BY ORDER OF THE SECRETARY OF THE AIR FORCE

DEPARTMENT OF THE AIR FORCE INSTRUCTION 51-202

4 JANUARY 2022

Law

NONJUDICIAL PUNISHMENT

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: Publications and forms are available on the e-Publishing website at **www.e-Publishing.af.mil** for downloading or ordering

RELEASABILITY: There are no releasability restrictions on this publication

---

OPR: AF/JAJM;

Certified by: AF/JAJ (BG Rebecca R. Vernon); USSF/SpOC/JA, (Colonel Todd Pennington)

Supersedes: AFI51-202, 6 March 2019

Pages: 56

This instruction implements Air Force Policy Directive (AFPD) 51-2, *Military Justice and Other Criminal Proceedings.* Specifically, this instruction addresses Article 15 of the Uniform Code of Military Justice (UCMJ), Part V of the Manual for Courts-Martial (MCM). This publication applies to the Regular Air Force, the Air Force Reserve, the Air National Guard (ANG) (when in federal service under Title 10 United States Code (U.S.C)), and the United States Space Force. Users of this instruction should familiarize themselves with the UCMJ, MCM, and Department of Defense directives and instructions pertaining to military justice. This publication may not be supplemented without the prior, written approval of AF/JAJM, 1500 West Perimeter Road, Suite 1130, Joint Base Andrews, Maryland 20762; DSN 612-4820. This instruction requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by Department of Defense Instruction (DoDI) 5400.11, *DoD Privacy and Civil Liberties Programs*. The applicable SORN, F051 AFJA I, *Military Justice and Magistrate Court Records* is available at **http://dpclo.defense.gov/Privacy/SORNs.aspx**. Refer recommended changes and questions about this publication to the office of primary responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, Table 1.1 for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to AF/JAJM, the publication OPR. Commanders may not waive non-tiered compliance items in this instruction.

See DAFI 33-360, paragraph 1.9.3.1. Ensure all records generated as a result of processes prescribed in this publication adhere to Air Force Instruction 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule (RDS), which is located in the Air Force Records Information Management System. The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Department of the Air Force. Compliance with the attachment in this publication is not mandatory.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Major changes include incorporation of a standard of proof applicable at all stages of the nonjudicial punishment process. The revision also clarifies the Air Force Reserve uses of AF Forms 3070A, 3070B, and 3070C; clarifies the member must acknowledge the commander's decision on filing the nonjudicial punishment (NJP) in an Unfavorable Information File (UIF) prior to completion of the servicing staff judge advocate (SJA) legal review; and clarifies that Air Force Reserve and ANG commanders must be in Title 10 status to impose punishment. The revision also contains updated Department of the Air Force (DAF) references to reflect applicability to both Air Force and Space Force personnel and removes recommended templates from the instruction and places them in the Virtual Military Justice Deskbook found at **https://kmjas.jag.af.mil/moodle/course/view.php?id=251**

Chapter 1—OVERVIEW AND ROLES AND RESPONSIBILITIES 7

1.1. Overview. 7

1.2. Roles and Responsibilities. 7

1.3. Forms. 8

Chapter 2—AUTHORITIES, LIMITATIONS ON IMPOSITION OF NONJUDICIAL PUNISHMENT, AND JURISDICTION 10

Section 2A—Authority to Impose Nonjudicial Punishment 10

2.1. Commander's Authority to Impose NJP. 10

2.2. NJP Authority in a Joint Force. 11

2.3. Procedures for Imposing NJP in a Joint Force. 12

2.4. Procedures for Multiservice Commanders. 12

2.5. Delegation of Authority. 13

Section 2B—Limitations on Commander's Authority 13

2.6. Limitations on Commander's Authority. 13

2.7. Commander as Victim or Witness in Commander's Personal Capacity. 13

2.8. Withholding Authority. 14

2.9. Cases Involving State or Foreign Prosecution Interest. 14

Section 2C—Jurisdiction 15

2.10. Host Command Jurisdiction. 15

2.11. Jurisdiction over Air National Guard Members. 15

2.12. Jurisdiction over Air Force Reserve Members. 16

2.13. Requirement that Commander be in Title 10 Status. 17

2.14. Jurisdiction Over Certain Air Force Personnel. 17

2.15. Exceptions to Support Agreements. 17

Chapter 3—PROCEDURES FOR INITIATING AND IMPOSING NONJUDICIAL PUNISHMENT 18

Section 3A—Responsibilities of the Initiating Commander 18

3.1. General Responsibilities. 18

3.2. Notice of Recoupment of Benefits. 18

3.3. Timeliness of Actions. 18

3.4. Standard of Proof. 19

3.5. Providing Evidence to the Member. 19

Section 3B—Initiating Nonjudicial Punishment 19

3.6. Initial Considerations. 19

3.7. Description of Offense. 20

3.8. Notifying the Member. 20

3.9. Changing Commanders before Nonjudicial Punishment Proceedings are Complete. 20

3.10. Discovery of Additional Offenses. 21

3.11. Member’s Decision to Accept or Reject Nonjudicial Punishment. 21

3.12. Member’s Presentation. 22

Section 3C—Imposing and Administering Punishments 23

3.13. Commander’s Findings. 23

3.14. Commander’s Punishments. 24

3.15. Maximizing the Impact of Punishment. 24

3.16. Permissible Punishments. Table 3.1 24

3.17. Punishment Effective Date. 25

3.18. Release of Information. 25

Section 3D—Action When the Member Demands Trial by Court-Martial 25

3.19. Restrictions. 25

3.20. Commander's Options. 25
3.21. Withdrawing Demand for Trial. 25
Table 3.1. Enlisted Punishments. 26
Table 3.2. Officer Punishments. 27
Chapter 4—NONJUDICIAL PUNISHMENT APPEALS AND SELECTION RECORDS 28
4.1. General Guidance. 28
4.2. Appellate Authority. 28
4.3. Format. 30
4.4. Delegation of Authority. 30
4.5. Procedures for Appeals. 30
4.6. Action on Appeal by Imposing Commander. 31
4.7. Action on Appeal by Appellate Authority. 32
4.8. Officer Selection Record and Enlisted Selection Record Determination. 32
Chapter 5—SUPPLEMENTARY ACTIONS 33
Section 5A—Suspension, Mitigation, Remission, and Set Aside of Punishment 33
5.1. General Guidance. 33
5.2. Consultation Required. 33
5.3. Action by Successor in Command. 33
5.4. Suspension. 33
5.5. Mitigation. 34
5.6. Remission. 35
5.7. Set Aside. 35
5.8. Limitations on Suspension, Mitigation, Remission and Set Aside of Punishment. 35
5.9. Processing Requirements. 35
Section 5B—Vacation of Suspension 35
5.10. General Guidance. 35
5.11. Notification to the Member. 36
5.12. Member's Elections. 36
5.13. Timing. 37
5.14. Commander's Decision. 37
5.15. Effect on Suspended Reductions. 37

Chapter 6—MISCELLANEOUS MATTERS 38

Section 6A—Indorsing Forms and Correspondence 38

6.1. Procedure. 38

6.2. Content of Indorsements. 38

6.3. Original. 38

6.4. Copies. 38

Section 6B—Action Taken on Records of Punishment, Including Vacation, Suspension, Mitigation, and Set Aside Actions 38

6.5. Action by the Commander. 38

6.6. Action by the Servicing SJA. 39

6.7. Action by the Military Personnel Flight (MPF) and Accounting and Finance Office (AFO). 40

6.8. Action by the GCMCA SJA. 40

Section 6C—Filing of the Original Record on Nonjudicial Punishment Proceedings 41

6.9. Procedures. 41

Section 6D—Criminal Indexing Required 42

6.10. Criminal History Record Data and Fingerprint Collection. 42

6.11. DNA Collection. 43

6.12. Firearms Possession Prohibited. 43

6.13. Distribution of the Air Force Form 3070 for Criminal Indexing. 43

Section 6E—Effect of Errors in Nonjudicial Punishment Proceedings 44

6.14. Effect of Errors. 44

Section 6F—Disposition of Records of Nonjudicial Punishment Proceedings 44

6.15. Governing Directive. 44

6.16. Contents of Record. 44

6.17. Supporting Documentation. 45

Section 6G—Signatures 45

6.18. Form Completion. 45

Chapter 7—CORRECTIONAL CUSTODY (REMOTIVATION) PROGRAM 46

Section 7A—Program Definition and Purpose. 46

7.1. Correctional Custody Defined. 46

7.2. Purpose. 46

7.3. Program Ownership and Evaluation. 46
7.4. Optional Nature of Program. 47
Section 7B—Correctional Custody Program Facilities 47
7.5. Remotivation Housing. 47
7.6. Regional Facilities. 47
Section 7C—Operating a Remotivation Area 47
7.7. Remotivation Plan. 47
7.8. Staffing. 48
7.9. Training and Work Programs. 49
7.10. Supervising Candidates. 49
7.11. Disciplining Candidates. 49
7.12. Clothing for Candidates. 50
Attachment 1—GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION 51

Chapter 1

OVERVIEW AND ROLES AND RESPONSIBILITIES

1.1. Overview.

1.1.1. Purpose. NJP provides commanders with an essential and prompt means of maintaining good order and discipline. It is intended to promote positive behavior changes in service members without the stigma of a court-martial conviction. See MCM, Part V, paragraphs 1b, 1c, and 1e.

1.1.2. "Department of the Air Force" or "DAF" will be used when the Air Force and Space Force are referred to collectively.

1.1.3. This instruction implements requirements for the administration of NJP in the DAF. The primary source of direction and guidance on NJP is the MCM, Part V. It establishes requirements, rules, and procedures for imposing NJP on members.

1.2. Roles and Responsibilities.

1.2.1. Commanders shall:

1.2.1.1. Report NJP actions on all officers to the Secretary of the Air Force, Inspector General, Senior Official Inquiries Directorate (SAF/IGS) (for general officers) or local Inspector General (IG) (for all other officers) when initiated and when final action is complete, in accordance with AFI 90-301, *Inspector General Complaints Resolution*.

1.2.1.2. Coordinate with the Air Force Reserve commander prior to initiating NJP against an Air Force Reserve member assigned or attached to the commander's unit. **(T-3).**

1.2.1.3. Coordinate with the administrative control (ADCON) commander to whom the Air National Guard (ANG) member is assigned when in Title 10 status or the 201st Mission Support Squadron (MSS) commander prior to initiating NJP action against an ANG member assigned or attached to the commander's unit, whichever is applicable. **(T-3).** See **paragraph 2.11**.

1.2.1.4. Consult with the servicing staff judge advocate (SJA) prior to initiating and administering NJP actions against members in the commander's unit. **(T-3).**

1.2.1.5. Ensure the impartial and timely administration of military justice by offering NJP for appropriate offenses as soon as possible after facts indicate such offenses have been committed and have become known by the member's commander.

1.2.2. The General Court-Martial Convening Authority (GCMCA) shall supervise all NJP within the convening authority's command.

1.2.3. The GCMCA SJA shall:

1.2.3.1. Conduct supervisory SJA review of all NJP within the command.

1.2.3.2. Forward the original NJP for filing in the master personnel record group.

1.2.4. The servicing SJA shall:

1.2.4.1. Advise commanders on all legal aspects of NJP, both substantive and procedural.

1.2.4.2. Conduct a legal sufficiency review on NJP after the conclusion of all appeal, UIF, and selection record decisions. See **paragraph 6.6**.

1.2.4.3. Advise commanders on their responsibilities regarding criminal indexing and Deoxyribonucleic Acid (DNA) collection related to NJP. See **Section 6D**.

1.2.4.4. Forward a copy of all final AF Forms (AF Form 3070A – 3070E, *Record of Nonjudicial Punishment Proceedings*; AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*; and AF Form 3212, *Record of Supplementary Action Under Article 15, UCMJ*), to the local Office of Special Investigations (OSI) detachment, local Security Forces Squadron Investigations Section (SFS/S2I), and OSI's Warfighting Integration Directorate (OSI/XI), in accordance with **Section 6D** of this instruction. This satisfies the legal office's requirements with regard to criminal titling and indexing in accordance with 18 U.S.C. § 922, *Unlawful acts*; Department of Defense Instruction (DoDI) 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*; and DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*; and AFMAN 71-102, *Air Force Criminal Indexing*. **See Section 6D**.

1.2.5. The Military Personnel Flight (MPF) shall take appropriate personnel actions required upon receipt of NJP records.

1.2.6. The Accounting and Finance Office (AFO) shall take appropriate finance actions upon receipt of NJP records.

1.2.7. OSI and Security Forces shall, upon receipt of completed AF Forms 3070, 366 and 3212, update criminal record history and disposition data in accordance with 18 U.S.C. § 922, DoDI 5505.11, DoDI 5505.14, and AFMAN 71-102. **(T-0).**

1.3. Forms. Use the following forms to record NJP actions:

1.3.1. AF Form 3070, *Record of Nonjudicial Punishment Proceedings*. Although referenced generally as "AF Form 3070," this form is subdivided based on grade and status. Use of AF Forms 3070A, 3070B, and 3070C is based on the grade of the member at the time NJP is initiated. For example, if a member is an E-6 at initiation of NJP and is found to have committed one or more offenses as listed on the AF Form 3070B, the AF Form 3070B must be completed, to include the senior noncommissioned officer (SNCO) selection record decision, even if the member is reduced below the grade of E-6 as a result of the NJP. AF Forms 3070D and 3070E are specific to members of the ANG in the grade of E-6 through E-9 and officers, respectively. The Air Force Reserve utilizes AF Forms 3070A, 3070B, and 3070C for NJP proceedings but do not utilize the selection records process for NCOs.

1.3.1.1. AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB through SSgt)*. This form is also for use by the ANG for personnel in the ranks of AB through SSgt.

1.3.1.2. AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt through CMSgt)*.

1.3.1.3. AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officers)*.

1.3.1.4. AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (TSgt through CMSgt) – ANG Only*.

1.3.1.5. AF Form 3070E, *Record of Nonjudicial Punishment Proceedings (Officers) – ANG Only*.

1.3.2. AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*.

1.3.3. AF Form 3212, *Record of Supplementary Action under Article 15, UCMJ*.

Chapter 2

AUTHORITIES, LIMITATIONS ON IMPOSITION OF NONJUDICIAL PUNISHMENT, AND JURISDICTION

Section 2A—Authority to Impose Nonjudicial Punishment

2.1. Commander's Authority to Impose NJP. The following personnel are authorized to impose NJP:

2.1.1. A commander of an Air Force unit.

2.1.2. A commander of a Space Force unit.

2.1.3. Commander, Air Force Forces, which is an officer designated from the United States Air Force who serves as the commander of all United States Air Force forces assigned and attached to the United States Air Force component in a joint or combined operation. See Air Force Doctrine Publication 3-30, *Command and Control*.

2.1.4. Commander, Space Force Forces, which is an officer designated from the United States Space Force who serves as the commander of all United States Space Force forces assigned and attached to the United States Space Force component in a joint or combined operation.

