

70. (Services) Please provide examples when alternative dispositions to courts-martial may be appropriate and discuss the benefits of having options such as article 15s, administrative separations for misconduct, or resignation or discharge in lieu of a court-martial. Also provide all policies regarding characterizing the discharge of the accused, who was pending sexual assault charges, but resigns or is discharged in lieu of court-martial.

USA	<p>Alternative dispositions to courts-martial may be appropriate in some cases. Every case requires the commander, upon the advice of his judge advocate, to carefully weigh the benefits and risks of every potential disposition. The Army does not have a policy specific to characterizing the discharge of the accused who was pending sexual assault charges, but resigns or is discharged in lieu of court-martial. However, there is little benefit to the command to accept a separation in lieu of court-martial if the accused does not agree to waive his separation board, essentially agreeing to be separated with a punitive characterization of service.</p> <p>Resignation or discharge in lieu of a court-martial would not provide an adequate level of punishment for most sexual offenses. However, examples where relieving the government of its burden of proof and accepting a discharge in lieu of court-martial may be an appropriate disposition, include: a groping over the clothing case; evidence challenges; and the fully-informed victim does not want to pursue the charges judicially. Accepting a discharge in lieu of court-martial in this scenario meets the wishes of the victim, provides a guaranteed punitive separation from the military which might not occur even with a conviction (with the added benefit of expediency), and punishes the offender with a negative characterization of service that will extinguish many of his benefits.</p> <p>Similarly, when weighing the benefits and risks of every potential disposition, an administrative separation for misconduct provides the command the benefit of a lower burden of proof. While it is not common to pursue mere administrative separation rather than a criminal conviction for a sexual offense, there are occasions where it may be appropriate because criminal proceedings require proof beyond a reasonable doubt and administrative proceedings require a mere preponderance of evidence. Therefore, after reviewing the facts of a case, considering the wishes of the victim, and evaluating the likelihood of a conviction in a criminal proceeding, there would be scenarios where-as an evidentiary matter-an administrative proceeding would be a prudent disposition.</p>
USAF	<p>Nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction. Generally, any commander who is a commissioned officer, on G-Series orders as defined by AFI 51-604, may impose NJP for minor offenses committed by members under his or her command. The offense must violate the UCMJ.</p> <p>In deciding whether or not an offense is minor, commanders should consider: the nature of the offense and the circumstances surrounding its commission; the need for</p>

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good order and discipline; the member's age, rank, duty assignment, record, and experience; and the effect of NJP on the member and the member's record. Ordinarily, an offense is not considered minor if the offense is one for which the maximum imposable punishment at a general court-martial includes a dishonorable discharge or confinement for more than one year. The decision whether an offense is "minor" is a matter of discretion for the commander imposing NJP. Commanders must confer with the SJA, or a designee, before initiating nonjudicial punishment proceedings and before imposing punishment.

While no specific standard of proof is applicable to NJP proceedings, commanders should recognize that a member is entitled to demand trial by court-martial, where proof beyond a reasonable doubt by competent evidence is required for conviction. Commanders should consider whether such proof is available before initiating action under Article 15. If not, NJP is usually not warranted.

Commanders should consider the maximum punishment that can be imposed based on the commander's grade and the grade of the member when deciding whether a more senior commander should impose the NJP. Commanders should encourage members to consult with the area defense counsel (ADC) in all cases. Once offered NJP, the member has the right to examine all statements and evidence upon which the commander intends to rely in arriving at a decision to impose punishment, and as to the quantum of punishment to be imposed, unless the matters are privileged or restricted by law, regulation, or instruction.

If a member decides to accept NJP, he or she is entitled to present matters in defense, mitigation, and extenuation. Acceptance of NJP is not an admission of guilt. It is simply a choice by the member not to assert the right to a trial by court-martial and instead to allow the commander to determine whether the member is guilty or not guilty of the alleged offense and the punishment, if any, to be imposed. Members may present matters in person, in writing, or both. A member is generally entitled to appear personally before the imposing commander and present matters in defense, mitigation, or extenuation, except under extraordinary circumstances or when the imposing commander is unavailable.

After consideration of all matters in defense, mitigation, and extenuation, the commander must decide: whether the member committed the offense; and if so, what punishment to impose. Commanders are required to confer with the SJA before imposing punishment except where impracticable due to military exigencies. Commanders should tailor the punishment to the offense and the member. Ordinarily, the commander should impose the least severe punishment sufficient to correct and/or rehabilitate the member.

