

NONJUDICIAL PUNISHMENT OVERVIEW AND PROCEDURES

Nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction.

OVERVIEW

- Generally, any *commander* who is a *commissioned officer* may impose NJP for *minor offenses* committed by members under his/her command

- **Some unique rules apply to situations involving Reserve members**
 - AFRC unit commanders have UCMJ authority over Reserve members assigned or attached to their respective units, even if the Reserve member is deployed. Although active commanders of Reserve members have concurrent UCMJ authority over all Reserve members attached to their respective units, i.e., on temporary duty or deployed, prior coordination with the Reserve member's parent organization commander is required.

 - The Readiness Group (RMG) commander has UCMJ authority over all Individual Mobilization Augmentees (IMAs)(Category B Reservists) attached or assigned to the RMG. Active Duty commanders have concurrent UCMJ authority over CAT B reservists attached to their unit for reserve duty, for temporary duty, or for deployment.

 - Authority to issue NJP on AFRC commissioned officers is withheld from all Reserve commanders, except those who are general officers or who exercise general court-martial convening authority and their principal assistants to whom Article 15 power has been delegated under the AFI

PROCEDURES

- The offense must violate the UCMJ
 - A Reserve member is subject to UCMJ jurisdiction for offenses committed while on active duty or inactive duty training (Title 10) status at the time of the alleged offense. In making this determination, the commander must ask two questions:
 - (1) Was the member in military status at the time he/she committed the alleged misconduct? If not, then no UCMJ jurisdiction exists

 - A member in active status (i.e., special tour, annual tour) is subject to the UCMJ from the beginning to the end of the tour, 24 hours a day. In certain circumstances,

a Reserve member may also be subject to the UCMJ for acts committed during a travel day associated with active duty orders.

- Generally, a member performing inactive duty training (IDT) or a unit training assembly (UTA) is subject to the UCMJ from the beginning to the end of the duty, i.e., 0730–1630. All Article 15 correspondence relating to Air Force members for offenses occurring while on inactive duty for training (IDT) must be processed through AFRC channels to HQ AFRC.
- An Air Force Reserve member is not, by virtue of the termination of a period of active duty or inactive-duty training, “shielded” from jurisdiction and discipline for an offense committed during such period of active duty or inactive-duty training
- Even if the Reserve member was not in military status, the commander is authorized to take administrative action, including letters of counseling, admonishment and reprimand
- (2) Will the Reserve member be in military status at the time the commander is authorized to take administrative action, including letters of counseling, admonishment and reprimand?
 - Commanders can always ask Reserve members to voluntarily submit to UCMJ jurisdiction by extending his/her tour or IDT/UTA. In the alternative, commanders can wait until the member’s next scheduled training to offer Article 15 punishment.
- In deciding whether or not an offense is minor, commanders should consider:
 - The nature of the offense and the circumstances surrounding its commission
 - The need for good order and discipline
 - The member’s age, rank, duty assignment, record, and experience
 - The effect of NJP on the member and the member’s record
 - In the case of members attached to the command, the TDY commander should confer with the member’s parent organization to determine the member’s background, past duty performance, and other relevant factors before initiating action
- Ordinarily, an offense is not considered minor if the offense is one for which the maximum imposable punishment at a general court-martial includes a dishonorable discharge or confinement for more than one year

