

ENROLLED SENATE
BILL NO. 1026

By: Bass, Garrison, Easley,
Riley, Eason McIntyre,
Leftwich, Adelson and
Ivester of the Senate

and

Duncan of the House

An Act relating to militia; creating the Uniform State Code of Military Justice; providing short title; defining terms; stating applicability of code; establishing certain jurisdiction; stating territorial applicability of code; requiring certain inspection and communication; establishing guidelines for apprehension, restraint and confinement of certain persons; allowing certain officers to impose specified nonjudicial punishments; establishing guidelines for certain punishments; defining kinds of courts-martial; establishing jurisdiction of courts-martial; establishing convening authority of courts-martial; establishing eligibility to serve on courts-martial; establishing requirements and duties for certain military judges; establishing requirements for certain counsel; requiring use of court reporters; establishing requirements for membership of courts-martial; establishing certain pretrial rights and procedures related to charges, self-incrimination, investigation and advice; authorizing Governor or Adjutant General to prescribe certain regulations related to pretrial, trial and posttrial procedures; prohibiting certain influence on court-martial; establishing duties of certain counsel; establishing certain trial procedure related to sessions, continuances, challenges, oaths, statutes of limitation, jeopardy, pleas, witnesses, evidence,

contempt, depositions, defenses, voting and rulings and trial records; prohibiting certain punishments; establishing sentencing guidelines related to maximum limits, deferment, reduction in enlisted grade and forfeiture of pay and allowances; authorizing certain review; requiring certain posttrial actions of convening authority; allowing withdrawal of certain appeal; allowing state to appeal certain orders or rulings; establishing procedures for rehearing; requiring senior force judge advocate review of certain cases; providing for disposition of certain records; providing for review by state appellate authority; establishing requirements for appellate counsel; providing for certain actions on sentences pending appellate review; allowing petition for new trial under certain circumstances; providing for finality of certain findings and sentences; requiring leave to be taken under certain circumstances; establishing procedures for lack of mental capacity or responsibility; stating elements of specified offenses; authorizing convening of courts of inquiry; establishing procedures for courts of inquiry; allowing certain persons to administer oaths for certain purposes; requiring explanation of certain code provisions to specified persons; establishing certain complaint procedures; allowing delegation of certain authority; directing payment of certain expenses; creating certain fund for specified purposes; construing provisions; exempting certain persons from liability under specified circumstances; specifying jurisdiction for certain offenses; amending 44 O.S. 2001, Sections 218 and 233.5, which relate to title to real estate and conveyance of sites; authorizing purchase of certain real estate; allowing use of state funds for certain conveyances; repealing 44 O.S. 2001, Sections 2101 through 3113, which relate to the Code of Military Justice; providing for codification; providing an effective date; and declaring an emergency.

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

PART I. GENERAL PROVISIONS

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3200 of Title 44, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform State Code of Military Justice".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3201 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. As used in this act, unless the context otherwise requires:

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

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

3. "Classified information" means:

- a. any information or material that has been determined by an official of the United States or any state pursuant to law, an Executive Order, or regulation to require protection against unauthorized disclosure for reasons of national or state security, and
- b. any restricted data, as defined in Section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C., Section 2014(y));

4. "Code" means this act;

5. "Commanding officer" includes only commissioned officers of the state military forces and shall include officers in charge only when administering nonjudicial punishment under Section 17 of this act. "Commander" has the same meaning as "commanding officer" unless the context otherwise requires;

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

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

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

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

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

- a. certified or designated as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, or the Marine Corps or designated as a law specialist as an officer of the Coast Guard, or a reserve component of one of these, or
- b. certified as a nonfederally recognized judge advocate, under regulations promulgated pursuant to this provision, by the senior judge advocate of the commander of the force in the state military forces of which the accused is a member, as competent to perform such military justice duties required by this code. If there is no such judge advocate available, then such certification may be made by such senior judge advocate of the commander of another force in the

state military forces as the convening authority directs;

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

12. "Military court" means a court-martial or a court of inquiry;

13. "Military judge" means an official of a general or special court-martial detailed in accordance with Section 29 of this act;