2.1.5. Commanders of detachments, headquarters, squadron sections and equivalents, and United States Air Force and United States Space Force element sections, if properly appointed to command. See MCM, Part V, paragraph 2; AFI 38-101, *Manpower and Organization*; and AFI 51-509, *Appointment to and Assumption of Command*.

2.1.6. The senior air force officer (SAFO) in the headquarters staff organization of a unified command, subordinate unified command, specified command, joint task force, combined command, or combined task force, with respect to Air Force members in the organization. The SAFO in the Air Force element of an activity outside the DAF, as defined in **Attachment 1**, with respect to Air Force members in the activity. This applies even if the Air Force element has not been formally designated as a unit and the SAFO has not been formally appointed to command. See AFI 51-509.

2.1.6.1. The SAFO must be an officer otherwise eligible to command in accordance with AFI 51-509.

2.1.6.2. SAFOs may delegate their authority under Article 15, UCMJ, to the next senior DAF officer or another principal assistant who is generally equivalent to a vice commander.

2.1.7. The senior space force officer (SSFO) in the headquarters staff organization of a unified command, subordinate unified command, specified command, joint task force, combined command, or combined task force, with respect to Space Force members in the organization. The SSFO in the Space Force element of an activity outside the DAF, as defined in **Attachment 1**, with respect to Space Force members in that activity. This applies even if the Space Force element has not been formally designated as a unit and the SSFO has not been formally appointed to command. See AFI 51-509.

2.1.7.1. The SSFO must be an officer otherwise eligible to command in accordance with AFI 51-509.

2.1.7.2. SSFOs may delegate their authority under Article 15, UCMJ, to the next senior DAF officer or another principal assistant who is generally equivalent to a vice commander.

2.1.8. The commander of an Air Force element, as appointed by superior competent authority in accordance with AFI 51-509. This includes the Air Force element of a headquarters unit in a joint or combined command or task force, as well as the Air Force element of an activity outside the DAF.

2.1.9. The commander of a Space Force element, as appointed by superior competent authority in accordance with AFI 51-509. This includes the Space Force element of a headquarters unit in a joint or combined command or task force, as well as the Space Force element of an activity outside the DAF.

2.1.10. The commander of Air Force District of Washington (AFDW/CC), and the commanders of subordinate units when designated by AFDW/CC, for Air Force members assigned to an Air Force element of an activity outside the DAF. This NJP authority is held concurrently with element commanders and SAFOs of activities outside the DAF.

2.1.11. The commander of Space Operations Command (SpOC/CC), and the commanders of subordinate units when designated by SpOC/CC, for Space Force members assigned to a Space Force element of an activity outside the DAF. This NJP authority is held concurrently with element commanders and SSFOs of activities outside the DAF.

2.1.12. The superintendent of the United States Air Force Academy (USAFA) and the commandant of a school that is designated as an Air Force unit.

2.1.13. The commander of a host command, and the commanders of subordinate units when designated by the host commander, providing support to a tenant organization pursuant to AFI 25-201, *Intra-Service, Intra-Agency, and Inter-Agency Support Agreements Procedures*.

2.1.14. Joint force commanders of joint activities established under the criteria of Joint Publication 1, *Doctrine for the Armed Forces of the United States*.

2.1.15. Multiservice U.S. Armed Forces commanders in combined commands, combined task forces, and activities outside the DAF, as defined in **Attachment 1**, to whose command DAF members are assigned or attached.

2.2. NJP Authority in a Joint Force. The joint force commander has authority to impose NJP on DAF members assigned or attached to the command unless such authority is withheld by a superior joint commander. See Joint Publication 1. DAF members are "assigned or attached to the command" of a joint force commander if they are assigned or attached to the joint staff organization or to a unit which is assigned or attached to the joint force.

2.2.1. Joint force commanders should use this instruction when imposing NJP on DAF members**.** See Joint Publication 1. The appropriate DAF commander should normally handle matters that involve only the DAF and occur within the military jurisdiction of the DAF.

2.2.2. If NJP is imposed on a DAF member by a commander of a different service, the decisions as to collateral administrative actions (e.g., entry into UIF or selection record) will be made by the SAFO for Air Force members, SSFO for Space Force members, or commander of the applicable Air Force or Space Force element in the Joint Command. If neither is available nor senior to the commander who imposed NJP, the decision is made by a general court-martial convening authority (GCMCA) of the DAF host command who is senior to the commander who imposed punishment, or by a GCMCA senior to the commander who imposed punishment as designated by the respective DAF host command's major command (MAJCOM) or field command (FIELDCOM) commander.

2.3. Procedures for Imposing NJP in a Joint Force. If the joint force commander decides to initiate NJP against a DAF member, the joint force commander should coordinate with the appropriate DAF commander before taking action.

2.3.1. The appropriate DAF commander immediately notifies the servicing SJA. See AFI 25-201. The servicing SJA:

2.3.1.1. Coordinates with the SJA assigned to the joint force commander.

2.3.1.2. Advises on the application of DAF instructions in the administration and processing of NJP actions, and assists the joint force SJA in ensuring the NJP action is properly completed by the joint force commander.

2.3.1.3. Enters the NJP proceedings into the Automated Military Justice Analysis and Management System (AMJAMS) and ensures required personnel and finance actions are taken. See paragraphs **4.8** and **6.5.2** to identify the DAF officer responsible for deciding selection record and UIF actions.

2.3.2. If a DAF judge advocate is assigned to the joint force commander, he or she may provide advice to the joint force SJA in lieu of the host command's servicing SJA. The servicing DAF SJA shall be notified of the occasion and nature of the advice and action and shall remain responsible for the required AMJAMS entries, personnel records and finance actions.

2.3.3. If the joint force commander determines NJP authority over a DAF member should be left to the discretion of DAF authorities, the appropriate DAF commander, as identified in **paragraph 2.1**, may take action. NJP shall be processed through the servicing DAF SJA for the host command.

2.3.4. Commander and member must both be in Title 10 status for action to be taken (e.g., if member is ANG or Air Force Reserve, he or she must be in Title 10 status or must be recalled to Title 10 status before NJP may be initiated). **(T-0).** See paragraphs **2.11** and **2.12**.

2.4. Procedures for Multiservice Commanders. The multiservice commander, when imposing NJP on a DAF member, follows this instruction, including the guidance applicable to joint force commanders in paragraphs **2.2** and **2.3**.

2.5. Delegation of Authority. Commanders who are general officers or who exercise GCMCA may delegate their powers under Article 15, UCMJ, to a principal assistant, provided that principal assistant is a military officer. See AFPD 51-2. The principal assistant then assumes the commander's authority to impose NJP on members of the command who are subordinate to the principal assistant. The principal assistant does not assume the commander's rank for punishment purposes, but acts on virtue of the principal assistant's own rank and the commander's delegation of authority. Delegation of such authority must be in writing or incorporated in a permanent directive, and should be addressed to the principal assistant by duty title, rather than by name, except as described in paragraphs **2.1.6.3** and **2.1.7.3** The original written delegation or directive shall be filed in the office of the SJA servicing the commander concerned. A delegation made by duty title continues in effect when a new principal assistant occupies the position or when command changes to a new commander, unless or until expressly rescinded. A commander delegating NJP punishment authority also retains the authority to administer NJP in the commander's own right.

Section 2B—Limitations on Commander's Authority

2.6. Limitations on Commander's Authority. A commander may only impose NJP on members of his or her command.

2.6.1. "Members of his or her command" include those assigned to the element or organization commanded, or members on temporary duty (TDY) with, or otherwise attached to, the element or organization. A commander may exercise NJP authority on a member not on TDY orders if the commander exercises the usual responsibilities of command over the member. A TDY commander has concurrent authority with the commander of the member's element or organization of permanent assignment. In these cases, the commander should confer whenever possible with the member's parent organization commander about which commander should initiate action. If the member is in the Air Force Reserve, prior coordination with the member's parent organization commander is required. **(T-3).** See **paragraph 2.12** If the member is in the ANG, prior coordination with the member's assigned Title 10 ADCON commander is required. **(T-3). See paragraph 2.11** In order for a commander to initiate NJP on a member of the Air Force Reserve or ANG, the commander and member must both be in Title 10 status.

2.6.2. A commander will not impose NJP on a member after that member has been transferred from the command. If NJP was initiated but punishment was not imposed prior to the transfer, the initiating commander may forward the record of proceeding to the gaining commander for disposition. If a member transfers after punishment has been imposed but before the action is complete, the action (including adjudication of any appeal) will be completed by the imposing commander's chain of command. In the event either of these scenarios should occur, refer to **paragraph 3.9** to determine what notification, if any, should be provided to the member receiving NJP.

2.7. Commander as Victim or Witness in Commander's Personal Capacity.

2.7.1. Commander as Victim. If a commander is the victim of the crime for which the NJP is being contemplated in the commander's personal capacity (e.g., victim of assault or larceny) as opposed to official capacity (e.g., violation of commander's order), that commander should forward the report of the incident to the next higher commander for review and appropriate action.

2.7.2. Commander as Witness. A commander who has witnessed misconduct or events related to misconduct is not barred from imposing NJP for the witnessed misconduct. In these instances, a commander should document his or her observations in an MFR record and include it as part of the evidence. If the commander's involvement precludes fair and impartial judgment, that commander should forward the report of the incident to the next higher commander for review and appropriate action.

2.8. Withholding Authority. A commander may withhold from any subordinate commander all or part of the authority, including the authority to impose NJP for specific types of offenses, that the subordinate would otherwise have under the UCMJ, MCM, or this instruction. When authority is withheld, such action shall be in a clearly defined writing or permanent directive. File the original of the letter or directive in the office of the SJA servicing the commander withholding the authority. File a copy in the office of the SJA servicing the commander whose authority has been withheld. Any such withholding remains in effect when a new commander assumes either command, until and unless expressly revoked by the superior commander. Any such action should be addressed by duty title and not by name.

2.9. Cases Involving State or Foreign Prosecution Interest. Only the Secretary of the Air Force (SecAF) may approve initiation of NJP action against a member who is pending trial or has been previously tried by a federal, state, or foreign court for substantially the same act(s) or transaction(s), regardless of the outcome.

2.9.1. A member may be considered to be "pending trial" when state or foreign authorities have expressed an intent to try the member, even if formal charges have not yet been brought (e.g., upon arrest of the member or a representation by civilian authorities that they intend to pursue the case).

2.9.2. A member is deemed "tried" if jeopardy has attached. Follow the applicable state or foreign law to determine when this occurs. At a minimum, jeopardy attaches when the jury is impaneled and sworn, or when the first witness testifies in a judge-alone trial. See *Crist v. Bretz*, 437 U.S. 28 (1978).

2.9.3. A member is not deemed "tried" if the prosecution is deferred, held in abeyance, or otherwise diverted from normal channels pending completion of conditions as an alternative to prosecution, without an initial determination of guilt. If deferral, abeyance, or diversion is conditional and the member remains subject to prosecution if a condition is violated, UCMJ action should not be taken until after the deferral, abeyance, or diversion is completed.

2.9.4. A member is not deemed "tried" in situations where jeopardy attached without resolution of the case, if further prosecutorial action is authorized under state or foreign law (for example, in the case of a mistrial).

2.9.5. If the state or foreign proceedings end without jeopardy attaching or if the DAF receives clear indication in writing from an authorized state or foreign government representative that the state or foreign proceedings will not continue pending military authorities taking UCMJ action, the principle of comity is satisfied and the DAF may proceed with nonjudicial punishment.

Section 2C—Jurisdiction

2.10. Host Command Jurisdiction. All members of a tenant unit, Air Force element, or Space Force element, whether designated a unit or not, are attached to the host command and its appropriate subordinate and higher commands for the exercise of authority under Article 15, UCMJ. However, commanders of tenant units, and other Air Force or Space Force element officers authorized to impose NJP pursuant to this instruction, retain concurrent authority to take such action.

2.10.1. Any appeal is made to the next superior authority in the command channel of the officer who imposes punishment or to the appeal authority otherwise designated by AF/JAJM. See AFPD 51-2.

2.10.2. Regardless of who imposes punishment or acts on the appeal, the action is administratively processed through the host command's SJA.

2.11. Jurisdiction over Air National Guard Members. Jurisdiction attaches when ANG members are in Title 10 status. However, because ANG Title 10 status cannot ordinarily be administratively extended for investigations into UCMJ violations or to complete actions to address UCMJ violations, the supporting Regular Air Force legal office contacts the legal office supporting the ANG Readiness Center, the Directorate Judge Advocate-ANG, within the National Guard Bureau Office of the General Counsel (NGB-GC), to discuss the timing of exercising jurisdiction and options for maintaining jurisdiction. The process for obtaining jurisdiction over ANG members varies based on the status of the member at the time the commander intends to initiate NJP.

2.11.1. Air National Guard Members in Title 10 Status. When an ANG member commits misconduct while in Title 10 status and attached to a Regular Air Force or Space Force unit, the commander of that unit initiates NJP if otherwise authorized to initiate NJP over that member. The commander coordinates any action with NGB-GC and 201 MSS. **(T-3).**

2.11.2. If an ANG member's Title 10 orders have expired and the ANG member has reverted to Title 32 ANG status before UCMJ action commences, the member must be recalled to Title 10 status under 10 U.S.C. § 802(d), *Persons subject to this chapter*. **(T-0).**

2.11.2.1. The servicing legal office of the attached commander with whom the ANG member was performing in Title 10 status at the time of the misconduct contacts NGB-GC, who coordinates with 201 MSS.

2.11.2.2. NGB-GC, in coordination with 201 MSS, identifies the Regular Air Force or Space Force installation with a servicing legal office that is geographically closest to the member's Title 32 home ANG unit.

2.11.2.3. If, after consulting NGB-GC and the servicing legal office, a decision to initiate NJP is made by the 201 MSS, the servicing legal office identified in **paragraph 2.11.2.2** routes a request to recall the member to Title 10 status to one of the following:

2.11.2.3.1. A GCMCA for the host command of the nearest Regular Air Force or Space Force installation;

2.11.2.3.2. A GCMCA for the Regular Air Force or Space Force unit to which the member was attached for duty (supported commander);

2.11.2.3.3. A GCMCA for the Regular Air Force or Space Force unit to which the member was attached for training; or

2.11.2.3.4. Any GCMCA pursuant to an agreement with or a request by 201 MSS/CC.

2.11.3. ANG Recall Process.

2.11.3.1. The GCMCA evaluates recall decisions using the preponderance of the evidence standard;

2.11.3.2. The GCMCA authorizes the recall to Title 10 status for UCMJ action against the member by signing a memorandum prepared by the GCMCA legal office;

2.11.3.3. The Air Force Director of Manpower, Organization and Resources (AF/A1M) provides the man-days for the orders under 10 U.S.C. § 802(d);

2.11.3.4. The member's home station creates the Title 10 order(s);

2.11.3.5. If necessary, the GCMCA who recalls the member to Title 10 status funds travel-related entitlements in accordance with the Joint Travel Regulations. *See Joint Federal Travel Regulations*.