- The decision whether an offense is “minor” is a matter of discretion for the commander imposing NJP
- Unless the member is AWOL or fleeing from justice, nonjudicial punishment **MAY NOT** be imposed for offenses which were committed more than 2 years before the date of imposition of punishment
- Commanders must confer with the staff judge advocate (SJA), or a designee, before initiating nonjudicial punishment proceedings **AND** before imposing punishment. The military justice section of the base legal office prepares the Air Force (AF) IMT 3070, *Record of Nonjudicial Punishment Proceedings*.
 - An AF IMT 3070A is used to impose NJP on a member in the grade of Airman Basic through Technical Sergeant
 - An AF IMT 3070B is used to impose NJP on a member in the grade of Master Sergeant through Chief Master Sergeant
 - An AF IMT 3070C is used to impose NJP on an officer
- While no specific standard of proof is applicable to NJP proceedings, commanders should recognize that a member is entitled to demand trial by court-martial, where proof beyond a reasonable doubt by competent evidence is required for conviction. Commanders should consider whether such proof is available before initiating action under Article 15. If not, NJP is usually not warranted.
- Commanders should consider the maximum punishment that can be imposed based on the commander’s grade and the grade of the member when deciding whether a more senior commander should impose NJP. Limitations are on the AF IMT 3070 and in AFI 51-202, Tables 3.1 and 3.2 (attached).
- Commanders initiate NJP action by serving the AF IMT 3070. (A Reserve commander must be in Title 10 status to offer NJP and sign AF IMT 3070, and the Reserve member must be in Title 10 status when served the AF IMT 3070. A Reserve member generally cannot be involuntarily ordered to a duty status solely for purposes of initiating or completing NJP actions, although a MAJCOM commander or equivalent may grant waivers in appropriate cases.)
- Commanders should serve the AF IMT 3070 on members within 10 days of the “date of discovery.” The date of discovery is identified as the date when an investigative agency (e.g., OSI, SFOI, IG, legal office, or commander, supervisor or first sergeant) becomes aware of an allegation and has identified a subject. (For Category A Reserve members, NJP should generally be offered no later than the next Unit Training Assembly (UTA) after the offense is

discovered or the investigation is completed. For Category B Reserve members, NJP should be offered as soon as possible after facts become known by the member's commander which indicate that an offense may have been committed.)

- Failure to meet this suggested processing goal does not preclude commanders from initiating NJP proceedings at a later date
- Once notified of NJP proceedings, by way of the AF IMT 3070, members are allowed three duty days to respond. Upon written application and for good cause, the initiating commander may approve a request for additional time to respond. (A Reserve member not in Title 10 status for at least 72 hours after being offered NJP should be required to respond at the start of the next military duty day (i.e., UTA), provided at least 72 hours have passed since the NJP was offered. A failure to respond within 30 calendar days is considered a waiver of his/her right to respond, unless an extension is granted.)
 - Commanders should encourage members to consult with the area defense counsel (ADC) in all cases. The AF IMT 3070 requires that an appointment with an ADC be established on behalf of a member prior to the commander notifying that member of the commander's intent to impose NJP. Typically, an ADC appointment will be arranged for the member by the First Sergeant or by legal office personnel before the member is notified of the commander's intent to impose NJP. (The servicing active duty ADC located nearest to the Reserve member's unit normally provides defense services to a Reserve member facing NJP.)
 - Once served with the AF IMT 3070, the member has the right to examine all statements and evidence upon which the commander intends to rely in arriving at a decision to impose punishment, and as to the quantum of punishment to be imposed, unless the matters are privileged or restricted by law, regulation, or instruction. The legal office normally supplies the evidence to the ADC.
 - If the member fails to indicate within three duty days (30 days for Non-EAD reservists) whether he or she will accept the Article 15, the commander may continue with the proceedings. The commander notes the member's failure to respond on the AF IMT 3070.
 - The member's failure to respond in time is deemed acceptance of NJP proceedings. However, if the commander believes the failure to respond was for reasons beyond the member's control, the commander may not proceed with NJP action. Consult with the SJA on this matter.
 - If a member decides to accept NJP, he or she is entitled to present matters in defense, mitigation, and extenuation. (The Reserve commander and member must be in Title

10 status when the Reserve member executes the acknowledgement of his/her rights and makes the decision to accept or reject NJP.)

--- Acceptance of NJP is not an admission of guilt. It is simply a choice by the member not to assert the right to a trial by court-martial and to instead allow the commander to determine whether the member is guilty or not guilty of the alleged offense and the punishment, if any, to be imposed.