14. The term "military offenses" means those offenses prescribed under Sections 88 (Principals), 89 (Accessory after the fact), 91 (Attempts), 92 (Conspiracy), 93 (Solicitation), 94 (Fraudulent enlistment, appointment, or separation), 95 (Unlawful enlistment, appointment, or separation), 96 (Desertion), 97 (Absence without leave), 98 (Missing movement), 99 (Contempt toward officials), 100 (Disrespect towards superior commissioned officer), 101 (Assaulting or willfully disobeying superior commissioned officer), 102 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer), 103 (Failure to obey order or regulation), 104 (Cruelty and maltreatment), 105 (Mutiny or sedition), 106 (Resistance, flight, breach of arrest, and escape), 107 (Releasing prisoner without proper authority), 108 (Unlawful detention), 109 (Noncompliance with procedural rules), 110 (Misbehavior before the enemy), 111 (Subordinate compelling surrender), 112 (Improper use of countersign), 113 (Forcing a safeguard), 114 (Captured or abandoned property), 115 (Aiding the enemy), 116 (Misconduct as prisoner), 117 (Larceny and wrongful appropriation), 119 (False official statements), 120 (Military property – Loss, damage, destruction, or wrongful disposition), 121 (Property other than military property – Waste, spoilage, or destruction), 122 (Improper hazarding of vessel), 124 (Drunk on duty), 125 (Wrongful use, possession, etc., of controlled substances), 126 (Misbehavior of sentinel), 127 (Dueling), 128 (Malingering), 129 (Riot or breach of peace), 130 (Provoking speeches or gestures), 131 (Assault), 132 (Adultery), 146 (Frauds against the government), 147 (Conduct unbecoming an officer and a gentleman), and 148 (General article) of this code;

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

16. The term "officer" means a commissioned or warrant officer;

17. The term "officer in charge" means a member of the naval militia, the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority;

18. The term "record", when used in connection with the proceedings of a court-martial, means:

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

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

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

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

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

23. "State military forces" means the National Guard of the state, as defined in Title 32, United States Code, the organized naval militia of the state, and any other military force organized under the Constitution and laws of the state to include the unorganized militia (the state defense force when not in a status subjecting them to exclusive jurisdiction under Chapter 47 of Title

10, United States Code). The unorganized militia, state defense force, state national guard, home guard or any other name of any state force that does not meet this definition nevertheless shall be part of the "state military forces" under this code;

24. The term "superior commissioned officer" means a commissioned officer superior in rank or command; and

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

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3202 of Title 44, unless there is created a duplication in numbering, reads as follows:

This code applies to all members of the state military forces who are not in federal service. No person may be tried for any offense provided in this code unless it was committed while he was in a duty status or during a period of time in which he was under lawful order to be in a duty status. However, the processing of charges and all proceedings, including trial and punishment, may be conducted without regard to the duty status of the accused.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3203 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3204 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. This code has applicability at all times and in all places, provided that the person subject to the code is in a duty status. However, this grant of military jurisdiction shall neither preclude nor limit civilian jurisdiction over an offense, which is limited only by the prohibition of double jeopardy.

B. Courts-martial and courts of inquiry may be convened and held in units of the state military forces while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3206 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. The senior force judge advocates in each of the state's military forces or those judge advocates' delegates shall make frequent inspections in the field in supervision of the administration of military justice in that force.

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

C. No person who has acted as member, military judge, trial counsel, defense counsel, or investigating officer, or who has been

a witness, in any case may later act as a judge advocate to any reviewing authority upon the same case.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3207 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

PART II. APPREHENSION AND RESTRAINT

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3211 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Apprehension is the taking of a person into custody.

B. Any person authorized by this code or by Chapter 47 of Title 10, United States Code, or by regulations issued under either, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer or civil officer having authority to apprehend offenders under the laws of the United States or of a state, may do so upon probable cause that an offense has been committed and that the person apprehended committed it.

C. Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein.

D. If an offender is apprehended outside the state, the offender's return to the area must be in accordance with normal extradition procedures or by reciprocal agreement.

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

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3212 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3213 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

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

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

D. No person may be ordered into arrest or confinement except for probable cause.

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3214 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code charged with an offense under this code may be ordered into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and diligent steps shall be taken to try the person or to dismiss the charges and release the person.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3215 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. If a person subject to this code is confined before, during, or after trial, confinement shall be in a civilian or military confinement facility.