2.11.3.6. The member is ordered to Title 10 status and scheduled to appear at the home ANG unit for NJP processing and remains in Title 10 status until the conclusion of that process.

2.11.3.7. Requirement that Commander be in Title 10 Status. The commander initiating the NJP must be in Title 10 status throughout the NJP process to include initiating NJP, making a decision regarding guilt and punishment, making an appeal or selection record decision, and forwarding the NJP for appellate or reviewing authority determination. The commander must be in Title 10 status when the member receiving NJP makes a personal presentation. See **paragraph 3.12**.

2.11.3.8. Execution of Punishment. Members must be in Title 10 status in order for punishment to be executed. In the event an ANG member's Title 10 orders have expired and the member has reverted to Title 32 status before execution of punishment, the punishment does not take effect until the member is returned to Title 10 status.

2.12. Jurisdiction over Air Force Reserve Members. Jurisdiction attaches when Air Force Reserve members are in Title 10 status.

2.12.1. When an Air Force Reserve member commits misconduct while in Title 10 status and attached to a Regular Air Force or Space Force unit, the commander of that unit initiates NJP if otherwise authorized to initiate NJP over that member. The commander coordinates any action with the member's Air Force Reserve chain of command including the applicable SJA. **(T-3).**

2.12.2. If an Air Force Reserve member's Title 10 status terminates before UCMJ action commences, the member must be recalled to Title 10 status under 10 U.S.C. § 802(d) or the commander initiating the NJP must wait until the member is otherwise in Title 10 status. **(T-0).**

2.12.3. Subject to the coordination requirement of **paragraph 2.12.1**, the following individuals may recall an Air Force Reserve member to Title 10 status for purposes of administering NJP:

2.12.3.1. A GCMCA for the Regular Air Force or Space Force unit to which the member is attached for training purposes;

2.12.3.2. A GCMCA for the Regular Air Force or Space Force unit in which the member performed federal service and/or was in Title 10 status when the offense occurred;

2.12.3.3. A GCMCA for the Regular Air Force or Space Force host unit, as designated in the applicable host-tenant support agreement, if the member is assigned to an Air Force Reserve unit for training purposes or was attached to such a unit when the offense occurred;

2.12.3.4. AFRC/CC, 4 AF/CC, 10 AF/CC, or 22 AF/CC for members assigned or attached to their respective commands; or

2.12.3.5. A GCMCA for the Regular Air Force or Space Force host command.

2.13. Requirement that Commander be in Title 10 Status. The commander initiating the Article l5 must be in Title 10 status throughout the NJP process to include initiating NJP, making a decision regarding guilt and punishment, making an appeal or selection record decision, and forwarding the NJP for appellate or reviewing authority determination. The commander must be in Title 10 status when the member receiving NJP makes a personal presentation. See **paragraph 3.12**.

2.14. Jurisdiction Over Certain Air Force Personnel.

2.14.1. USAFA Cadets. See DAFI 51-201, Section 2B.

2.14.2. Air Force Judge Advocates Assigned to Headquarters Air Force (AF/JA) and Subordinate Directorates. See DAFI 51-201.

2.14.3. Military Judges. See DAFI 51-201.

2.15. Exceptions to Support Agreements. When a support agreement differing from the construct outlined in this instruction is necessary or desirable, the contents and conditions of the support agreement must be documented at the GCMCA level or higher and coordinated with AF/JAJM.

Chapter 3

PROCEDURES FOR INITIATING AND IMPOSING NONJUDICIAL PUNISHMENT

Section 3A—Responsibilities of the Initiating Commander

3.1. General Responsibilities. A commander who initiates NJP action and imposes punishment acts on the basis of information the commander determines relevant. The commander's action must be temperate, just, and conducive to good order and discipline.

3.2. Notice of Recoupment of Benefits. Concurrent with initiation of the NJP action, the initiating commander must provide written notice to a member who has received educational assistance, special pay, or bonuses concerning the member's obligation to reimburse the DAF if the member is discharged or involuntarily separated for misconduct. **(T-0).** The statement of understanding regarding recoupment is inserted and included on the AF Form 3070. The member's initial signature on the AF Form 3070 constitutes acknowledgement. Noncompliance with this provision shall not affect the legal sufficiency of the NJP action.

3.3. Timeliness of Actions. The impartial and timely administration of military justice helps maintain good order and discipline. NJP should be offered for appropriate offenses as soon as possible after facts that indicate such offenses have been committed become known by the member's commander.

3.3.1. Timelines. Commanders should offer NJP within 21 calendar days of the date of discovery of the offense. Punishment should be served on the member within nine calendar days of offer of NJP. The servicing SJA legal review should be completed within nine calendar days of the service of punishment.

3.3.2. SJAs, chiefs of military justice and non-commissioned officers in charge (NCOICs) of military justice should regularly analyze AMJAMS data as to each segment of NJP processing to determine specific areas for improvement, and implement appropriate management measures to maximize effectiveness and efficiency. The following metrics have been established to assist in expediting the administration of justice:

3.3.2.1. Complete 80% of all NJP actions (date of discovery of the offense through servicing SJA legal review) within 39 days.

3.3.2.2. The date of discovery of the offense is defined as the initial date when a DAF investigative agency (e.g., OSI, SFS/S2I, IG), legal office, commander, supervisor, or first sergeant, whichever is first in time, becomes aware of an allegation that an offense has been committed and a potential subject of NJP has been identified, including when notification is made by civilian authorities.

3.3.2.2.1. For commander directed investigations (CDIs), the date of discovery of an offense is when a commander is notified of an allegation that an offense has been committed and a subject has been identified. The date of discovery is not the date the CDI is initiated or the date the allegation(s) are subsequently turned over to an investigative agency for further investigation.

3.3.2.2.2. Use the earliest date of discovery of all offenses (e.g., if the date of discovery of Offense A is 1 February and the date of discovery of Offense B is 15 February, the date of discovery for purposes of AMJAMS and the NJP metric is 1 February).

3.3.3. Failure to meet these processing goals does not preclude a commander from initiating NJP proceedings.

3.4. Standard of Proof. The burden of proof to be utilized for imposition of nonjudicial punishment, to include adjudication of any appeal, shall be a preponderance of the evidence.

3.5. Providing Evidence to the Member.

3.5.1. After a commander serves the AF Form 3070 on a member, that member and the member's counsel have a right to examine the evidence, except as noted in paragraphs **3.5.2** and **3.5.3** The evidence includes that which the commander intends to rely upon in determining whether the member committed the alleged offense(s), and if applicable, regarding whether to impose punishment, and the quantum, if any, of punishment to be imposed. This includes any summary of a statement provided by the victim or witness. **Note:** The servicing legal office must ensure the victim is aware that a summary of comments made to the commander imposing NJP will be provided to the member. **(T-0).**

3.5.2. Members are not entitled to matters that are privileged, classified, or otherwise restricted by law, regulation, or instruction, even if relied upon by the commander.

3.5.3. Legal offices must redact personally identifiable information (PII) of individuals other than the member in the evidence prior to releasing matters to the member or defense counsel if determined not to be relevant for due process purposes. **(T-0).** When releasing Privacy Act material to defense counsel or members receiving NJP, government counsel must redact Privacy Act information regarding individuals other than the member. **(T-0).** An example would be Social Security numbers of individuals providing urinalysis samples, which appear in an otherwise relevant document but which have no relevance to the case. When Privacy Act material or PII is not redacted in material provided to the member or defense counsel, the member or defense counsel, as applicable, should take appropriate steps to guard against improper release of this information.

Section 3B—Initiating Nonjudicial Punishment

3.6. Initial Considerations.

3.6.1. After making a preliminary inquiry, the commander consults with the servicing SJA to determine whether NJP is appropriate and, if so, whether the commander can initiate proceedings personally, or should or must refer the matter to a superior commander for action. Such referral is appropriate when the commander cannot impose an appropriate punishment because of the member's grade, or where authority has been withheld. See **Table 3.1**, **Table 3.2**, and **paragraph 2.8**.

3.6.2. When initiation of NJP action is under consideration, the member's personal data is normally available to the legal office through AMJAMS. The member's personal data is also available by requesting an AMJAMS report on individual personnel (RIP) from the member's servicing MPF. Do not delay initiation for receipt of an AMJAMS RIP.

3.7. Description of Offense. The SJA should advise the commander how to properly allege each offense to state a violation of the UCMJ, consistent with available facts and evidence. Follow the form of specifications in MCM, Part IV. The legal office shall provide the language describing each offense on the AF Form 3070, except where impracticable. **(T-3).** The NJP action remains valid even if the specification fails to include all the elements of an offense, provided that the member is reasonably informed of the nature of the alleged misconduct.

3.8. Notifying the Member.

3.8.1. A commander initiating an NJP proceeding completes the offer portion of the AF Form 3070, signs and dates the form, and causes the member to be notified and advised of his or her rights using the AF Form 3070. See MCM, Part V. The initiating commander should serve the offer of NJP when practicable. If service by the initiating commander is not practicable, a subordinate of the initiating commander senior in rank to the member receiving NJP may be designated to serve the offer of NJP. The commander or subordinate annotates the date and time of service and signs in the appropriate location on the AF Form 3070 as the person serving the member. Regardless of who serves the member, provide the member with a copy of all pages of the AF Form 3070, any attachments, and the evidence discussed in **paragraph 3.5**.

3.8.2. If a commander refers the matter to a superior commander, the superior commander should normally initiate the NJP action and provide the notification. Where it is not practicable for the member to appear personally before the superior commander, the subordinate commander may initiate the NJP proceeding by initialing the appropriate block in the offer portion of the AF Form 3070. When doing so, the subordinate commander notifies the member that NJP proceedings before a superior commander are being recommended (including the identity of the superior commander) and advises the member of his or her rights.

3.8.3. A commander who initially recommended NJP proceedings referred to a superior commander may dispose of the case personally if the AF Form 3070 has not been forwarded to the superior commander. If the commander does not intend to personally pursue the matter as an NJP action, the commander withdraws the AF Form 3070 by marking the appropriate box on the AF Form 3070 and providing it to the servicing SJA so termination of NJP proceedings can be recorded in AMJAMS. If the commander intends to personally pursue the matter as an NJP action, the commander has two options. The commander may notify the member by memorandum that he or she intends to decide whether to impose punishment under the pending NJP action instead of the superior commander, giving the member a new opportunity (three duty days) to accept NJP proceedings or demand trial by court-martial. Attach the memorandum to the AF Form 3070. Alternatively, the commander may withdraw the existing action and initiate a new action on a new AF Form 3070.

3.9. Changing Commanders before Nonjudicial Punishment Proceedings are Complete. A member must always be informed of the identity of the commander who will make the findings and punishment decisions before a decision is required as to whether to accept or demand court-martial. **(T-0).**

3.9.1. If a new commander takes responsibility for the case after the member was offered NJP proceedings, but before findings are made and punishment, if any, has been imposed, inform the member of the identity of the new commander and provide three duty days to accept NJP proceedings or to demand trial by court-martial. **(T-0).** The new commander accomplishes this by either notifying the member about the change in writing, using the notification format located in the Virtual Military Justice Deskbook, or by withdrawing the old AF Form 3070 and initiating a new action on a new AF Form 3070. If a new action is being initiated, the original case in AMJAMS should be closed and a new case opened for the new offer. If the notification format is used, it becomes an attachment to the AF Form 3070.

3.9.2. If a change in commanders occurs after imposition of punishment but before the appeal decision has been made, inform the member in writing of the identity of the new commander and obtain an acknowledgment of this change from the member. Attach the notification and acknowledgment to the original AF Form 3070. Such a change neither impacts the former commander's action nor affords the member additional rights or response time. The new commander has full authority to ensure completion of the action, to include acting on appeal of punishment the new commander could not have independently imposed (e.g., the new commander is junior in grade to the imposing commander and could not have imposed the punishment the initiating commander imposed on the member). However, if an appeal is made, the former commander must prepare a written summary of any oral presentation and the source and substance of any other information considered, consistent with **paragraph 4.6.3**. **(T-0).** Notification of a change in commanders merely for the UIF decision (**paragraph 6.5.2**) is not required.

3.9.3. If a commander notifies a member of the intent to recommend that a superior commander impose NJP, a change of the superior commander provides the identical rights, creating a new opportunity to accept or reject NJP. The subordinate commander follows the procedures set forth above in such situations.

3.10. Discovery of Additional Offenses. When evidence of any additional offense arises following initiation of NJP proceedings, but before the member is notified of the punishment, a commander may:

3.10.1. Proceed with the initial NJP proceeding and, provided initiation of NJP is the appropriate disposition for the additional offense(s), offer a second NJP for the additional offense(s); or

3.10.2. Withdraw the initial AF Form 3070 and reinitiate NJP to include all offenses. If the form has been sent to a superior commander, withdrawal can only occur with the superior's agreement. If a new action is being initiated, the original case in AMJAMS should be closed and a new case opened for the new offer.

3.11. Member's Decision to Accept or Reject Nonjudicial Punishment.

3.11.1. Acceptance of NJP is a choice of forum, not an admission of guilt. The member has three duty days to accept or reject NJP following offer of NJP. Weekends and holidays are counted if they are normally scheduled duty days for the member. The member is not required to, but may, accept or reject NJP earlier than 72 hours following offer of NJP in which case the commander or designee shall include an MFR stating that the member voluntarily submitted his or her elections earlier than the required response deadline.

3.11.2. The member may request an extension by submitting a written request. Upon receiving the written request, the initiating commander may grant an extension for good cause. Initiating commanders should consult with the servicing legal office before granting any extension. **Note:** For traditional reservists or ANG members in Title 10 status, three duty days includes unit training assemblies (UTAs), annual tour days, or other days in which the member is in a military status. Duty days do not include any days in which the member is not in a military status, whether paid or unpaid.

3.11.3. Members must reflect their NJP decision by initialing the appropriate blocks in the member's acknowledgement and elections portion of the AF Form 3070, signing, and then annotating the date and time signed. **(T-0).** Member must initial the appropriate block indicating whether the member:

3.11.3.1. Consulted a lawyer. **(T-0).**

3.11.3.2. Demands trial by court-martial or waives the right to court-martial and accepts NJP proceedings. **(T-0).**

3.11.3.3. Provided a written presentation. **(T-0).**

3.11.3.4. Requests a personal appearance before the commander and whether or not the member requests the personal appearance be public. **(T-0).**

3.11.4. The member has a right to consult a lawyer before making any decisions, and a lawyer may assist the member throughout the proceedings. The contact information of the closest military defense counsel should be provided to the member to further explain the member's rights. The member may retain civilian counsel at the member's own expense. The commander should encourage the member to take full advantage of this time to consult with legal counsel, to decide whether to accept NJP proceedings, and if so, to prepare matters in defense, extenuation, and/or mitigation. The right to legal counsel does not include the right to request individual military defense counsel as defined in DAFI 51-201. However, where a member asserts an attorney-client relationship with a military defense counsel other than the detailed military defense counsel, in regard to the same matter for which he or she is being offered NJP, process the request for this counsel according to the provisions of DAFI 51-201.

