

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1820

 By: Kannady

8 COMMITTEE SUBSTITUTE

9 An Act relating to militia; authorizing the Adjutant
10 General or designee to have access to certain
11 information; amending 44 O.S. 2011, Section 21, which
12 relates to the Military Department; specifying
13 control over Military Department; providing joint
14 forces headquarter staffing; specifying command and
15 control over state military forces; describing
16 persons assigned to the joint forces headquarters;
17 amending 44 O.S. 2011, Section 209, as amended by
18 Section 154, Chapter 304, O.S.L. 2012 (44 O.S. Supp.
19 2016, Section 209), which relates to leave of absence
20 for public officers and employees; limiting paid
21 hours during certain leave; expanding types of
22 operations that qualify for certain pay calculations
23 during leave; amending 44 O.S. 2011, Section 212,
24 which relates to action against an officer or
 enlisted person; specifying persons entitled to
 certain defense; creating civil immunity for acts of
 self-defense; amending 44 O.S. 2011, Sections 241,
 242, 243, 244, 247, 248 and 250, which relate to the
 Oklahoma State Guard Act; updating citation;
 providing gender-neutral language; providing that
 Oklahoma State Guard members shall be considered part
 of the state military and subject to certain laws;
 providing Governor shall issue rules governing
 Oklahoma State Guard personnel in certain manner;
 removing certain applicability to Oklahoma State
 Guard; updating short title; amending 44 O.S. 2011,
 Sections 3200, 3201, 3202, 3203, 3205, 3206, 3211,
 3213, 3221, 3232, 3233, 3234, 3235, 3241, 3242, 3243,
 3244, 3246, 3247, 3248, 3249, 3251, 3252, 3253, 3255,

1 3261, 3263, 3264, 3266, 3268, 3269, 3274, 3276, 3277,
2 3278, 3280, 3292, 3295, 3298, 3302, 3303, 3304, 3306,
3 3310, 3313, 3314, 3318, 3319, 3320, 3321, 3331, 3336,
4 3337, 3338, 3339, 3340, 3341, 3343, 3344, 3345, 3346,
5 3347, 3348, 3350, 3353, 3355, 3357, 3359, 3360, 3361,
6 3366, 3369, 3376, 3377, 3378, 3379, 3380, 3381, 3389,
7 3390, 3391, 3393, 3394, 3395, 3396, 3397, 3399, 4001
8 and 4002, which relate to the Uniform State Code of
9 Military Justice; updating short title; updating
10 citations; defining terms; modifying definitions;
11 modifying applicability of Uniform State Code of
12 Military Justice; removing duty status requirements
13 for trial and punishment; establishing certain
14 jurisdiction; specifying military force components
15 shall be inspected; deleting definitions; eliminating
16 certain petty officer authority; clarifying language;
17 eliminating lieutenant commander authority to impose
18 certain punishments; modifying punishments; providing
19 requirements for imposing nonjudicial punishments;
20 specifying the Adjutant General is the final
21 appellate authority for military nonjudicial
22 punishments; providing procedures for appeal;
23 specifying when pay forfeiture shall apply; providing
24 the state manual for courts-martial may prescribe
certain forms; eliminating certain court-martial
jurisdiction; providing the state manual may
prescribe limitations to adjudge punishments;
providing the state manual may prescribe limitations
to certain jurisdiction; providing the state manual
may prescribe regulations to employ court reporters;
providing the state manual may prescribe procedures
for trial; providing for gender-neutral language;
allowing digital video evidence; specifying number of
votes required to reconsider a finding; providing the
state manual may prescribe requirements for keeping
records of proceedings and trials; specifying
exemption shall apply to confidential information;
providing that the Court of Criminal Appeals shall
have exclusive appellate jurisdiction in certain
cases; specifying the state manual may prescribe
regulations concerning certain sentences; specifying
persons prohibited from being brought to trial;
eliminating procedures applicable to persons
incompetent to stand trial; providing presumption to
stand trial; requiring procedures for determining
mental competence be established in the state manual;
modifying unlawful acts subject to court-martial;

1 making certain sex-related actions unlawful;
authorizing defenses to be raised; defining terms;
2 making certain stalking actions unlawful; making
certain acts unlawful; making certain fraternization
3 actions unlawful; making certain communications of
confidential information unlawful; providing for
4 gender-neutral language; specifying an officer
convicted of certain offenses shall be punished by
5 court-martial; updating citations; eliminating
authority for officers to administer oaths;
6 specifying certain boards may convene subject to the
state manual for courts-martial regulations;
7 requiring delegations of authority to be in writing;
mandating fines be delivered to certain authorities;
8 allowing funds be provided to victims; providing
jurisdiction shall not be extended to certain sex
9 offenses; requiring the continuation of pending
actions when certain parties are not present;
10 authorizing the Governor to approve a state manual
for courts-martial; repealing 44 O.S. 2011, Section
11 3375, which relates to adultery; providing for
codification; and providing an effective date.
12
13
14

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 26.2 of Title 44, unless there
18 is created a duplication in numbering, reads as follows:

19 The Adjutant General or the Adjutant General's designee may
20 request from a district attorney or law enforcement agency
21 confidential criminal justice information relating to a member of
22 the National Guard for use in an administrative action. Unless the
23 district attorney or law enforcement agency determines that
24 dissemination of the requested confidential criminal justice

1 information would jeopardize a pending investigation or other
2 pending criminal proceeding, the district attorney or the
3 investigating law enforcement agency shall disseminate the requested
4 information to the Adjutant General or the Adjutant General's
5 designee.

6 PART I. GENERAL PROVISIONS

7 SECTION 2. AMENDATORY 44 O.S. 2011, Section 21, is
8 amended to read as follows:

9 Section 21. The Military Department of the State of Oklahoma is
10 hereby established and shall be ~~administered and controlled by~~ under
11 command and control of the Governor as Commander in Chief, with the
12 Adjutant General as the executive and administrative head thereof.
13 The Military Department ~~is~~ shall be constituted of the state
14 military forces, as defined by Section 3201 of this title, and is
15 hereby organized into a joint headquarters ~~with separate branches~~
16 ~~for the~~ which shall be identified as the joint forces headquarters.
17 The joint forces headquarters shall be jointly staffed by Army
18 National Guard and the Air National Guard, and there personnel who,
19 under the authority and direction of the Adjutant General shall
20 support and assist the Adjutant General in the exercise of command
21 and control over state military forces when not activated for
22 federal duty under Title 10 of the United State Code. There shall
23 be assigned to ~~each~~ the joint forces headquarters, officers,
24 enlisted ~~men~~ personnel and civilian employees as may be considered

1 necessary by the Governor as Commander in Chief and as may be
2 authorized by law and Army National Guard regulations and Air
3 National Guard regulations.

4 SECTION 3. AMENDATORY 44 O.S. 2011, Section 209, as
5 amended by Section 154, Chapter 304, O.S.L. 2012 (44 O.S. Supp.
6 2016, Section 209), is amended to read as follows:

7 Section 209. All officers and employees of the state or a
8 political subdivision thereof who are members of the Oklahoma
9 National Guard or any reserve component of any branch of the United
10 States military, shall, when ordered by proper authority to active
11 or inactive service, be entitled to a leave of absence from civil
12 employment for the period of active service, without loss of status
13 or efficiency rating. During the first thirty (30) calendar days
14 for employees of political subdivisions or the first thirty (30)
15 regular scheduled work days for state employees not to exceed Two
16 Hundred and Forty (240) hours of the leave of absence in any federal
17 fiscal year, the officers or employees shall receive their full
18 regular pay from the employing state agency or political
19 subdivision. During the remainder of the leave of absence in any
20 federal fiscal year, the employing state agency or political
21 subdivision may elect to pay them an amount equal to the difference
22 between the officers' or employees' full regular pay from the
23 employing state agency or political subdivision and their Oklahoma
24 National Guard or United States military reserve component pay,

1 except that state officers and employees shall receive the
2 difference between their full regular pay and their Oklahoma
3 National Guard or United States military reserve component pay when
4 they are ordered by proper authority to active or inactive service
5 retroactive to the date that the state officer or employee reported
6 to active service on or after September 11, 2001, during the period
7 that Operation Enduring Freedom is in effect or any subsequent
8 contingency operation declared by the Secretary of Defense. The
9 durational limit of protected military service as provided for in
10 this section shall not be less than that provided by federal law.
11 If it is necessary in the public interest to provide for the
12 performance of the duties of their positions during such absence,
13 the authority having power to fill a vacancy in the positions may
14 appoint substitutes, to be known as acting incumbents, who shall
15 qualify as required for the regular incumbents and shall receive the
16 same pay, including benefits and pay adjustments, as fixed by law,
17 if any, or otherwise such pay, including benefits and pay
18 adjustments, as may be fixed by proper authority.

19 The Office of Management and Enterprise Services shall
20 promulgate rules as necessary to implement the provisions of this
21 section that relate to state employees.

22 SECTION 4. AMENDATORY 44 O.S. 2011, Section 212, is
23 amended to read as follows:

24

1 Section 212. A. If a suit or proceeding shall be commenced in
2 any court by any person against any officer or enlisted person of
3 the military forces for any act done by such officer or enlisted
4 person in his or her official capacity in the discharge of any duty
5 under Sections 1 through 117, 208 through ~~235.2~~ 237, ~~or~~ 241 through
6 250, or 3200 through 4002 of this title, or against any ~~soldier~~
7 member of state military forces as defined in Section 3201 of this
8 title acting under the authority or order of any such officer, or by
9 virtue of any warrant issued by him or her pursuant to law, it shall
10 be the duty of the Attorney General or Judge Advocate to defend such
11 person.

12 The actual court costs of such a defense shall be a legal charge
13 against the state and shall be submitted to the Legislature for
14 payment. Before any suit or proceeding shall be filed or maintained
15 against any officer or soldier as herein provided, the plaintiff
16 shall be required to give security, to be approved by the court in a
17 sum not less than One Hundred Dollars (\$100.00), to secure the
18 costs. If the plaintiff fails to recover judgment such costs shall
19 be taxed and judgment rendered therefor against him or her and his
20 or her sureties.

21 B. Any officer or enlisted person of the state military forces
22 acting in his or her official capacity in the discharge of any duty
23 under Sections 1 through 117, 208 through 235.2, or 241 through 250
24 of this title, or against any soldier acting under the authority or

1 order of any such officer, or by virtue of any warrant issued by him
2 or her pursuant to law, shall be immune from personal liability for
3 any acts that include the use of deadly force for self-defense or to
4 defend another person from what the member reasonably believes is
5 the imminent use of unlawful deadly force.

6 SECTION 5. AMENDATORY 44 O.S. 2011, Section 241, is
7 amended to read as follows:

8 Section 241. The Governor, pursuant to the authority granted
9 the states by ~~the Act of Congress of October 21, 1940~~ 32 U.S.C.,
10 Section 109 or a successor provision, and under such regulations as
11 the Secretary of Defense may prescribe for discipline in training,
12 is hereby authorized to enlist, organize, maintain, equip and
13 discipline such military forces other than the National Guard as he
14 or she may deem necessary to defend the state. Such forces shall be
15 uniformed and subject to Sections 1 through 117, ~~192 through 195.8,~~
16 Sections 208 through 235.2 237, and ~~2101 through 3113~~ Sections 3200
17 through 4003 of this title ~~unless in conflict with such sections,~~
18 insofar as such sections do not conflict with Sections 241 through
19 250 of this title.

20 SECTION 6. AMENDATORY 44 O.S. 2011, Section 242, is
21 amended to read as follows:

22 Section 242. Such military forces shall be designated as the
23 "Oklahoma State Guard" and shall be composed of officers
24 commissioned or assigned, and such able-bodied ~~male~~ citizens of the

1 state as shall volunteer for service therein. They shall be
2 additional to and distinct from the National Guard ~~organized under~~
3 ~~existing law~~ of the State of Oklahoma, as defined in Title 32 of the
4 United States Code. They shall not be required to serve outside the
5 boundaries of ~~this state~~ the State of Oklahoma.

6 SECTION 7. AMENDATORY 44 O.S. 2011, Section 243, is
7 amended to read as follows:

8 Section 243. A. The Governor is hereby authorized to prescribe
9 rules and regulations governing the enlistment, organization,
10 administration, equipment, discipline and discharge of the personnel
11 of such military forces; to requisition from the Secretary of
12 Defense such arms and equipment as may be in the possession of and
13 can be spared by the Department of Defense and to extend thereto the
14 facilities of state armories and their equipment and such other
15 state premises and property as may be available for the purpose of
16 drill and instruction. Insofar as applicable the procedure for the
17 enlistment, organization, pay, maintenance, equipment and
18 disciplining of such forces shall be in conformity with the law and
19 the rules and regulations governing and pertaining to the National
20 Guard; provided that the officers and enlisted ~~men~~ personnel in the
21 Oklahoma State Guard shall not receive any compensation or monetary
22 allowances from the state except when ~~called into active service~~
23 activated for state active duty, as defined in Section 3201 of this
24 title, by order of the Governor.

1 B. Members of the Oklahoma State Guard shall be considered part
2 of state military forces as defined in Section 3201 of this title
3 and shall be subject to the Oklahoma Uniform Code of Military
4 Justice.

5 C. When prescribing the rules and regulations governing
6 enlistment, organization, administration, equipment, discipline and
7 discharge of the personnel of the Oklahoma State Guard, the Governor
8 shall issue such rules and regulations in the form of an executive
9 order which shall be published in the Oklahoma Administrative Code.
10 For purposes of the Administrative Procedures Act, the executive
11 order prescribing the rules and regulations governing enlistment,
12 organization, administration, equipment, discipline and discharge of
13 the personnel of the Oklahoma State Guard shall be considered a
14 military publication and shall be published and indexed as part of
15 the Oklahoma Administrative Code.

16 SECTION 8. AMENDATORY 44 O.S. 2011, Section 244, is
17 amended to read as follows:

18 Section 244. Nothing in ~~this act~~ the Oklahoma State Guard Act
19 shall be construed as authorizing such forces, or any part thereof
20 to be called, ordered or in any manner drafted, as such into the
21 military service of the United States, but no person shall by reason
22 of his or her enlistment or commission in any such forces be
23 exempted from military service under any law of the United States.

24

1 SECTION 9. AMENDATORY 44 O.S. 2011, Section 247, is
2 amended to read as follows:

3 Section 247. No person shall be enlisted for more than one (1)
4 year, but such enlistment may be renewed. The oath to be taken upon
5 enlistment in such forces shall be substantially in the form
6 prescribed for enlisted ~~men~~ members of the National Guard,
7 substituting the words "Oklahoma State Guard" where necessary.

8 SECTION 10. AMENDATORY 44 O.S. 2011, Section 248, is
9 amended to read as follows:

10 Section 248. ~~(a) Whenever such forces or any part thereof~~
11 ~~shall be ordered out for active service the Articles of War of the~~
12 ~~United States applicable to members of the National Guard of this~~
13 ~~state in relation to courts martial, their jurisdiction and the~~
14 ~~limits of punishment and the rules and regulations prescribed~~
15 ~~thereunder shall be in full force and effect with respect to "the~~
16 ~~Oklahoma State Guard."~~

17 ~~(b)~~ No officer or enlisted ~~man~~ person of ~~such forces~~ the
18 Oklahoma State Guard shall be arrested on any warrant, except for
19 treason or felony, while going to, remaining at, or returning from a
20 place where he or she is ordered to attend for military duty. Every
21 officer and enlisted ~~man~~ person of such forces shall, during his or
22 her service therein, be exempt from service upon any posse comitatus
23 and from jury duty.

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1 SECTION 11. AMENDATORY 44 O.S. 2011, Section 250, is
2 amended to read as follows:

3 Section 250. This act may be cited as the Oklahoma State Guard
4 Act.

5 SECTION 12. AMENDATORY 44 O.S. 2011, Section 3200, is
6 amended to read as follows:

7 Section 3200. ~~This~~ Sections 3200 through 4002 of this title and
8 Sections 101 and 102 of this act shall be known and may be cited as
9 the "Oklahoma Uniform ~~State~~ Code of Military Justice".