Members are entitled to appeal nonjudicial punishment to the next superior authority in the commander's chain of command. The member may appeal when he or she considers the punishment unjust or disproportionate to the offense. A member may assert the punishment was unjust because the offense was not committed. Thus, the

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	<p>guilty finding, the punishment, or both may be appealed. Members must submit all evidence supporting an appeal to the commander who imposed the original punishment. After considering any new matters submitted by the member, the imposing commander may deny all relief, grant partial relief, or grant all relief requested by the member. If the imposing commander does not grant all the requested relief, he or she must forward the appeal to the appellate authority through the servicing SJA. The appellate authority may deny all relief, grant partial relief, or grant all relief requested by the member. The appellate authority's decision is final.</p> <p>Officers may submit a Resignation for the Good of the Service (RILO) with the understanding that the Secretary of the Air Force may direct a discharge under other than honorable conditions (UOTHC) when their conduct makes them subject to trial by court-martial. Commanders should not recommend that SecAF accept a RILO for expediency when the member's conduct would be more appropriately addressed at trial. Before making any recommendations, commanders at all levels must consider the best interests of the Air Force and the effect a resignation accepted by SecAF will have on good order and discipline. The expense of a court-martial should rarely be the deciding factor in making a recommendation on a tendered resignation under this paragraph. To permit the full development of the facts of the case and appropriate consideration of dispositions other than trial, officers are encouraged not to tender a resignation for the good of the service before charges are referred to trial by court-martial. Convening authorities are authorized to deny RILOs submitted prior to the referral of charges. If denied, the officer may again submit a RILO after referral of charges. Once referral of charges occurs, RILOs may only be acted upon at the Secretarial level. A RILO may not be submitted post-arraignment.</p> <p>Airmen may request discharge if charges have been preferred with respect to an offense for which a punitive discharge is authorized. If Rule 1003(d)(3), Manual for Courts-Martial (MCM), is the sole basis for a punitive discharge, they may not request discharge in lieu of trial unless the charges have been referred to a court-martial empowered to adjudge a punitive discharge. The fact that a member is triable for an offense for which a court-martial could adjudge a punitive discharge reflects the serious nature of the conduct. The Air Force will generally characterize the service of airmen discharged under these circumstances as under other than honorable conditions (UOTHC); however, if the charges are referred to a summary court-martial and the member requests discharge in lieu of trial by summary court-martial, the member's service may not be characterized as under other than honorable conditions unless such characterization is approved by the Secretary of the Air Force. The general court-martial convening authority (GCMCA) personally takes final action on requests for discharge in lieu of trial by court-martial, except in cases where the charges were referred to a summary court-martial and the GCMCA wishes to seek SAF approval of a UOTHC. The SJA for the GCMCA reviews the case for legal sufficiency before the GCMCA acts on it. The legal review is made a part of the case file.</p>
USN	Generally speaking, alternative dispositions to courts-martial may be appropriate when an accused is charged with relatively minor offenses, or in more serious cases when there are significant evidentiary issues, when the victim declines to participate in

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	<p>prosecution, or when civilian authorities exercised criminal jurisdiction. Alternative dispositions provide commanders with a tool to enforce good order and discipline, terminate a Sailor's active duty status, or establish an adverse record for a member who has committed misconduct but whose actions cannot be proven beyond a reasonable doubt at court-martial. These alternative forms of disposition are also beneficial to the command and the victim in that they offer swift and efficient resolution, when appropriate, at that level, whereas courts-martial cases often take several months to adjudicate.</p> <p>Rule for Courts-Martial 306 provides a non-exclusive list of factors that a convening authority should consider in determining the appropriate disposition for any offense. Factors include: nature and seriousness of the offenses (extent of harm caused, offense's effect on morale, health, safety, welfare, and discipline); appropriateness of the authorized punishment to the particular offense or accused; any extenuating or mitigating circumstances; views of the alleged victim; availability of witnesses and victim; evidence presented and its availability; recommendations of subordinate commanders; interest of justice; military exigencies; effect of decision on the accused and the command; possible improper motives or biases of the accuser; availability and likelihood of prosecution by civilian jurisdiction; character and military service of the accused; and the accused's willingness to enter into a plea agreement.</p> <p>In those cases where a servicemember is not tried at court-martial, but there is a substantiated allegation of sexual assault, or where a servicemember was prosecuted but did not receive a punitive discharge, processing for separation is mandatory under Military Personnel Manual (MILPERSMAN) 1910-142 for enlisted members, and at the direction of Navy Personnel Command for officers. There are no Navy policies specifically regarding the characterization of the discharge of an accused who was pending sexual assault charges; but, for any servicemember pending administrative separation from the Navy, the appropriate characterization of discharge is governed by MILPERSMAN 1910-300 (for enlisted personnel) and SECNAVINST 1920.6c (for officers). Generally, characterization is based on the gravity of the conduct that forms the basis for separation, and the member's service record (with consideration given to the member's performance of duty; and conduct during the current enlistment); however, there are circumstances where the conduct or performance of duty reflected by a single incident may form the basis of characterization. Administrative separations that result from alternative disposition agreements following sexual assault allegations generally include characterizations of service as under Other Than Honorable conditions. In addition, the Secretary of the Navy has authority to separate servicemembers under MILPERSMAN 1910-164 in the best interest of the Service where no other basis for separation is appropriate.</p>
USMC	<p>In the Marine Corps, alternative disposition in lieu of a court-martial is a necessary tool for commanders for sexual assault cases in limited circumstances. As a general rule, 10 U.S.C. § 6329 directs that no Navy or Marine Corps officer may be retired because of misconduct for which trial by court-martial would be appropriate. Outside of this statute, there are two general situations where alternative disposition</p>