3.11.5. If a member does not reply with his or her elections in time, the commander may continue with the proceedings by noting "member failed to respond" in the member's acknowledgement and elections portion of the AF Form 3070 then initialing and dating. The member's failure to respond in time is deemed an acceptance of NJP. However, if the commander has reason to believe a failure to respond resulted from reasons beyond the member's control, the commander may not, without good cause, proceed with NJP action.

3.12. Member's Presentation. A member is generally entitled to appear personally before the imposing commander and present matters in defense, extenuation, and/or mitigation, except under extraordinary circumstances or when the imposing commander is unavailable to receive the member's appearance in person or via alternative means (e.g., telephone, video teleconferencing). There is no requirement a lawyer be made available to accompany the member at a personal appearance. See MCM, Part V, paragraph 4c(1) for the member's entitlements at a personal appearance.

3.12.1. If a personal appearance before a superior commander in proceedings initiated under **paragraph 3.8.2** is prevented by the unavailability of the superior commander or by extraordinary circumstances, the member may appear personally before the subordinate commander who served him or her with the AF Form 3070. The subordinate commander then prepares a memorandum summarizing the presentation and forwards it to the superior commander, along with all written matters submitted by the member.

3.12.2. Under any other circumstances where a personal appearance is prevented by the unavailability of the imposing commander or by other extraordinary circumstances, the member appears personally before a person designated by the imposing commander. The designee prepares a memorandum summarizing the presentation and forwards it to the imposing commander, along with all written matters submitted by the member.

3.12.3. The commander may open the personal appearance to the public, even though the member does not request it or consent to the appearance being open, subject to the following restrictions. Public NJP at commander's calls, UTAs, and other public gatherings is inappropriate without the consent of the member. The member must be given an opportunity to consult with counsel before deciding whether or not to consent to any such public appearance. **(T-0).** NJP proceedings may be attended by a limited number of people in a more private setting (e.g., 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 decision authority (first sergeant, squadron section commander, SJA or designee, etc.).

3.12.4. If the proceedings involve a waiver of the statute of limitations, the member must sign a written waiver that becomes an attachment to the AF Form 3070. **(T-0).** See MCM, Part V, paragraph 1f(4); Rule for Courts-Martial (R.C.M.) 907(b)(2)(B); and *United States v. Moore*, 32 M.J. 170 (CMA 1991).

Section 3C—Imposing and Administering Punishments

3.13. Commander's Findings.

3.13.1. Following full and fair consideration of the evidence, including any matters presented by the member, using a preponderance of the evidence standard of proof, the commander indicates one of the following actions in the commander's decision of the AF Form 3070 by initialing the appropriate block on the form:

3.13.1.1. The proceedings are terminated because NJP is not appropriate or because the member did not commit the offense(s) alleged.

3.13.1.2. The member committed one or more offenses alleged. The commander lines out, initials and dates any offense(s) for which NJP is not appropriate or that the member did not commit. If the member committed one or more lesser included offenses, the commander consults with the SJA before changing an alleged offense to a lesser included offense.

3.13.2. If the commander terminates the proceedings, the commander should notify the individual of this decision, and send the original AF Form 3070 to the servicing SJA for appropriate AMJAMS entries. The AF Form 3070 is then destroyed.

3.14. Commander's Punishments. The commander must consult the servicing legal office before the commander imposes punishment. **(T-3).**

3.14.1. The commander must consult directly with the servicing SJA or an attorney from the SJA's staff in lieu of the SJA. However, before providing a punishment recommendation on behalf of the SJA, the attorney from the SJA's staff must consult with the servicing SJA. This consultation must be annotated in AMJAMS. Any failure to consult with the servicing SJA, along with the reasons for such failure, requires annotation in AMJAMS. A non-attorney shall not provide punishment advice on behalf of the SJA. **(T-0).**

3.14.2. After the commander satisfies the requirements in **paragraph 3.14.1**, the commander completes the commander's decision portion, and signs and dates the form in the indicated blocks. Punishment is recorded in the appropriate block as a continuation of the commander's decision. Examples of punishment formats are located in the Virtual Military Justice Deskbook. The date of imposition of NJP is the date the form is signed by the commander in the signature block of the commander's decision. The member should be informed of the punishment and acknowledge receipt of the action on the same date punishment is imposed. See **paragraph 4.5.2**.

3.15. Maximizing the Impact of Punishment. Whenever possible, the commander should impose NJP personally.

3.16. Permissible Punishments. Table 3.1 and **Table 3.2** set out the maximum permissible punishments, based on the grade and status of the commander and the grade of the member. If, after considering matters presented by the member, the commander determines the member committed one or more of the alleged offenses and NJP is appropriate, the commander must select at least one of the permissible punishments set out in **Table 3.1** or **Table 3.2**. **(T-0).** The commander may suspend all or a portion of the punishment when imposed. For additional guidance on suspension of punishment, see **paragraph 5.4** However, if the commander determines the member should not receive any form of authorized punishment, then the commander must find that NJP is not appropriate and terminate the proceedings. **(T-0).**

3.16.1. The maximum authorized punishment in a single case is subject to the limitations in MCM, Part V, paragraph 5d.

3.16.2. No more than one-half of the member's pay per month is subject to forfeiture, regardless of the number of NJPs imposed. If the member is reduced in grade, the maximum forfeitures are calculated based upon the reduced grade, even if the reduction in grade is suspended.

3.16.3. Subject to the restrictions outlined in this paragraph, extra duties imposed as part of NJP may be required to be performed at any time and for any length of time during the period of punishment. No extra duties may be imposed that constitute: cruel or unusual punishment; punishment not sanctioned by the customs of the Air Force or Space Force (e.g., using the member as a personal servant); duties normally intended as an honor (e.g., assignment to honor guard); actions required to be performed in an unnecessarily degrading manner (e.g., an order to clean a floor with a toothbrush); or duties that are a safety or health hazard to the member.

3.16.4. Frocked commanders may exercise only that authority associated with their actual pay grade. **(T-0).** No increased punishment authority is conferred by assumption of the title and insignia of the frocked grade.

3.16.5. Officers in the grade of lieutenant colonel and below may not impose NJP on an officer.

3.17. Punishment Effective Date. Unsuspended reductions in grade and forfeitures of pay take effect on the date the commander imposes punishment. This is reflected as the date the commander signs block 4 of the AF Form 3070. All other unsuspended punishments take effect immediately upon notification to the member, unless the commander provides otherwise in the punishment indorsement. The suspension of a punishment takes effect on the date the commander imposes punishment, not the date the member was notified of the punishment. The date of notification to the member is reflected in block 5 of the AF Form 3070.

3.17.1. Prompt execution of punishment is desired absent unique circumstances, which include, but are not limited to, the member serving similar punishment from a prior UCMJ action, lack of available space in a correctional custody facility, physical incapacity of the member, emergency leave, and/or humanitarian considerations.

3.17.2. Once commenced, punishments involving restraint (e.g., correctional custody, restrictions, or arrest in quarters) or extra duties run continuously. However, these punishments may be stayed pursuant to the member's request based upon an appeal not being acted upon in accordance with MCM, Part V, paragraph 7.d, or when temporarily interrupted due to either the fault of the member or unique circumstance as listed above in **paragraph 3.17.1** Note that special rules for imposing punishment on reserve component members may be authorized under MCM, Part V, paragraphs 5.e and 5.f.

3.18. Release of Information. Release of NJP information to the public subsequent to imposition of punishment should be limited to an individual's grade, offense, punishment and squadron. Do not release information from the AF Form 3070 that would readily identify the member. **(T-0).**

Section 3D—Action When the Member Demands Trial by Court-Martial

3.19. Restrictions. If a member demands trial by court-martial, the commander may not impose NJP for the offense(s) listed on the offer of NJP.

3.20. Commander's Options. The commander is not required to prefer court-martial charges, and no mandate exists to refer a case to trial by court-martial. Charges and specifications preferred following rejection of an offered NJP action are not limited to those originally included in the offer. The form and substance of the charges may be altered to meet legal or proof requirements, and new charges may be added.

3.21. Withdrawing Demand for Trial. Once a member demands trial, the member may withdraw this demand only with the commander's approval. In addition, convening authority concurrence is required if charges have been preferred. If charges were preferred and not forwarded to the GCMCA (e.g.., the withdrawal request was received prior to the completion of any Article 32, UCMJ, preliminary hearing and forwarding of the report to the GCMCA; if the charges were preferred with the intent of referring the charges to a special court-martial; or if the charges were preferred and referred to a special court-martial), the special court-martial convening authority's concurrence is sufficient. Otherwise, the request must be forwarded to the GCMCA for concurrence. Procedurally, the member must submit a written request to the commander, who

will then indorse approval or disapproval. **(T-0).** The request will become an attachment to the AF Form 3070. If withdrawal is granted, pen and ink changes should be made in the member's acknowledgement and elections portion of the AF Form 3070 to reflect the member's new decision to accept NJP proceedings and the commander should continue with the NJP proceedings. While this is the preferred resolution, initiating a new NJP proceeding remains an alternative.

Table 3.1. Enlisted Punishments.

Punishment	**Imposed by O-1 through O-3**	**Imposed by O-4**	**Imposed by O-5 or Above**
Additional Restrictions	May not Impose NJP on E-8 or E-9	May not Impose NJP on E-8 or E-9	See Note 2 for reduction of E-8 or E-9
Correctional Custody	Up to 7 days	30 days	30 days
Reduction in Rank	E-9 – No E-8 – No E-7 – No E-6 – No E-5 – One Grade E-4 – One Grade E-3 – One Grade E-2 – to E-1	E-9 – No E-8 – No E-7 – No E-6 – One Grade E-5 – One Grade E-4 – to E-1 E-3 – to E-1 E-2 – to E-1	E-9 – See Note 2 E-8 – See Note 2 E-7 – One Grade E-6 – One Grade E-5 – One Grade E-4 – to E-1 E-3 – to E-1 E-2 – to E-1
Forfeiture	7 days' pay	1/2 of 1 month's pay per month for 2 months	1/2 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 5b and 5d, for further limitations on combinations of punishments.
2. E-9 or E-8 may be reduced one grade only by MAJCOM/FIELDCOM commanders, commanders of unified or specified commands, or commanders to whom promotion authority to these grades has been delegated. See AFI 36-2502, *Enlisted Airmen Promotion and Demotion Programs*.
3. Frocked commanders may exercise only that authority associated with their actual pay grade.
4. For enlisted members of the ANG, the "initiating commander" recalling the member to Title 10 status may impose punishment. The "initiating commander" may be: (1) the commander to whom the member is attached in Title 10 status, (2) the 201 MSS/CC or subordinate or superior commander, or (3) the MAJCOM/FIELDCOM commander recalling the member to Title 10 status (or subordinate commander to the MAJCOM/FIELDCOM commander recalling the member to Title 10 status).

Table 3.2. Officer Punishments.

Punishment	Imposed by Colonel	Imposed by General Officer or GCMCA
Correctional Custody	No	No
Reduction	No	No
Forfeiture	No	1/2 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. Only MAJCOM/FIELDCOM commanders, commanders of unified commands, and their equivalents, or higher may impose NJP on general officers.
2. See MCM, Part V, paragraph 5b and 5d, for further limitations on combinations of punishments.
3. Only the ANG Readiness Center Commander, commander to whom the member is attached in Title 10 status, or MAJCOM/FIELDCOM commander (or subordinate commander to the MAJCOM/FIELDCOM commander) recalling the member to Title 10 status may impose punishment.

Chapter 4

NONJUDICIAL PUNISHMENT APPEALS AND SELECTION RECORDS

4.1. General Guidance. An appeal may be taken if a member considers the punishment to be unjust or disproportionate to the offense or because the member asserts the offense was not committed.

4.2. Appellate Authority. NJP appeals are made to the "next superior authority," as defined in AFPD 51-2.

4.2.1. When a principal assistant to a commander of an Air Force or Space Force establishment, unit, or non-unit (other than Air Force or Space Force elements of organizations outside the DAF) imposed punishment, the "next superior authority" is the next DAF commander superior to the commander who delegated the power. See AFPD 51-2.

4.2.2. When a detachment commander imposes punishment, the "next superior authority" is the detachment commander's immediate commander, unless the immediate commander is not the appointing authority (e.g., if the detachment commander is appointed by a group commander, the appellate authority cannot be a squadron commander of the squadron). Detachment commanders exercise the authority of the commander who appoints them as detachment commanders. See AFI 51-509.

4.2.3. When a section commander of a squadron imposes punishment, the "next superior authority" is the squadron commander's superior commander. However, when a section commander for all other units or elements imposes punishment (e.g., group, wing, delta, garrison, numbered air force, major command, field command, center, field operating agency, and direct reporting unit), the "next superior authority" is the section commander's immediate commander.

4.2.4. When the SAFO/SSFO or Air Force element commander for the headquarters staff organization in a unified command, specified command, subordinate unified command, joint task force, combined command or combined task force imposes punishment, the "next superior authority" is the SAFO/SSFO or Air Force/Space Force element commander in the headquarters staff organization at the next superior level component command in the joint or combined force, if any, or the GCMCA for the Air Force or Space Force unit responsible for providing support to the headquarters staff organization under AFI 25-201.

4.2.5. The DAF officer who acts on the appeal must at least be a field grade officer and higher in grade to the officer who imposed the punishment. **(T-0).** When the next superior authority is not at least a field grade officer and higher in grade to the SAFO/SSFO or Air Force/Space Force element commander who imposed the punishment, or when the SAFO/SSFO or Air Force/Space Force element commander for the headquarters staff of a unified command imposed the punishment, the Chief of Staff of the Air Force (CSAF) or Chief of Space Operations (CSO), as applicable, is the "next superior authority," and the appeal is forwarded directly to AF/JAJM. CSAF may delegate this responsibility to the Vice Chief of Staff of the Air Force (AF/CV) and the CSO may delegate this responsibility to the Vice Chief of Space Operations (VCSO).

4.2.6. When the SAFO or Air Force element commander of an activity outside the DAF imposes punishment, the "next superior authority" is AFDW/CC. However, if AFDW/CC is not senior in grade to the SAFO or element commander who imposed punishment, CSAF, or AF/CV if CSAF delegated the authority, is the "next superior authority" and the appeal is forwarded directly to Investigations, Inquiries, and Relief Division (AF/JAJI) with a courtesy copy to AF/JAJM.

4.2.7. When the SSFO or Space Force element commander of an activity outside the DAF imposes punishment, the "next superior authority" is SpOC/CC. However, if SpOC/CC is not higher in grade to the SSFO or element commander who imposed punishment, the CSO, or the VCSO if CSO delegated the authority, is the "next superior authority" and the appeal is forwarded directly to AF/JAJI with a courtesy copy to AF/JAJM.