10 SECTION 13. AMENDATORY 44 O.S. 2011, Section 3201, is
11 amended to read as follows:

12 Section 3201. ~~A.~~ As used in ~~this act~~ the Oklahoma Uniform Code
13 of Military Justice, unless the context otherwise requires:

14 1. "Accuser" means a person who signs and swears to charges,
15 any person who directs that charges nominally be signed and sworn to
16 by another, and any other person who has an interest other than an
17 official interest in the prosecution of the accused;

18 2. "Adjutant General" means the most senior military officer of
19 the Oklahoma National Guard appointed by the Governor with the
20 advice and consent of the Senate. The Adjutant General exercises
21 command and control over the Oklahoma National Guard when it is not
22 activated for federal duty under Title 10 of the United States Code
23 and serves as the executive and administrative head of the Military

24

1 Department of the State of Oklahoma as provided for in Section 21 of
2 this title;

3 3. "Administrative control (ADCON)" means the control or
4 exercise of authority over subordinate units and other organizations
5 or units with respect to administration and support, including
6 control of resources and equipment, personnel management, unit
7 logistics, individual and unit training, readiness, mobilization,
8 demobilization and other matters not included in the operational
9 missions of the subordinate units or other organizations or units.
10 Disciplinary authority is not inherent to administrative control;
11 however, a G-series order or its equivalent implementing
12 administrative control may incorporate references to the UCMJ or the
13 OUCMJ for disciplinary purposes;

14 4. "Allowance" means an amount of money provided to members of
15 the state military forces when adequate services or facilities are
16 not provided by the military. Allowances are usually provided tax
17 free for basic housing, basic subsistence, cost of living, clothing
18 expenses and separation from family members;

19 5. "Apprehension" means the taking of a person into custody;

20 6. "Arrest" means the restraint of a person by an order, not
21 imposed as a punishment for an offense, directing that person to
22 remain within certain specified limits;

23 7. "Arrest in quarters" means moral restraint, as opposed to
24 physical restraint, limiting the liberty of an officer. The limits

1 of arrest in quarters are set by the authority imposing nonjudicial
2 punishment and may extend beyond the physical quarters of an
3 officer;

4 8. "Assistant Adjutant General" means an officer appointed by
5 the Governor to assist the Adjutant General in the discharge and
6 performance of his or her duties. An Assistant Adjutant General
7 must possess the rank of Brigadier General and otherwise meet the
8 qualifications prescribed by law for the Adjutant General. At least
9 one Assistant Adjutant General for the Army and one Assistant
10 Adjutant General for the Air Force are customarily appointed to
11 establish lines of command and administration into each component of
12 state military forces;

13 9. "Cadet", ~~or "candidate", or "midshipman"~~ means a person who
14 is enrolled in or attending a state military academy, a regional
15 training institute, or any other formal education program for the
16 purpose of becoming a commissioned officer in the state military
17 forces;

18 ~~3.~~ 10. "Classified information" means:

- 19 a. any information or material that has been determined
20 ~~by an official of the United States or any state~~
21 pursuant to federal law, by an Executive Order issued
22 by the President in execution of federal law, or a
23 lawfully promulgated federal regulation to require
24 protection against unauthorized disclosure for reasons

1 of national ~~or state~~ security and that is so
2 designated, and

3 b. any restricted data, as defined in Section 11(y) of
4 the Atomic Energy Act of 1954 (42 U.S.C., Section
5 2014(y));

6 ~~4.~~ 11. "Code" means ~~this act~~ the Oklahoma Uniform Code of
7 Military Justice (OUCMJ);

8 ~~5.~~ 12. "Command authority" means the authority that a commander
9 in the state military forces lawfully exercises over subordinates by
10 virtue of rank or assignment. Disciplinary authority under the
11 OUCMJ is inherent to command authority and is distinct from
12 administrative control;

13 13. "Commander" means a designated commissioned officer vested
14 with command authority pursuant to law, regulation, assignment,
15 lawful order or custom;

16 14. "Commanding officer" includes only commissioned officers of
17 the state military forces and shall include officers in charge only
18 when administering nonjudicial punishment under Section ~~47~~ 3221 of
19 this ~~act~~ title. "Commander" has the same meaning as "commanding
20 officer" unless the context otherwise requires;

21 ~~6.~~ 15. "Component" means one of two constituent parts that make
22 up the state military forces, namely the army force responsible for
23 land-based operations and the air force responsible for aerial
24 operations and related support activities;

1 16. "Confidential information" means any information or
2 material that must be designated as confidential pursuant to Section
3 24A.27 of Title 51 of the Oklahoma Statutes and any information or
4 material that may be kept confidential pursuant to Section 24A.28 of
5 Title 51 of the Oklahoma Statutes that has not previously been
6 released by an appropriate authority;

7 17. "Confinement" means the physical restraint of a person;

8 18. "Convening authority" includes, in addition to the person
9 who convened the court, a commissioned officer commanding for the
10 time being or a successor in command to the convening authority;

11 ~~7.~~ 19. "Day" means calendar day and is not synonymous with the
12 term "unit training assembly". Any punishment authorized by this
13 act which is measured in terms of days shall, when served in a
14 status other than annual field training, be construed to mean
15 succeeding duty days;

16 ~~8.~~ 20. "Duty status other than state active duty" means any
17 other type of duty not in federal service and not full-time duty in
18 the active service of the state, under an order issued by authority
19 of law and includes travel to and from such duty;

20 ~~9.~~ 21. "Enlisted member" means a person in an enlisted grade;

21 ~~10.~~ 22. "Fatigue duty" means general labor performed by members
22 of the state military forces when unarmed, including but not limited
23 to cleaning, digging, loading, organizing, etc.;

1 23. "Fine" means a type of punishment that makes a member
2 pecuniarily liable to the State of Oklahoma for the amounts
3 specified by nonjudicial punishment or adjudged by a court-martial.
4 A fine may be paid in cash by a member, collected by deduction from
5 the current pay of a member or collected by deduction on settlement
6 of the pay account of a member at discharge;

7 24. "Forfeiture" means a loss of monetary compensation provided
8 to members of the Oklahoma National Guard or Oklahoma State Guard
9 for performance of military duties as a result of nonjudicial
10 punishment or as adjudged by a court-martial. A forfeiture is
11 applicable to basic pay and allowances if total forfeitures of pay
12 and allowances are specifically adjudged by a general court-martial;
13 provided that forfeitures, other than total forfeitures, shall not
14 apply to special pay, other than hardship duty pay, or proficiency
15 or incentive pay;

16 25. "Grade" means a step or degree in a graduated scale of
17 office or military rank which is established and designated as a
18 grade by law or regulation;

19 26. "Installation commander" means a commissioned officer
20 responsible for the protection of assigned forces and assets,
21 lodging, dining and administrative reporting, regardless of the
22 command relations of the various types of forces present on the
23 installation. For purposes of this definition an installation is an
24 air base, armory, camp, post, readiness center, office building, the

1 joint forces headquarters or other facility, location, structure or
2 property so designated as an "installation" by the Adjutant General.

3 27. "Joint Forces Headquarters" means the joint headquarters
4 provided for and established in Section 21 of this title;

5 28. "Judge advocate" means a commissioned officer of the
6 ~~organized~~ state military forces who is a member in good standing of
7 the bar of the highest court of a state, and is:

8 a. certified or designated as a judge advocate in the
9 Judge Advocate General's Corps of the Army, Air Force,
10 Navy, or the Marine Corps or designated as a law
11 specialist as an officer of the Coast Guard, or a
12 reserve component of one of these, or

13 b. certified as a nonfederally recognized judge advocate,
14 under regulations ~~promulgated pursuant to this~~
15 ~~provision~~ in the state manual for courts-martial, by
16 the senior judge advocate of the commander of the
17 force component in the state military forces of which
18 the accused is a member, as competent to perform such
19 military justice duties required by this code. If
20 there is no such judge advocate available, then such
21 certification may be made by ~~such~~ the senior judge
22 advocate of the commander of ~~another~~ the other force
23 component in the state military forces as the
24 convening authority directs;

1 ~~11.~~ 29. "May" is used in a permissive sense. The phrase "no
2 person may" means that no person is required, authorized, or
3 permitted to do the act prescribed;

4 ~~12.~~ 30. "Military court" means a court-martial or a court of
5 inquiry;

6 ~~13.~~ 31. "Military judge" means an official of a general or
7 special court-martial detailed in accordance with Section ~~29~~ 3246 of
8 this ~~act~~ title;

9 ~~14.~~ ~~The term "military~~ 32. "Military offenses" means those
10 offenses prescribed under Sections ~~88~~ 3331 (Principals), ~~89~~ 3332
11 (Accessory after the fact), ~~91~~ 3334 (Attempts), ~~92~~ 3335
12 (Conspiracy), ~~93~~ 3336 (Solicitation), ~~94~~ 3337 (Fraudulent
13 enlistment, appointment, or separation), ~~95~~ 3338 (Unlawful
14 enlistment, appointment, or separation), ~~96~~ 3339 (Desertion), ~~97~~
15 3340 (Absence without leave), ~~98~~ 3341 (Missing movement), ~~99~~ 3342
16 (Contempt toward officials), ~~100~~ 3343 (Disrespect towards superior
17 commissioned officer), ~~101~~ 3344 (Assaulting or willfully disobeying
18 superior commissioned officer), ~~102~~ 3345 (Insubordinate conduct
19 toward warrant officer, or noncommissioned officer, ~~or petty~~
20 ~~officer~~), ~~103~~ 3346 (Failure to obey order or regulation), ~~104~~ 3347
21 (Cruelty and maltreatment), ~~105~~ 3348 (Mutiny or sedition), ~~106~~ 3349
22 (Resistance, flight, breach of arrest, and escape), ~~107~~ 3350
23 (Releasing prisoner without proper authority), ~~108~~ 3351 (Unlawful
24 detention), ~~109~~ 3352 (Noncompliance with procedural rules), ~~110~~ 3353

1 (Misbehavior before the enemy), ~~111~~ 3354 (Subordinate compelling
2 surrender), ~~112~~ 3355 (Improper use of countersign), ~~113~~ 3356
3 (Forcing a safeguard), ~~114~~ 3357 (Captured or abandoned property),
4 ~~115~~ 3358 (Aiding the enemy), ~~116~~ 3359 (Misconduct as prisoner), ~~117~~
5 3360 (Larceny and wrongful appropriation), ~~119~~ 3361 (Misuse of
6 public records), 3362 (False official statements), ~~120~~ 3363
7 (Military property – Loss, damage, destruction, or wrongful
8 disposition), ~~121~~ 3364 (Property other than military property –
9 Waste, spoilage, or destruction), ~~122~~ 3365 (Improper hazarding of
10 vessel), ~~124~~ 3366 (Conduct likely to produce death or grievous
11 bodily harm), 3367 (Drunk on duty), ~~125~~ 3368 (Wrongful use,
12 possession, etc., of controlled substances), ~~126~~ 3369 (Misbehavior
13 of sentinel), ~~127~~ 3370 (Dueling), ~~128~~ 3371 (Malingering), ~~129~~ 3372
14 (Riot or breach of peace), ~~130~~ 3373 (Provoking speeches or
15 gestures), ~~131~~ 3374 (Assault), ~~132~~ (Adultery), ~~146~~ 3376 (Misuse of
16 military or official pass, permit, discharge certificate, or
17 identification card), 3377 (Sexual assault, aggravated sexual
18 contact, or abusive sexual contact), 3378 (Stalking), 3379 (Other
19 sexual misconduct), 3380 (Fraternization), 3381 (Communication of
20 confidential information), 3389 (Frauds against the government), ~~147~~
21 3390 (Conduct unbecoming an officer and a gentleman), and ~~148~~ 3391
22 (General article) of this ~~code~~ title;

23 15. ~~The term "national security" means the national defense and~~
24 ~~foreign relations of the United States;~~

1 ~~16. The term "officer"~~ 33. "Military publication" means a
2 written publication of an administrative nature such as a
3 regulation, instruction, pamphlet, circular, permanent or general
4 order, bulletin, policy memorandum or blank form promulgated or
5 published by or under the authority of the Adjutant General. An
6 order or directive issued by the Adjutant General that is
7 operational in nature or issued in execution of a military mission
8 shall not be included within the meaning of military publication;

9 34. "National security" means the national defense and foreign
10 relations of the United States;

11 35. "Nexus" means the appearance of a connection between a
12 nonmilitary offense and the state military forces which brings
13 discredit or dishonor to the state military forces due to
14 representations of membership in the state military forces by a
15 member. Such representations may be made directly or indirectly,
16 including but not limited to publication on social media or other
17 electronic communication platforms;

18 36. "Noncommissioned officer" means an enlisted member above
19 the pay grade of E-4;

20 37. "Nonjudicial punishment" means punishment imposed
21 administratively by a commander or officer in charge for minor
22 offenses in lieu of a court-martial;

23 38. "Officer" means a commissioned or warrant officer;
24

1 ~~17. The term "officer"~~ 39. "Officer in charge" means a ~~member~~
2 ~~of the naval militia, the Navy, the Marine Corps, or the Coast Guard~~
3 commissioned or warrant officer designated as such by appropriate
4 authority;

5 ~~18. The term "record"~~ 40. "Pay" means monetary compensation
6 provided to members of the state military forces in exchange for
7 performance of military duties carried out pursuant to a lawful
8 order or otherwise under the authority of law, including basic pay,
9 special pay, proficiency pay and incentive pay. "Pay" shall not
10 mean allowances as defined in this section;

11 41. "Rank" means the order of precedence among members of the
12 state military forces;

13 42. "Record", when used in connection with the proceedings of a
14 court-martial, means:

- 15 a. an official written transcript, written summary, or
16 other writing relating to the proceedings, or
17 b. an official audiotape, videotape, digital image or
18 file, or similar material from which sound, or sound
19 and visual images, depicting the proceedings may be
20 reproduced;

21 ~~19. "Shall" is used in an imperative sense;~~

22 ~~20. "State" means one of the several states, the District of~~
23 ~~Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin~~
24 ~~Islands;~~

1 ~~21. "State active duty" means full-time duty in the state~~
2 ~~military forces under an order of the Governor or otherwise issued~~
3 ~~by authority of law, and paid by state funds, and includes travel to~~
4 ~~and from such duty;~~

5 ~~22. "Senior force judge advocate" means the senior judge~~
6 ~~advocate of the commander of the same force of the state military~~
7 ~~forces as the accused and who is that commander's chief legal~~
8 ~~advisor;~~

9 ~~23. "State military forces" means the National Guard of the~~
10 ~~state, as defined in Title 32, United States Code, the organized~~
11 ~~naval militia of the state, and any other military force organized~~
12 ~~under the Constitution and laws of the state to include the~~
13 ~~unorganized militia (the state defense force when not in a status~~
14 ~~subjecting them to exclusive jurisdiction under Chapter 47 of Title~~
15 ~~10, United States Code). The unorganized militia, state defense~~
16 ~~force, state national guard, home guard or any other name of any~~
17 ~~state force that does not meet this definition nevertheless shall be~~
18 ~~part of the "state military forces" under this code;~~

19 ~~24. The term "superior~~

20 ~~43. "Restriction" means moral restraint, as opposed to physical~~
21 ~~restraint, limiting access to physical places or participation in~~
22 ~~certain activities. In comparison to arrest in quarters,~~
23 ~~"restriction" is a lesser punishment;~~

1 44. "Senior Assistant Adjutant General" means an Assistant
2 Adjutant General who either possesses the most time in grade or has
3 been designated in writing by the Adjutant General as the senior
4 Assistant Adjutant General for his or her component irrespective of
5 time in grade;

6 45. "Senior force component judge advocate" means the judge
7 advocate assigned as chief legal advisor to the Senior Assistant
8 Adjutant General of the same component of the state military forces
9 as the accused;

10 46. "Shall" is used in an imperative sense;

11 47. "State" means one of the several states, the District of
12 Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin
13 Islands;

14 48. "State active duty" means full-time duty in the state
15 military forces under an order of the Governor or otherwise issued
16 by authority of law, and paid by state funds, and includes travel to
17 and from such duty;

18 49. "State Judge Advocate" means a member of the Oklahoma
19 National Guard qualified as a judge advocate as defined in this
20 section and who is designated in writing by the Adjutant General as
21 the "state judge advocate";

22 50. "State military forces" means the National Guard of the
23 State of Oklahoma, which includes an army component and an air force
24 component, as defined in Title 32, United States Code, and Section

1 41 of this title; the Oklahoma State Guard, organized pursuant to
2 Title 32, U.S.C., Section 109 and established pursuant to the State
3 Guard Act, Section 241 of this title and any other military force
4 organized under the Constitution and laws of the State of Oklahoma
5 when not in a status placing them under exclusive jurisdiction
6 pursuant to Chapter 47 of Title 10, United States Code. Unless
7 otherwise established by Oklahoma law, the unorganized militia, as
8 defined in Section 41 of this title or any other state military
9 force that does not meet this definition shall not be considered
10 part of the "state military forces" under this code;

11 51. "Superior commissioned officer" means a commissioned
12 officer superior in rank or command; and

13 ~~25. "Senior force commander" means the commander of the same~~
14 ~~force of the state military forces as the accused~~

15 52. "Supplies" means materiel, equipment, and stores of all
16 types possessed or lawfully controlled by state military forces; and

17 53. "Title 32 active duty" means training or other duty, other
18 than inactive duty, performed by a member of the Army National Guard
19 of the United States or the Air National Guard of the United States
20 in the member's status as a member of the Oklahoma National Guard
21 pursuant to Sections 316, 502, 503, 504 or 505 of Title 32 of the
22 United States Code for which the member is entitled to pay from the
23 United States or for which the member has waived pay from the United
24 States.

1 ~~B. The use of the masculine gender throughout this code shall~~
2 ~~also include the feminine gender.~~

3 SECTION 14. AMENDATORY 44 O.S. 2011, Section 3202, is
4 amended to read as follows:

5 Section 3202. A. This code applies to all members of the state
6 military forces who are not in federal service. No person may be
7 tried for any offense provided in this code unless it was committed
8 while he was in a duty status or during a period of time in which he
9 was under lawful order to be in a duty status. However, the
10 processing of charges and all proceedings, including trial and
11 punishment, may be conducted without regard to the duty status of
12 the accused at all times who are not in active federal service, as
13 defined by Title 10 of the United States Code.

14 B. Subject matter jurisdiction is established if a nexus exists
15 between an offense, either military or nonmilitary, and the state
16 military forces. Courts-martial have primary jurisdiction over
17 military offenses as defined in this code.

18 C. A proper civilian court has primary jurisdiction of a
19 nonmilitary offense when an act or omission violates both this code
20 and local criminal law, foreign or domestic. In such a case, a
21 court-martial may be initiated only after the civilian authority has
22 declined to prosecute or has dismissed the charge, provided jeopardy
23 has not attached. The state manual for courts-martial may prescribe
24

1 how a convening authority establishes jurisdiction over a
2 nonmilitary offense.

3 D. Jurisdiction over attempted crimes, conspiracy crimes,
4 solicitation, and accessory crimes shall be determined by the
5 underlying offense.

6 E. If a commander or officer in charge determines that a nexus
7 exists between a nonmilitary offense and the state military forces,
8 for purposes of administrative action, the commander or officer in
9 charge may impose nonjudicial punishment regardless of whether
10 courts-martial jurisdiction is then possessed or later acquired by
11 the state military forces.

12 SECTION 15. AMENDATORY 44 O.S. 2011, Section 3203, is
13 amended to read as follows:

14 Section 3203. A. Each person discharged from the state
15 military forces who is later charged with having fraudulently
16 obtained a discharge is, subject to Section 46 3268 of this ~~act~~
17 title, subject to trial by court-martial on that charge and is,
18 after apprehension, subject to this code while in custody under the
19 direction of the state military forces for that trial. Upon
20 conviction of that charge that person is subject to trial by court-
21 martial for all offenses under this code committed before the
22 fraudulent discharge.

23
24

1 B. No person who has deserted from the state military forces
2 may be relieved from amenability to the jurisdiction of this code by
3 virtue of a separation from any later period of service.

4 SECTION 16. AMENDATORY 44 O.S. 2011, Section 3205, is
5 amended to read as follows:

6 Section 3205. A. ~~The~~ Except when members of the state military
7 forces are in active federal service, as defined by Title 10 of the
8 United States Code, the Oklahoma Uniform State Code of Military
9 Justice ~~has~~ shall have applicability at all times and in all places,
10 ~~provided that the person subject to the code is in a duty status.~~
11 ~~For those offenses set forth in Section 3368 of this title, the~~
12 ~~Uniform State Code of Military Justice has applicability at all~~
13 ~~times and in all places regardless of duty status. Provided,~~
14 ~~however, these grants of military jurisdiction shall neither~~
15 ~~preclude nor limit civilian jurisdiction over an offense, which~~ ~~is~~
16 shall be limited only by the prohibition of double jeopardy.