B. No person authorized to receive prisoners pursuant to subsection A of this section may refuse to receive or keep any prisoner committed to the person's charge by a commissioned officer of the state military forces, when the committing officer furnishes a statement, signed by such officer, of the offense charged against the prisoner, unless otherwise authorized by law.

C. Every person authorized to receive prisoners pursuant to subsection A of this section to whose charge a prisoner is committed shall, within twenty-four (24) hours after that commitment or as soon as the person is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3216 of Title 44, unless there is created a duplication in numbering, reads as follows:

No member of the state military forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3217 of Title 44, unless there is created a duplication in numbering, reads as follows:

No person, while being held for trial or awaiting a verdict, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest or confinement imposed upon such person be any more rigorous than the circumstances required to ensure the person's presence, but the person may be subjected to minor punishment during that period for infractions of discipline.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3218 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. A person subject to this code accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial or confinement.

B. When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to the place of original custody for the completion of the person's sentence.

PART III. NONJUDICIAL PUNISHMENT

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3221 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Under such regulations as prescribed, any commanding officer (and for purposes of this article, officers in charge) may impose disciplinary punishments for minor offenses without the intervention of a court-martial pursuant to this article. The Governor, the Adjutant General, or an officer of a general or flag rank in command may delegate the powers under this article to a principal assistant who is a member of the state military forces.

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

1. An admonition;
2. A reprimand;
3. The withholding of privileges for not more than six (6) months which need not be consecutive;
4. The forfeiture of pay of not more than seven (7) days' pay;
5. A fine of not more than seven (7) days' pay;
6. A reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
7. Extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; and
8. Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive.

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

1. Any punishment authorized in paragraphs 1, 2 and 3 of subsection B of this section;
2. The forfeiture of not more than one-half (1/2) of one (1) month's pay per month for two (2) months;
3. A fine of not more than one (1) month's pay;
4. A reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

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

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

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

1. Upon officers of the officer's command:

a. any punishment authorized in paragraphs 1, 2, 3 and 6 of subsection C of this section, and

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

2. Upon enlisted members of the officer's command: any punishment authorized in subsection C of this section.

E. Whenever any of those punishments are combined to run consecutively, the total length of the combined punishment cannot exceed the authorized duration of the longest punishment in the combination, and there must be an apportionment of punishments so that no single punishment in the combination exceeds its authorized length under this article.

F. Prior to the offer of nonjudicial punishment, the commanding officer shall determine whether arrest in quarters or restriction shall be considered as punishments. Should the commanding officer determine that the punishment options may include arrest in quarters or restriction, the accused shall be notified of the right to demand trial by court-martial. Should the commanding officer determine that the punishment options will not include arrest in quarters or restriction, the accused shall be notified that there is no right to trial by court-martial in lieu of nonjudicial punishment.

G. The officer who imposes the punishment, or the successor in command, may, at any time, suspend, set aside, mitigate, or remit

any part or amount of the punishment and restore all rights, privileges, and property affected. The officer also may:

1. Mitigate reduction in grade to forfeiture of pay;
2. Mitigate arrest in quarters to restriction; or
3. Mitigate extra duties to restriction.

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

H. A person punished under this article who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the Joint Chiefs of Staff within fifteen (15) days after the punishment is either announced or sent to the accused, as the commander may determine. The appeal shall be promptly forwarded and decided, and the person may not be punished until the appeal is decided. The Joint Chiefs of Staff may exercise the same powers with respect to the punishment imposed as may be exercised under subsection G of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment, the Joint Chief of Staff may refer the case to a judge advocate for consideration and advice.

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

J. Whenever a punishment of forfeiture of pay is imposed under this article, the forfeiture may apply to pay accruing before, on, or after the date that punishment is imposed.

K. Regulations may prescribe the form of records to be kept of proceedings under this article and may prescribe that certain categories of those proceedings shall be in writing.