4.2.8. When the commander of an Air Force MAJCOM, direct reporting unit, or field operating agency imposes punishment, SecAF has designated CSAF as the appellate authority and authorized CSAF to delegate this authority to AF/CV. Forward such appeals directly to AF/JAJI with a courtesy copy to AF/JAJM.

4.2.9. When the commander of a Space Force FIELDCOM, direct reporting unit, or field operating agency imposes punishment, SecAF has designated CSO as the appellate authority and authorized CSO to delegate this authority to VCSO. Forward such appeals directly to AF/JAJI with a courtesy copy to AF/JAJM.

4.2.10. When a joint force commander, including a DAF officer acting in his or her capacity as a joint force commander, imposes punishment, the "next superior authority" is the next superior joint force commander. When the commander of a unified command imposes punishment, or is otherwise disqualified from being the appellate authority, forward the appeal to the Chairman of the Joint Chiefs of Staff for appropriate action by the Secretary of Defense or designee, in accordance with Joint Publication 1. The SAFO, SSFO, or commander of the member's element notifies the servicing SJA of the appeal. The servicing SJA coordinates with the SJA or legal counsel who services the appellate authority to explain DAF policy and procedures for NJP and to advise the appellate authority's SJA or legal counsel that collateral decisions and processing (including AMJAMS inputs, personnel and finance actions, and UIF and selection record entries) will be made within DAF channels.

4.2.11. When a multiservice commander in a combined command, combined task force, or activity outside the DAF imposes NJP on a DAF member, the next superior authority is the immediate multiservice commander who is a member of the U.S. Armed Forces and who is superior to the imposing commander, if any, or the DAF GCMCA with UCMJ authority over the Air Force member. However, if the next superior authority or GCMCA is junior in grade to the imposing commander, the AF/CV or VCSO, as applicable, is the "next superior authority" and the appeal is forwarded directly to AF/JAJM.

4.2.12. When a unique command structure or situation exists, AF/JAJM may designate another individual to act as the appellate authority. Applications for such designations shall be submitted to AF/JAJI with a courtesy copy to AF/JAJM in writing through appropriate command channels.

4.3. Format. Appeals must be documented on the AF Form 3070. **(T-0).** No right or entitlement to a personal appearance before the appellate authority is provided.

4.4. Delegation of Authority. If the "next superior authority" is a general officer or a GCMCA, that individual may delegate the power to act on appeals to a principal assistant in the manner described in **paragraph 2.5**.

4.5. Procedures for Appeals.

4.5.1. Punishment is not stayed pending appeal, except as provided in MCM, Part V, paragraph 7d.

4.5.2. At the time a commander informs the member of the punishment, the commander:

4.5.2.1. Directs the member to acknowledge receipt of the punishment and right to appeal by signing the member's acknowledgement portion of the AF Form 3070 and then annotating the date and time signed. If the member refuses to acknowledge receipt of the punishment and rights to appeal, the commander notes "member refused to acknowledge receipt of punishment and right to appeal," initials, and dates in the member's acknowledgement portion of the AF Form 3070. The time limit for appeal is still applicable despite the member's failure to sign the AF Form 3070.

4.5.2.2. Informs the member that the appeal can be filed anytime within five calendar days. **(T-0).** A decision not to appeal is final.

4.5.2.3. Explains that if an appeal is not filed within five days, appellate rights will be waived. The commander may grant an extension of time to appeal for good cause and upon written application received within the five-day appeal period.

4.5.2.4. Explains to the member that any documents supporting the appeal must be submitted at the same time the member makes the appeal decision.

4.5.2.5. Explains to the member that he or she is entitled to the advice of legal counsel in making the appeal decision.

4.5.3. The member must reflect his or her appeal decision by initialing only one appeal decision block in the member's appeal decision portion of the AF Form 3070, signing the form, and then annotating the date and time signed. See **paragraph 4.8** for guidance on completing the selection record decision for non-Air Force Reserve NCOs in the grade of E-6 and above and officers.

4.5.3.1. The member makes a choice between not appealing, appealing and submitting matters in writing, or appealing and not submitting matters in writing.

4.5.3.2. The appeal decision is a one-time decision made during the time limit for appeal explained in **paragraph 4.5.2.2** All documents supporting the appeal must be submitted at the same time as the appeal decision. If the member decides not to appeal, the imposing commander makes the UIF determination in the unfavorable information file action portion of the AF Form 3070 and continues processing the NJP action in accordance with **paragraph 4.8**, if applicable, and **Section 6B**. If the member decides to appeal, the imposing commander continues processing the appeal, and, if applicable, the filing decision required in accordance with **paragraph 4.8**.

4.5.3.3. The member's decision to appeal or not to appeal in the member's appeal decision portion of the AF Form 3070 ends the time limit for appeal. If the imposing commander has not acted on the appeal, the member may withdraw the appeal. Pen and ink changes should be made in the member's appeal decision portion of the AF Form 3070 to reflect the member's decision not to appeal. Any changes should be initialed and dated by the member.

4.5.3.4. If the member refuses or fails to sign his or her appeal decision within the time limit for appeal, the commander notes in the member's appeal decision portion of the AF Form 3070 "member refused/failed to make appeal decision within the time limit for appeal" and initials and dates. The member's failure to timely respond is deemed a waiver of his or her right to appeal.

4.5.4. In the event a member in the grade of E-5 upon which NJP has been imposed promotes to E-6 prior to making an appellate election, an AF Form 3070B, or 3070D as appropriate, should be added as a supplement to the AF Form 3070A, allowing the member to make elections for NCO selection record purposes in accordance with **paragraph 4.8** A memorandum should be included as a formal attachment explaining the supplementation.

4.6. Action on Appeal by Imposing Commander.

4.6.1. The imposing commander examines the written matters submitted, if any, and must consult directly with the servicing SJA or an attorney on the servicing SJA's staff in lieu of the SJA. However, before providing an appeal recommendation on behalf of the SJA, the attorney from the SJA's staff must consult with the servicing SJA. **(T-3).** This consultation must be annotated in AMJAMS. A non-attorney shall not provide punishment advice on behalf of the SJA. **(T-0).** After receiving a recommendation, the commander may deny the appeal or grant the relief requested in whole or in part, by using his or her powers to suspend, mitigate, remit, or set aside the punishment.

4.6.2. The imposing commander records his or her decision on the appeal in the commander action on appeal portion of the AF Form 3070 by initialing the appropriate block and signing the form. If the imposing commander grants relief, he or she annotates the relief granted in the continuation portion of the AF Form 3070 as a continuation of the commander action on appeal. The annotation should state "As the commander who imposed nonjudicial punishment, I grant your appeal [(in full)(in part)] as follows: (State the specific relief granted)." If the commander grants full relief, do not forward the appeal. If the commander grants less than the full relief requested, forward the appeal to the appellate authority.

4.6.3. If the appeal is forwarded to the appellate authority, the imposing commander adds written comments by indorsement through the servicing legal office (see MCM, Part V, paragraph 7e), addressing any contentions raised by the member. The imposing commander states in the forwarding indorsement whether the member has served any portion of the punishment. The imposing commander includes in the package all written materials considered in imposing the punishment, including a summary of the member's oral presentation, if applicable, as well as a summary of any other information considered and its source. In the event there is a change of command after the commander initiates NJP, the

memorandum provided to the member notifying him or her of the change of commander should also be forwarded to the appellate authority. The indorsement may state the commander's rationale for imposing punishment and a recommendation for action on the appeal. **Note:** any written comment (e.g., memo, email, handwritten note) about the commander's rationale needs to be provided to the member.

4.7. Action on Appeal by Appellate Authority. The appellate authority reviews the written material forwarded by the initiating commander and the legal review required by MCM, Part V, Paragraph 7e. The legal review must be in writing. This material does not become part of the permanent record, but is returned to the SJA for filing. The appellate authority may deny the appeal or grant the relief requested in whole or in part, by using the same power as may be exercised by the imposing commander to suspend, mitigate, remit, or set aside the punishment. The appellate authority records his or her decision on the appeal in the appellate authority action on appeal portion of the AF Form 3070 by initialing the appropriate block and signing the form. Relief granted (either in full or in part) or denied is based upon the remaining punishment after the initiating commander acts on the appeal. Record any relief granted in continuation portion of the AF Form 3070 as a continuation of the appellate authority action on appeal. Unless otherwise stated, relief granted as a result of an appeal is effective from the date the punishment was initially imposed. See MCM, Part V, paragraph 7f(1). If all punishment is disapproved, the entire action must be set aside and removed from the member's record; an NJP action cannot consist of "no punishment." **(T-0).**

4.8. Officer Selection Record and Enlisted Selection Record Determination. Follow the procedures in AFI 36-2608, *Military Personnel Records System,* for completing the selection record portion of the AF Form 3070 for officers or enlisted members in the grade of E-6 and above. Refer to AFI 36-2608 for instruction on where to forward the NJP documents, to include records of vacation or supplemental proceedings (i.e., AF Forms 366 and 3212).

Chapter 5

SUPPLEMENTARY ACTIONS

Section 5A—Suspension, Mitigation, Remission, and Set Aside of Punishment

5.1. General Guidance. Use AF Form 3212 to record actions to suspend, mitigate, remit, or set aside punishment, unless such actions are accomplished as part of an appeal, which is governed by **Chapter 4**.

5.2. Consultation Required. Commanders must consult the servicing SJA before taking action to suspend, mitigate, remit, or set aside a previously imposed punishment. **(T-3).** A commander may take such action upon his or her own initiative or upon a request from the member. A sample format is located in the Virtual Military Justice Deskbook.

5.3. Action by Successor in Command. A commander's power to suspend, mitigate, remit, or set aside NJP passes to any successor in command. For these purposes, the successor in command may be either:

5.3.1. The officer who succeeded to the command or the position of the officer who imposed the punishment and who is authorized to impose on the member the punishment involved; or

5.3.2. An officer authorized to impose on the member the punishment involved, if the member has been reassigned.

5.3.3. If a successor in command lacks authority, that officer forwards the member's request to the next superior authority. See MCM, Part V, paragraph 7f(1); AFPD 51-2.

5.4. Suspension. See MCM, Part V, paragraph 6a. Suspension is the postponement of the application of all or part of the punishment for a specific probationary period, until a specified date. It will be automatically remitted (canceled) at the end of that period if the member does not violate the condition(s) of suspension. Suspension is often warranted for a first offense or where persuasive extenuating or mitigating circumstances exist.

5.4.1. A commander 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, provided the suspension is accomplished within a period of four months after the date imposed.

5.4.2. Suspension of punishment may not be for a period: (1) longer than six months from the date the suspension was imposed or (2) longer than six months from the date the original punishment was imposed. **(T-0).** The expiration of the member's current enlistment or term of service automatically terminates any period of suspension. (**Note**: Six months may be longer than 180 days; for example, 1 July punishment suspended through 31 December.) A suspension action will set a specific date after which, unless sooner vacated, the suspension will terminate and the punishment will be remitted. This date should not exceed the member's expiration of term of service at the time suspension action is taken.

5.4.3. When reduction in grade is later suspended, the member's original date of rank (DOR), held before the reduction, is reinstated. The effective DOR is the date of the document directing the suspension. See AFMAN 36-2604, *Service Dates and Dates of Rank*.

5.4.4. Suspension of a punishment automatically includes a condition that the service member will not violate any punitive articles of the UCMJ. Commanders may specify other conditions as well, but shall consult with the servicing SJA in accordance with **paragraph 5.2** before imposing them. **(T-3).** Include any additional conditions of suspension within the punishment indorsement. The additional condition(s) upon which suspension is based must be clearly stated and capable of being completed during the period of suspension. **(T-0).** A sample format is located in the Virtual Military Justice Deskbook.

5.4.5. The member, if undergoing a suspended reduction in grade, is ineligible for promotion, including testing and consideration if already tested. See AFI 36-2502. The member, if serving any suspended punishment, is ineligible to reenlist, but may be eligible for an extension of enlistment. See AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*.

5.5. Mitigation. See MCM, Part V, paragraph 6b. Mitigation is a reduction in either the quantity or level of a punishment with its general nature remaining the same. For example, a punishment of correctional custody for 20 days can be mitigated to correctional custody for 10 days or to restriction for 20 days. The first action lessens the quantity and the second lessens the quality, with both mitigated punishments remaining of the same general nature as correctional custody, that is, deprivation of liberty. However, a mitigation of 10 days correctional custody to 14 days restriction would not be permitted because the quantity has been increased. **(T-0).**

5.5.1. With the exception of reduction in grade, only the unexecuted part or amount of the punishment can be mitigated. **(T-0).**

5.5.2. A reduction in grade can only be mitigated to forfeitures. A reduction in grade will not be mitigated to a lesser reduction or no reduction**. (T-0).** Mitigation of a reduction in grade must be done within four months after the date of execution. **(T-0).** When mitigating a reduction in grade to forfeiture of pay, the amount of the forfeiture imposed may not be greater than the amount that could have been imposed by the officer who initially imposed the mitigated punishment. **(T-0).** See MCM, Part V, paragraph 6b. If the reduction was executed, the DOR for the restored grade is the date of the indorsement mitigating the punishment. For example, if a member receives NJP consisting of a reduction in grade on 1 June, and on 1 July the commander subsequently mitigates the reduction to a forfeiture, both the effective date and DOR for the restored grade is 1 July. See AFMAN 36-2604.

5.5.3. A forfeiture of pay, to the extent to which it has not been executed, may be mitigated to a lesser forfeiture of pay, but cannot be mitigated to other forms of punishment. **(T-0).**

5.5.4. Restraints on liberty (such as arrest, correctional custody, extra duties, and restriction) may not be mitigated to forfeitures or reduction in grade because the general nature of the punishment would be changed. **(T-0).** Arrest in quarters can be mitigated to restriction; correctional custody can be mitigated to extra duties or restriction or both; extra duties can be mitigated to restriction; but restriction, being the least severe restraint on liberty, cannot be mitigated to a different form of punishment. When a restraint on liberty is mitigated, the lesser punishment may not run for a period greater than the remainder of the period for which the punishment mitigated was initially imposed. For example, when a person is given 15 days of correctional custody and has served five days of this punishment and correctional custody is mitigated to restriction, the mitigated punishment may not exceed restriction for a period of 10 days.

5.6. Remission. See MCM, Part V, paragraph 6c. Remission is simply the cancellation of any portion of the unexecuted punishment. An unsuspended reduction is executed on imposition. It can, therefore, never be remitted, but under appropriate circumstances may be suspended (**paragraph 5.4**), mitigated (**paragraph 5.5**), or set aside (**paragraph 5.7**).

5.7. Set Aside. See MCM, Part V, paragraph 6d. Set aside occurs when the punishment, or any part or amount thereof, whether executed or unexecuted, is removed from the record and any rights, privileges, pay, or property affected by the relevant portion of the punishment are restored. A set aside of all punishment voids the NJP. Commanders use AF Form 3212 to set aside punishment. A commander may not set aside punishment more than four months after execution of the punishment, unless the commander determines unusual circumstances exist and explains them in an attachment to AF Form 3212. **Note:** The servicing SJA should obtain guidance from the GCMCA SJA before initiating a set aside on an NJP punishment more than four months after the execution of punishment.