17 B. Courts-martial and courts of inquiry may be convened and
18 held in units of the state military forces while those units are
19 serving outside the state with the same jurisdiction and powers as
20 to persons subject to the Oklahoma Uniform ~~State~~ Code of Military
21 Justice as if the proceedings were held inside the state, and
22 offenses under the code committed outside the state may be tried and
23 punished either inside or outside of the state.

1 SECTION 17. AMENDATORY 44 O.S. 2011, Section 3206, is
2 amended to read as follows:

3 Section 3206. A. The senior force judge advocates in each of
4 the state's military ~~forces~~ force components or those judge
5 advocates' delegates shall make frequent inspections in the field in
6 supervision of the administration of military justice in that force
7 component.

8 B. Convening authorities shall at all times communicate
9 directly with their judge advocates in matters relating to the
10 administration of military justice. The judge advocate of any
11 command is entitled to communicate directly with the judge advocate
12 of a superior or subordinate command, or with the State Judge
13 Advocate.

14 C. No person who has acted as member, military judge, trial
15 counsel, defense counsel, or investigating officer, or who has been
16 a witness, in any case may later act as a judge advocate to any
17 reviewing authority upon the same case.

18 PART II. APPREHENSION AND RESTRAINT

19 SECTION 18. AMENDATORY 44 O.S. 2011, Section 3211, is
20 amended to read as follows:

21 Section 3211. A. ~~Apprehension is the taking of a person into~~
22 ~~custody.~~

23 ~~B.~~ Any person authorized by this code or by Chapter 47 of Title
24 10, of the United States Code, or by regulations issued under

1 either, to apprehend persons subject to this code, any marshal of a
2 court-martial appointed pursuant to the provisions of this code, and
3 any peace officer or civil officer having authority to apprehend
4 offenders under the laws of the United States or of a state, may do
5 so upon probable cause that an offense has been committed and that
6 the person apprehended committed it.

7 ~~E.~~ B. Commissioned officers, warrant officers, ~~petty officers,~~
8 and noncommissioned officers have authority to quell quarrels,
9 frays, and disorders among persons subject to this code and to
10 apprehend persons subject to this code who take part therein.

11 ~~D.~~ C. If an offender is apprehended outside the state, the
12 offender's return to the area must be accomplished in accordance
13 with ~~normal~~ lawful extradition procedures or by reciprocal
14 agreement.

15 ~~E.~~ D. No person authorized by this ~~article~~ section to apprehend
16 persons subject to this code or the place where such offender is
17 confined, restrained, held, or otherwise housed may require payment
18 of any fee or charge for so receiving, apprehending, confining,
19 restraining, holding, or otherwise housing a person except as
20 otherwise provided by law.

21 SECTION 19. AMENDATORY 44 O.S. 2011, Section 3213, is
22 amended to read as follows:

23 Section 3213. A. ~~Arrest is the restraint of a person by an~~
24 ~~order, not imposed as a punishment for an offense, directing him to~~

1 ~~remain within certain specified limits. Confinement is the physical~~
2 ~~restraint of a person.~~

3 ~~B.~~ An enlisted member may be ordered into arrest or confinement
4 by any commissioned officer by an order, oral or written, delivered
5 in person or through other persons subject to this code. A
6 commanding officer may authorize warrant officers, ~~petty officers,~~
7 or noncommissioned officers to order enlisted members of the
8 commanding officer's command or subject to the commanding officer's
9 authority into arrest or confinement.

10 ~~C.~~ B. A commissioned officer, a warrant officer, or a civilian
11 subject to this code or to trial thereunder may be ordered into
12 arrest or confinement only by a commanding officer to whose
13 authority the person is subject, by an order, oral or written,
14 delivered in person or by another commissioned officer. The
15 authority to order such persons into arrest or confinement may not
16 be delegated.

17 ~~D.~~ C. No person may be ordered into arrest or confinement
18 except for probable cause.

19 ~~E.~~ D. This ~~article~~ section does not limit the authority of
20 persons authorized to apprehend offenders to secure the custody of
21 an alleged offender until proper authority may be notified.

22 PART III. NONJUDICIAL PUNISHMENT

23 SECTION 20. AMENDATORY 44 O.S. 2011, Section 3221, is
24 amended to read as follows:

1 Section 3221. A. ~~Under such regulations as prescribed~~ Pursuant
2 to this section, any commanding officer ~~(, and for purposes of this~~
3 ~~article section, officers~~ an officer in charge~~), as defined in~~
4 Section 3201 of this title, may impose disciplinary punishments for
5 minor offenses arising under the punitive sections of this code
6 without the intervention of a court-martial ~~pursuant to this~~
7 ~~article.~~ The

8 B. Except as provided in subsection K of this section, the
9 Governor, the Adjutant General, or ~~an~~ a general officer ~~of a general~~
10 ~~or flag rank~~ in command may delegate the powers established under
11 this ~~article~~ section to a principal assistant who is a member of the
12 state military forces.

13 ~~B.~~ C. Any commanding officer may impose upon enlisted members
14 of the officer's command:

- 15 1. An admonition;
- 16 2. A reprimand;
- 17 3. The withholding of privileges for not more than six (6)
18 months which need not be consecutive;
- 19 4. The forfeiture of pay of not more than seven (7) days' pay;
- 20 5. A fine of not more than seven (7) days' pay;
- 21 6. A reduction to the next inferior pay grade, if the grade
22 from which demoted is within the promotion authority of the officer
23 imposing the reduction or any officer subordinate to the one who
24 imposes the reduction;

1 7. Extra duties, including fatigue or other duties, for not
2 more than fourteen (14) days, which need not be consecutive; and

3 8. Restriction to certain specified limits, with or without
4 suspension from duty, for not more than fourteen (14) days, which
5 need not be consecutive.

6 ~~C.~~ D. Any commanding officer of the grade of major ~~or~~
7 ~~lieutenant commander~~ or above may impose upon enlisted members of
8 the officer's command:

9 1. ~~Any punishment authorized in paragraphs 1, 2 and 3 of~~
10 ~~subsection B of this section~~ An admonition;

11 2. A reprimand;

12 3. The withholding of privileges for not more than six (6)
13 months which need not be consecutive;

14 4. The forfeiture of not more than one-half (1/2) of one (1)
15 month's pay per month for two (2) months;

16 ~~3.~~ 5. A fine of not more than one (1) month's pay;

17 ~~4.~~ 6. A reduction to the lowest or any intermediate pay grade,
18 if the grade from which demoted is within the promotion authority of
19 the officer imposing the reduction or any officer subordinate to the
20 one who imposes the reduction, but an enlisted member in a pay grade
21 above E-4 ~~may~~ shall not be reduced more than two pay grades;

22 ~~5.~~ 7. Extra duties, including fatigue or other duties, for not
23 more than forty-five (45) days which need not be consecutive; and
24

1 ~~6.~~ 8. Restriction to certain specified limits, with or without
2 suspension from duty, for not more than sixty (60) days which need
3 not be consecutive.

4 ~~D.~~ E. The Governor, the Adjutant General, a general officer in
5 command, or an officer exercising general court-martial convening
6 authority, ~~or an officer of a general or flag rank in command~~ may
7 impose:

8 1. Upon officers of the officer's command:

9 a. except reduction in grade or extra duties, any
10 punishment authorized in ~~paragraphs 1, 2, 3 and 6 of~~
11 subsection ~~€~~ D of this section, and

12 b. arrest in quarters for not more than thirty (30) days
13 which need not be consecutive; and

14 2. Upon enlisted members of the officer's command: any
15 punishment authorized in subsection ~~€~~ D of this section.

16 Admonitions or reprimands given as nonjudicial punishment to
17 commissioned officers and warrant officers shall be administered in
18 writing. In all other cases, unless otherwise prescribed by the
19 commander of the force component of which the accused is a member,
20 such punishments may be administered either orally or in writing.

21 ~~E.~~ F. Whenever any of those punishments are combined to run
22 consecutively, the total length of the combined punishment ~~cannot~~
23 shall not exceed the authorized duration of the longest punishment
24 included in the combination, and there ~~must~~ shall be an

1 appportionment of punishments so that no single punishment in the
2 combination exceeds its authorized length under this ~~article~~
3 section.

4 ~~F. Prior to the offer~~ G. The right to demand trial by court-
5 martial in lieu of nonjudicial punishment, the commanding officer
6 shall determine whether arise only upon a determination that arrest
7 in quarters or restriction ~~shall~~ will be considered as punishments.
8 ~~Should~~ If the commanding officer ~~determine~~ determines that ~~the~~
9 ~~punishment options may include~~ arrest in quarters or restriction
10 will be considered as punishments, prior to the offer of nonjudicial
11 punishment, the accused shall be notified in writing of the right to
12 demand trial by court-martial. Should the commanding officer
13 determine that the punishment options will not include arrest in
14 quarters or restriction, the accused shall be notified that there is
15 no right to trial by court-martial in lieu of nonjudicial
16 punishment. Upon notification by the commander or officer in charge
17 of his or her intent to impose nonjudicial punishment, the accused
18 shall be afforded a reasonable amount of time to confer with legal
19 counsel and to offer a response.

20 ~~G. H.~~ H. The officer who imposes the punishment, or the successor
21 in command, may, at any time, suspend, set aside, mitigate, or remit
22 any part or amount of the punishment and restore all rights,
23 privileges, and property affected. The officer also may:

24 1. Mitigate reduction in grade to forfeiture of pay;

1 2. Mitigate arrest in quarters to restriction; or

2 3. Mitigate extra duties to restriction.

3 The mitigated punishment shall not be for a greater period than
4 the punishment mitigated. When mitigating reduction in grade to
5 forfeiture of pay, the amount of the forfeiture shall not be greater
6 than the amount that could have been imposed initially under this
7 ~~article~~ section by the officer who imposed the punishment mitigated.

8 ~~H. I.~~ A person punished under this ~~article~~ section who
9 considers the punishment unjust or disproportionate to the offense
10 may, through the proper channel, appeal to the ~~Joint Chiefs of Staff~~
11 Senior Assistant Adjutant General of the same component of the state
12 military forces as the accused within fifteen (15) days after the
13 punishment is either announced or sent to the accused, ~~as the~~
14 ~~commander may determine~~ whichever is later in time. The officer
15 imposing nonjudicial punishment may, at his or her discretion,
16 extend the deadline for an appeal. The appeal shall be promptly
17 forwarded and decided, and the person ~~may~~ shall not be punished
18 until the appeal is decided. The ~~Joint Chiefs of Staff~~ Senior
19 Assistant Adjutant General may exercise the same powers with respect
20 to the punishment imposed as may be exercised under subsection ~~G~~ H
21 of this section by the officer who imposed the punishment. Before
22 acting on an appeal from a punishment, the ~~Joint Chief of Staff~~
23 Senior Assistant Adjutant General may refer the case to a judge
24 advocate for consideration and advice.

1 ~~I.~~ J. Except for nonjudicial punishment imposed by the Adjutant
2 General or the Governor, the final appellate authority for
3 nonjudicial punishment imposed within state military forces is the
4 Adjutant General. A person punished under this section whose appeal
5 was previously denied by a Senior Assistant Adjutant General may
6 lodge an additional appeal with the Adjutant General within five (5)
7 days after the appeal is denied. In the event the officer imposing
8 nonjudicial punishment is the Senior Assistant Adjutant General, an
9 appeal thereof shall be addressed directly to the Adjutant General.
10 In the event the officer imposing nonjudicial punishment is the
11 Adjutant General, an appeal thereof shall be addressed directly to
12 the Governor. An appeal offered pursuant to this subsection shall
13 be made only in writing.

14 K. Whenever nonjudicial punishment is imposed under this
15 section:

16 1. After adjudication and while the punishment is being carried
17 out or while the adjudged punishment is pending before the appellate
18 authority, the commander or officer in charge who imposed the
19 nonjudicial punishment may:

- 20 a. excuse the accused from attendance at scheduled unit
21 training assemblies, or
22 b. arrange for the accused to drill on alternate dates
23 and in alternate locations; or
24

1 2. If necessary to maintain good order and discipline within
2 the unit, the commander or officer in charge who imposed the
3 nonjudicial punishment may order the accused to drill on alternate
4 dates and in alternate locations. The order shall be reduced to
5 writing and shall become part of the record of nonjudicial
6 punishment.

7 L. The imposition and enforcement of disciplinary punishment
8 under this ~~article~~ section for any act or omission is not a bar to
9 trial by court-martial or a civilian court of competent jurisdiction
10 for a serious crime or offense ~~growing~~ arising out of the same act
11 or omission and not properly punishable under this section; but the
12 fact that a disciplinary punishment has been enforced may be ~~shown~~
13 demonstrated by the accused upon trial and, when so ~~shown~~
14 demonstrated, it shall be considered in determining the measure of
15 punishment to be adjudged in the event of a ~~finding~~ verdict of
16 guilty.

17 ~~J.~~ M. Whenever a punishment of forfeiture of pay is imposed
18 under this ~~article~~ section, the forfeiture ~~may~~ shall not apply to
19 pay accruing before the date that punishment is imposed, but only
20 pay accruing on~~7~~ or after the date that punishment is imposed.

21 ~~K. Regulations~~ N. The Adjutant General may prescribe the form
22 of records to be kept of proceedings under this ~~article~~ section and
23 may prescribe that certain categories of those proceedings shall be
24 in writing.

1 SECTION 21. AMENDATORY 44 O.S. 2011, Section 3232, is
2 amended to read as follows:

3 Section 3232. Each component of the state military forces has
4 court-martial jurisdiction over all members ~~of the particular~~
5 belonging to that component who are subject to this code.

6 ~~Additionally, the Army and Air National Guard state military forces~~
7 ~~have court-martial jurisdiction over all members subject to this~~
8 ~~code.~~

9 SECTION 22. AMENDATORY 44 O.S. 2011, Section 3233, is
10 amended to read as follows:

11 Section 3233. Subject to Section ~~19~~ 3232 of this ~~act~~ title,
12 general courts-martial have jurisdiction to try persons subject to
13 this code for any offense made punishable by this code, and may,
14 under such limitations as ~~the Governor~~ may ~~prescribe~~ be prescribed
15 in the state manual for courts-martial, adjudge any punishment not
16 forbidden by this code.

17 SECTION 23. AMENDATORY 44 O.S. 2011, Section 3234, is
18 amended to read as follows:

19 Section 3234. Subject to Section ~~19~~ 3232 of this ~~act~~ title,
20 special courts-martial have jurisdiction to try persons subject to
21 this code for any offense made punishable by this code, and may,
22 under such limitations as ~~the Governor~~ may ~~prescribe~~ be prescribed
23 in the state manual for courts-martial, adjudge any punishment not
24 forbidden by this code except dishonorable discharge, dismissal,

1 confinement for more than one (1) year, forfeiture of pay exceeding
2 two-thirds (2/3) pay per month, or forfeiture of pay for more than
3 one (1) year.

4 SECTION 24. AMENDATORY 44 O.S. 2011, Section 3235, is
5 amended to read as follows:

6 Section 3235. A. Subject to Section ~~19~~ 3232 of this ~~act~~ title,
7 summary courts-martial have jurisdiction to try persons subject to
8 this code, except officers, cadets, and candidates, ~~and midshipmen,~~
9 for any offense made punishable by this code under such limitations
10 as ~~the Governor~~ may ~~prescribe~~ be prescribed in the state manual for
11 courts-martial.

12 B. No person with respect to whom summary courts-martial have
13 jurisdiction may be brought to trial before a summary court-martial
14 if that person objects thereto. If objection to trial by summary
15 court-martial is made by an accused, trial by special or general
16 court-martial may be ordered, as may be appropriate. Summary
17 courts-martial may, under such limitations as ~~the Governor~~ may
18 ~~prescribe~~ be prescribed in the state manual for courts-martial,
19 adjudge any punishment not forbidden by this code except dismissal,
20 dishonorable or bad-conduct discharge, confinement for more than one
21 (1) month, restriction to specified limits for more than two (2)
22 months, or forfeiture of more than two-thirds (2/3) of one (1)
23 month's pay.

24

1 SECTION 25. AMENDATORY 44 O.S. 2011, Section 3241, is
2 amended to read as follows:

3 Section 3241. A. General courts-martial may be convened by:

4 1. The Governor;

5 2. The Adjutant General;

6 3. The commanding officer of a force component of the state
7 military forces;

8 4. The commanding officer of a division or a separate brigade;
9 or

10 5. The commanding officer of a separate wing.

11 B. If any such commanding officer is an accuser, the court
12 shall be convened by superior competent authority and may in any
13 case be convened by such superior authority if considered desirable
14 by such authority.

15 SECTION 26. AMENDATORY 44 O.S. 2011, Section 3242, is
16 amended to read as follows:

17 Section 3242. A. Special courts-martial may be convened by:

18 1. Any person who may convene a general court-martial;

19 2. The commanding officer of a garrison, fort, post, camp,
20 station, or Air National Guard base, ~~or naval base or station~~;

21 3. The commanding officer of a brigade, regiment, detached
22 battalion, or corresponding unit of the ~~Army~~ army component;

23 4. The commanding officer of a wing, group, separate squadron,
24 or corresponding unit of the ~~Air Force~~ air force component; or

1 5. The commanding officer or officer in charge of any other
2 command when ~~empowered~~ so detailed by the Adjutant General.

3 B. If any such officer is an accuser, the court shall be
4 convened by superior competent authority and may in any case be
5 convened by such superior authority if considered desirable by such
6 authority.

7 SECTION 27. AMENDATORY 44 O.S. 2011, Section 3243, is
8 amended to read as follows:

9 Section 3243. A. Summary courts-martial may be convened by:

10 1. Any person who may convene a general or special court-
11 martial;

12 2. The commanding officer of a detached company or other
13 detachment, or corresponding unit of the ~~Army~~ army component;

14 3. The commanding officer of a detached squadron or other
15 detachment, or corresponding unit of the ~~Air Force~~ air force
16 component; or

17 4. The commanding officer or officer in charge of any other
18 command when ~~empowered~~ so detailed by the Adjutant General.

19 B. When only one commissioned officer is present with a command
20 or detachment that officer shall be the summary court-martial of
21 that command or detachment and shall hear and determine all summary
22 court-martial cases. Summary courts-martial may, however, be
23 convened in any case by superior competent authority if considered
24 desirable by such authority.

1 SECTION 28. AMENDATORY 44 O.S. 2011, Section 3244, is
2 amended to read as follows:

3 Section 3244. A. Any commissioned officer of the state
4 military forces is eligible to serve on all courts-martial for the
5 trial of any person subject to this code.

6 B. Any warrant officer of the state military forces is eligible
7 to serve on general and special courts-martial for the trial of any
8 person subject to this code, other than a commissioned officer.