PART IV. COURT-MARTIAL JURISDICTION

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3231 of Title 44, unless there is created a duplication in numbering, reads as follows:

The three kinds of courts-martial in the state military forces are:

1. General courts-martial, consisting of:

- a. a military judge and not less than five members, or
- b. only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

2. Special courts-martial, consisting of:

- a. a military judge and not less than three members, or
- b. only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in subparagraph b of paragraph 1 of this section so requests; and

3. Summary courts-martial, consisting of one commissioned officer.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3232 of Title 44, unless there is created a duplication in numbering, reads as follows:

Each component of the state military forces has court-martial jurisdiction over all members of the particular component who are

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

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3233 of Title 44, unless there is created a duplication in numbering, reads as follows:

Subject to Section 19 of this act, general courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code, and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this code.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3234 of Title 44, unless there is created a duplication in numbering, reads as follows:

Subject to Section 19 of this act, special courts-martial have jurisdiction to try persons subject to this code for any offense made punishable by this code, and may, under such limitations as the Governor may prescribe, adjudge any punishment not forbidden by this code except dishonorable discharge, dismissal, confinement for more than one (1) year, forfeiture of pay exceeding two-thirds (2/3) pay per month, or forfeiture of pay for more than one (1) year.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3235 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Subject to Section 19 of this act, summary courts-martial have jurisdiction to try persons subject to this code, except officers, cadets, candidates, and midshipmen, for any offense made punishable by this code under such limitations as the Governor may prescribe.

B. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if that person objects thereto. If objection to trial by summary court-martial is made by an accused, trial by special or general court-martial may be ordered, as may be appropriate. Summary courts-martial may, under such limitations as the Governor may

prescribe, adjudge any punishment not forbidden by this code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one (1) month, restriction to specified limits for more than two (2) months, or forfeiture of more than two-thirds (2/3) of one (1) month's pay.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3236 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

PART V. APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3241 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. General courts-martial may be convened by:

1. The Governor;
2. The Adjutant General;
3. The commanding officer of a force of the state military forces;
4. The commanding officer of a division or a separate brigade;
or
5. The commanding officer of a separate wing.

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

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3242 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Special courts-martial may be convened by:

1. Any person who may convene a general court-martial;
2. The commanding officer of a garrison, fort, post, camp, station, Air National Guard base, or naval base or station;
3. The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
4. The commanding officer of a wing, group, separate squadron, or corresponding unit of the Air Force; or
5. The commanding officer or officer in charge of any other command when empowered by the Adjutant General.

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

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3243 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Summary courts-martial may be convened by:

1. Any person who may convene a general or special court-martial;
2. The commanding officer of a detached company or other detachment, or corresponding unit of the Army;
3. The commanding officer of a detached squadron or other detachment, or corresponding unit of the Air Force; or
4. The commanding officer or officer in charge of any other command when empowered by the Adjutant General.

B. When only one commissioned officer is present with a command or detachment that officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases. Summary courts-martial may, however, be

convened in any case by superior competent authority if considered desirable by such authority.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3244 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

C. Any enlisted member of the state military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member subject to this code, but that member shall serve as a member of a court only if, before the conclusion of a session called by the military judge under Section 42 of this act prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third (1/3) of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained. In this article, "unit" means any regularly organized body of the state military forces not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

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

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

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

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3245 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3246 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

B. A military judge shall be:

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

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

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

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

D. The military judge of a general or special court-martial shall be designated by the senior force judge advocate which is the same force as the accused, or a designee, for detail by the convening authority. Neither the convening authority nor any staff member of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge.

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

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

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3247 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

1. A judge advocate as defined in Section 2 of this act; and
2. In the case of trial counsel, a member in good standing of the bar of the highest court of the state where the court-martial is held.

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

1. A commissioned officer of the armed forces of the United States or a component thereof;
2. A member in good standing of the bar of the highest court of a state; and
3. Certified as a judge advocate in the Judge Advocate General's Corps of the Army, Air Force, Navy, Marine Corps, or a judge advocate as defined in Section 2 of this act.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3248 of Title 44, unless there is created a duplication in numbering, reads as follows:

Under such regulations as may be prescribed, the convening authority of a general or special court-martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court and may detail or employ interpreters who shall interpret for the court.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3249 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial

of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

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

C. Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had been introduced previously at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, the accused, and counsel for both sides.

