

CODE 20

SIDEBAR

COVID-19 PANDEMIC

RESTRICTION OF MOVEMENT ORDERS (ROM) & THEIR ENFORCEABILITY

Given the impacts of the COVID-19 global infectious disease pandemic, commanders may be required to take actions that both maintain readiness and protect the force. Certain restrictions on off-duty activities of military Service Members which might otherwise be unwarranted under normal circumstances may now be legally instituted by unit commanders in order to protect the health and mission readiness of command members from COVID-19. For example, where reasonably necessary for a valid military purpose (e.g. mitigating the continuing impacts of COVID-19), commanders may lawfully issue orders restricting the movement of Service Members under their authority (to include military personnel who may or may not yet have been exposed to COVID-19). Command guidance affecting military civilian employees and contractors is outside the scope of this Sidebar.

Restriction of Movement (ROM) refers to the limitation of personal liberty and should be narrowly tailored for the purpose of ensuring health, safety, and welfare. Commanders should issue ROM orders in writing. In addition to notifying individual Service Members of the specific limitations on liberty, the written order may, depending on specific circumstances, be used by a Service Member to receive entitlements offsetting costs associated with the commander-issued ROM order. Commanders may issue ROM orders that incorporate or exceed ROM guidance issued by federal, state or local public health agencies and organizations, including those within DoD. Commanders issuing ROM orders will normally consult with medical experts and assess impacts on command member(s) as part of their reasonable necessity analysis. Likewise, commanders should consider calibrating ROM restrictions on an individual or categorical basis as warranted by evolving conditions. That said, no specific procedure is legally required. ROM orders may include lawful: (1) orders to restrict travel, (2) orders to restrict certain activities, (3) orders for medical quarantine, (4) administrative restrictions to a specific location, or (5) orders to remain together with a unit. Below is sample language for restriction of movement orders that can be used during these extraordinary circumstances to mitigate health risks to military members inherent in the spread of COVID-19.

ROM/Telework Order (tailor as needed)

I hereby order you to observe the following restrictions on your movement because [brief statement of the facts warranting the ROM/Telework order]: (1) both on and off duty, you will maintain at least six feet of distance between yourself and all others (except members of your household); (2) you will not engage in non-essential travel (essential travel includes transit to and from your place(s) of assigned military duty as directed, purchasing supplies and facilitating medical care for yourself or an immediate family member); (3) you will self-isolate in residence, following NAVADMIN 83/20 guidance; (4) you

will perform your duties in a telework capacity, in accordance with the terms of DD 2946 and the direction of your chain of command.

[IAW NR (1990) 0802, 0820, 0825, 0827, MPM 1050-290, NAVADMIN 83/20]

Due to the response to COVID-19, [ROM/telework] is reasonably necessary to accomplish the military mission of [command] and to safeguard the health, safety, and welfare of members of [command]. Any violations of this order are subject to adverse administrative actions and/or disciplinary action under the Uniform Code of Military Justice (UCMJ).

Medical Quarantine Order (tailor as needed)

In light of the public health emergency posed by the COVID-19 pandemic, this is a formal notice that as the [position title], I am ordering your quarantine. I am providing you with the following directions and information regarding the quarantine. [Include the below information in the order]

[Name, identifying information or other description of the individual, group of individuals or geographic location subject to the order. Brief statement of the facts warranting the quarantine.]

[Symptoms of the subject disease and a course of treatment. Instructions on the disinfecting or disposal of any personal property. Precautions to prevent the spread of the subject disease.]

[Conditions for termination of the order. Specified duration of quarantine. The place or area of quarantine. Rules for the quarantine. Requirements for contact with non-quarantined individuals.]

Due to response to COVID-19, your medical quarantine is reasonably necessary to accomplish the military mission of [command] and to safeguard health, safety, and welfare of members of [command]. Any violations of this order are subject to adverse administrative actions and/or disciplinary action under the Uniform Code of Military Justice (UCMJ).

Should I issue a “Quarantine” order? DoDI 6200.03 (Public Health Emergency Management) identifies installation commanders (ICO) as having primary roles in declaring a public health emergency & ordering (e.g. installation-wide) quarantines to military personnel. Unit CO’s should consider issuing tailored ROM, self-isolation, or similar measures & consult an authorized medical representative and servicing SJA prior to issuing a quarantine order to Sailors under their command.

Administrative Restriction Order (tailor as needed)

In light of the response to COVID-19 and because [brief statement of the facts warranting the administrative restriction], you are ordered into administrative restriction to [name location] for a period of [time]. During this time, you will muster twice a day with [name of person] via [method of muster]. Muster times are at [time] and [time]. While on administrative restriction, you are prohibited from leaving [location – barracks or installation]. You are prohibited from using the following facilities while on administrative restriction: [list facilities].

This administrative restriction is not imposed as a form of punishment or in anticipation of any disciplinary proceeding. Rather, you are placed into administrative restriction because it is reasonably necessary to accomplish the military mission of [command] and to safeguard training, operations, security, or safety of members of [command]. Any violations of this administrative restriction order are subject to adverse administrative actions and/or disciplinary action under the Uniform Code of Military Justice (UCMJ).