9 C. Any enlisted member of the state military forces who is not
10 a member of the same unit as the accused is eligible to serve on
11 general and special courts-martial for the trial of any enlisted
12 member subject to this code, but that member shall serve as a member
13 of a court only if, before the conclusion of a session called by the
14 military judge under Section ~~42~~ 3264 of this ~~act~~ title prior to
15 trial or, in the absence of such a session, before the court is
16 assembled for the trial of the accused, the accused personally has
17 requested orally on the record or in writing that enlisted members
18 serve on it. After such a request, the accused may not be tried by
19 a general or special court-martial the membership of which does not
20 include enlisted members in a number comprising at least one-third
21 (1/3) of the total membership of the court, unless eligible enlisted
22 members cannot be obtained on account of physical conditions or
23 military exigencies. If such members cannot be obtained, the court
24 may be assembled and the trial held without them, but the convening

1 authority shall make a detailed written statement, to be appended to
2 the record, stating why ~~they~~ such enlisted members could not be
3 obtained. In this ~~article~~ section, "unit" means any regularly
4 organized body of the state military forces not larger than a
5 company, a squadron, ~~a division of the naval militia,~~ or a body
6 corresponding to one of them.

7 D. When it can be avoided, no person subject to this code may
8 be tried by a court-martial any member of which is junior to the
9 accused in rank or grade.

10 E. When convening a court-martial, the convening authority
11 shall detail as members thereof such members of the state military
12 forces as, in the convening authority's opinion, are best qualified
13 for the duty by reason of age, education, training, experience,
14 length of service, and judicial temperament. No member of the state
15 military forces is eligible to serve as a member of a general or
16 special court-martial when that member is the accuser, a witness, or
17 has acted as investigating officer or as counsel in the same case.

18 F. Before a court-martial is assembled for the trial of a case,
19 the convening authority may excuse a member of the court from
20 participating in the case. The convening authority may delegate the
21 authority under this subsection to a judge advocate or to any other
22 principal assistant.

23 SECTION 29. AMENDATORY 44 O.S. 2011, Section 3246, is
24 amended to read as follows:

1 Section 3246. A. A military judge shall be detailed to each
2 general and special court-martial. The military judge shall preside
3 over each open session of the court-martial to which the military
4 judge has been detailed.

5 B. A military judge shall be:

6 1. An active or retired commissioned officer of an organized
7 state military force;

8 2. A member in good standing of the bar of the highest court of
9 a state or a member of the bar of a federal court for at least five
10 (5) years; and

11 3. Certified as qualified for duty as a military judge by the
12 senior force component judge advocate which is the same force
13 component as the accused.

14 C. In the instance when a military judge is not a member of the
15 bar of the highest court of the state, the military judge shall be
16 deemed admitted pro hac vice, subject to filing a certificate with
17 the senior force component judge advocate which is the same force
18 component as the accused setting forth such qualifications provided
19 in subsection B of this section.

20 D. The military judge of a general or special court-martial
21 shall be designated by the senior force component judge advocate
22 which is the same force component as the accused, or a designee, for
23 detail by the convening authority. Neither the convening authority
24 nor any staff member of the convening authority shall prepare or

1 review any report concerning the effectiveness, fitness, or
2 efficiency of the military judge so detailed, which relates to
3 performance of duty as a military judge.

4 E. No person is eligible to act as military judge in a case if
5 that person is the accuser or a witness, or has acted as
6 investigating officer or a counsel in the same case.

7 F. The military judge of a court-martial may not consult with
8 the members of the court except in the presence of the accused,
9 trial counsel, and defense counsel nor vote with the members of the
10 court.

11 SECTION 30. AMENDATORY 44 O.S. 2011, Section 3247, is
12 amended to read as follows:

13 Section 3247. A. 1. For each general and special court-
14 martial the authority convening the court shall detail trial
15 counsel, defense counsel, and such assistants as are appropriate.

16 2. No person who has acted as investigating officer, military
17 judge, witness or court member in any case may act later as trial
18 counsel, assistant trial counsel, or, unless expressly requested by
19 the accused, as defense counsel or assistant or associate defense
20 counsel in the same case. No person who has acted for the
21 prosecution may act later in the same case for the defense nor may
22 any person who has acted for the defense act later in the same case
23 for the prosecution.

24

1 B. Except as provided in subsection C of this section, trial
2 counsel or defense counsel detailed for a general or special court-
3 martial must be:

4 1. A judge advocate as defined in Section ~~2~~ 3201 of this ~~act~~
5 title; and

6 2. In the case of trial counsel, a member in good standing of
7 the bar of the highest court of the state where the court-martial is
8 held.

9 C. In the instance when a defense counsel is not a member of
10 the bar of the highest court of the state, the defense counsel shall
11 be deemed admitted pro hac vice, subject to filing a certificate
12 with the military judge setting forth the qualifications that
13 counsel is:

14 1. A commissioned officer of the armed forces of the United
15 States or a component thereof;

16 2. A member in good standing of the bar of the highest court of
17 a state; and

18 3. Certified as a judge advocate in the Judge Advocate
19 General's Corps of the Army, Air Force, Navy, Marine Corps, or a
20 judge advocate as defined in Section ~~2~~ 3201 of this ~~act~~ title.

21 SECTION 31. AMENDATORY 44 O.S. 2011, Section 3248, is
22 amended to read as follows:

23 Section 3248. Under such regulations as may be prescribed in
24 the state manual for courts-martial, the convening authority of a

1 general or special court-martial or court of inquiry shall detail or
2 employ qualified court reporters, who shall record the proceedings
3 of and testimony taken before that court and may detail or employ
4 interpreters who shall interpret for the court.

5 SECTION 32. AMENDATORY 44 O.S. 2011, Section 3249, is
6 amended to read as follows:

7 Section 3249. A. No member of a general or special court-
8 martial may be absent or excused after the court has been assembled
9 for the trial of the accused unless excused as a result of a
10 challenge, excused by the military judge for physical disability or
11 other good cause, or excused by order of the convening authority for
12 good cause.

13 B. Whenever a general court-martial, other than a general
14 court-martial composed of a military judge only, is reduced below
15 five members, the trial may not proceed unless the convening
16 authority details new members sufficient in number to provide not
17 less than the applicable minimum number of five members. The trial
18 may proceed with the new members present after the recorded evidence
19 previously introduced before the members of the court has been read
20 to the court in the presence of the military judge, the accused, and
21 counsel for both sides.

22 C. Whenever a special court-martial, other than a special
23 court-martial composed of a military judge only, is reduced below
24 three members, the trial may not proceed unless the convening

1 authority details new members sufficient in number to provide not
2 less than three members. The trial shall proceed with the new
3 members present as if no evidence had been introduced previously at
4 the trial, unless a verbatim record of the evidence previously
5 introduced before the members of the court or a stipulation thereof
6 is read to the court in the presence of the military judge, the
7 accused, and counsel for both sides.

8 D. If the military judge of a court-martial composed of a
9 military judge only is unable to proceed with the trial because of
10 physical disability, as a result of a challenge, or for other good
11 cause, the trial shall proceed, subject to any applicable conditions
12 of Section ~~18~~ 3231 of this ~~act~~ title, after the detail of a new
13 military judge as if no evidence had previously been introduced,
14 unless a verbatim record of the evidence previously introduced or a
15 stipulation thereof is read in court in the presence of the new
16 military judge, the accused, and counsel for both sides.

17 SECTION 33. AMENDATORY 44 O.S. 2011, Section 3251, is
18 amended to read as follows:

19 Section 3251. A. Charges and specifications shall be signed by
20 a person subject to this code under oath before a commissioned
21 officer authorized by Section ~~150~~ 3393 of this ~~act~~ title to
22 administer oaths and shall state:

23 1. That the signer has personal knowledge of, or has
24 investigated, the matters set forth therein; and

1 2. That they are true in fact to the best of the signer's
2 knowledge and belief.

3 B. Upon the preferring of charges, the proper authority shall
4 take immediate steps to determine what disposition should be made
5 thereof in the interest of justice and discipline, and the person
6 accused shall be informed of the charges as soon as practicable.

7 SECTION 34. AMENDATORY 44 O.S. 2011, Section 3252, is
8 amended to read as follows:

9 Section 3252. A. No person subject to this code ~~may~~ shall
10 compel any person to incriminate himself or herself or to answer any
11 question the answer to which may tend to incriminate him or her.

12 B. No person subject to this code may interrogate or request
13 any statement from an accused or a person suspected of an offense
14 without first informing that person of the nature of the accusation
15 and advising that person that the person does not have to make any
16 statement regarding the offense of which the person is accused or
17 suspected and that any statement made by the person may be used as
18 evidence against the person in nonjudicial punishment, an
19 administrative board proceeding or in a trial by court-martial.

20 C. No person subject to this code may compel any person to make
21 a statement or produce evidence in the course of nonjudicial
22 punishment, an administrative board proceeding or before any
23 military court if the statement or evidence is not material to the
24 issue and may tend to degrade the person.

1 D. No statement obtained from any person in violation of this
2 article section or through the use of coercion, unlawful influence,
3 or unlawful inducement may be received in evidence against the
4 person in nonjudicial punishment, an administrative board proceeding
5 or in a trial by court-martial.

6 SECTION 35. AMENDATORY 44 O.S. 2011, Section 3253, is
7 amended to read as follows:

8 Section 3253. A. No charge or specification may be referred to
9 a general court-martial for trial until a thorough and impartial
10 investigation of all the matters set forth therein has been made.
11 This investigation shall include inquiry as to the truth of the
12 matter set forth in the charges, consideration of the form of
13 charges, and a recommendation as to the disposition which should be
14 made of the case in the interest of justice and discipline.

15 B. The accused shall be advised of the charges against the
16 accused and of the right to be represented at that investigation by
17 counsel. The accused has the right to be represented at that
18 investigation as provided in Section ~~41~~ 3263 of this ~~act~~ title and
19 in regulations prescribed under that section. At that
20 investigation, full opportunity shall be given to the accused to
21 cross-examine witnesses against the accused, if they are available,
22 and to present anything the accused may desire in the accused's own
23 behalf, either in defense or mitigation, and the investigating
24 officer shall examine available witnesses requested by the accused.

1 If the charges are forwarded after the investigation, they shall be
2 accompanied by a statement of the substance of the testimony taken
3 on both sides and a copy thereof shall be given to the accused.

4 C. If an investigation of the subject matter of an offense has
5 been conducted before the accused is charged with the offense, and
6 if the accused was present at the investigation and afforded the
7 opportunities for representation, cross-examination, and
8 presentation prescribed in subsection B of this section, no further
9 investigation of that charge is necessary under this ~~article~~ section
10 unless it is demanded by the accused after the accused is informed
11 of the charge. A demand for further investigation entitles the
12 accused to recall witnesses for further cross-examination and to
13 offer any new evidence in the accused's own behalf.

14 D. If evidence adduced in an investigation under this ~~article~~
15 section indicates that the accused committed an uncharged offense,
16 the investigating officer may investigate the subject matter of that
17 offense without the accused having first been charged with the
18 offense if the accused:

19 1. Is present at the investigation;

20 2. Is informed of the nature of each uncharged offense
21 investigated; and

22 3. Is afforded the opportunities for representation, cross-
23 examination, and presentation prescribed in subsection B of this
24 section.

1 E. The requirements of this ~~article~~ section are binding on all
2 persons administering this code but failure to follow them does not
3 constitute jurisdictional error.

4 SECTION 36. AMENDATORY 44 O.S. 2011, Section 3255, is
5 amended to read as follows:

6 Section 3255. A. Before directing the trial of any charge by
7 general court-martial, the convening authority shall refer it to a
8 judge advocate for consideration and advice. The convening
9 authority may not refer a specification under a charge to a general
10 court-martial for trial unless the convening authority has been
11 advised in writing by a judge advocate that:

- 12 1. The specification alleges an offense under this code;
- 13 2. The specification is warranted by the evidence indicated in
14 the report of investigation under Section ~~35~~ 3253 of this ~~act~~ title,
15 if there is such a report; and
- 16 3. A court-martial would have jurisdiction over the accused and
17 the offense.

18 B. The advice of the judge advocate under subsection A of this
19 section with respect to a specification under a charge shall include
20 a written and signed statement by the judge advocate:

- 21 1. Expressing conclusions with respect to each matter set forth
22 in subsection A of this section; and
- 23 2. Recommending action that the convening authority take
24 regarding the specification.

1 If the specification is referred for trial, the recommendation
2 of the judge advocate shall accompany the specification.

3 C. If the charges or specifications are not correct formally or
4 do not conform to the substance of the evidence contained in the
5 report of the investigating officer, formal corrections, and such
6 changes in the charges and specifications as are needed to make them
7 conform to the evidence, may be made.

8 SECTION 37. AMENDATORY 44 O.S. 2011, Section 3261, is
9 amended to read as follows:

10 Section 3261. Pretrial, trial and posttrial procedures,
11 including modes of proof, for courts-martial cases arising under
12 this code, and for courts of inquiry, may be prescribed by the
13 ~~Governor or the Adjutant General by regulations~~ state manual for
14 courts-martial, or as otherwise provided by law, which shall apply
15 the principles of law and the rules of evidence generally recognized
16 in military criminal cases in the courts of the armed forces but
17 which may not be contrary to or inconsistent with this code.

18 SECTION 38. AMENDATORY 44 O.S. 2011, Section 3263, is
19 amended to read as follows:

20 Section 3263. A. The trial counsel of a general or special
21 court-martial shall be a member in good standing of the state bar
22 and shall prosecute in the name of the state, and shall, under the
23 direction of the court, prepare the record of the proceedings.
24

1 B. 1. The accused has the right to be represented in defense
2 before a general or special court-martial or at an investigation
3 under Section ~~35~~ 3253 of this ~~act~~ title as provided in this
4 subsection.

5 2. The accused may be represented by civilian counsel at the
6 provision and expense of the accused.

7 3. The accused may be represented:

8 a. by military counsel detailed under Section ~~30~~ 3247 of
9 this ~~act~~ title, or

10 b. by military counsel of the accused's own selection if
11 that counsel is reasonably available as determined
12 under paragraph 7 of this subsection.

13 4. If the accused is represented by civilian counsel, military
14 counsel detailed or selected under paragraph 3 of this subsection
15 shall act as associate counsel unless excused at the request of the
16 accused.

17 5. Except as provided under paragraph 6 of this subsection, if
18 the accused is represented by military counsel of his own selection
19 under subparagraph b of paragraph 3 of this subsection, any military
20 counsel detailed under subparagraph a of paragraph 3 of this
21 subsection shall be excused.

22 6. The accused is not entitled to be represented by more than
23 one military counsel. However, the person authorized under
24

1 regulations prescribed under Section ~~30~~ 3247 of this ~~act~~ title to
2 detail counsel, in that person's sole discretion:

3 a. may detail additional military counsel as assistant
4 defense counsel, and

5 b. if the accused is represented by military counsel of
6 the accused's own selection under subparagraph b of
7 paragraph 3 of this subsection, may approve a request
8 from the accused that military counsel detailed under
9 subparagraph a of paragraph 3 of this subsection act
10 as associate defense counsel.

11 7. The senior force component judge advocate of the same force
12 component of which the accused is a member, shall determine whether
13 the military counsel selected by an accused is reasonably available.

14 C. In any court-martial proceeding resulting in a conviction,
15 the defense counsel:

16 1. May forward for attachment to the record of proceedings a
17 brief of such matters as counsel determines should be considered in
18 behalf of the accused on review, including any objection to the
19 contents of the record which counsel considers appropriate;

20 2. May assist the accused in the submission of any matter under
21 Section ~~68~~ 3302 of this ~~act~~ title; and

22 3. May take other action authorized by this code.

23 SECTION 39. AMENDATORY 44 O.S. 2011, Section 3264, is
24 amended to read as follows:

1 Section 3264. A. At any time after the service of charges
2 which have been referred for trial to a court-martial composed of a
3 military judge and members, the military judge may, subject to
4 Section ~~38~~ 3256 of this ~~act~~ title, call the court into session
5 without the presence of the members for the purpose of:

6 1. Hearing and determining motions raising defenses or
7 objections which are capable of determination without trial of the
8 issues raised by a plea of not guilty;

9 2. Hearing and ruling upon any matter which may be ruled upon
10 by the military judge under this code, whether or not the matter is
11 appropriate for later consideration or decision by the members of
12 the court;

13 3. Holding the arraignment and receiving the pleas of the
14 accused; and

15 4. Performing any other procedural function which does not
16 require the presence of the members of the court under this code.

17 These proceedings shall be conducted in the presence of the
18 accused, the defense counsel, and the trial counsel and shall be
19 made a part of the record. These proceedings may be conducted
20 notwithstanding the number of court members and without regard to
21 Section ~~32~~ 3249 of this ~~act~~ title.

22 B. When the members of a court-martial deliberate or vote, only
23 the members may be present. All other proceedings, including any
24 other consultation of the members of the court with counsel or the

1 military judge, shall be made a part of the record and shall be in
2 the presence of the accused, the defense counsel, the trial counsel,
3 and the military judge.

4 SECTION 40. AMENDATORY 44 O.S. 2011, Section 3266, is
5 amended to read as follows:

6 Section 3266. A. 1. The military judge and members of a
7 general or special court-martial may be challenged by the accused or
8 the trial counsel for cause stated to the court. The military judge
9 or the court shall determine the relevancy and validity of
10 challenges for cause and may not receive a challenge to more than
11 one person at a time. Challenges by the trial counsel shall
12 ordinarily be presented and decided before those by the accused are
13 offered.

14 2. If exercise of a challenge for cause reduces the court below
15 the minimum number of members required by Section ~~18~~ 3231 of this
16 ~~act~~ title, all parties shall, notwithstanding Section ~~32~~ 3249 of
17 this ~~act~~ title, either exercise or waive any challenge for cause
18 then apparent against the remaining members of the court before
19 additional members are detailed to the court. However, peremptory
20 challenges shall not be exercised at that time.

21 B. 1. Each accused and the trial counsel are entitled
22 initially to one peremptory challenge of members of the court. The
23 military judge may not be challenged except for cause.

24

1 2. If exercise of a peremptory challenge reduces the court
2 below the minimum number of members required by Section ~~18~~ 3231 of
3 this ~~act~~ title, the parties shall, notwithstanding Section ~~32~~ 3249
4 of this ~~act~~ title, either exercise or waive any remaining peremptory
5 challenge, not previously waived, against the remaining members of
6 the court before additional members are detailed to the court.