--- Members may present matters in person, in writing, or both

-- A member is generally entitled to appear personally before the imposing commander and present matters in defense, mitigation, or extenuation, except under extraordinary circumstances or when the imposing commander is unavailable. (The Reserve commander and member must both be in Title 10 status at the time of this personal presentation.) If the member chooses to make a personal appearance, the member also has the right to:

--- Be accompanied by a spokesperson (who does not have to be a lawyer)

--- Present witnesses who are reasonably available

-- A member may request that a personal presentation be open to the public. The commander may open the personal appearance to the public, even though the member does not request it or agree that the appearance should be open. However, public NJP at commander's calls, unit training assemblies and other public gatherings is inappropriate. NJP proceedings may be attended by a limited number of people in a more private setting, i.e., the commander's office. The individuals in attendance at NJP proceedings should normally be limited to those in the member's supervisory chain or people who can assist the commander in making a decision.

- After the personal presentation (if one is requested), and after a full and fair consideration of all matters in defense, mitigation, and extenuation, the commander must decide:

-- Whether or not the member committed the offense

-- If so, what punishment to impose. Note that, aside from determination that NJP is warranted and, if warranted, determination of level of NJP, the commander should refrain from discussing what punishment should be imposed until determining the member committed the offense.

PUNISHMENT

- Commanders are required to confer with the SJA before imposing punishment except where impracticable due to military exigencies. The legal office will normally type the appropriate

punishment language on the AF IMT 3070. (The Reserve commander must be in Title 10 status to impose punishment on the member. If the Reserve member is unavailable to accept the punishment for the Article 15 action, the Reserve commander may serve the punishment by certified mail.)

- Commanders should tailor the punishment to the offense **AND** the member
 - Ordinarily, the commander should impose the least severe punishment sufficient to correct and/or rehabilitate the member
 - For example, an unsuspended reduction in grade (“hard bust”) may be reserved for repeat offenders, cases where past rehabilitative efforts have failed, or for the most serious offenses
 - Punishment limitations based upon the commander’s grade and the member’s grade are summarized in AFI 51-202, Tables 3.1 and 3.2 (attached), and on page 3 of the AF IMT 3070
 - There are limitations on the combination of certain punishments
 - The Remotivation Program (also known as the Correctional Custody Program) is a discipline option only available at installations where the Wing Commander has established a Remotivation program consistent with MAJCOM/A7S guidance.)
 - If restriction and extra duties are combined, they must run concurrently (i.e., at the same time) and must not exceed the maximum time imposable for extra duties (45 days when field grade or general officers impose punishment; 14 days when company grade officers impose punishment)
 - Arrest in quarters (officers only) cannot be combined with restriction
 - There are limitations on the punishment that can be imposed on Reserve members
 - Because a Reserve member cannot be required to arrive before, or remain after, a UTA to serve NJP, the Remotivation Program, arrest in quarters, restriction to base or extra duties should not be imposed unless the Reserve member is expected to serve on EAD or perform an Annual Tour
 - Barring a Reserve member from participating in UTAs is not an authorized punishment under Article 15, UCMJ
 - Since Reserve members not on EAD typically work only 2 days of military duty per month, the forfeiture provision of the Article 15 does not carry the same

disciplinary weight for Reserve members as for active duty members. If the member does not perform any duty during the stated period of the sentence, no forfeiture collection will be made.

- Unless the commander otherwise specifies, unsuspended reductions in grade and forfeitures take effect on the date the commander imposes punishment. All other unsuspended punishments take effect immediately upon notification to the member. Suspension of a punishment takes effect on the imposition date.