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

PART VI. PRETRIAL PROCEDURE

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3251 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Charges and specifications shall be signed by a person subject to this code under oath before a commissioned officer authorized by Section 150 of this act to administer oaths and shall state:

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

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

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

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3252 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. No person subject to this code may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

B. No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

C. No person subject to this code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

D. No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3253 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

B. The accused shall be advised of the charges against the accused and of the right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in Section 41 of this act and in regulations prescribed under that section. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against the accused, if they are available, and to present anything the accused may desire in the accused's own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

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

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

1. Is present at the investigation;

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

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

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

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3254 of Title 44, unless there is created a duplication in numbering, reads as follows:

When a person is held for trial by general court-martial, the commanding officer shall within eight (8) days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that person the reasons for delay.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3255 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

1. The specification alleges an offense under this code;

2. The specification is warranted by the evidence indicated in the report of investigation under Section 35 of this act, if there is such a report; and

3. A court-martial would have jurisdiction over the accused and the offense.

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

1. Expressing conclusions with respect to each matter set forth in subsection A of this section; and

2. Recommending action that the convening authority take regarding the specification.

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

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

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3256 of Title 44, unless there is created a duplication in numbering, reads as follows:

The trial counsel shall serve or cause to be served upon the accused a copy of the charges. No person may, against the person's objection, be brought to trial before a general court-martial case within a period of five (5) days after the service of charges upon the accused, or in a special court-martial, within a period of three (3) days after the service of charges upon the accused.

PART VII. TRIAL PROCEDURE

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3261 of Title 44, unless there is created a duplication in numbering, reads as follows:

Pretrial, trial and posttrial procedures, including modes of proof, for courts-martial cases arising under this code, and for

courts of inquiry, may be prescribed by the Governor or the Adjutant General by regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this code.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3262 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, the military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to their judicial acts. The foregoing provisions of this subsection shall not apply with respect to:

1. General instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial; or

2. Statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

B. In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained on active status, no person subject to this code may, in preparing any such report:

1. Consider or evaluate the performance of duty of any such member as a member of a court-martial or witness therein; or

2. Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3263 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

3. The accused may be represented:

a. by military counsel detailed under Section 30 of this act, or

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

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

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

6. The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under Section 30 of this act to detail counsel, in that person's sole discretion:

- a. may detail additional military counsel as assistant defense counsel, and
- b. if the accused is represented by military counsel of the accused's own selection under subparagraph b of paragraph 3 of this subsection, may approve a request from the accused that military counsel detailed under subparagraph a of paragraph 3 of this subsection act as associate defense counsel.

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

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

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

2. May assist the accused in the submission of any matter under Section 68 of this act; and

3. May take other action authorized by this code.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3264 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

B. When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3265 of Title 44, unless there is created a duplication in numbering, reads as follows:

The military judge of a court-martial or a summary court-martial may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3266 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3267 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation, the time and place

of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if such an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

B. Each witness before a court-martial shall be examined under oath or affirmation.

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3268 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

3. Committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or government agency,

is suspended until two (2) years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

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

- a. has expired, or
- b. will expire within one hundred eighty (180) days after the date of dismissal of the charges and specifications,

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

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

- a. be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty (180) days after the dismissal of the charges or specifications, and
- b. allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3269 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. No person may, without his consent, be tried a second time for the same offense.

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

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

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3270 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

B. With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event, the proceedings shall continue as though the accused had pleaded not guilty.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3271 of Title 44, unless there is created a duplication in numbering, reads as follows:

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall apply the principles of law and the rules of courts-martial generally recognized in military criminal cases in the courts of the armed forces of the United States, but which may not be contrary to or inconsistent with this code. Process shall run to any part of the United States, or the Territories, Commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3272 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person not subject to this code who:

1. Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court of inquiry, or before any military or civil officer designated to take a deposition to be read in evidence before such a court;

2. Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a criminal court of the state; and

3. Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce,

may be punished by the military court in the same manner as a criminal court of the state.

B. The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3273 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. A military judge or summary court-martial officer may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

B. A person subject to this code may be punished for contempt by confinement not to exceed thirty (30) days or a fine of One Hundred Dollars (\$100.00), or both.

C. A person not subject to this code may be punished for contempt by a military court in the same manner as a criminal court of the state.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3274 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

D. A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if it appears:

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

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

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

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3275 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

B. Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

C. Such testimony may also be read in evidence before a court of inquiry.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3276 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

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

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

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

SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3277 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

C. Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

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

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

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

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

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

SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3278 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

B. All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3279 of Title 44, unless there is created a duplication in numbering, reads as follows:

A court-martial shall announce its findings and sentence to the parties as soon as determined.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3280 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the

record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

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

2. In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations.

C. Each summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner as may be prescribed by regulations.

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

PART VIII. SENTENCES

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3291 of Title 44, unless there is created a duplication in numbering, reads as follows:

Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3292 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

B. The limits of punishment for violations of the punitive articles prescribed herein shall be the lesser of the sentences prescribed by the manual for courts-martial of the United States in effect on January 1, 2004, and the state manual for courts-martial, but in no instance shall any punishment exceed that authorized by this code.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3293 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3294 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

B. Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

C. All other sentences of courts-martial are effective on the date ordered executed.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3295 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3296 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

B. The omission of "hard labor" as a sentence authorized under this code does not deprive the state confinement facility from employing it, if it otherwise is within the authority of that facility to do so.