7 3. Whenever additional members are detailed to the court, and
8 after any challenges for cause against such additional members are
9 presented and decided, each accused and the trial counsel are
10 entitled to one peremptory challenge against members not previously
11 subject to peremptory challenge.

12 SECTION 41. AMENDATORY 44 O.S. 2011, Section 3268, is
13 amended to read as follows:

14 Section 3268. A. Except as otherwise provided in this ~~article~~
15 section, a person charged with any offense is not liable to be tried
16 by court-martial or punished under Section ~~17~~ 3221 of this ~~act~~ title
17 if the offense was committed more than three (3) years before the
18 receipt of sworn charges and specifications by an officer exercising
19 court-martial jurisdiction over the command or before the imposition
20 of punishment under Section ~~17~~ 3221 of this ~~act~~ title.

21 B. Periods in which the accused is absent without authority or
22 fleeing from justice shall be excluded in computing the period of
23 limitation prescribed in this ~~article~~ section.

1 C. Periods in which the accused was absent from territory in
2 which the state has the authority to apprehend him, or in the
3 custody of civil authorities, or in the hands of the enemy, shall be
4 excluded in computing the period of limitation prescribed in this
5 ~~article~~ section.

6 D. When the United States is at war, the running of any statute
7 of limitations applicable to any offense under this code:

8 1. Involving fraud or attempted fraud against the United
9 States, any state, or any agency of either in any manner, whether by
10 conspiracy or not;

11 2. Committed in connection with the acquisition, care,
12 handling, custody, control, or disposition of any real or personal
13 property of the United States or any state; or

14 3. Committed in connection with the negotiation, procurement,
15 award, performance, payment, interim financing, cancellation, or
16 other termination or settlement, of any contract, subcontract, or
17 purchase order which is connected with or related to the prosecution
18 of the war, or with any disposition of termination inventory by any
19 war contractor or government agency,
20 is suspended until two (2) years after the termination of
21 hostilities as proclaimed by the President or by a joint resolution
22 of Congress.

23
24

1 E. 1. If charges or specifications are dismissed as defective
2 or insufficient for any cause and the period prescribed by the
3 applicable statute of limitations:

4 a. has expired, or

5 b. will expire within one hundred eighty (180) days after
6 the date of dismissal of the charges and
7 specifications,

8 trial and punishment under new charges and specifications are not
9 barred by the statute of limitations if the conditions specified in
10 paragraph 2 of this subsection are met.

11 2. The conditions referred to in paragraph 1 are that the new
12 charges and specifications must:

13 a. be received by an officer exercising summary court-
14 martial jurisdiction over the command within one
15 hundred eighty (180) days after the dismissal of the
16 charges or specifications, and

17 b. allege the same acts or omissions that were alleged in
18 the dismissed charges or specifications or allege acts
19 or omissions that were included in the dismissed
20 charges or specifications.

21 SECTION 42. AMENDATORY 44 O.S. 2011, Section 3269, is
22 amended to read as follows:

23 Section 3269. A. No person may, without his or her consent, be
24 tried a second time for the same offense.

1 B. No proceeding in which an accused has been found guilty by a
2 court-martial upon any charge or specification is a trial in the
3 sense of this ~~article~~ section until the finding of guilty has become
4 final after review of the case has been fully completed.

5 C. A proceeding which, after the introduction of evidence but
6 before a finding, is dismissed or terminated by the convening
7 authority or on motion of the prosecution for failure of available
8 evidence or witnesses without any fault of the accused is a trial in
9 the sense of this ~~article~~ section.

10 SECTION 43. AMENDATORY 44 O.S. 2011, Section 3274, is
11 amended to read as follows:

12 Section 3274. A. At any time after charges have been signed as
13 provided in Section ~~33~~ 3251 of this ~~act~~ title, any party may take
14 oral or written depositions unless the military judge or summary
15 court-martial officer hearing the case or, if the case is not being
16 heard, an authority competent to convene a court-martial for the
17 trial of those charges, forbids it for good cause.

18 B. The party at whose instance a deposition is to be taken
19 shall give to every other party reasonable written notice of the
20 time and place for taking the deposition.

21 C. Depositions may be taken before and authenticated by any
22 military or civil officer authorized by the laws of the state or by
23 the laws of the place where the deposition is taken to administer
24 oaths.

1 D. A duly authenticated deposition taken upon reasonable notice
2 to the other parties, so far as otherwise admissible under the rules
3 of evidence, may be read in evidence or, in the case of ~~audiotape~~
4 digital audio recordings, ~~videotape~~ digital video recordings,
5 digital ~~image~~ images or ~~file~~ files, or similar material, may be
6 played in evidence before any military court, if it appears:

7 1. That the witness resides or is beyond the state in which the
8 court is ordered to sit, or beyond one hundred (100) miles from the
9 place of trial or hearing;

10 2. That the witness by reason of death, age, sickness, bodily
11 infirmity, imprisonment, military necessity, nonamenability to
12 process, or other reasonable cause, is unable or refuses to appear
13 and testify in person at the place of trial or hearing; or

14 3. That the present whereabouts of the witness is unknown.

15 SECTION 44. AMENDATORY 44 O.S. 2011, Section 3276, is
16 amended to read as follows:

17 Section 3276. A. It is an affirmative defense in a trial by
18 court-martial that, at the time of the commission of the acts
19 constituting the offense, the accused, as a result of a severe
20 mental disease or defect, was unable to appreciate the nature and
21 quality or the wrongfulness of the acts. Mental disease or defect
22 does not otherwise constitute a defense.

23 B. The accused has the burden of proving the defense of lack of
24 mental responsibility by clear and convincing evidence.

1 C. Whenever lack of mental responsibility of the accused with
2 respect to an offense is properly at issue, the military judge shall
3 instruct the members of the court as to the defense of lack of
4 mental responsibility under this ~~article~~ section and charge them to
5 find the accused:

- 6 1. Guilty;
- 7 2. Not guilty; or
- 8 3. Not guilty only by reason of lack of mental responsibility.

9 D. Subsection C of this section does not apply to a court-
10 martial composed of a military judge only. In the case of a court-
11 martial composed of a military judge only or a summary court-martial
12 officer, whenever lack of mental responsibility of the accused with
13 respect to an offense is properly at issue, the military judge or
14 summary court-martial officer shall find the accused:

- 15 1. Guilty;
- 16 2. Not guilty; or
- 17 3. Not guilty only by reason of lack of mental responsibility.

18 E. Notwithstanding the provisions of Section ~~56~~ 3278 of this
19 ~~act~~ title, the accused shall be found not guilty only by reason of
20 lack of mental responsibility if:

- 21 1. A majority of the members of the court-martial present at
22 the time the vote is taken determines that the defense of lack of
23 mental responsibility has been established; or

24

1 2. In the case of a court-martial composed of a military judge
2 only or a summary court-martial officer, the military judge or
3 summary court-martial officer determines that the defense of lack of
4 mental responsibility has been established.

5 SECTION 45. AMENDATORY 44 O.S. 2011, Section 3277, is
6 amended to read as follows:

7 Section 3277. A. Voting by members of a general or special
8 court-martial on the findings and on the sentence shall be by secret
9 written ballot. The junior member of the court shall count the
10 votes. The count shall be checked by the president, who shall
11 forthwith announce the result of the ballot to the members of the
12 court.

13 B. The military judge shall rule upon all questions of law and
14 all interlocutory questions arising during the proceedings. Any
15 such ruling made by the military judge upon any question of law or
16 any interlocutory question other than the factual issue of mental
17 responsibility of the accused is final and constitutes the ruling of
18 the court. However, the military judge may change the ruling at any
19 time during the trial. Unless the ruling is final, if any member
20 objects thereto, the court shall be cleared and closed and the
21 question decided by a vote as provided in Section ~~56~~ 3278 of this
22 ~~act~~ title, beginning with the junior in rank.

23 C. Before a vote is taken on the findings, the military judge
24 shall, in the presence of the accused and counsel, instruct the

1 members of the court as to the elements of the offense and charge
2 them:

3 1. That the accused must be presumed to be innocent until his
4 or her guilt is established by legal and competent evidence beyond
5 reasonable doubt;

6 2. That in the case being considered, if there is a reasonable
7 doubt as to the guilt of the accused, the doubt must be resolved in
8 favor of the accused and the accused must be acquitted;

9 3. That, if there is a reasonable doubt as to the degree of
10 guilt, the finding must be in a lower degree as to which there is no
11 reasonable doubt; and

12 4. That the burden of proof to establish the guilt of the
13 accused beyond reasonable doubt is upon the state.

14 D. Subsections A, B and C of this section do not apply to a
15 court-martial composed of a military judge only. The military judge
16 of such a court-martial shall determine all questions of law and
17 fact arising during the proceedings and, if the accused is
18 convicted, adjudge an appropriate sentence. The military judge of
19 such a court-martial shall make a general finding and shall in
20 addition, on request, find the facts specially. If an opinion or
21 memorandum of decision is filed, it will be sufficient if the
22 findings of fact appear therein.

23 SECTION 46. AMENDATORY 44 O.S. 2011, Section 3278, is
24 amended to read as follows:

1 Section 3278. A. No person may be convicted of an offense
2 except as provided in subsection B of Section 48 3270 of this act
3 title or by the concurrence of two-thirds (2/3) of the members
4 present at the time the vote is taken.

5 B. All other questions to be decided by the members of a
6 general or special court-martial shall be determined by a majority
7 vote, ~~but~~ except that a determination to reconsider a finding of
8 guilty or to reconsider a sentence, with a view toward decreasing
9 it, ~~may be made by any lesser vote which indicates that the~~
10 ~~reconsideration is not opposed by the number of votes required for~~
11 ~~that finding or sentence~~ shall be undertaken by no less than one-
12 third (1/3) of the total number of members who voted in the previous
13 determination of guilt or sentencing. A tie vote on a challenge
14 disqualifies the member challenged. A tie vote on a motion relating
15 to the question of the accused's sanity is a determination against
16 the accused. A tie vote on any other question is a determination in
17 favor of the accused.

18 SECTION 47. AMENDATORY 44 O.S. 2011, Section 3280, is
19 amended to read as follows:

20 Section 3280. A. Each general and special court-martial shall
21 keep a separate record of the proceedings in each case brought
22 before it, and the record shall be authenticated by the signature of
23 the military judge. If the record cannot be authenticated by the
24 military judge by reason of his or her death, disability, or

1 absence, it shall be authenticated by the signature of the trial
2 counsel or by that of a member, if the trial counsel is unable to
3 authenticate it by reason of his or her death, disability, or
4 absence. In a court-martial consisting of only a military judge,
5 the record shall be authenticated by the court reporter under the
6 same conditions which would impose such a duty on a member under
7 this subsection.

8 B. 1. A complete verbatim record of the proceedings and
9 testimony shall be prepared in each general and special court-
10 martial case resulting in a conviction.

11 2. In all other court-martial cases, the record shall contain
12 such matters as may be prescribed by ~~regulations~~ the state manual
13 for courts-martial.

14 C. Each summary court-martial shall keep a separate record of
15 the proceedings in each case, and the record shall be authenticated
16 in the manner as ~~may be~~ prescribed by ~~regulations~~ the state manual
17 for courts-martial.

18 D. A copy of the record of the proceedings of each general and
19 special court-martial shall be given to the accused as soon as it is
20 authenticated.

21 SECTION 48. AMENDATORY 44 O.S. 2011, Section 3292, is
22 amended to read as follows:

23 Section 3292. A. The punishment which a court-martial may
24 direct for an offense may not exceed such limits as prescribed by

1 this code, but in no instance may a sentence exceed more than ten
2 (10) years for a military offense, nor shall a sentence of death be
3 adjudged. A conviction by general court-martial of any military
4 offense for which an accused may receive a sentence of confinement
5 for more than one (1) year is a felony offense. Except for
6 convictions by a summary court-martial, all other military offenses
7 are misdemeanors. Any conviction by a summary court-martial is not
8 a criminal conviction.

9 B. The limits of punishment for violations of the punitive
10 ~~articles~~ sections prescribed herein shall be the lesser of the
11 sentences prescribed by the edition of the manual for courts-martial
12 of the United States in effect ~~on January 1, 2004~~ at the time of the
13 alleged offense, and the state manual for courts-martial, but in no
14 instance shall any punishment exceed that authorized by this code.

15 SECTION 49. AMENDATORY 44 O.S. 2011, Section 3295, is
16 amended to read as follows:

17 Section 3295. A. On application by an accused who is under
18 sentence to confinement that has not been ordered executed, the
19 convening authority or, if the accused is no longer under that
20 person's jurisdiction, the person exercising general court-martial
21 jurisdiction over the command to which the accused is currently
22 assigned, may in that person's sole discretion defer service of the
23 sentence to confinement. The deferment shall terminate when the
24 sentence is ordered executed. The deferment may be rescinded at any

1 time by the person who granted it or, if the accused is no longer
2 under that person's jurisdiction, by the person exercising general
3 court-martial jurisdiction over the command to which the accused is
4 currently assigned.

5 B. 1. In any case in which a court-martial sentences an
6 accused referred to in paragraph 2 of this subsection to
7 confinement, the convening authority may defer the service of the
8 sentence to confinement, without the consent of the accused, until
9 after the accused has been permanently released to the state
10 military forces by a state, the United States, or a foreign country
11 referred to in that paragraph.

12 2. Paragraph 1 of this subsection applies to a person subject
13 to this code who:

- 14 a. while in the custody of a state, the United States, or
15 a foreign country is temporarily returned by that
16 state, the United States, or a foreign country to the
17 state military forces for trial by court-martial, and
18 b. after the court-martial, is returned to that state,
19 the United States, or a foreign country under the
20 authority of a mutual agreement or treaty, as the case
21 may be.

22 3. In this subsection, the term "state" includes the District
23 of Columbia and any Commonwealth, Territory, or possession of the
24 United States.

1 C. In any case in which a court-martial sentences an accused to
2 confinement and the sentence to confinement has been ordered
3 executed, but in which review of the case under Section ~~76~~ 3310 of
4 this ~~act~~ title is pending, the Adjutant General may defer further
5 service of the sentence to confinement while that review is pending.

6 SECTION 50. AMENDATORY 44 O.S. 2011, Section 3298, is
7 amended to read as follows:

8 Section 3298. A. 1. A court-martial sentence described in
9 paragraph 2 of this subsection shall result in the forfeiture of
10 pay, or of pay and allowances, due that member during any period of
11 confinement or parole. The forfeiture pursuant to this ~~article~~
12 section shall take effect on the date determined under Section ~~62~~
13 3294 of this ~~act~~ title and may be deferred as provided by that
14 section. The pay and allowances forfeited, in the case of a general
15 court-martial, shall be all pay and allowances due that member
16 during such period and, in the case of a special court-martial,
17 shall be two-thirds (2/3) of all pay due that member during such
18 period.

19 2. A sentence covered by this ~~article~~ section is any sentence
20 that includes:

- 21 a. confinement for more than six (6) months, or
- 22 b. confinement for six (6) months or less and a
- 23 dishonorable or bad-conduct discharge or dismissal.

1 B. In a case involving an accused who has dependents, the
2 convening authority or other person acting under Section ~~68~~ 3302 of
3 this ~~act~~ title may waive any or all of the forfeitures of pay and
4 allowances required by subsection A of this section for a period not
5 to exceed six (6) months. Any amount of pay or allowances that,
6 except for a waiver under this subsection, would be forfeited shall
7 be paid, as the convening authority or other person taking action
8 directs, to the dependents of the accused.

9 C. If the sentence of a member who forfeits pay and allowances
10 under subsection A of this section is set aside or disapproved or,
11 as finally approved, does not provide for a punishment referred to
12 in paragraph 2 of subsection A of this section, the member shall be
13 paid the pay and allowances which the member would have been paid,
14 except for the forfeiture, for the period during which the
15 forfeiture was in effect.

16 SECTION 51. AMENDATORY 44 O.S. 2011, Section 3302, is
17 amended to read as follows:

18 Section 3302. A. The findings and sentence of a court-martial
19 shall be reported promptly to the convening authority after the
20 announcement of the sentence.

21 B. 1. The accused may submit to the convening authority
22 matters for consideration by the convening authority with respect to
23 the findings and the sentence. Any such submission shall be in
24 writing. Except in a summary court-martial case, such a submission

1 shall be made within ten (10) days after the accused has been given
2 an authenticated record of trial and, if applicable, the
3 recommendation of a judge advocate under subsection D of this
4 section. In a summary court-martial case, such a submission shall
5 be made within seven (7) days after the sentence is announced.

6 2. If the accused shows that additional time is required for
7 the accused to submit such matters, the convening authority or other
8 person taking action under this section, for good cause, may extend
9 the applicable period under paragraph 1 of this subsection for not
10 more than an additional twenty (20) days.

11 3. In a summary court-martial case, the accused shall be
12 promptly provided a copy of the record of trial for use in preparing
13 a submission authorized by paragraph 1 of this subsection.

14 4. The accused may waive the right to make a submission to the
15 convening authority under paragraph 1 of this subsection. Such a
16 waiver must be made in writing and may not be revoked. For the
17 purposes of paragraph 2 of subsection C of this section, the time
18 within which the accused may make a submission under this subsection
19 shall be deemed to have expired upon the submission of such a waiver
20 to the convening authority.

21 C. 1. The authority under this ~~article~~ section to modify the
22 findings and sentence of a court-martial is a matter of command
23 prerogative involving the sole discretion of the convening
24 authority. If it is impractical for the convening authority to act,

1 the convening authority shall forward the case to a person
2 exercising general court-martial jurisdiction who may take action
3 under this ~~article~~ section.

4 2. Action on the sentence of a court-martial shall be taken by
5 the convening authority or by another person authorized to act under
6 this ~~article~~ section. Such action may be taken only after
7 consideration of any matters submitted by the accused under
8 subsection B of this section or after the time for submitting such
9 matters expires, whichever is earlier. The convening authority or
10 other person taking such action, in that person's sole discretion,
11 may approve, disapprove, commute, or suspend the sentence in whole
12 or in part.

13 3. Action on the findings of a court-martial by the convening
14 authority or other person acting on the sentence is not required.
15 However, such person, in the person's sole discretion, may:

- 16 a. dismiss any charge or specification by setting aside a
17 finding of guilty thereto, or
- 18 b. change a finding of guilty to a charge or
19 specification to a finding of guilty to an offense
20 that is a lesser included offense of the offense
21 stated in the charge or specification.