APPEALS

- Members are entitled to appeal nonjudicial punishment to the commander who imposed the original punishment and to the next superior authority in the commander's chain of command
 - The member may appeal when he or she considers the punishment to be unjust or disproportionate to the offense. A member may assert the punishment was unjust because the offense was not committed. Thus, the guilty finding, the punishment, or both may be appealed. (A Reserve member is not required to make this appeal election in Title 10 status or in person.)
 - Members must appeal the punishment within five calendar days unless they request an extension in writing within the five calendar days and the commander imposing the punishment grants it for good cause. (Reserve members not in Title 10 status for at least five days following receipt of punishment waive their appeal rights by failing to make an election within 30 calendar days of that receipt.)
 - Members must submit all evidence supporting an appeal to the commander who imposed the original punishment. (If a Reserve member makes a personal presentation to the commander for the appeal, both the Reserve member and commander must be in Title 10 status.)
 - After considering any new matters submitted by the member, the imposing commander may deny all relief, grant partial relief, or grant all relief requested by the member. If the imposing commander does not grant all the requested relief, he or she must forward the appeal to the appellate authority through the servicing SJA. If the imposing commander is a section commander of a squadron, the next superior authority is the squadron commander's superior commander.
 - The *appellate authority* may deny all relief, grant partial relief, or grant all relief requested by the member. The appellate authority's decision is final.
 - Punishments are not stayed during the appeal process. However, if the commander and/or appellate authority fail to take action on an appeal within five days after submission,

and if the member so requests, any unexecuted punishment involving *restraint or extra duties* will be delayed until after appeal.

REFERENCES:

UCMJ art. 15

MANUAL FOR COURTS-MARTIAL, UNITED STATES, Part V (2012)

AFI 51-202, *Nonjudicial Punishment* (7 November 2003), Incorporating Through Change 3 (11 August 2011), Including AFGM 22 October 2013

ATTACHMENT:

Tables of Enlisted and Officer Punishments, AFI 51-202, Tables 3.1 and 3.2

Table 3.1. Enlisted Punishments

Punishment	Imposed by Lt or Capt		Imposed by Maj		Imposed by Lt Col or Above	
Additional Restrictions	May not Impose NJP on CMSgt or SMSgt		May not Impose NJP on CMSgt or SMSgt		See Note 2 for reduction of CMSgt or SMSgt	
Correctional Custody	Up to 7 days		30 days		30 days	
Reduction (See Note 2)	CMSgt	No	CMSgt	No	CMSgt	Note 2
	SMSgt	No	SMSgt	No	SMSgt	Note 2
	MSgt	No	MSgt	No	MSgt	One Grade
	TSgt	No	TSgt	One Grade	TSgt	One Grade
	SSgt	One Grade	SSgt	One Grade	SSgt	One Grade
	SrA	One Grade	SrA	to AB	SrA	to AB
	A1C	One Grade	A1C	to AB	A1C	to AB
	Amn	to AB	Amn	to AB	Amn	to AB
Forfeiture	7 days pay		½ of 1 month's pay per month for 2 months		½ of 1 month's pay per month for 2 months	
Reprimand	Yes		Yes		Yes	
Restriction	14 days		60 days		60 days	
Extra Duties	14 days		45 days		45 days	

NOTES:

1. See MCM, Part V, paragraph 5d for further limitations on combinations of punishments.
2. CMSgt or SMSgt may be reduced one grade only by MAJCOM commanders, commanders of unified or specified commands, or commanders to whom promotion authority to these grades have been delegated. See AFI 36-2502, Airmen Promotion Program.
3. Neither bread and water nor diminished rations punishments are authorized.

4. Frocked commanders may exercise only that authority associated with their actual pay grade. No increased punishment authority is conferred by assumption of the title and insignia of the frocked grade.

Table 3.2. Officer Punishments

Punishment	Imposed by Colonel	Imposed by General Officer or GCMCA
Correctional Custody	No	No
Reduction	No	No
Forfeiture	No	½ of 1 month's pay per month for 2 months
Reprimand	Yes	Yes
Arrest in Quarters	No	30 days
Restriction	30 days	60 days
Extra Duties	No	No

NOTES:

1. Officers in the grade of Lt Colonel and below (includes frocked Colonels) may not impose NJP on officers.
2. Only MAJCOM commanders, commanders of unified commands and their equivalents, or higher may impose NJP on general officers.
3. See MCM, Part V, paragraph 5d, for further limitations on combinations of punishments.