Order to remain at place of duty (tailor as needed)

Your place of duty is [location and name of unit]. In light of the response to COVID-19 and because [brief statement of the facts warranting the order to remain at place of duty], you are ordered to remain at your place of duty from [date and time] to [date and time]. You are prohibited from leaving your place of duty during this time without obtaining prior approval from [name of approving authority].

In light of the response to COVID-19, requiring you to remain at your place of duty is reasonably necessary to accomplish the military mission of [command] and to safeguard morale, discipline, and wellbeing of members of [command]. Any violations of this order are subject to adverse administrative actions and/or disciplinary action under the Uniform Code of Military Justice (UCMJ).

Enforcing violations of the above discussed orders is within the sole discretion of a commander. The range of options include: no action, non-punitive action such as counseling, non-judicial punishment, administrative action, or court-martial. Appendix 2.1 of the Manual for Court-Martial contains factors for consideration when evaluating the disposition options.

Should a Service Member violate a restriction of movement order, the following Uniform Code of Military Justice (UCMJ) articles may apply:

Article 90, UCMJ – Willfully disobeying superior commissioned officer			
Applicability	Knowledge Requirement	Form of Order	Example
A violation of Article 90, UCMJ, is an act of willful disobedience, which is “an intentional defiance of authority. Failure to comply with an order through heedlessness, remission, or forgetfulness is not a violation [Article 90], but may violate Article 92.” MCM, pt IV, paragraph 14.c.(2)(f).	The accused must have actual knowledge of the order and of the fact that the person issuing the order was the accused’s superior commissioned officer.	The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, including in this circumstance to safeguard or promote the usefulness of members of a command. The order may not interfere with private rights or personal affairs without such a valid military purpose. As long as the order is understandable, the form of the order is immaterial, as is the method by which it is transmitted.	Order issued by commanding officer prohibiting travel outside 50 miles from duty station.

Exceptions: When issuing any of the above orders, commanders will normally inform affected Service Members of the ability to request a variance, modification or exception if (e.g.) undue hardship will otherwise result. For example, if a single parent cannot comply with the order without extreme hardship, a commander should consider a modification or exception.

Article 92, UCMJ – Failure to obey order or regulation			
Applicability	Knowledge Requirement	Form of Order	Example
<p>Article 92(1) applies when a Service Member violates a lawful general order or regulation.</p> <p>See MCM, pt. IV, ¶ 18c(1)(a) for a list of those with authority to issue a general order.</p>	<p>Knowledge of the lawful general order or regulation is not an element and lack of knowledge does not constitute a defense to a violation of Article 92(1).</p>	<p>It is best practice for the order or regulation to state: This is a lawful [general] order that is effective immediately without further implementation. Any violations of this [general] order are subject to adverse administrative actions and/or disciplinary action under the UCMJ.</p>	<p>COMUSNAVEUR-AF issues an order that all NAVEUR-AF personnel stationed in Italy cannot leave the local area. (You can mirror the restrictions imposed by the Italian government, but create a separate order.)</p>
<p>Article 92(2) applies when a Service Member knowingly violates any other lawful order issued by a member of the armed forces, which is his duty to obey.</p>	<p>A Service Member must have actual knowledge of the order or regulation.</p>	<p>See discussion under Article 90, above.</p>	<p>The battalion commander issues an order that all personnel must remain within 50 miles of the installation.</p>
<p>Article 92(3) applies when a Service Member is derelict in the performance of his duties.</p>	<p>The Service Member must have known or should have known of the duty.</p>	<p>A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the Service.</p>	<p>A petty officer, aware of a lawful general order to remain on the installation, fails to stop junior Sailors from leaving the installation.</p>

Note: **Foreign or State orders that restrict movement:** For situations where the state or foreign government has issued an order to self-quarantine or a “lockdown,” that order is not enforceable under the UCMJ. In order to enforce a foreign or state order upon Service Members, a commander must issue a separate order, meeting all the requirements for a valid military order, and that requires all Service Members to comply with the foreign or state order. Once that order has been issued, if a Service Member violates that order, they can be charged with a violation of Article 90 or 92.

- **Exception:** An order issued by a local or foreign official may be enforced using Article 134 (clause 1 or clause 2). Clause 1 offenses under Article 134 requires that the accused’s conduct be prejudicial to good order and discipline. Clause 2 offenses under Article 134 require proof that the accused’s conduct, under the circumstances, was of a nature to bring discredit upon the armed forces.
- ALNAV 029/20 states, when Department of Navy continuing operations must be performed, federal law exempts military and federal civilian personnel from state and local government orders in order to perform their official duties. Refer to ALNAV 029/20 for specific guidance on continuity of operations procedures.