22 D. Before acting under this ~~article~~ section on any general or
23 special court-martial case in which there is a finding of guilt, the
24 convening authority or other person taking action under this ~~article~~

1 section shall obtain and consider the written recommendation of a
2 judge advocate. The convening authority or other person taking
3 action under this ~~article~~ section shall refer the record of trial to
4 the judge advocate, and the judge advocate shall use such record in
5 the preparation of the recommendation. The recommendation of the
6 judge advocate shall include such matters as may be prescribed by
7 regulation and shall be served on the accused, who may submit any
8 matter in response under subsection B of this section. Failure to
9 object in the response to the recommendation or to any matter
10 attached to the recommendation waives the right to object thereto.

11 E. 1. The convening authority or other person taking action
12 under this ~~article~~ section, in the person's sole discretion, may
13 order a proceeding in revision or a rehearing.

14 2. A proceeding in revision may be ordered if there is an
15 apparent error or omission in the record or if the record shows
16 improper or inconsistent action by a court-martial with respect to
17 the findings or sentence that can be rectified without material
18 prejudice to the substantial rights of the accused. In no case,
19 however, may a proceeding in revision:

- 20 a. reconsider a finding of not guilty of any
21 specification or a ruling which amounts to a finding
22 of not guilty,
23 b. reconsider a finding of not guilty of any charge,
24 unless there has been a finding of guilty under a

1 specification laid under that charge, which
2 sufficiently alleges a violation of some ~~article~~
3 section of this code, or

4 c. increase the severity of the sentence unless the
5 sentence prescribed for the offense is mandatory.

6 3. A rehearing may be ordered by the convening authority or
7 other person taking action under this ~~article~~ section if that person
8 disapproves the findings and sentence and states the reasons for
9 disapproval of the findings. If such person disapproves the
10 findings and sentence and does not order a rehearing, that person
11 shall dismiss the charges. A rehearing as to the findings may not
12 be ordered where there is a lack of sufficient evidence in the
13 record to support the findings. A rehearing as to the sentence may
14 be ordered if the convening authority or other person taking action
15 under this subsection disapproves the sentence.

16 SECTION 52. AMENDATORY 44 O.S. 2011, Section 3303, is
17 amended to read as follows:

18 Section 3303. A. In each case subject to appellate review
19 under this code, the accused may file with the convening authority a
20 statement expressly withdrawing the right of the accused to such
21 appeal. Such a withdrawal shall be signed by both the accused and
22 his or her defense counsel and ~~must~~ shall be filed in accordance
23 with appellate procedures as provided by law.

1 B. The accused may withdraw an appeal at any time in accordance
2 with appellate procedures as provided by law.

3 SECTION 53. AMENDATORY 44 O.S. 2011, Section 3304, is
4 amended to read as follows:

5 Section 3304. A. 1. In a trial by court-martial in which a
6 punitive discharge may be adjudged, the state may appeal the
7 following, other than a finding of not guilty with respect to the
8 charge or specification by the members of the court-martial, or by a
9 judge in a bench trial so long as it is not made in reconsideration:

- 10 a. an order or ruling of the military judge which
11 terminates the proceedings with respect to a charge or
12 specification,
- 13 b. an order or ruling which excludes evidence that is
14 substantial proof of a fact material in the
15 proceeding,
- 16 c. an order or ruling which directs the disclosure of
17 classified or confidential information,
- 18 d. an order or ruling which imposes sanctions for
19 nondisclosure of classified or confidential
20 information,
- 21 e. a refusal of the military judge to issue a protective
22 order sought by the state to prevent the disclosure of
23 classified or confidential information, and
24

1 f. a refusal by the military judge to enforce an order
2 described in subparagraph e of this ~~section~~ paragraph
3 that has previously been issued by appropriate
4 authority.

5 2. An appeal of an order or ruling may not be taken unless the
6 trial counsel provides the military judge with written notice of
7 appeal from the order or ruling within seventy-two (72) hours of the
8 order or ruling. Such notice shall include a certification by the
9 trial counsel that the appeal is not taken for the purpose of delay
10 and, if the order or ruling appealed is one which excludes evidence,
11 that the evidence excluded is substantial proof of a fact material
12 in the proceeding.

13 3. An appeal under this ~~article~~ section shall be diligently
14 prosecuted as provided by law.

15 B. An appeal under this ~~article~~ section shall be forwarded to
16 the ~~court prescribed in Section 76 of this act~~ Court of Criminal
17 Appeals. In ruling on an appeal under this ~~article~~ section, ~~that~~
18 ~~court~~ the Court of Criminal Appeals may act only with respect to
19 matters of law.

20 C. Any period of delay resulting from an appeal under this
21 ~~article~~ section shall be excluded in deciding any issue regarding
22 denial of a speedy trial unless an appropriate authority determines
23 that the appeal was filed solely for the purpose of delay with the
24 knowledge that it was totally frivolous and without merit.

1 SECTION 54. AMENDATORY 44 O.S. 2011, Section 3306, is
2 amended to read as follows:

3 Section 3306. A. Each general and special court-martial case
4 in which there has been a finding of guilty shall be reviewed by the
5 senior force component judge advocate, or a designee. The senior
6 force component judge advocate, or designee, may not review a case
7 under this subsection if that person has acted in the same case as
8 an accuser, investigating officer, member of the court, military
9 judge, or counsel or has otherwise acted on behalf of the
10 prosecution or defense. The senior force component judge advocate's
11 review shall be in writing and shall contain the following:

- 12 1. Conclusions as to whether:
 - 13 a. the court had jurisdiction over the accused and the
14 offense,
 - 15 b. the charge and specification stated an offense, and
 - 16 c. the sentence was within the limits prescribed as a
17 matter of law;

18 2. A response to each allegation of error made in writing by
19 the accused; and

20 3. If the case is sent for action under subsection B of this
21 section, a recommendation as to the appropriate action to be taken
22 and an opinion as to whether corrective action is required as a
23 matter of law.

24

1 B. The record of trial and related documents in each case
2 reviewed under subsection A of this section shall be sent for action
3 to the Adjutant General, if:

4 1. The judge advocate who reviewed the case recommends
5 corrective action;

6 2. The sentence approved under Section ~~68~~ 3302 of this act
7 title extends to dismissal, a bad-conduct or dishonorable discharge,
8 or confinement for more than six (6) months; or

9 3. Such action is otherwise required by ~~regulations of the~~
10 ~~Adjutant General~~ the state manual for courts-martial.

11 C. 1. The Adjutant General may:

12 a. ~~disapprove~~ approve or ~~approve~~ disapprove the findings
13 or sentence, in whole or in part,

14 b. remit, commute, or suspend the sentence in whole or in
15 part,

16 c. except where the evidence was insufficient at the
17 trial to support the findings, order a rehearing on
18 the findings, on the sentence, or on both, or

19 d. dismiss the charges.

20 2. If a rehearing is ordered but the convening authority finds
21 a rehearing impracticable, the convening authority shall dismiss the
22 charges.

23 3. If the opinion of the senior force component judge advocate,
24 or designee, in the senior force component judge advocate's review

1 under subsection A of this section is that corrective action is
2 required as a matter of law and if the Adjutant General does not
3 take action that is at least as favorable to the accused as that
4 recommended by the judge advocate, the record of trial and action
5 thereon shall be sent to the Governor for review and action as
6 deemed appropriate.

7 D. The senior force component judge advocate, or a designee,
8 may review any case in which there has been a finding of not guilty
9 of all charges and specifications. The senior force component judge
10 advocate, or designee, may not review a case under this subsection
11 if that person has acted in the same case as an accuser,
12 investigating officer, member of the court, military judge, or
13 counsel or has otherwise acted on behalf of the prosecution or
14 defense. The senior force component judge advocate's review shall
15 be limited to questions of subject matter jurisdiction.

16 E. The record of trial and related documents in each case
17 reviewed under subsection D of this section shall be sent for action
18 to the Adjutant General. The Adjutant General may:

19 1. When subject matter jurisdiction is found to be lacking,
20 void the court-martial ab initio, with or without prejudice to the
21 government, as the Adjutant General deems appropriate; or

22 2. Return the record of trial and related documents to the
23 senior force component judge advocate for appeal by the government
24 as provided by law.

1 SECTION 55. AMENDATORY 44 O.S. 2011, Section 3310, is
2 amended to read as follows:

3 Section 3310. ~~Decisions of a court-martial are from a court~~
4 ~~with jurisdiction to issue felony convictions and appeals are to the~~
5 ~~court provided by the law of the state in which the court-martial~~
6 ~~was held~~ The Oklahoma Court of Criminal Appeals shall have exclusive
7 appellate jurisdiction in all cases appealed from a court-martial
8 proceeding conducted pursuant to this code, whether such a
9 proceeding occurred within or without the geographical boundaries of
10 the State of Oklahoma. The appellate procedures to be followed
11 shall be those provided by law for the appeal of criminal cases
12 thereto.

13 SECTION 56. AMENDATORY 44 O.S. 2011, Section 3313, is
14 amended to read as follows:

15 Section 3313. A. The senior force component judge advocate
16 shall detail a judge advocate as appellate government counsel to
17 represent the state in the review or appeal of cases specified in
18 Section ~~76~~ 3310 of this ~~act~~ title and before any federal court when
19 requested to do so by the ~~state~~ Oklahoma Attorney General.
20 Appellate government counsel ~~must~~ shall be a member in good standing
21 of the ~~bar of the highest court of the state to which the appeal is~~
22 ~~taken~~ Oklahoma Bar Association.

1 B. Upon an appeal by the state, an accused has the right to be
2 represented by detailed military counsel before any reviewing
3 authority and before any appellate court.

4 C. Upon the appeal by an accused, the accused has the right to
5 be represented by military counsel before any reviewing authority.

6 D. Upon the request of an accused entitled to be so
7 represented, the senior force component judge advocate shall appoint
8 a judge advocate to represent the accused in the review or appeal of
9 cases specified in subsections B and C of this section.

10 E. An accused may be represented by civilian appellate counsel
11 at no expense to the state.

12 SECTION 57. AMENDATORY 44 O.S. 2011, Section 3314, is
13 amended to read as follows:

14 Section 3314. A. If the sentence of the court-martial extends
15 to dismissal or a dishonorable or bad-conduct discharge and if the
16 right of the accused to appellate review is not waived, and an
17 appeal is not withdrawn under Section ~~69~~ 3303 of this ~~act~~ title,
18 that part of the sentence extending to dismissal or a dishonorable
19 or bad-conduct discharge may not be executed until there is a final
20 judgment as to the legality of the proceedings. A judgment as to
21 the legality of the proceedings is final in such cases when review
22 is completed by ~~an appellate court prescribed in Section 76 of this~~
23 ~~act~~ the Oklahoma Court of Criminal Appeals, and is deemed final ~~by~~
24 ~~the law of the state where the judgment was had~~ under Oklahoma law.

1 B. If the sentence of the court-martial extends to dismissal or
2 a dishonorable or bad-conduct discharge and if the right of the
3 accused to appellate review is waived, or an appeal is withdrawn
4 under Section ~~69~~ 3303 of this ~~act~~ title, that part of the sentence
5 extending to dismissal or a dishonorable or bad-conduct discharge
6 may not be executed until review of the case by the senior force
7 component judge advocate and any action on that review under Section
8 ~~72~~ 3306 of this ~~act~~ title is completed. Any other part of a court-
9 martial sentence may be ordered executed by the convening authority
10 or other person acting on the case under Section ~~68~~ 3302 of this ~~act~~
11 title when so approved under that ~~article~~ section.

12 SECTION 58. AMENDATORY 44 O.S. 2011, Section 3318, is
13 amended to read as follows:

14 Section 3318. A. Under such regulations as may be prescribed
15 in the state manual for courts-martial, all rights, privileges, and
16 property affected by an executed part of a court-martial sentence
17 which has been set aside or disapproved, except an executed
18 dismissal or discharge, shall be restored unless a new trial or
19 rehearing is ordered and such executed part is included in a
20 sentence imposed upon the new trial or rehearing.

21 B. If a previously executed sentence of dishonorable or bad-
22 conduct discharge is not imposed on a new trial, the Governor may
23 substitute therefor a form of discharge authorized for
24

1 administrative issuance unless the accused is to serve out the
2 remainder of the accused's enlistment.

3 C. If a previously executed sentence of dismissal is not
4 imposed on a new trial, the Governor may substitute therefor a form
5 of discharge authorized for administrative issue, and the
6 commissioned officer dismissed by that sentence may be reappointed
7 by the Governor alone to such commissioned grade and with such rank
8 as in the opinion of the Governor that former officer would have
9 attained had he or she not been dismissed. The reappointment of
10 such a former officer shall be without regard to the existence of a
11 vacancy and shall affect the promotion status of other officers only
12 insofar as the Governor may direct. All time between the dismissal
13 and the reappointment shall be considered as actual service for all
14 purposes, including the right to pay and allowances.

15 SECTION 59. AMENDATORY 44 O.S. 2011, Section 3319, is
16 amended to read as follows:

17 Section 3319. The appellate review of records of trial provided
18 by this code, the proceedings, findings, and sentences of courts-
19 martial as approved, reviewed, or affirmed as required by this code,
20 and all dismissals and discharges carried into execution under
21 sentences by courts-martial following approval, review, or
22 affirmation as required by this code, are final and conclusive.
23 Orders publishing the proceedings of courts-martial and all action
24 taken pursuant to those proceedings are binding upon all

1 departments, courts, agencies, and officers of the United States and
2 the several states, subject only to action upon a petition for a new
3 trial as provided in Section ~~82~~ 3316 of this ~~act~~ title and to action
4 under Section ~~83~~ 3317 of this ~~act~~ title.

5 SECTION 60. AMENDATORY 44 O.S. 2011, Section 3320, is
6 amended to read as follows:

7 Section 3320. Under regulations prescribed in the state manual
8 for courts-martial, an accused who has been sentenced by a court-
9 martial may be required to take leave pending completion of action
10 under this ~~article~~ section if the sentence, as approved under
11 Section ~~68~~ 3302 of this ~~act~~ title, includes an unsuspended dismissal
12 or an unsuspended dishonorable or bad-conduct discharge. The
13 accused may be required to begin such leave on the date on which the
14 sentence is approved under Section ~~68~~ 3302 of this ~~act~~ title or at
15 any time after such date, and such leave may be continued until the
16 date on which action under this ~~article~~ section is completed or may
17 be terminated at any earlier time.

18 SECTION 61. AMENDATORY 44 O.S. 2011, Section 3321, is
19 amended to read as follows:

20 Section 3321. A. ~~Persons incompetent to stand trial.~~

21 ~~1. In the case of a person determined under this code to be No~~
22 person accused of violating a punitive section under this code shall
23 be brought to trial by a general or special court-martial if that
24 person is presently suffering from a mental disease or defect

1 rendering ~~the person~~ him or her mentally incompetent to the extent
2 that ~~the person~~ he or she is unable to understand the nature of the
3 proceedings against ~~that person~~ him or her or to conduct or
4 cooperate intelligently in the defense of the case, ~~the general~~
5 ~~court-martial convening authority for that person shall commit the~~
6 ~~person to the custody of the state Attorney General.~~

7 2. ~~The state Attorney General shall take action in accordance~~
8 ~~with the state statute applicable to persons incompetent to stand~~
9 ~~trial. If at the end of the period for hospitalization provided for~~
10 ~~in the state statute applicable to persons incompetent to stand~~
11 ~~trial, it is determined that the committed person's mental condition~~
12 ~~has not so improved as to permit the trial to proceed, action shall~~
13 ~~be taken in accordance with the state statute applicable to persons~~
14 ~~incompetent to stand trial.~~

15 3. a. ~~When the director of a facility in which a person is~~
16 ~~hospitalized pursuant to paragraph 2 of this section~~
17 ~~determines that the person has recovered to such an~~
18 ~~extent that the person is able to understand the~~
19 ~~nature of the proceedings against the person and to~~
20 ~~conduct or cooperate intelligently in the defense of~~
21 ~~the case, the director shall promptly transmit a~~
22 ~~notification of that determination to the state~~
23 ~~Attorney General and to the general court-martial~~
24 ~~convening authority for the person. The director~~

1 ~~shall send a copy of the notification to the person's~~
2 ~~counsel.~~

3 ~~b. Upon receipt of a notification, the general court-~~
4 ~~martial convening authority shall promptly take~~
5 ~~custody of the person unless the person covered by the~~
6 ~~notification is no longer subject to this code. If~~
7 ~~the person is no longer subject to this code, the~~
8 ~~state Attorney General shall take any action within~~
9 ~~the authority of the state Attorney General that the~~
10 ~~state Attorney General considers appropriate regarding~~
11 ~~the person.~~

12 ~~c. The director of the facility may retain custody of the~~
13 ~~person for not more than thirty (30) days after~~
14 ~~transmitting the notifications required by~~
15 ~~subparagraph a of paragraph 3 of this subsection.~~

16 ~~4. In the application of the state statute applicable to~~
17 ~~persons incompetent to stand trial to a case under this subsection,~~
18 ~~references to the court that ordered the commitment of a person, and~~
19 ~~to the clerk of such court, shall be deemed to refer to the general~~
20 ~~court-martial convening authority for that person. However, if the~~
21 ~~person is no longer subject to this code at a time relevant to the~~
22 ~~application of such article to the person, the state trial court~~
23 ~~with felony jurisdiction in the county where the person is~~
24

1 ~~hospitalized or otherwise may be found shall be considered as the~~
2 ~~court that ordered the commitment of the person.~~

3 ~~B. Persons found not guilty by reason of lack of mental~~
4 ~~responsibility.~~

5 ~~1. If a person is found by a court-martial not guilty only by~~
6 ~~reason of lack of mental responsibility, the person shall be~~
7 ~~committed to a suitable facility until the person is eligible for~~
8 ~~release in accordance with this article.~~

9 ~~2. The court martial shall conduct a hearing on the mental~~
10 ~~condition in accordance with the state statute applicable to persons~~
11 ~~incompetent to stand trial.~~

12 ~~3. A report of the results of the hearing shall be made to the~~
13 ~~general court martial convening authority for the person.~~

14 ~~4. If the court-martial fails to find by the standard specified~~
15 ~~in the state statute applicable to persons incompetent to stand~~
16 ~~trial, that the person's release would not create a substantial risk~~
17 ~~of bodily injury to another person or serious damage of property of~~
18 ~~another due to a present mental disease or defect:~~

19 ~~a. the general court martial convening authority may~~
20 ~~commit the person to the custody of the state Attorney~~
21 ~~General, and~~

22 ~~b. the state's Attorney General shall take action in~~
23 ~~accordance with the state statute applicable to~~
24 ~~persons incompetent to stand trial.~~

1 ~~5. The state statute applicable to persons incompetent to stand~~
2 ~~trial shall apply in the case of a person hospitalized pursuant to~~
3 ~~subparagraph b of paragraph 4 of this subsection, except that the~~
4 ~~state trial court with felony jurisdiction in the county where the~~
5 ~~person is hospitalized shall be considered as the court that ordered~~
6 ~~the person's commitment.~~

7 ~~C. General provisions.~~

8 ~~1. Except as otherwise provided in this subsection and~~
9 ~~subsection D of this section, the state statute most closely~~
10 ~~comparable to 18 U.S.C., Section 4247(d), applies in the~~
11 ~~administration of this article.~~

12 ~~2. In the application of the state statute most closely~~
13 ~~comparable to 18 U.S.C., Section 4247(d), to hearings conducted by a~~
14 ~~court-martial under this article or by order of a general court-~~
15 ~~martial convening authority under this article, the reference in~~
16 ~~that article to article 3006A of such title does not apply.~~

17 ~~D. Applicability.~~

18 ~~1. The state statute most closely comparable to Chapter 313 of~~
19 ~~Title 18, United States Code (10 U.S.C., Section 4241 et seq.)~~
20 ~~referred to in this article applies according to the provisions of~~
21 ~~this article notwithstanding article 4247(j) of Title 18.~~

22 ~~2. If the status of a person as described in article 2~~
23 ~~terminates while the person is, pursuant to this article, in the~~
24 ~~custody of the state Attorney General, hospitalized, or on~~

1 ~~conditional release under a prescribed regimen of medical,~~
2 ~~psychiatric, or psychological care or treatment, the provisions of~~
3 ~~this article establishing requirements and procedures regarding a~~
4 ~~person no longer subject to this code shall continue to apply to~~
5 ~~that person notwithstanding the change of status.~~

6 B. A person is presumed to have the capacity to stand trial
7 unless the contrary is established.

8 C. The procedure for determining mental competence shall be
9 established in the state manual for courts-martial.

10 SECTION 62. AMENDATORY 44 O.S. 2011, Section 3331, is
11 amended to read as follows:

12 Section 3331. Any person subject to this code who:

13 1. Commits an offense punishable by this code, or aids, abets,
14 counsels, commands, or procures its commission; or

15 2. Causes an act to be done which if directly performed by him
16 or her would be punishable by this code,
17 is a principal.