5.7.1. Set aside is not normally considered a rehabilitation tool, like suspension, remission, and mitigation. Commanders should not routinely set aside punishment, but 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 DAF are served by clearing the member's record.

5.7.2. Setting aside a punishment in its entirety restores the member to the position held before imposition of the punishment, as if the NJP had never been initiated. For example, if a member has been reduced in grade through NJP, and the reduction is later set aside, the effective date and DOR revert to that held before reduction. See AFMAN 36-2604.

5.8. Limitations on Suspension, Mitigation, Remission and Set Aside of Punishment. A commander can suspend, mitigate, remit, or set aside NJP, only if the commander has the authority to impose that punishment. **(T-0).** For example, a commander in the grade of captain or lieutenant cannot suspend, mitigate, remit, or set aside punishment imposed by a field grade commander beyond what the captain or lieutenant could impose. A commander not empowered to act may recommend suspending, mitigating, remitting, or setting aside an action to the next superior authority empowered to impose such punishment(s).

5.9. Processing Requirements. Process and file all requests to suspend, mitigate, remit, or set aside punishment, and any actions taken in response, with the original NJP record and ensure inclusion with other official file copies.

Section 5B—Vacation of Suspension

5.10. General Guidance. Commanders must consult the servicing SJA before taking action to vacate a suspended punishment. **(T-3).** A commander may vacate all or a portion of the suspended punishment. Vacation of a suspended NJP is not itself NJP. A commander can impose NJP for the same violation of a punitive article of the UCMJ upon which the vacation action is based. MCM, Part V, paragraph 6a(5) provides further guidance on vacation actions.

5.11. Notification to the Member. Except when prevented by unauthorized absence of the member, the commander completes item 1 of the AF Form 366, signs and dates the form, and causes the member to be notified and advised of his or her rights, using the form. Normally, the commander notifies and serves the member, then signs and annotates the date and time the member was served notice of the proceeding in item 2 of the AF Form 366. Where circumstances prevent the commander from personally notifying and serving the AF Form 366 on the member or the commander elects not to do so, the commander may direct a subordinate, senior in rank to the member (when practicable), to notify and serve the member. The subordinate annotates the date and time of service and signs in item 2 of the AF Form 366 as the person serving the member. Regardless of who serves the member, provide the member with a copy of both pages of the AF Form 366. Make available to the member all statements and evidence upon which the commander intends to rely in making his or her decision.

5.11.1. The servicing SJA provides a description of the basis for the vacation (e.g., misconduct or failure to meet an additional condition upon which the suspension was based) and other information pertinent to the suspended punishment on the AF Form 366.

5.11.2. If a new commander assumes responsibility for the case after a vacation proceeding has been initiated, but before the vacation decision is made, inform the member of the identity of the new commander and provide three duty days to present matters. The new commander accomplishes this either by notifying the member about the change in writing or by withdrawing the old AF Form 366 and initiating a new vacation proceeding on a new AF Form 366. If the notification format is used, it becomes an attachment to the AF Form 366.

5.11.3. Notification of proceedings to vacate suspended NJP may be provided to officers by the commander who originally recommended that another commander punish the member under Article 15, UCMJ (e.g., the wing commander who recommended the numbered air force commander punish the member). This notification can be provided by modifying the AF Form 366 in block 1.d, to include the statement, "Upon receipt of your presentation, if any, the decision whether to vacate your punishment will be made by [Name/Grade of CC]."

5.11.4. The member may present matters in defense, extenuation, and/or mitigation regarding the violation on which the vacation action is based.

5.11.5. The member may make either a written presentation or personal appearance or both. If the member elects to make a personal appearance, he or she may personally appear before the commander authorized to vacate suspension of the NJP. If such an appearance is impracticable due to the unavailability of the commander or by extraordinary circumstances, the member may appear before a person designated by the commander who will prepare a summary of the personal appearance for the commander. At the personal appearance, the member may: (a) present evidence; (b) present witnesses who are reasonably available; and (c) be accompanied by someone to speak on his or her behalf. There is no requirement that a lawyer be made available to accompany the member at the personal appearance.

5.12. Member's Elections. The member has three duty days to make his or her elections. The member must initial in item 3 of the AF Form 366 whether the member consulted a lawyer, attached a written presentation, or requested a personal appearance before the commander. The commander may, upon written application, grant an extension for good cause.

5.12.1. If a member does not reply with his or her elections in time, the commander may continue with the proceedings and notes in item 3 of AF Form 366 "member failed to respond" and initials and dates.

5.12.2. The member's failure to respond in time does not prevent the commander from continuing with the vacation proceedings. However, if the commander has reason to believe a failure to respond resulted from reasons beyond that individual's control, the commander may not, without good cause, proceed with vacation proceedings.

5.13. Timing. Vacation of a suspension must be based on the violation of the condition(s) of the suspension and occur within the period of suspension. **(T-0).** See **paragraph 5.4.4** To vacate a suspension, the commander must present the member with the AF Form 366 before the end of the suspension period. **(T-0).** The suspension period is stayed if the member has been properly notified via AF Form 366 during the suspension period. The member's unauthorized absence also stays the suspension period.

5.14. Commander's Decision.

5.14.1. Following full and fair consideration of the evidence, including any matters presented by the member, using a preponderance of the evidence standard of proof, the commander indicates one of the following actions in item 4a of the AF Form 366 by initialing the appropriate block on the form:

5.14.1.1. The vacation proceedings are terminated because vacation of the suspended punishment is not appropriate or because the member did not violate the condition(s) of the suspension.

5.14.1.2. The member violated one or more of the conditions of the suspension. The commander lines out and initials any violations for which vacation of the suspended punishment is not appropriate or which the member did not violate.

5.14.2. The commander completes item 4 of the AF Form 366 and signs and dates the form in the indicated blocks.

5.14.2.1. If the commander terminates the proceedings, the original AF Form 366 is sent to the servicing SJA for appropriate AMJAMS entries. The AF Form 366 is then destroyed.

5.14.2.2. Punishment is recorded in item 9 of the AF Form 366 as a continuation of 4.a(2).

5.14.3. At the time a commander informs the member of the vacation decision, the commander directs the member to acknowledge the action taken on the proceedings of vacation of suspended NJP and that there is no right to appeal by signing and dating item 5 of the AF Form 366. **Note**: If the member refuses to acknowledge receipt of the vacation action, the commander notes in item 5 "member refused to acknowledge receipt of vacation action," and initials and dates.

5.15. Effect on Suspended Reductions. If a reduction in grade is suspended, but the suspension is later vacated, the DOR in the grade to which the member is reduced is the date the original reduction was imposed by the commander. The effective date, however, is the date of the vacation action. See AFMAN 36-2604. For example, if the commander imposed punishment consisting of a suspended reduction in grade for six months on 1 June, and the commander subsequently vacates the suspension on 2 September, the effective date of the reduction is 2 September, but the member's new DOR is 1 June. Pay is not retroactively recouped.

Chapter 6

MISCELLANEOUS MATTERS

Section 6A—Indorsing Forms and Correspondence

6.1. Procedure. Prepare any indorsements to AF Form 3070 using normal correspondence practices. Send the correspondence involved in processing NJP (including prescribed forms) through command channels, except as provided in **paragraph 6.9** Unless specifically prescribed, each intermediate commander decides whether to add matters of substance by indorsement. If so, they are signed as noted below.

6.2. Content of Indorsements.

6.2.1. Any intermediate commander or delegee may recommend action or provide other information that might help the superior commander in arriving at a decision.

6.2.2. Following actions by appropriate authority, any intermediate commander, delegee, or staff officer signing under the authority line may furnish information (including administrative instructions) to the member or to a subordinate commander by indorsement.

6.3. Original. The AF Form 3070 that contains all required signatures constitutes the "original." The original AF Form 3070 may contain wet signatures, digital signatures, accurate reproductions of wet or digital signatures, or a combination thereof. See M.R.E. 1002 and 1003.

6.3.1. The member, upon signing the AF Form 3070, waives all rights to challenge at a later time the authenticity of any signature already contained on the AF Form 3070. The member waives his or her right to challenge the authenticity of any signature already contained on the AF Form 3070 if the member refuses to sign the form and does not specifically raise in writing the validity of the signatures at the time.

6.4. Copies. Copies of Article 15 documentation are reproduced from the signed original. The SJA ensures copies of all documents and attachments that will comprise the record of punishment, as set forth in **paragraph 6.16**, are provided to the member and to each level of command involved.

Section 6B—Action Taken on Records of Punishment, Including Vacation, Suspension, Mitigation, and Set Aside Actions

6.5. Action by the Commander. The commander who imposed the punishment or who took action to vacate, suspend, mitigate, remit, or set aside, sends the record to the servicing SJA for review, comment, and recommendation, as appropriate.

6.5.1. If the punishment includes unsuspended correctional custody, the commander immediately notifies the correctional custody monitor of the details, including inclusive dates, to begin the punishment.

6.5.2. Before sending the AF Form 3070 to the servicing SJA, but after completing all other action, including appeal, the commander imposing punishment indicates whether the NJP record will be filed in an enlisted member's UIF by initialing, signing, and dating the appropriate block in the unfavorable information file action portion of the AF Form 3070. The imposing commander should make this determination even in cases that were appealed. However, if the imposing commander is not available, any person authorized by AFI 36-2907, *Adverse Administrative Actions*, may make the UIF determination. UIFs are mandatory for officers who receive NJP as noted on the AF Form 3070. The member must acknowledge or the command must note the member refused to acknowledge or was unable to acknowledge that he or she has been informed of the UIF decision before the SJA may complete the legal review.

6.5.2.1. It is within the commander's discretion to provide the member with an opportunity to respond to the UIF decision, regardless of whether the entry of the NJP record in the UIF is mandatory or optional.

6.5.2.2. In a joint or combined command or task force, if an officer assigned to a different service imposed NJP on a DAF member, the DAF officer identified in AFI 36-2907 must make the UIF decision.

6.5.2.3. The member acknowledges that he or she was informed about the commander's decisions on the UIF, selection record, and appeal, as applicable, by signing and dating the member's acknowledgement block on the AF Form 3070. If the member refuses to sign, the commander notes "member refused to sign" in this block and initials and dates. If the member is unable to sign, the commander notes "member unable to sign" in this block and initials and dates.

6.5.3. For enlisted members in the grade of E-6 and above, the commander must make a decision regarding selection record processing, and the member must acknowledge that he or she has been informed of the decisions before the servicing SJA may complete the legal review. For all officers, all completed nonjudicial punishment will be filed in the selection record in accordance with DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*. For enlisted members, if the commander elects not to file the NJP in the member's selection record, the NJP is not forwarded for superior commander review. The Air Force Reserve does not use SNCO selection records. The ANG does not use officer selection records.

6.5.4. In the event action to vacate, suspend, mitigate, remit, or set aside is taken by a new commander junior in rank to the imposing commander, the new commander has authority to act on any punishment imposed by the original imposing commander. This applies regardless of whether the new commander would have had the authority to impose the punishment as the imposing commander.

6.6. Action by the Servicing SJA. After acknowledgment of the UIF decision, the imposing commander returns the record to the servicing SJA. The reviewing attorney signs and dates the servicing SJA legal review block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable) when the record is found legally sufficient. The NJP action is then final and admissible in courts-martial for purposes of R.C.M. 1001(b)(2). This is also the final action for purposes of the timeliness metric as recorded in AMJAMS.

6.6.1. After completing the servicing SJA legal review, the servicing legal office expeditiously sends:

6.6.1.1. One copy of the record to the officer who supervises the correctional custody program if the case involves unsuspended correctional custody.

6.6.1.2. Two copies of the record, with an AF Form 1373, *MPO Document Control Log-Transmittal*, to the AFO if the punishment affects the member's pay. The SJA keeps a copy of the AF Form 1373. The person who provided the copies of the record to AFO will date and initial the appropriate part of the MPF and AFO distribution block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable) or mark "N/A" if not applicable.

6.6.1.3. One copy of the record to the unit UIF monitor if the record will be filed in a UIF. The unit UIF monitor is responsible for ensuring entry into a UIF. See AFI 36-2907.

6.6.1.4. One copy of the record to the servicing MPF, with an AF Form 1373, in all cases. The servicing legal office keeps a copy of the AF Form 1373. The person who provided the copy of the record to MPF will date and initial the appropriate part of the MPF and AFO distribution block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable).

6.6.1.5. The original record (and two complete copies for officer NJPs) to the SJA for the officer exercising GCMCA, after providing the record to the MPF and AFO and noting the date of receipt. File the receipted copy of AF Form 1373 as prescribed in **paragraph 6.17**.

6.6.1.6. In cases involving officers, one copy of the record and all supporting documents to the member's commander for forwarding in accordance with AFI 90-301. See **paragraph 1.2.1.1** In all cases where the incident was investigated by OSI or Security Forces, provide the investigating office with sufficient information on final disposition to fulfill its respective reporting requirements.

6.7. Action by the Military Personnel Flight (MPF) and Accounting and Finance Office (AFO). The MPF and AFO, on receiving the record, acknowledge receipt on a copy of the AF Form 1373, take appropriate actions, and return this form to the servicing legal office.

6.8. Action by the GCMCA SJA. The GCMCA SJA or attorney from that SJA's staff performs a supervisory review on behalf of the GCMCA.

6.8.1. The GCMCA SJA review will include:

6.8.1.1. An administrative supervisory review of the AF Form 3070. This includes a review to ensure that: (1) the AF Form 3070is properly completed, (2) jurisdiction over the member existed, and (3) the specifications stated an offense cognizable under the UCMJ.

6.8.1.2. An evidentiary review to ensure the standard of proof in **paragraph 3.4** is satisfied for each specification in the NJP.

6.8.2. The GCMCA legal office returns legally deficient proceedings to the servicing legal office for correction. The servicing legal office should pay particular attention to any deficiency that may require updating the effective date of punishment.

6.8.3. After review, the GCMCA reviewing attorney signs and dates the GCMCA SJA administrative supervisory review block of the AF Form 3070 (or of the AF Form 366 or 3212, when applicable) when the record is in compliance with DAFI 51-202 and sends a copy of it to the servicing SJA.

Section 6C—Filing of the Original Record on Nonjudicial Punishment Proceedings

6.9. Procedures. The GCMCA SJA sends the NJP action with the original signature of the GCMCA reviewer to one of the addresses listed in paragraphs **6.9.1** through **6.9.4** for filing in the master personnel record group. For instructions regarding the selection record portion of the AF Form 3070, where applicable, refer to **paragraph 4.8**.

6.9.1. For Regular Air Force members and reservists on extended active duty (as defined in **Attachment 1**):

6.9.1.1. For general officers, send to AF/A1LG, 1040 Air Force Pentagon, Washington, DC 20330-1040. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM/FIELDCOM, send a copy to that MAJCOM's/FIELDCOM's SJA.

