

(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

commander from completing the 48-hour probable cause determination and the 72-hour commander's decision immediately after an accused is ordered into pretrial confinement.

(B) *Requirements for confinement.* The commander shall direct the confinee's release from pretrial confinement unless the commander believes upon probable cause, that is, upon reasonable grounds, that:

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

(ii) The confinee committed it;

(iii) Confinement is necessary because it is foreseeable that:

(a) The confinee will not appear at trial, pretrial hearing, or preliminary hearing, or

(b) The confinee will engage in serious criminal misconduct; and

(iv) Less severe forms of restraint are inadequate.

Serious criminal misconduct includes intimidation of witnesses or other obstruction of justice, serious injury of others, or other offenses which pose a serious threat to the safety of the community or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States. As used in this rule, "national security" means the national defense and foreign relations of the United States and specifically includes: a military or defense advantage over any foreign nation or group of nations; a favorable foreign relations position; or a defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(C) *72-hour memorandum.* If continued pretrial confinement is approved, the commander shall prepare a written memorandum that states the reasons for the conclusion that the requirements for confinement in R.C.M. 305(i)(2)(B) have been met. This memorandum may