18 SECTION 63. AMENDATORY 44 O.S. 2011, Section 3336, is
19 amended to read as follows:

20 Section 3336. A. Any person subject to this code who solicits
21 or advises another or others to desert in violation of Section ~~96~~
22 3339 of this ~~act~~ title or mutiny in violation of Section ~~105~~ 3348 of
23 this ~~act~~ title shall, if the offense solicited or advised is
24 attempted or committed, be punished with the punishment provided for

1 the commission of the offense, but~~7~~ if the offense solicited or
2 advised is not committed or attempted~~7~~, the person shall be punished
3 as a court-martial may direct.

4 B. Any person subject to this code who solicits or advises
5 another or others to commit an act of misbehavior before the enemy
6 in violation of Section ~~110~~ 3353 of this ~~act~~ title or sedition in
7 violation of Section ~~105~~ 3348 of this ~~act~~ title shall, if the
8 offense solicited or advised is committed, be punished with the
9 punishment provided for the commission of the offense, but~~7~~ if the
10 offense solicited or advised is not committed~~7~~, the person shall be
11 punished as a court-martial may direct.

12 SECTION 64. AMENDATORY 44 O.S. 2011, Section 3337, is
13 amended to read as follows:

14 Section 3337. Any person who:

15 1. Procures his or her own enlistment or appointment in the
16 state military forces by knowingly false representation or
17 deliberate concealment as to his or her qualifications for that
18 enlistment or appointment and receives pay or allowances thereunder;
19 or

20 2. Procures his or her own separation from the state military
21 forces by knowingly false representation or deliberate concealment
22 as to his or her eligibility for that separation,
23 shall be punished as a court-martial may direct.

24

1 SECTION 65. AMENDATORY 44 O.S. 2011, Section 3338, is
2 amended to read as follows:

3 Section 3338. Any person subject to this code who effects an
4 enlistment or appointment in or a separation from the state military
5 forces of any person who is known to him or her to be ineligible for
6 that enlistment, appointment or separation because it is prohibited
7 by law, regulation or order shall be punished as a court-martial may
8 direct.

9 SECTION 66. AMENDATORY 44 O.S. 2011, Section 3339, is
10 amended to read as follows:

11 Section 3339. A. Any member of the state military forces who:

12 1. Without authority goes or remains absent from his or her
13 unit, organization, or place of duty with intent to remain away
14 therefrom permanently;

15 2. Quits his or her unit, organization, or place of duty with
16 intent to avoid hazardous duty or to shirk important service; or

17 3. Without being regularly separated from one of the state
18 military forces enlists or accepts an appointment in the same or
19 another one of the state military forces, or in one of the armed
20 forces of the United States, without fully disclosing the fact that
21 he or she has not been regularly separated, or enters any foreign
22 armed service except when authorized by the United States,
23 is guilty of desertion.

24

1 B. Any commissioned officer of the state military forces who,
2 after tender of his or her resignation and before notice of its
3 acceptance, quits his or her post or proper duties without leave and
4 with intent to remain away therefrom permanently is guilty of
5 desertion.

6 C. Any person found guilty of desertion or attempt to desert
7 shall be punished, if the offense is committed in time of war, by
8 confinement of not more than ten (10) years or such other punishment
9 as a court-martial may direct, but if the desertion or attempt to
10 desert occurs at any other time, by such punishment as a court-
11 martial may direct.

12 SECTION 67. AMENDATORY 44 O.S. 2011, Section 3340, is
13 amended to read as follows:

14 Section 3340. Any person subject to this code who, without
15 authority:

16 1. Fails to go to his or her appointed place of duty at the
17 time prescribed~~7~~;

18 2. Goes from that place; or

19 3. Absents himself or herself or remains absent from his or her
20 unit, organization, or place of duty at which he or she is required
21 to be at the time prescribed,
22 shall be punished as a court-martial may direct.

23 SECTION 68. AMENDATORY 44 O.S. 2011, Section 3341, is
24 amended to read as follows:

1 Section 3341. Any person subject to this code who through
2 neglect or design misses the movement of a ship, aircraft or unit
3 with which he or she is required in the course of duty to move shall
4 be punished as a court-martial may direct.

5 SECTION 69. AMENDATORY 44 O.S. 2011, Section 3343, is
6 amended to read as follows:

7 Section 3343. Any person subject to this code who behaves with
8 disrespect toward his or her superior commissioned officer shall be
9 punished as a court-martial may direct.

10 SECTION 70. AMENDATORY 44 O.S. 2011, Section 3344, is
11 amended to read as follows:

12 Section 3344. Any person subject to this code who:

13 1. Strikes his or her superior commissioned officer or draws or
14 lifts up any weapon or offers any violence against him or her while
15 he or she is in the execution of his or her office; or

16 2. Willfully disobeys a lawful command of his or her superior
17 commissioned officer,
18 shall be punished, if the offense is committed in time of war, by
19 confinement of not more than ten (10) years or such other punishment
20 as a court-martial may direct, and if the offense is committed at
21 any other time, by such punishment as a court-martial may direct.

22 SECTION 71. AMENDATORY 44 O.S. 2011, Section 3345, is
23 amended to read as follows:

24 Section 3345. Any warrant officer or enlisted member who:

1 1. Strikes or assaults a warrant officer, or noncommissioned
2 officer, ~~or petty officer,~~ while that officer is in the execution of
3 his or her office;

4 2. Willfully disobeys the lawful order of a warrant officer, or
5 noncommissioned officer, ~~or petty officer;~~ or

6 3. Treats with contempt or is disrespectful in language or
7 deportment toward a warrant officer, or noncommissioned officer ~~or~~
8 ~~petty officer,~~ while that officer is in the execution of his or her
9 office,

10 shall be punished as a court-martial may direct.

11 SECTION 72. AMENDATORY 44 O.S. 2011, Section 3346, is
12 amended to read as follows:

13 Section 3346. Any person subject to this code who:

14 1. Violates or fails to obey any lawful general order or
15 regulation;

16 2. Having knowledge of any other lawful order issued by a
17 member of the state military forces, which it is his or her duty to
18 obey, fails to obey the order; or

19 3. Is derelict in the performance of his or her duties,
20 shall be punished as a court-martial may direct.

21 SECTION 73. AMENDATORY 44 O.S. 2011, Section 3347, is
22 amended to read as follows:

23 Section 3347. Any person subject to this code who is guilty of
24 cruelty toward, or oppression or maltreatment of, any person subject

1 to his or her orders shall be punished as a court-martial may
2 direct.

3 SECTION 74. AMENDATORY 44 O.S. 2011, Section 3348, is
4 amended to read as follows:

5 Section 3348. A. Any person subject to this code who:

6 1. With intent to usurp or override lawful military authority,
7 refuses, in concert with any other person, to obey orders or
8 otherwise do his or her duty or creates any violence or disturbance
9 is guilty of mutiny;

10 2. With intent to cause the overthrow or destruction of lawful
11 civil authority, creates, in concert with any other person, revolt,
12 violence, or other disturbance against that authority is guilty of
13 sedition; or

14 3. Fails to do his or her utmost to prevent and suppress a
15 mutiny or sedition being committed in his or her presence, or fails
16 to take all reasonable means to inform his or her superior
17 commissioned officer or commanding officer of a mutiny or sedition
18 which he or she knows or has reason to believe is taking place, is
19 guilty of a failure to suppress or report a mutiny or sedition.

20 B. A person who is found guilty of attempted mutiny, mutiny,
21 sedition, or failure to suppress or report a mutiny or sedition
22 shall be punished as a court-martial may direct.

23 SECTION 75. AMENDATORY 44 O.S. 2011, Section 3350, is
24 amended to read as follows:

1 Section 3350. Any person subject to this code who, without
2 proper authority, releases any prisoner committed to his or her
3 charge, or who through neglect or design suffers any such prisoner
4 to escape, shall be punished as a court-martial may direct, whether
5 or not the prisoner was committed in strict compliance with law.

6 SECTION 76. AMENDATORY 44 O.S. 2011, Section 3353, is
7 amended to read as follows:

8 Section 3353. Any person subject to this code who before or in
9 the presence of the enemy:

10 1. Runs away;

11 2. Shamefully abandons, surrenders, or delivers up any command,
12 unit, place, or military property which it is his or her duty to
13 defend;

14 3. Through disobedience, neglect, or intentional misconduct
15 endangers the safety of any such command, unit, place, or military
16 property;

17 4. Casts away his or her arms or ammunition;

18 5. Is guilty of cowardly conduct;

19 6. Quits his or her place of duty to plunder or pillage;

20 7. Causes false alarms in any command, unit, or place under
21 control of the armed forces of the United States or the state
22 military forces;

23 8. Willfully fails to do his or her utmost to encounter,
24 engage, capture, or destroy any enemy troops, combatants, vessels,

1 aircraft, or any other thing, which it is his or her duty so to
2 encounter, engage, capture, or destroy; or

3 9. Does not afford all practicable relief and assistance to any
4 troops, combatants, vessels, or aircraft of the armed forces
5 belonging to the United States or their allies, to the state, or to
6 any other state, when engaged in battle,
7 shall be punished as a court-martial may direct.

8 SECTION 77. AMENDATORY 44 O.S. 2011, Section 3355, is
9 amended to read as follows:

10 Section 3355. Any person subject to this code who in time of
11 war discloses the parole or countersign to any person not entitled
12 to receive it or who gives to another, who is entitled to receive
13 and use the parole or countersign, a different parole or countersign
14 from that which, to his or her knowledge, he or she was authorized
15 and required to give, shall be punished as a court-martial may
16 direct.

17 SECTION 78. AMENDATORY 44 O.S. 2011, Section 3357, is
18 amended to read as follows:

19 Section 3357. A. All persons subject to this code shall secure
20 all public property taken for the service of the United States or
21 the state, and shall give notice and turn over to the proper
22 authority without delay all captured or abandoned property in their
23 possession, custody, or control.

24 B. Any person subject to this code who:

1 1. Fails to carry out the duties prescribed in subsection A of
2 this section;

3 2. Buys, sells, trades, or in any way deals in or disposes of
4 taken, captured, or abandoned property, whereby he or she receives
5 or expects any profit, benefit, or advantage to himself or herself
6 or another directly or indirectly connected with himself or herself;
7 or

8 3. Engages in looting or pillaging,
9 shall be punished as a court-martial may direct.

10 SECTION 79. AMENDATORY 44 O.S. 2011, Section 3359, is
11 amended to read as follows:

12 Section 3359. Any person subject to this code who, while in the
13 hands of the enemy in time of war:

14 1. For the purpose of securing favorable treatment by his or
15 her captors acts without proper authority in a manner contrary to
16 law, custom, or regulation, to the detriment of others of whatever
17 nationality held by the enemy as civilian or military prisoners; or

18 2. While in a position of authority over such persons maltreats
19 them without justifiable cause,
20 shall be punished as a court-martial may direct.

21 SECTION 80. AMENDATORY 44 O.S. 2011, Section 3360, is
22 amended to read as follows:

23 Section 3360. A. Any person subject to this code who
24 wrongfully takes, obtains, or withholds, by any means, from the

1 possession of the owner or of any other person any money, personal
2 property, or value of any kind:

3 1. With intent permanently to deprive or defraud another person
4 of the use and benefit of property or to appropriate it to his or
5 her own use or the use of any person other than the owner, steals
6 that property and is guilty of larceny; or

7 2. With intent temporarily to deprive or defraud another person
8 of the use and benefit of property or to appropriate it to his or
9 her own use or the use of any person other than the owner, is guilty
10 of wrongful appropriation.

11 B. Any person found guilty of larceny or wrongful appropriation
12 shall be punished as a court-martial may direct.

13 SECTION 81. AMENDATORY 44 O.S. 2011, Section 3361, is
14 amended to read as follows:

15 Section 3361. Any person subject to the Oklahoma Uniform ~~State~~
16 Code of Military Justice who willfully and unlawfully alters,
17 conceals, removes, mutilates, obliterates, destroys, or takes with
18 the intent to alter, conceal, remove, mutilate, obliterate, or
19 destroy, a certain public record, and whose conduct, under the
20 circumstances, was to the prejudice of good order and discipline in
21 the armed forces or was of a nature to bring discredit upon the
22 armed forces, shall be punished as a court-martial may direct.

23 SECTION 82. AMENDATORY 44 O.S. 2011, Section 3366, is
24 amended to read as follows:

1 Section 3366. Any person subject to the Oklahoma Uniform State
2 Code of Military Justice who engages in wrongful and reckless or
3 wanton conduct likely to produce death or grievous bodily harm, and
4 whose conduct, under the circumstances, was to the prejudice of good
5 order and discipline in the armed forces or was of a nature to bring
6 discredit upon the armed forces, shall be punished as a court-
7 martial may direct.

8 SECTION 83. AMENDATORY 44 O.S. 2011, Section 3369, is
9 amended to read as follows:

10 Section 3369. Any sentinel or look-out who is found drunk or
11 sleeping upon his or her post or leaves it before being regularly
12 relieved, shall be punished, if the offense is committed in time of
13 war, by confinement of not more than ten (10) years or other
14 punishment as a court-martial may direct, but if the offense is
15 committed at any other time, by such punishment as a court-martial
16 may direct.

17 SECTION 84. AMENDATORY 44 O.S. 2011, Section 3376, is
18 amended to read as follows:

19 Section 3376. Any person subject to ~~the Uniform State Code of~~
20 ~~Military Justice~~ this code who:

21 1. Wrongfully makes, alters, counterfeits, or tampers with a
22 military or official pass, permit, discharge certificate, or
23 identification;

24

1 2. Wrongfully sells, gifts, lends or disposes of a military or
2 official pass, permit, discharge certificate, or identification
3 card; or

4 3. Wrongfully uses or possesses a false or unauthorized
5 military or official pass, permit, discharge certificate, or
6 identification card,
7 shall be punished as a court-martial may direct.

8 SECTION 85. AMENDATORY 44 O.S. 2011, Section 3377, is
9 amended to read as follows:

10 Section 3377. ~~RESERVED.~~ A. Any person subject to this code
11 who:

12 1. Commits a sexual act upon another person by:

- 13 a. threatening or placing that other person in fear,
- 14 b. causing bodily harm to that other person,
- 15 c. making a fraudulent representation that the sexual act
16 serves a professional purpose, or
- 17 d. inducing a belief by any artifice, pretense or
18 concealment that the person is another person;

19 2. Commits a sexual act upon another person when the person
20 knows or reasonably should know that the other person is asleep,
21 unconscious or otherwise unaware that the sexual act is occurring;
22 or

23 3. Commits a sexual act upon another person when the other
24 person is incapable of consenting to the sexual act due to:

1 E. An accused may raise any applicable defenses available under
2 this code or the rules for court-martial published in the state
3 manual for courts-martial or, in the event such a manual has not
4 been published, the latest edition of the federal manual for courts-
5 martial. Marriage is not a defense for any conduct in issue at any
6 prosecution under this section.

7 F. In this section the following terms shall be defined as
8 follows:

9 1. "Sexual act" means:

- 10 a. contact between the penis and the vulva or anus or
11 mouth, and for purposes of this code contact involving
12 the penis occurs upon penetration, however slight, or
13 b. the penetration, however slight, of the vulva or anus
14 or mouth of another by any part of the body or by any
15 object, with an intent to abuse, humiliate, harass or
16 degrade any person or to arouse or gratify the sexual
17 desire of any person;

18 2. "Sexual contact" means:

- 19 a. touching, or causing another person to touch, either
20 directly or through the clothing, the genitalia, anus,
21 groin, breast, inner thigh or buttocks of any person,
22 with an intent to abuse, humiliate or degrade any
23 person, or

1 b. any touching, or causing another person to touch,
2 either directly or through the clothing, any body part
3 of any person, if done with an intent to arouse or
4 gratify the sexual desire of any person.

5 Touching may be accomplished by any part of the body;

6 3. "Bodily harm" means any offensive touching of another,
7 however slight, including any nonconsensual sexual act or
8 nonconsensual sexual contact;

9 4. "Grievous bodily harm" means serious bodily injury. It
10 includes fractured or dislocated bones, deep cuts, torn members of
11 the body, serious damage to internal organs, and other severe bodily
12 injuries. It does not include minor injuries such as a black eye or
13 a bloody nose;

14 5. "Force" means:

15 a. the use of a weapon,

16 b. the use of such physical strength or violence as is
17 sufficient to overcome, restrain or injure a person,

18 or

19 c. inflicting physical harm sufficient to coerce or
20 compel submission by the victim;

21 6. "Unlawful force" means an act of force done without legal
22 justification or excuse;

23 7. "Threatening or placing that other person in fear" means a
24 communication or action that is of sufficient consequence to cause a

1 reasonable fear that noncompliance will result in the victim or
2 another person being subjected to the wrongful action contemplated
3 by the communication or action; and

4 8. "Consent" means a freely given agreement to the conduct at
5 issue by a competent person. An expression of lack of consent
6 through words or conduct means there is no consent.

