



DEPARTMENT OF THE NAVY

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SECNAVINST 5822.1B

JAG 20

JAN - 4 2006

SECNAV INSTRUCTION 5822.1B

From: Secretary of the Navy

Subj: IMPLEMENTATION OF THE FEDERAL MAGISTRATES ACT BY THE  
DEPARTMENT OF THE NAVY

Ref: (a) Title 28 United States Code, Section 636  
(b) Title 18 United States Code, Section 19  
(c) Title 18 United States Code, Section 3581  
(d) Title 18 United States Code, Section 13  
(e) Title 40 United States Code, Section 1315  
(f) Title 18 United States Code, Section 3401  
(g) Title 18 United States Code, Section 3402  
(h) 32 Code of Federal Regulations, Part 1290

1. Purpose. To revise policies and procedures for handling of misdemeanors and petty offenses committed at Navy and Marine Corps installations.

2. Cancellation. SECNAV Instruction 5822.1A.

3. Background. Pursuant to reference (a), magistrate judges are appointed by the district judges of each U.S. district court and have jurisdiction over misdemeanors and petty offenses committed on Federal installations. Petty offenses are defined in reference (b). Per reference (c), misdemeanors are offenses punishable under the laws of the United States, the penalty for which does not exceed imprisonment for 1 year.

4. Policy

a. Whenever possible, misdemeanors and petty offenses committed by civilian personnel on base, may be disposed of utilizing the administrative and disciplinary tools available to the commander concerned. Normally, adequate corrective action of such infractions can be taken under applicable base or civilian personnel regulations. Imposition of administrative measures does not preclude trial of the offense under the Federal Magistrates Act. Department of Defense activities should utilize U.S. magistrate judges to the maximum extent practicable in the disposition of such offenses.

b. Military offenders may be dealt with under appropriate military regulations and the Uniform Code of Military Justice. Imposition of non-judicial punishment or other administrative action by the disciplinary authority of the commander concerned does not preclude trial of the offense under reference (a).

#### 5. Jurisdiction of Magistrate Judges

a. Pursuant to the provisions of reference (d), U.S. magistrate judges may try misdemeanors and petty offenses, to include assimilated state crimes.

b. In those states where traffic offenses cannot be assimilated under 18 U.S.C. section 13 because such violations are not criminal offenses, but where the United States has exclusive or concurrent jurisdiction over the military installation or parts thereof, those traffic laws may be enforced by Federal magistrates as petty offenses under reference (e).

c. Installations or parts thereof that are held by the United States only under proprietarial authority are beyond the scope of reference (d) and are not covered by the provisions of reference (e). Consequently, traffic offenses promulgated as Navy, Marine Corps, or base regulations on such proprietarial installations, or parts thereof, are not enforceable by a U.S. magistrate judge.

d. Pursuant to the provisions of reference (f), any person charged with a misdemeanor may elect to be tried before a district judge for the district court in which the offense was committed. The magistrate judge shall carefully explain to the person that he or she has a right to trial, judgment, and sentencing by a district judge and that he or she may have a right to a trial by jury before a district judge or magistrate. The magistrate judge may not proceed to try the case unless the person, after such explanations, expressly consents to be tried before the magistrate judge and specifically waives trial, judgment, and sentencing by a district judge.

e. Pursuant to reference (g), in cases of conviction by the magistrate judge, an appeal may be taken to the district judge of the district court of the district where the offense was committed.

6. Procedure for Referral to Trial before Magistrate Judges of Misdemeanors and Petty Offenses

a. Offenders will be notified to appear before the local U.S. district magistrate judge by means of DD Form 1805. Section 1290.9 and Appendixes A through D of reference (h) outline the general information and preparation of DD Form 1805. The Central Violations Bureau (CVB), which is managed by the Administrative Office of the U.S. Courts, receives and processes for docketing and appearance before the magistrate judge, the DD Form 1805. CVB receives the copy of the DD Form 1805 from the local Department of Defense activity.

b. The trial of Class A misdemeanors, as defined by reference (c), must proceed on an Information (the charging instrument). The Information must be filed in the U.S. district court before the magistrate judge even though a DD Form 1805 for the same Class A misdemeanor has already been received and processed for docketing before the magistrate judge by CVB. The trial of a petty offense may proceed once the DD Form 1805 has been processed and docketed for appearance before a magistrate judge by CVB.

c. DD Form 1805 can be issued when a violation of base safety, traffic, or protective regulations also constitutes a violation of Federal law or of state law that is applicable to a military installation pursuant to the provisions of either reference (d) or reference (e). A state criminal law may be incorporated into Federal law per reference (d). When a state's traffic regulations are not criminal in nature, only installations that have exclusive and concurrent jurisdictional areas are included within the current delegation under reference (e).

d. When a base safety, traffic or protective regulation that constitutes a violation of Federal law or state law that is applicable to military installations under references (d) or (e) is a Class A misdemeanor as defined by reference (c), an Information must be filed for that Class A misdemeanor offense in the U.S. district court before the magistrate judge. As with all Class A misdemeanors, the Information must be filed in the U.S. district court before the magistrate judge even though a DD Form 1805 for the same Class A misdemeanor has been received and processed for docketing before the magistrate judge by CVB.

7. Action

a. Navy commands must ensure that military and base police are thoroughly briefed in the operation of references (a) through (h) with particular emphasis on the policies and procedures of the local district court and magistrate.

b. Navy commands must ensure that the DD Form 1805 will be used throughout the Navy shore establishment when referral of an offense to a U.S. magistrate judge is deemed appropriate.



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