control. Nothing in R.C.M. 305(d), this subparagraph (R.C.M. 305(i)(2)(A)), or R.C.M. (j)(1) prevents a neutral and detached