7 a. Lack of verbal or physical resistance or submission
8 resulting from the use of force, threat of force or
9 placing another person in fear does not constitute
10 consent.

11 b. A current or previous dating or social or sexual
12 relationship by itself does not constitute consent.

13 c. The manner of dress of the person involved with the
14 accused in the conduct at issue does not constitute
15 consent.

16 d. A sleeping, unconscious, or incompetent person cannot
17 consent.

18 e. A person cannot consent to force causing or likely to
19 cause death or grievous bodily harm or to being
20 rendered unconscious.

21 f. A person cannot consent while under threat or in fear
22 or under the circumstances described in subparagraphs
23 c and d of paragraph 1 of subsection A of this
24 section.

1 g. Lack of consent may be inferred based on the
2 circumstances of the offense.

3 h. All the surrounding circumstances are to be considered
4 in determining whether a person gave consent, or
5 whether a person did not resist or ceased to resist
6 only because of another person's actions.

7 SECTION 86. AMENDATORY 44 O.S. 2011, Section 3378, is
8 amended to read as follows:

9 Section 3378. ~~RESERVED.~~ A. Any person subject to this code:

10 1. Who wrongfully engages in a course of conduct directed at a
11 specific person that would cause a reasonable person to fear death
12 or bodily harm, including sexual assault, to himself or herself or a
13 member of his or her immediate family;

14 2. Who has knowledge, or should have knowledge, that the
15 specific person will be placed in reasonable fear of death or bodily
16 harm, including sexual assault, to himself or herself or a member of
17 his or her immediate family; and

18 3. Whose acts induce reasonable fear in the specific person of
19 death or bodily harm, including sexual assault, to himself or
20 herself or to a member of his or her immediate family,
21 is guilty of stalking and shall be punished as a court-martial may
22 direct.

23 B. In this section the following terms shall be defined as
24 follows:

1 1. "Course of conduct" means:

2 a. a repeated maintenance of visual or physical proximity
3 to a specific person, or

4 b. a repeated conveyance of verbal threat, written
5 threats or threats implied by conduct, or a
6 combination of such threats, directed at or toward a
7 specific person;

8 2. "Repeated", with respect to conduct, means two or more
9 occasions of such conduct; and

10 3. "Immediate family", in the case of a specific person, means
11 a spouse, parent, child or sibling of the person, or any other
12 family member, relative or intimate partner of the person who
13 regularly resides in the household of the person or who within the
14 six (6) months preceding the commencement of the course of conduct
15 regularly resided in the household of the person.

16 SECTION 87. AMENDATORY 44 O.S. 2011, Section 3379, is
17 amended to read as follows:

18 Section 3379. ~~RESERVED.~~ A. Any person subject to this code
19 who, without legal justification or lawful authorization:

20 1. Knowingly and wrongfully views the private area of another
21 person without that other person's consent and under circumstances
22 in which that other person has a reasonable expectation of privacy;

23 2. Knowingly photographs, videotapes, films or records by any
24 means the private area of another person without that other person's

1 consent and under circumstances in which that other person has a
2 reasonable expectation of privacy; or

3 3. Knowingly broadcasts or distributes any such recording that
4 the person knew or reasonably should have known was made under the
5 circumstances proscribed in paragraphs 1 and 2 of this subsection,
6 is guilty of an offense under this section and shall be punished as
7 a court-martial may direct.

8 B. Any person subject to this code who compels another person
9 to engage in an act of prostitution with any person is guilty of
10 forcible pandering and shall be punished as a court-martial may
11 direct.

12 C. Any person subject to this code who intentionally exposes,
13 in an indecent manner, the genitalia, anus, buttocks or female
14 areola or nipple is guilty of indecent exposure and shall be
15 punished as a court-martial may direct.

16 D. In this section the following terms shall be defined as
17 follows:

18 1. "Act of prostitution" means a sexual act or sexual contact
19 as defined in subsection F of Section 3377 of this title on account
20 of which anything of value is given to, or received by, any person;

21 2. "Private area" means the naked or underwear-clad genitalia,
22 anus, buttocks or female areola or nipple;

23 3. "Under circumstances in which that other person has a
24 reasonable expectation of privacy" means:

1 a. circumstances in which a reasonable person would
2 believe that he or she could disrobe in privacy,
3 without being concerned that an image of a private
4 area of the person was being captured, or

5 b. circumstances in which a reasonable person would
6 believe that a private area of the person would not be
7 visible to the public;

8 4. "Broadcast" means to electronically transmit a visual image
9 with the intent that it be viewed by a person or persons;

10 5. "Distribute" means delivering to the actual or constructive
11 possession of another, including transmission by electronic means;
12 and

13 6. "Indecent manner" means conduct that amounts to a form of
14 immorality relating to sexual impurity which is grossly vulgar,
15 obscene and repugnant to common propriety and tends to excite sexual
16 desire or deprave morals with respect to sexual relations.

17 SECTION 88. AMENDATORY 44 O.S. 2011, Section 3380, is
18 amended to read as follows:

19 Section 3380. ~~RESERVED.~~ Any person subject to this code who is
20 a commissioned or warrant officer and:

21 1. Who fraternizes on terms of military equality with one or
22 more certain enlisted members in a certain manner;

23 2. Who then knows the person or persons to be an enlisted
24 person or persons;

1 3. Who, through such fraternization, knowingly violates the
2 custom of the United States Army, if a member of the army component
3 of the state military forces, or the custom of the United States Air
4 Force, if a member of the air force component of the state military
5 forces, that officers shall not fraternize with enlisted members on
6 terms of equality; and

7 4. Under the circumstances, the conduct of the accused was to
8 the prejudice of good order and discipline in the state military
9 forces or of a nature to bring discredit upon the state military
10 forces,
11 shall be punished as a court-martial may direct.

12 SECTION 89. AMENDATORY 44 O.S. 2011, Section 3381, is
13 amended to read as follows:

14 Section 3381. ~~RESERVED.~~ Any person subject to this code who,
15 with intent or reason to believe that it is to be used in the
16 commission of a crime under Oklahoma law, communicates, delivers or
17 transmits, or attempts to communicate, deliver or transmit
18 confidential information, directly or indirectly, to any other
19 person shall be punished as a court-martial may direct.

20 SECTION 90. AMENDATORY 44 O.S. 2011, Section 3389, is
21 amended to read as follows:

22 Section 3389. Any person subject to this code:

23 1. Who, knowing it to be false or fraudulent:
24

1 a. makes any claim against the United States, the state,
2 or any officer thereof, or

3 b. presents to any person in the civil or military
4 service thereof, for approval or payment, any claim
5 against the United States, the state, or any officer
6 thereof;

7 2. Who, for the purpose of obtaining the approval, allowance,
8 or payment of any claim against the United States, the state, or any
9 officer thereof:

10 a. makes or uses any writing or other paper knowing it to
11 contain any false or fraudulent statements,

12 b. makes any oath, affirmation or certification to any
13 fact or to any writing or other paper knowing the
14 oath, affirmation or certification to be false, or

15 c. forges or counterfeits any signature upon any writing
16 or other paper, or uses any such signature knowing it
17 to be forged or counterfeited;

18 3. Who, having charge, possession, custody, or control of any
19 money, or other property of the United States or the state,
20 furnished or intended for the armed forces of the United States or
21 the state military forces, knowingly delivers to any person having
22 authority to receive it, any amount thereof less than that for which
23 he or she receives a certificate or receipt; or

24

1 4. Who, being authorized to make or deliver any paper
2 certifying the receipt of any property of the United States or the
3 state, furnished or intended for the armed forces of the United
4 States or the state military forces, makes or delivers to any person
5 such writing without having full knowledge of the truth of the
6 statements therein contained and with intent to defraud the United
7 States or the state,
8 shall, upon conviction, be punished as a court-martial may direct.

9 SECTION 91. AMENDATORY 44 O.S. 2011, Section 3390, is
10 amended to read as follows:

11 Section 3390. Any commissioned officer, cadet, or officer
12 candidate ~~or midshipman~~ who is convicted of conduct unbecoming an
13 officer and a gentleman shall be punished as a court-martial may
14 direct.

15 SECTION 92. AMENDATORY 44 O.S. 2011, Section 3391, is
16 amended to read as follows:

17 Section 3391. Though not specifically mentioned in this code,
18 all disorders and neglects to the prejudice of good order and
19 discipline in the state military forces and all conduct of a nature
20 to bring discredit upon the state military forces shall be taken
21 cognizance of by a court-martial and punished at the discretion of a
22 military court. However, where a crime constitutes an offense that
23 violates both this code and the criminal laws of the state where the
24 offense occurs or criminal laws of the United States, jurisdiction

1 of the military court must be determined in accordance with Section
2 ~~3~~ 3202 of this ~~act~~ title.

3 SECTION 93. AMENDATORY 44 O.S. 2011, Section 3393, is
4 amended to read as follows:

5 Section 3393. A. The following persons may administer oaths
6 for the purposes of military administration, including military
7 justice:

8 1. All judge advocates;

9 2. All summary courts-martial;

10 3. All adjutants, assistant adjutants, acting adjutants, and
11 personnel adjutants; or

12 4. ~~All commanding officers of the naval militia; or~~

13 ~~5.~~ All other persons designated by regulations of the armed
14 forces of the United States or by statute.

15 B. The following persons may administer oaths necessary in the
16 performance of their duties:

17 1. The president, military judge, and trial counsel for all
18 general and special courts-martial;

19 2. The president and the counsel for the court of any court of
20 inquiry;

21 3. All officers designated to take a deposition;

22 4. All persons detailed to conduct an investigation;

23 5. All recruiting officers; or
24

1 6. All other persons designated by regulations of the armed
2 forces of the United States or by statute.

3 C. The signature without seal of any such person, together with
4 the title of his or her office, is prima facie evidence of the
5 person's authority.

6 SECTION 94. AMENDATORY 44 O.S. 2011, Section 3394, is
7 amended to read as follows:

8 Section 3394. A. 1. The ~~articles~~ sections of this ~~code~~ title
9 specified in paragraph 3 of this ~~section~~ subsection shall be
10 carefully explained to each enlisted member at the time of, or
11 within thirty (30) days after, the member's initial entrance into a
12 duty status with the state military forces.

13 2. Such ~~articles~~ sections shall be explained again:

14 a. after the member has completed basic or recruit
15 training, and

16 b. at the time when the member reenlists.

17 3. This subsection applies with respect to Sections ~~3, 4, 9-17,~~
18 ~~27, 30, 34, 40, 41, 59, 88-148, and 151-153~~ 3202, 3203, 3211, 3213
19 through 3218, 3244, 3247, 3252, 3262, 3263, 3291, 3331 through 3381,
20 3389 through 3391 and 3394 through 3396 of this ~~act~~ title.

21 B. The text of the code and of the regulations prescribed under
22 such code shall be made available to a member of the state military
23 forces, upon request by the member, for the member's personal
24 examination.

1 SECTION 95. AMENDATORY 44 O.S. 2011, Section 3395, is
2 amended to read as follows:

3 Section 3395. Any member of the state military forces who
4 believes himself or herself wronged by a commanding officer, and
5 who, upon due application to that commanding officer, is refused
6 redress, may complain to any superior commissioned officer, who
7 shall forward the complaint to the officer exercising general court-
8 martial jurisdiction over the officer against whom it is made. The
9 officer exercising general court-martial jurisdiction shall examine
10 into the complaint and take proper measures for redressing the wrong
11 complained of; and shall, as soon as possible, send to the Adjutant
12 General a true statement of that complaint, with the proceedings had
13 thereon.

14 SECTION 96. AMENDATORY 44 O.S. 2011, Section 3396, is
15 amended to read as follows:

16 Section 3396. A. Whenever complaint is made to any commanding
17 officer that willful damage has been done to the property of any
18 person or that the person's property has been wrongfully taken by
19 members of the state military forces, that person may, under such
20 regulations prescribed in the state manual for courts-martial,
21 convene a board to investigate the complaint. The board shall
22 consist of from one to three commissioned officers and, for the
23 purpose of that investigation, it has power to summon witnesses and
24 examine them upon oath, to receive depositions or other documentary

1 evidence, and to assess the damages sustained against the
2 responsible parties. The assessment of damages made by the board is
3 subject to the approval of the commanding officer, and in the amount
4 approved by that officer shall be charged against the pay of the
5 offenders. The order of the commanding officer directing charges
6 herein authorized is conclusive on any disbursing officer for
7 payment to the injured parties of the damages so assessed and
8 approved.

9 B. If the offenders cannot be ascertained, but the organization
10 or detachment to which they belong is known, charges totaling the
11 amount of damages assessed and approved may be made in such
12 proportion as may be considered just upon the individual members
13 thereof who are shown to have been present at the scene at the time
14 the damages complained of were inflicted, as determined by the
15 approved findings of the board.

16 SECTION 97. AMENDATORY 44 O.S. 2011, Section 3397, is
17 amended to read as follows:

18 Section 3397. The Governor may delegate any authority vested in
19 the Governor under this code, and provide for the subdelegation of
20 any such authority, except the ~~power~~ powers given the Governor by
21 Section ~~24~~ 3241 and subsection K of Section 3221 of this ~~act~~ title.
22 Any delegations of authority carried out pursuant to this section
23 shall be effectuated in writing.

24

1 SECTION 98. AMENDATORY 44 O.S. 2011, Section 3399, is
2 amended to read as follows:

3 Section 3399. A. Fines imposed by a military court or through
4 imposition of nonjudicial punishment ~~may~~ shall be paid to the ~~state~~
5 State of Oklahoma and delivered to the ~~court~~ convening authority or
6 his or her designee or in the case of nonjudicial punishment, the
7 imposing officer, ~~or to a person executing their process.~~ Fines may
8 be collected in the following manner:

- 9 1. By cash or money order;
- 10 2. By retention of any pay or allowances due or to become due
11 the person fined from any state or the United States; or
- 12 3. By garnishment or levy, together with costs, on the wages,
13 goods, and chattels of a person delinquent in paying a fine, as
14 provided by law.

15 B. Any sum so received or retained shall be deposited in the
16 Military Justice Fund ~~or to whomever the court so directs,~~ except
17 that the court may direct that the sum so received or retained be
18 provided to a victim or victims as restitution.

19 SECTION 99. AMENDATORY 44 O.S. 2011, Section 4001, is
20 amended to read as follows:

21 Section 4001. Any person acting under the provisions of this
22 code, whether as a member of the military or as a civilian, shall be
23 immune from personal liability for any of the acts or omissions
24

1 which he or she did or failed to do as part of his or her duties
2 under this code.

3 SECTION 100. AMENDATORY 44 O.S. 2011, Section 4002, is
4 amended to read as follows:

5 Section 4002. Though not specifically mentioned in this code,
6 all disorders and neglects to the prejudice of good order and
7 discipline in the state military forces, of which persons subject to
8 this code may be guilty, shall be taken cognizance of by a general,
9 special, or summary court-martial according to the nature and degree
10 of the offense and shall be punished at the discretion of that
11 court. However, cognizance may not be taken of, and jurisdiction
12 ~~may~~ shall not be extended to, the crimes of murder, manslaughter,
13 rape, rape and sexual assault of a child, robbery, maiming, sodomy,
14 arson, extortion, burglary, or housebreaking, jurisdiction of which
15 is reserved to civil courts.

16 SECTION 101. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4003 of Title 44, unless there
18 is created a duplication in numbering, reads as follows:

19 A. It shall be the duty of any justice, judge, judicial
20 referee, corporation commissioner, administrative law judge or
21 hearing officer presiding over any civil, criminal or administrative
22 proceeding in this state to continue any trial, hearing or other
23 action pending before the court or an administrative forum when a
24 party to the pending action or the primary counsel representing a

1 party to the pending action is not present at the time the case or
2 matter in question is reached on the docket or schedule by reason of
3 participation in:

4 1. Active federal service, as defined in Title 10 of the United
5 States Code;

6 2. Title 32 active duty, as defined in Section 3201 of Title 44
7 of the Oklahoma Statutes;

8 3. Service in other reserve components of the Armed Forces of
9 the United States, as defined in Title 10 of the United States Code;

10 or

11 4. State active duty, as defined in Section 3201 of Title 44 of
12 the Oklahoma Statutes.

13 B. The trial, hearing or other pending action may proceed if
14 the party, without the presence of his or her primary counsel, or
15 the primary counsel, without the presence of the party, declares
16 that the case or matter in question is nevertheless ready to proceed
17 at the scheduled time.

18 C. If the primary counsel of a party to the pending action is
19 not present due to military service pursuant to subsection A of this
20 section, the party so affected shall declare under oath that he or
21 she cannot properly proceed with the trial, hearing or other action
22 pending before the court or administrative forum without the
23 presence of the primary counsel.

1 D. If a party to the pending action is not present due to
2 military service pursuant to subsection A of this section, his or
3 her legal counsel shall appear and shall state in his or her place
4 that the case or matter in question cannot properly proceed without
5 the presence of the absent party.

6 E. Continuances granted pursuant to this section shall remain
7 in effect no longer than ninety (90) calendar days. The justice,
8 judge, judicial referee, corporation commissioner, administrative
9 law judge or hearing officer may, at his or her discretion, continue
10 the proceeding in question in order to carry out the administration
11 of justice. The protections provided to service members in this
12 section shall be available in addition to any protections afforded
13 to service members under Section 208.1 of Title 44 of the Oklahoma
14 Statutes.

15 SECTION 102. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 4004 of Title 44, unless there
17 is created a duplication in numbering, reads as follows:

18 The Governor, with the advice of the Adjutant General and the
19 senior judge advocates of each force component comprising the
20 Oklahoma National Guard, may approve a state manual for courts-
21 martial. Approval of a state manual shall be accomplished by
22 executive order and shall be published and indexed as part of the
23 "Oklahoma Administrative Code".

24

1 SECTION 103. REPEALER 44 O.S. 2011, Section 3375, is
2 hereby repealed.

3 SECTION 104. This act shall become effective November 1, 2017.
4

5 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS,
6 dated 02/15/2017 - DO PASS, As Amended.
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