6.9.1.2. For O-6s or O-6 selects, send to AF/A1LO, 1040 Air Force Pentagon, Washington, DC 20330-1040. Also send one copy to the custodian of the command selection record group. See AFI 36-2608. If the officer is a member of a tenant command from another MAJCOM/FIELDCOM, send a copy to that MAJCOM's/FIELDCOM's SJA.

6.9.1.3. For E-9s or E-9 selects, send to AF/A1LE, 1040 Air Force Pentagon, Washington, DC 20330-1040. If the E-9 or E-9 select is a member of a tenant command from another MAJCOM/FIELDCOM, send a copy to that MAJCOM's/FIELDCOM's SJA

6.9.1.4. For the following personnel, send to HQ AFPC/DP1ORM, 550 C Street West, Joint Base San Antonio-Randolph, TX 78150 and to the custodian of the command selection record group, as applicable:

6.9.1.4.1. Officers in the grade of O-5 or below (excluding O-6 selects); and

6.9.1.4.2. All enlisted personnel below the grade of E-9 (excluding E-9 selects).

6.9.2. For reservists not on extended active duty, send the original to HQ ARPC/DPTARA, 18420 E. Silver Creek Ave. Bldg. 390, MS 68, Buckley SFB, CO 80011.

6.9.3. For ANG members, send to the military justice attorney, Air National Guard Readiness Center, NGB-GC, 3501 Fetchet Avenue, Suite 431, Joint Base Andrews, MD 20762. Forward a copy of the ANG member's Title 10 orders with the NJP. NGB-GC serves as a central collection point for these actions and will notify the specific state adjutant general concerned and will determine ultimate disposition of the record.

6.9.4. For cases involving USAFA Cadets, send all records to HQ USAFA/DPY, 2360 Vandenberg Drive, Suite 3C24, USAF Academy, CO 80840-8720. Upon commissioning, these records will be forwarded to the officer master personnel record group, AFPC/DP1ORM, 550 C Street West, Joint Base San Antonio-Randolph, TX 78150-4723.

Section 6D—Criminal Indexing Required

6.10. Criminal History Record Data and Fingerprint Collection. The DAF, through OSI and Security Forces, must submit offender criminal history record data and fingerprints to the Federal Bureau of Investigation (FBI) when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See DoDI 5505.11; Title 28 Code of Federal Regulations (C.F.R.) Part 20; 28 U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*, and AFMAN 71-102. Criminal history record information reported includes identifiable descriptions of individuals; initial notations of arrests, detentions, indictments, and information or other formal criminal charges; and any disposition arising from any such entry (e.g., acquittal, sentencing, NJP; administrative action; or administrative discharge). This final disposition includes the imposition of NJP. See **paragraph 6.13**.

6.10.1. Qualifying Offenses. Qualifying offenses are listed in DoDI 5505.11, with excluded non-serious offenses listed in AFMAN 71-102, Attachment 5.

6.10.2. Probable Cause Requirement. Fingerprints and criminal history data will only be submitted where there is probable cause to believe that a qualifying offense has been committed and that the person identified as the offender committed it. **(T-0).** The collection of fingerprints under this paragraph does not require a search authorization or consent of the person whose fingerprints are being collected.

6.10.3. SJA Coordination Requirement. The law enforcement agency (e.g., OSI or Security Forces) coordinates with the SJA or government counsel to determine whether the probable cause requirement is met for a qualifying offense. See paragraphs **6.10.1** and **6.10.2** The SJA or government counsel must ensure they understand the applicable indexing requirements in order to advise OSI or Security Forces for purposes of criminal history indexing. **(T-0).** SJAs must also ensure that completed 3070s for qualifying offenses are distributed to Security Forces, OSI, and the Department of the Air Force Criminal Justice Indexing Cell (DAF-CJIC) to ensure that the correct disposition is listed in the record. Failure to do so will result in the FBI having inaccurate information and reporting such information in response to law enforcement queries.

6.10.4. Process for Submission of Criminal History Data. After the probable cause determination is made, the investigating agency (e.g., OSI or Security Forces) submits the required data to the FBI in accordance with DoDI 5505.11. **(T-0).**

6.10.5. Final Disposition Requirement. The final disposition is submitted by OSI or Security Forces for each indexed offense. **(T-0).** OSI or Security Forces, whichever is applicable, obtains the final disposition data from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). In the case of NJP, the legal office must, upon completion of the supervisory SJA review, promptly forward the completed AF Form 3070, 3212 or 366 to the local OSI detachment, Security Forces, and OSI/XI for inclusion of the final disposition. See **paragraph 6.13**.

6.11. DNA Collection. The DAF, through OSI and Security Forces, collects and submits DNA for analysis and inclusion in the Combined Deoxyribonucleic Acid Indexing System (CODIS), through the U.S. Army Criminal Investigative Laboratory (USACIL), when there is probable cause to believe an identified individual committed a qualifying offense. **(T-0).** See DoDI 5505.14; 28 C.F.R. Part 20; 28 U.S.C. 534. See DAFI 51-201 and DoDI 5505.14 for required SJA coordination, various timelines for submission of DNA and processing requirements. **Note**: As commanders conducting commander-directed investigations or other informal inquiries are required to coordinate with Security Forces for collection of DNA where required under DoDI 5505.14, SJAs must ensure commanders conducting commander-directed investigations or other informal inquiries are briefed on their responsibilities under DoDI 5505.14.

6.12. Firearms Possession Prohibited. 18 U.S.C. § 922 prohibits any person from selling, transferring or otherwise providing a firearm or ammunition to persons they know or have reasonable cause to believe fit within specified prohibited categories as defined by law. 18 U.S.C. § 922(g) further prohibits any person that fits within specified prohibited categories from possessing or obtaining a firearm. Some firearms prohibitors (e.g., Lautenberg Amendment violations) may trigger prohibitions on the possession of a firearm for the purpose of carrying out official duties (e.g., force protection mission, deployments, law enforcement). See DAFI 51-201 and AFMAN 71-102 for required SJA coordination.

6.12.1. Categories of Prohibition. Categories of prohibition are listed at 18 U.S.C. § 922(g). **Note**: For purposes of NJP, the prohibition will most commonly be triggered where a member has received NJP for use, possession, distribution, introduction, manufacture, or diversion of a controlled substance. See AFMAN 71-102. The prohibition may also be triggered as a result of violation of a civilian protective order issued by a court. See 18 U.S.C. § 922(g)(8); DAFI 51-201.

6.12.2. Final Disposition Requirement. Final disposition of investigated charges must be forwarded to OSI and Security Forces to ensure a firearms prohibition is accurately recorded in the National Instant Criminal Background Check System (NICS). **(T-0).** The final disposition data is obtained from the legal office responsible for advising on disposition of the case (generally the servicing base legal office). In the case of NJP, the legal office must, upon completion of the supervisory SJA review, promptly forward the completed AF Form 3070 (or AF Form 366 or 3212, when applicable) to the local OSI detachment, Security Forces, and OSI/XI for inclusion of the final disposition. See **paragraph 6.13**. **NOTE**: While imposition of NJP may not trigger a prohibition under 18 U.S.C. § 922, NJP for qualifying offenses must still be forwarded to ensure disposition data is correct. See **paragraph 6.10**.

6.13. Distribution of the Air Force Form 3070 for Criminal Indexing. In cases involving qualifying offenses which require criminal indexing, the SJA sends a copy of the final AF Form 3070 (or AF Form 366 or 3212, when applicable) to the local OSI detachment, local Security Forces Squadron Investigations Section (SFS/S2I), and the DAF-CJIC for final disposition. See 18 U.S.C. § 922; DoDI 5505.11 and DoDI 5505.14.

6.13.1. This requirement applies to any case for which the service member receiving NJP was investigated for an offense that requires criminal indexing or DNA submission under DoDI 5505.11, DoDI 5505.14, or 18 U.S.C. § 922. The SJA must consult with the investigating agency (OSI or Security Forces) or commander, in the event the investigation was a command-directed investigation or informal inquiry, to determine whether indexing is required.

6.13.2. Electronic Submission Preferred. In addition to promptly submitting the required documents discussed in **paragraph 6.13** to the local OSI detachment and local Security Forces unit, these documents should be submitted to the DAF-CJIC electronically to ensure timely processing. Documents should be submitted to **daf.cjic@us.af.mil** and may be submitted as attachments or via other secure method.

Section 6E—Effect of Errors in Nonjudicial Punishment Proceedings

6.14. Effect of Errors. See MCM, Part V, paragraph 1.i. An NJP proceeding is not legally sufficient if it contains an error that materially prejudices a substantial right of the member.

6.14.1. If such an error exists but is discovered prior to forwarding NJP to the superior authority, the imposing commander may either withdraw or set aside the Article 15, and may reinitiate NJP action. If such an error exists and is discovered after the NJP is forwarded to the superior authority and it cannot be remedied within the same proceeding, the appropriate NJP authority sets aside the defective NJP action. In either case, a new action may be initiated but any punishment imposed as a result of an additional proceeding may be no more severe than that originally imposed.

6.14.2. If a material error exists and can be remedied within the same proceeding without prejudicing the member's rights, reflect the correction, whenever possible, as a pen and ink change on the form initialed and dated by the commander and the member. However, if a pen and ink change will not result in a clear and unambiguous corrected record, the commander, by indorsement to the form, should notify the member of the error and thoroughly explain the correction to the record. The member signs an acknowledgment to the commander's indorsement. The indorsement and acknowledgment become an attachment to the form.

6.14.3. Administrative or clerical errors and minor errors that do not materially prejudice a substantial right of a member do not require correction to make the NJP proceeding legally sufficient. However, such errors may be corrected with pen and ink changes in the manner described above.

Section 6F—Disposition of Records of Nonjudicial Punishment Proceedings

6.15. Governing Directive. The disposition of records of NJP is governed by the Air Force Records Disposition Schedule (RDS) located at **https://afrims.cce.af.mil/**. Legal offices are authorized to destroy copies of NJP records after three years, or when no longer needed, whichever is later.

6.16. Contents of Record. The record of punishment consists of the finalized AF Form 3070; any written response thereto submitted by the member and/or the member's defense counsel (**Note**: Additional materials submitted by the member in mitigation, extenuation, or defense are not part of the record);"; and if applicable, AF Forms 366, 3212, and any of their attachments. Those attachments include additional pages for punishment or statement of offenses, change of commander notifications (paragraphs **3.9.1** and **3.9.2**), waivers of the statute of limitations (**paragraph 3.12.4**), withdrawals of request for trial (**paragraph 3.21**), and indorsements correcting errors requiring explanation (**paragraph 6.14**). **NOTE:** The requirement to include any written responses provided by the member as part of the record only applies to NJPs served after the date of enactment of this publication.

6.17. Supporting Documentation. Supporting documentation includes evidence and other written materials considered as a basis for imposing punishment or vacating a suspended punishment. Supporting documentation also includes summaries of a member's oral presentation, initiating commander indorsements for appeals, and legal reviews for an appellate authority. File such evidence and other written materials in the office of the servicing SJA of the commander who initiated the NJP as attachments to the file copy of the action, except for AF Forms 1373. See RDS, Table 51-3, Rule 28. AF Forms 1373 are maintained in a single file separately from the Article 15 file, and in chronological sequence based on date of receipt.

Section 6G—Signatures

6.18. Form Completion. All NJP forms (AF Forms 3070, 3212, and 366) must be signed to be complete. All NJP forms should be signed in wet ink if practicable. If an individual is unable to wet sign the NJP form, the form may be completed with electronic signatures in accordance with AFI 33-322.

6.18.1. A member, by electing to waive his or her right to a court-martial and accept NJP proceeding, acknowledges and accepts that electronic signatures may be used on the NJP form.

6.18.2. See the Virtual Military Justice Deskbook for NJP forms that accept digital signatures and guidance when completing an NJP form with electronic signatures.

Chapter 7

CORRECTIONAL CUSTODY (REMOTIVATION) PROGRAM

Section 7A—Program Definition and Purpose.

7.1. Correctional Custody Defined. Correctional custody is an NJP option that commanders may impose for offenses under Article 15, UCMJ. It is not confinement, as that term is used in 10 U.S.C. § 972, *Members: effect of time lost*, and time served in correctional custody is not time lost under 10 U.S.C. § 972.

7.2. Purpose. Correctional custody provides commanders a secure setting in which to maintain discipline while reeducating and remotivating DAF members to become productive members of the DAF. Correctional custody may only be imposed on DAF members of grade E-5 and below.

7.3. Program Ownership and Evaluation. Installation commanders decide whether a correctional custody program is needed by balancing potential costs and benefits. If implemented, the installation commander is responsible for ensuring a legal and effective correctional custody program on his or her installation. Programs should be evaluated at least annually to determine whether there is a continued need for the correctional custody program.

7.3.1. Because depriving DAF members of their liberty is a severe punishment, use of this program requires careful consideration. Installation commanders should consider, among others, the following factors in determining the need for a correctional custody program:

7.3.1.1. Specific deterrent effect on potential entrants;

7.3.1.2. Cost of facility, staff, vehicles, and equipment;

7.3.1.3. Burden on units providing staff;

7.3.1.4. Savings from rehabilitating entrants instead of replacing them;

7.3.1.5. Value of work entrants do for the installation;

7.3.1.6. Potential number of entrants; and

7.3.1.7. Ability to maintain the health and safety of the entrants.

7.3.2. The installation commander approves local policies and procedures for operating the program and uses referral agencies to counsel and evaluate candidates. The installation commander also uses feedback from the unit commander, referral agencies, and program supervisor to evaluate the program's effectiveness.

7.3.3. Determining Success of Remotivation Program on Entrant. The unit commander who imposed correctional custody or superior commander decides if remotivation corrects an entrant's delinquent behavior. Unit commanders track and evaluate an entrant's progress in the program using regular reports from the program supervisor and referral agencies. Only the unit commander or a superior commander may terminate correctional custody prior to its expiration.

7.4. Optional Nature of Program. This program is optional. Commanders are not required to maintain a correctional custody program. However, in order to utilize the correctional custody program, the commander must implement a program that meets the requirements in this instruction.

Section 7B—Correctional Custody Program Facilities

7.5. Remotivation Housing. Use dormitories or other suitable housing. If quarters for unaccompanied personnel are used, clearly define the program area and make it off limits to people not involved in the program. Use partitions to make rooms in open-bay dormitories. In all cases, consider the need for fire, safety and emergency evacuation before program requirements. Detention cells co-located with law enforcement desks and DAF corrections system facilities are not to be used for this program.

7.6. Regional Facilities. If an installation facility is impracticable, installations may participate in a regional program. MAJCOMs and FIELDCOMs may determine the need for regional facilities. If the installation belongs to a separate MAJCOM or FIELDCOM, develop support agreements to define responsibilities.

Section 7C—Operating a Remotivation Area

7.7. Remotivation Plan. The installation commander determines whether to establish the program. If established, the installation commander is responsible for the program and designates a program supervisor for the program. The program supervisor will develop a local plan governing its operation in coordination with the SJA. The installation commander will review and approve the installation's program plan. Security Forces and legal office personnel shall not serve as the program supervisor.