SUPPLEMENTARY NONJUDICIAL PUNISHMENT ACTIONS

Supplementary nonjudicial punishment (NJP) actions are important tools for commanders to understand when dealing with NJP. Commanders are required to consult with the servicing staff judge advocate (SJA), or designee, before proceeding with any supplementary NJP actions.

- **Procedure:** Supplementary NJP actions are accomplished on Air Force IMT 3212, *Record of Supplementary Action under Article 15*, and are filed with the original NJP action. Members may request post-punishment relief (use the sample format in AFI 51-202, Atch 6), or the commander may grant such relief on his/her own initiative.

- **Suspension:** Suspension postpones all or part of a punishment for a specific probationary period. The suspended punishment is later remitted (canceled) if the member successfully completes the period of the suspension without **either** committing another offense under the UCMJ or violating a condition of the suspension specified by the commander. Commanders must consult with the servicing SJA, or designee, before imposing conditions on suspensions.
 - Suspension is usually appropriate for a first-time offender or where there are persuasive extenuating or mitigating circumstances
 - The period of a suspension may not exceed six months from the date of the suspension
 - Commanders may, at any time, suspend any part or amount of the unexecuted punishment imposed. An executed punishment of reduction in grade or forfeiture may be suspended if accomplished within 4 months of the punishment being imposed.
 - When a reduction in grade is later suspended, the member's original date of rank, held before the reduction, is reinstated. However, the effective date of rank is the date of the document directing the suspension and the member is not entitled to back pay.
 - If a member is undergoing a suspended reduction in grade, the member is ineligible for promotion, including testing and consideration if already tested. They are also ineligible to reenlist, but may be eligible for an extension of enlistment.

- **Mitigation:** Mitigation is a reduction in either the quantity or quality of a punishment, with its general nature remaining the same as the original punishment. Mitigation is appropriate when the member's later good conduct merits a reduction in the punishment, or when the commander later determines the punishment imposed was disproportionate to the offense.
 - With the exception of reduction in grade, only the unexecuted part or amount of the punishments can be mitigated

- A reduction in grade may be mitigated even after it has been executed. Reduction in grade may only be mitigated to forfeitures and may only be done within four months after the date of execution. In such cases, the mitigation date will become the offender's new date of rank and effective date of rank. The member will **NOT** be entitled to receive back pay.
- Punishments involving loss of liberty, such as correctional custody or restriction, cannot be mitigated to forfeitures or reduction in grade
- Mitigated restraints on liberty (for example mitigating correctional custody to extra duties) cannot run for a longer period than the remaining amount of punishment that was originally imposed
- **Remission:** Remission is the cancellation of any unexecuted portion of a punishment. Remission is appropriate under the same circumstances as mitigation.
 - Commanders may remit punishments any time before the execution of the punishment is completed
 - An unsuspended reduction in rank is executed at imposition, so it can never be remitted
- **Set Aside:** Set aside occurs when the punishment, or any part of the punishment, whether executed or unexecuted, is removed from the record. A set aside of all punishment voids the entire NJP action.
 - Any property, privileges, or rights, affected by the portion of the punishment set aside are restored to the member
 - Unlike suspension, mitigation, and remission, setting aside a punishment is **not normally considered rehabilitative** in nature and should not be used on a routine basis
 - Commanders should exercise this discretionary authority only in the rare and unusual case where a question concerning the guilt of the member arises or where the best interests of the Air Force are served by clearing the member's record
 - Punishments should be set aside within a reasonable time (4 months, except in unusual circumstances) after the punishment is originally imposed

REFERENCES:

UCMJ art. 15

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