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	<p>to courts-martial is a necessary tool for the commander. First, there are instances when a sexual assault victim simply does not want to proceed with a trial, either because the initial report became unrestricted against the victim's desires or circumstances change in the victim's life and he or she no longer wants to pursue a report of sexual assault. In these instances, if there is surrounding minor misconduct by the accused that can be proven without the victim's testimony, an alternative disposition allows the commander to adjudicate the surrounding minor misconduct without forcing the victim to undergo the stresses of a trial against his or her will. Additionally, there are cases where there simply is not enough evidence to move forward with a court-martial for sexual assault even though there is an initial report. In these situations allowing the convening authority to conduct an alternative disposition to court-martial is an important tool to hold the offender accountable for the conduct that can be proven without a court-martial and to potentially separate the offender from the service.</p> <p>When an accused submits a separation/resignation in lieu of trial, both Marine Corps Order P1900.16F for enlisted Marines and Secretary of Navy Instruction 1920.6C for officers, dictate that an other than honorable characterization is normally the appropriate characterization of service and an honorable characterization of service is appropriate only if a Marine's service is otherwise so meritorious that any other characterization would clearly be inappropriate.</p>
USCG	<p>Although a court-martial is a disciplinary modality most associated with military justice, prosecutions are the least common encounters service members have in the military justice system. Most members with violations of the UCMJ face corrective or disciplinary action through other avenues, either non-judicial punishment, administrative separation, or resignation/discharge in lieu of court-martial.</p> <p>The benefits to the government to obtain an alternative disposition to courts-martial are largely to do with maintaining discipline in the ranks, and, to a degree, deterrence. Utilizing alternatives within the toolbox of disposition allows commanders to swiftly enforce discipline rooted in the principles of justice, provides immediate and public consequences, and strengthens command authority. Examples of when an alternative to court-martial may be desired are: (1) when the member has already been convicted in a civilian court or is pending lengthy civilian court proceedings; (2) if the victim is unwilling to testify or would prefer a more expeditious resolution of the matter (particularly if the alternative disposition can be executed rapidly and the negative consequences meet the good order and discipline/interests of justice); (3) circumstances in which there is significant doubt that material evidence might be admissible at trial, (4) insufficient evidence exists to meet the "beyond a reasonable doubt" burden of proof threshold at court-martial, (5) concerns and impact on the victims are also a factor, and the government must be concerned about a victims' credibility, availability, or durability. In exchange for a disposition in lieu of court-martial, a member must depart the service and admit to his guilt, albeit in his application for discharge rather than in open court. In addition, the member may face the likelihood of receiving a discharge characterization that is derogatory in nature, and deprives the member benefits associated with honorable service</p>

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	<p>in the military.</p> <p>There are three types of administrative discharge characterizations: Under Other Than Honorable Conditions, General (under Honorable Conditions), and Honorable. The serious nature of the misconduct and the circumstances warranting trial by court-martial generally support the appropriateness of a Other Than Honorable discharge. Normally, requests for administrative discharge in lieu of trial by court-martial are characterized as discharges Under Other Than Honorable Conditions.</p>
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