7.7.1. The plan should include the following:

7.7.1.1. Purpose and policy;

7.7.1.2. Rehabilitation programs and responsibilities of referral agencies;

7.7.1.3. Standardized procedures for in-processing;

7.7.1.4. Daily schedules;

7.7.1.5. Responsibilities of unit commanders, program supervisors and staff;

7.7.1.6. Training and work programs, including how much "extra" duty to permit;

7.7.1.7. Guidelines for supervising and treating entrants; and

7.7.1.8. Local procedures for secure storage, issue, accountability, and destruction of entrant medications. The program staff strictly controls medical supplies and medication, documents all medication issues and dispositions, and files completed records in an entrant's established folder.

7.7.2. The training and work plan may include military, physical or technical training, productive work or other duties. Program entrants may be assigned details. Develop procedures for returning entrants to their normal duty sections for parts of the day as soon as possible after entry into the program.

7.7.3. Installation commanders incorporate a physical training routine at least three times a week into the entrant's curriculum. Prior to entering the program, the member's unit ensures the host medical facility conducts a health assessment. The purpose of the assessment should focus on the entrant's fitness to complete program requirements.

7.7.4. Unit Commander's Progress Review. Commanders maintain command authority for assigned personnel in the program, regardless of location. If imposed, the commander or first sergeant reviews the progress of the entrant weekly. Commanders must get base referral agencies to evaluate and contribute to the correction process by making referral appointments for entrants. Commanders are responsible for providing escorts to required referral appointments. Commanders may mitigate, remit, or suspend punishment for the following reasons:

7.7.4.1. The entrant's behavior is believed to have been corrected;

7.7.4.2. Remotivational treatment is no longer appropriate; and/or

7.7.4.3. Administrative discharge actions have begun.

7.8. Staffing. The installation commander determines the size of the program staff and carefully screens and selects NCOs to make sure they are responsible, dependable, mature, and meet all quality indicators. Law enforcement personnel, such as Security Forces staff, and legal office personnel are not assigned as staff members and are not part of the Program.

7.8.1. A panel consisting of a field grade officer, a chief master sergeant, and a first sergeant will be appointed by the installation commander to screen and recommend NCOs for remotivation staff duties. The installation commander may screen and detail additional staff from units with members assigned to the program when the staff temporarily needs them. Do not use corrections or confinement staff personnel to manage or staff a program facility. All NCOs appointed to the program staff retain their primary air force specialty code. The field grade officer serves as the program supervisor.

7.8.2. The program supervisor will:

7.8.2.1. Administer the program under the supervision of the installation commander and coordination with the installation's servicing SJA;

7.8.2.2. Oversee buildings and equipment;

7.8.2.3. Make sure correction is fair and effective;

7.8.2.4. Report any misconduct that may warrant disciplinary action to the responsible commander; and

7.8.2.5. Supervise entrants in the program area or assigned duties that are directly monitored.

7.8.3. The NCOIC of the program staff reports directly to program supervisor.

7.8.4. Prior to assigning members to the program staff, the installation commander must require each individual have proper CPR and other first-aid related training as determined by the medical group commander (MDG/CC).

7.8.5. The installation commander must have provisions established for when candidates of both genders are present. This will include, at a minimum:

7.8.5.1. At least one male staff member physically present when there is a male candidate in correctional custody.

7.8.5.2. At least one female staff member physically present when there is a female candidate in correctional custody.

7.8.5.3. Separate gender restrooms and shower facilities.

7.8.5.4. Separate gender sleeping quarters.

7.8.6. Program staff will ensure entrants are not unnecessarily separated by gender and will take steps to ensure entrants otherwise progress through the remotivation program with members of the opposite gender.

7.9. Training and Work Programs. Allow entrants to train and work in their own units as they progress in the program. Each unit supervises entrants attached to it for training or work and designs duties so entrants meet performance standards in their AFSC by the end of the program.

7.9.1. Supervisors of regional program facilities will designate work and training units for candidates, thus returning candidates to their AFSC whenever possible.

7.9.2. Each facility uses offices such as base legal, a local professional military academy, and the Military Equal Opportunity office to educate entrants on professional military subjects.

7.10. Supervising Candidates. Supervise entrants at all times in the program area, and know where they are at other times. Program supervisors and staff will not carry weapons or use any form of personal restraints, such as handcuffs. Staff members must abide by the following standards when dealing with entrants:

7.10.1. Act in accordance with the requirements of Part V, MCM and this instruction. **(T-0).**

7.10.2. The following aspects of program staff member behavior require special emphasis and the program supervisor immediately reviews any violations:

7.10.2.1. Personal dignity of all individuals is observed and any act or work assignment that demeans, degrades, humiliates or serves only to embarrass an individual is expressly prohibited.

7.10.2.2. Physical abuse, hazing, bullying, use of unnecessary force, and any form of corporal punishment by staff is prohibited. The use of profanity by staff is prohibited. Striking a candidate is prohibited. Use of physical force upon candidates is prohibited except in self-defense, to prevent serious injury to others or the entrant, to prevent serious damage to property, to effect an authorized search, or to quell a disturbance. In such cases, the amount of force used is the least amount necessary to bring the situation under control.

7.10.2.3. Sexual harassment is prohibited. This behavior interferes with an individual's performance and creates an intimidating, hostile and offensive environment. Whether the individual is an entrant or staff member, sexual harassment denies the individual respect and dignity, and is contrary to the mission of the facility.

7.11. Disciplining Candidates. The commander who imposes punishment also disciplines entrants who commit violations while in the program. The installation commander may empower the program supervisor to withdraw in-house privileges from entrants who commit minor violations. The program supervisor must establish disciplinary guidelines.

7.12. Clothing for Candidates. Program entrants must wear the prescribed uniform in the program area and in training or work programs. Do not use special or distinctive uniforms, armbands, or other devices to identify entrants.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Uniform Code of Military Justice, *10 U.S.C. § 801, et seq*.

Manual for Courts-Martial (MCM), *United States, 2019 Edition*

10U.S.C. § 802, *Persons subject to this chapter*

10U.S.C. § 815. *Commanding officer's non-judicial punishment*

10U.S.C. § 854, *Record of trial*

10U.S.C. § 865. *Transmittal and review of records*

10U.S.C. § 972, *Members*: *effect of time lost*

10U.S.C. § 8013, *Secretary of the Air Force*

18U.S.C. § 922, *Unlawful acts*

28U.S.C. § 534, *Acquisition, preservation, and exchange of identification records and information; appointment of officials*

28C.F.R. Part 20, *Criminal Justice Information Systems*

Rule for Courts-Martial (R.C.M.) *907(b)(2)(B)*

Rule for Courts-Martial (R.C.M.) *1001(b)(2)*

Military Rule of Evidence (M.R.E.) *1002*

Military Rule of Evidence (M.R.E.) *1003*

Executive Order 9397, *Number System for Federal Accounts Relating to Individual Persons*, 22 November 1943

DoDI 5400.11, *DoD Privacy and Civil Liberties Programs*, 29 January 2019

DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*, 31 October 2019

DoDI 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders*, 22 December 2015

AFPD 51-2, *Military Justice and Other Criminal Proceedings*, 21 June 2021

DAFPM 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*,

26 February 2021

AFI 25-201, *Intra-Service, Intra-Agency, and Inter-Agency Support Agreements Procedures*,

18 October 2013

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

DAFI 33-360, *Publications and Forms Management*, 21 July 2021

DAFI 51-201, *Administration of Military Justice*, 15 April 2021

AFI 36-2502, *Enlisted Airmen Promotion and Demotion Programs*, 16 April 2021

AFI 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, 20 September 2019

AFI 36-2608, *Military Personnel Records Systems*, 16 April 2021

AFI 36-2907, *Adverse Administrative Actions*, 22 May 2020

AFI 38-101, *Manpower and Organization*, 29 August 2019

AFI 51-509, *Appointment to and Assumption of Command*, 14 January 2019

AFI 90-301, *Inspector General Complaints Resolution*, 28 December 2018

AFMAN 36-2604, *Service Dates and Dates of Rank*, 28 December 2018

AFMAN 71-102, *Air Force Criminal Indexing*, 21 July 2020

AFDP 3-30, *Command and Control*

Joint Federal Travel Regulations, *current edition*

Joint Publication 1, *Doctrine for the Armed Forces of the United States*, 12 July 2017

Crist v. Bretz, *437 U.S. 28 (1978)*

United States v. Moore, *32 M.J. 170 (CMA 1991)*

Prescribed Forms

AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (E-1 through E-5)*

AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (E-6 through E-9)*

AF Form 3070C, *Record of Nonjudicial Punishment Proceedings (Officers)*

AF Form 3070D, *Record of Nonjudicial Punishment Proceedings (E-6 through E-9) – Air National Guard Only*

AF Form 3070E, *Record of Nonjudicial Punishment Proceedings (Officers) – Air National Guard Only*

AF Form 366, *Record of Proceedings of Vacation of Suspended Nonjudicial Punishment*

AF Form 3212, *Record of Supplementary Action under Article 15, UCMJ*

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

AF Form 1373, *MPO Document Control Log-Transmittal*

Abbreviations and Acronyms

AB—Airman Basic

ADCON—Administrative control

AF—Air Force

AF/A1M—Air Force Director of Manpower, Organization and Resources

AF/CV—Vice Chief of Staff of the Air Force

AF/JAJ—Military Justice and Discipline Domain

AF/JAJI—Investigations, Inquiries and Relief Division

AF/JAJM—Military Justice Law and Policy Division

AFDW—Air Force District of Washington

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFO—Accounting and Finance Office

AFRC—Air Force Reserve Command

AMJAMS—Automated Military Justice Analysis and Management System

ANG—Air National Guard

CC—Commander

CDI—Commander Directed Investigation

CMA—Court of Military Appeals

CMSGT—Chief Master Sergeant

CODIS—Combined Deoxyribonucleic Acid Indexing System

CSAF—Chief of Staff of the Air Force

CSO—Chief of Space Operations, United States Space Force

DAF—Department of the Air Force

DAF-CJIC—Department of the Air Force Criminal Justice Indexing Cell

DAFI—Department of the Air Force Instruction

DNA—Deoxyribonucleic Acid

DoD—Department of Defense

DoDI—Department of Defense Instruction

DOR—Date of Rank

FBI—Federal Bureau of Investigation

FIELDCOM—Field Command

GCMCA—General Court-Martial Convening Authority

IG—Inspector General

MAJCOM—Major Command

MDG/CC—Medical Group Commander

MCM—Manual for Courts-Martial

MPF—Military Personnel Flight

MSS—Mission Support Squadron

NCOIC—Non-Commissioned Officer in Charge

NICS—National Instant Criminal Background Check System

NGB—National Guard Bureau

NGB-GC—National Guard Bureau, Office of the General Counsel

NJP—Nonjudicial Punishment

OPR—Office of Primary Responsibility

OSI—Office of Special Investigation

OSI/XI—Office of Special Investigation Warfighting Integration Directorate

PII—Personally Identifiable Information

R.C.M.—Rule for Courts-Martial

RDS—Records Disposition Schedule

RIP—Report on Individual Personnel

SAF/IGS—Secretary of the Air Force, Inspector General, Senior Official Inquiries Directorate

SAFO—Senior Air Force Officer

SECAF—Secretary of the Air Force

SFOI—Security Force Office of Investigation

SFS—Security Forces Squadron

SFS/S2I—Security Forces Squadron Investigations Section

SJA—Staff Judge Advocate

SNCO—Senior Non-Commissioned Officer

SPOC—Space Operations Command

SSFO—Senior Space Force Officer

SSGT—Staff Sergeant

TDY—Temporary Duty

TSGT—Technical Sergeant

UCMJ—Uniform Code of Military Justice

UIF—Unfavorable Information File

USACIL—U.S. Army Criminal Investigative Laboratory

USAFA—United States Air Force Academy

U.S.C.—United States Code

UTA—Unit Training Assembly

VCSO—Vice Chief of Space Operations, United States Space Force

Terms

Activity Outside the Department of the Air Force—An organization or agency to which DAF members are assigned or attached that is not part of the Air Force or Space Force. They include, but are not limited to, Defense Agencies, DoD field activities, and consolidated units, such as consolidated flying units. While joint and combined organizations are not part of the Air Force or Space Force, they are not considered "activities outside the Department of the Air Force" for the purpose of this instruction.

Air Force Unit—A named or numbered military organization constituted by directives issued by HQ USAF. Air Force units include major commands, numbered air forces, wings, groups, squadrons, centers, direct reporting units, field operating agencies, and provisional units. See AFI 38-101. They also include deployable units formed from air expeditionary forces, such as air expeditionary wings, groups or squadrons that are attached to an Air and Space Expeditionary Task Force or an in-place Numbered Air Force that has been directed by a MAJCOM to support a joint force commander. A duly constituted unit will have a commander who has assumed or been appointed to command in accordance with AFI 51-509.

Commander—A commissioned officer who has assumed or been appointed to command of an Air Force or Space Force organization in accordance with AFI 51-509.

Extended Active Duty—A tour of Title 10 active duty, other than active duty for training or temporary tours of active duty, performed by a member of an Air Force Reserve component that is normally for a duration in excess of 90 days. Strength accountability for persons on extended active duty changes from Air Reserve Component to the active force.

General Court-Martial Convening Authority—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

Installation—As used in this instruction, installation refers to DAF property under the control and orders of a commander.

Joint Force—A joint force is composed of significant elements, assigned or attached, of two or more Military Departments operating under a single commander authorized to exercise operational control over the force to accomplish an assigned mission. Joint forces are established at unified commands, specified commands, subordinate unified commands, and joint task forces. Joint forces organizationally consist of a joint force commander, a joint staff organization, and Service component commands. See Joint Publication 1, *Doctrine for the Armed Forces of the United States*.

Next Superior Authority—For purposes of NJP under Article 15, UCMJ, the next superior authority is generally the immediate Department of the Air Force commander superior to the officer who imposed the punishment. The next superior authority must be superior or equal in grade to the commander who imposed punishment. See AFPD 51-2.

Officer—A commissioned officer or United States Air Force Academy cadet.

Principal Assistant—The commander's principal assistant is the officer who would assume command in the event of the commander's death, prolonged absence, or disability, or the vice or deputy commander of the organization. However, if that officer is located at another station, the commander may delegate authority to the officer on the commander's station who is next eligible to assume command. Principal assistants must be military officers to exercise NJP authority and may impose only the amount of punishment authorized for their grades. See AFPD 51-2.

Space Force Unit—Space Force units include field commands and deltas, garrisons, centers, direct reporting units, field operating agencies, and provisional units. They also include deployable units formed that are attached to Air and Space Expeditionary Task Force that has been directed by a FIELDCOM to support a joint force commander. A duly constituted unit will have a commander who has assumed or been appointed to command in accordance with AFI 51-509.

Special Court-Martial Convening Authority—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.