Ultimate offense doctrine: Minor offenses may not be escalated in severity by charging them as violations of orders or willful disobedience of superiors. *United States v. Hargrove*, 51 M.J. 408, 409 (C.A.A.F. 1999). This means a commander cannot charge a Service Member with a violation of Article 90 or 92 simply to increase the maximum punishment. Instead, the appropriate charge is the one that specifically relates to the misconduct the Service Member is alleged to have committed.

Article 84, UCMJ – Breach of Medical Quarantine

Applicability	Knowledge Requirement	Form of Order	Example
<p>A commander may place a Service Member into a medical quarantine in order to separate an individual or group already infected or reasonably believed to be infected with a communicable disease (COVID-19) from those who are healthy in such a place and manner to prevent the spread of the communicable disease.</p>	<p>A Service Member must be aware that he/she has been placed into a medical quarantine.</p>	<p>As a best practice, an order into medical quarantine must specifically state that the purpose of the order is for medical quarantine. Neither excusing a Service Member from duty due to illness nor restricting a Service Member to quarters otherwise constitutes an order into medical quarantine. Additionally, an order into medical quarantine should state both the geographical limits of the quarantine as well as prohibitions during the quarantine period.</p>	<p>A commander orders a Service Member into a quarantine at the NGIS for 14 days after testing positive with COVID-19.</p>

Note: A medical quarantine may also be appropriate to separate an individual or group that has been exposed to a communicable disease (COVID-19), but is not yet ill, from others who have not been so exposed, in such manner and place to prevent the possible spread of the communicable disease. However, as a practical matter, issuing an order to “self-isolate” under Article 90 or 92 is a better practice for those individuals that have not tested positive for COVID-19.

Note: DoDI 6200.03 sets forth a construct within which military installation commanders, having coordinated with local civilian authorities, declare a public health emergency and direct (e.g.) an installation-wide medical quarantine, however DODI 6200.03 should not be read as limiting the legal authority of individual unit commanders under U.S. Navy Regulations to order a medical quarantine or similar restrictions on movement where reasonably necessary to protect their command’s members and mission readiness. App. 17, ¶ 8, MCM (2019).

Article 86 – Absence from unit or place of duty without leave

Applicability	Knowledge Requirement	Form/Contents of Order	Example
Article 86 applies to any member of the armed forces who through the member’s own fault is not at the place where the member is required to be at a prescribed time.	The accused must have actual knowledge of his or her duty to be at a certain place. Therefore, restriction of movement orders should be provided directly to the Service Member.	The appointed place of duty should be clear and understandable by the Service Member. Providing the order to a place of duty in writing is the best practice, but verbal orders are also enforceable, although oral orders may be more difficult to prove.	A unit commander orders his entire unit to remain together at the unit location after they return from a deployment to Afghanistan. During this time, the unit location is the place of duty and unit members are prohibited from leaving without prior approval.

NOTE: Article 86 may also pertain to violations of a unit commander’s order that the entire unit remain together immediately prior to or immediately upon return from (e.g.) an OCONUS deployment, underway period or port-visit.

Article 87b(c) – Breach of Restriction

Applicability	Knowledge Requirement	Form of Order	Example
“Restriction” is the moral restraint of a person imposed by an order directing a person to remain within certain specified limits. Although restriction is normally thought of as punishment imposed by NJP or court-martial, or pre-trial restriction pending charges, valid restriction may also include “administrative restriction in the interest of training, operations, security, or safety.” MCM, Part IV, para. 13.c.(4).	There is no requirement for all members of the command to sign restriction paperwork or any other document for the restriction to be valid (although that is normally done for pretrial restriction or restriction imposed as punishment). However, to punish violations of the administrative restriction, the government will need to later prove “that the accused knew of the restriction and the limits thereof.” MCM, Part IV, para. 13.b.(3). The limits of restriction may change rapidly. To protect Service Members and prove knowledge of the restriction later on, a recommended practice is have Service Members acknowledge that they understand the limits of	As a practical matter, administrative restriction orders should document the legitimate government purpose of the restriction and the terms of the restriction. The terms of the restriction must not amount to punishment and must not be unduly rigorous.	Commanders may place members of the command on administrative restriction, such as restricting members to an installation, restricting travel outside of designated distances away from a command, restricting travel into certain high-transmission areas, or even restricting members to remain in quarters. The nature of the restrictions may rapidly change based on circumstances in the local area and the military necessity and purpose for imposing the restriction.

	any restrictions via email, text messages, or other communication to small unit leaders.		
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Note: The purposes served by the administrative restriction or condition must be reasonably related to a legitimate governmental interests. *United States v. Reyesesquer*, No. 201700342, 2018 CCA LEXIS 255 (N-M. Ct. Crim. App. May 29, 2018). “Legitimate governmental interests include protection of the morale, welfare, and safety of the unit or the accused, protection of victims or witnesses, or to ensure the accused's presence at trial.” *Id.* See also *United States v. Mack*, 65 M.J. 108, 109 (C.A.A.F. 2007).

This Sidebar and support references have been posted to Code 20's page on the JAG Portal at: <https://portal.secnv.navy.mil/orgs/JAG/20/SitePages/Home.aspx>

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