C. No place of confinement may require payment of any fee or charge for so receiving or confining a person except as otherwise provided by law.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3297 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. A court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes:

1. A dishonorable or bad-conduct discharge; or
2. Confinement,

reduces that member to pay grade E-1, effective on the date of that approval.

B. If the sentence of a member who is reduced in pay grade under subsection A of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in paragraph 1 or 2 of subsection A of this section, the rights and privileges of which the person was deprived because of that reduction shall be restored, including pay and allowances.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3298 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

2. A sentence covered by this article is any sentence that includes:

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

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

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

PART IX. POSTTRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3301 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

B. Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3302 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

B. 1. The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within ten (10) days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of a judge advocate under subsection D of this section. In a summary court-martial case, such a submission shall be made within seven (7) days after the sentence is announced.

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

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

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

C. 1. The authority under this article to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. If it is impractical for the convening authority to act, the convening authority shall forward the case to a person exercising general court-martial jurisdiction who may take action under this article.

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

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

- a. dismiss any charge or specification by setting aside a finding of guilty thereto, or

- b. change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

D. Before acting under this article on any general or special court-martial case in which there is a finding of guilt, the convening authority or other person taking action under this article shall obtain and consider the written recommendation of a judge advocate. The convening authority or other person taking action under this article shall refer the record of trial to the judge advocate, and the judge advocate shall use such record in the preparation of the recommendation. The recommendation of the judge advocate shall include such matters as may be prescribed by regulation and shall be served on the accused, who may submit any matter in response under subsection B of this section. Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

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

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

- a. reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty,
- b. reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this code, or
- c. increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

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

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3303 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

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

SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3304 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

- a. an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification,

- b. an order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding,
- c. an order or ruling which directs the disclosure of classified information,
- d. an order or ruling which imposes sanctions for nondisclosure of classified information,
- e. a refusal of the military judge to issue a protective order sought by the state to prevent the disclosure of classified information, and
- f. a refusal by the military judge to enforce an order described in subparagraph e of this section that has previously been issued by appropriate authority.

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

3. An appeal under this article shall be diligently prosecuted as provided by law.

B. An appeal under this article shall be forwarded to the court prescribed in Section 76 of this act. In ruling on an appeal under this article, that court may act only with respect to matters of law.

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

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3305 of Title 44, unless there is created a duplication in numbering, reads as follows:

Each rehearing under this code shall take place before a court-martial composed of members who were not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes a plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3306 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

1. Conclusions as to whether:
 - a. the court had jurisdiction over the accused and the offense,
 - b. the charge and specification stated an offense, and

c. the sentence was within the limits prescribed as a matter of law;

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

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

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

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

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

3. Such action is otherwise required by regulations of the Adjutant General.

C. 1. The Adjutant General may:

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

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

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

d. dismiss the charges.

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

3. If the opinion of the senior force judge advocate, or designee, in the senior force judge advocate's review under subsection A of this section is that corrective action is required as a matter of law and if the Adjutant General does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Governor for review and action as deemed appropriate.

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

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

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

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

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3307 of Title 44, unless there is created a duplication in numbering, reads as follows:

Except as otherwise required by this code, all records of trial and related documents shall be transmitted and disposed of as prescribed by regulation and provided by law.

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3308 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3309 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3310 of Title 44, unless there is created a duplication in numbering, reads as follows:

Decisions of a court-martial are from a court with jurisdiction to issue felony convictions and appeals are to the court provided by the law of the state in which the court-martial was held. The appellate procedures to be followed shall be those provided by law for the appeal of criminal cases thereto.

SECTION 77. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3311 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3312 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3313 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. The senior force judge advocate shall detail a judge advocate as appellate government counsel to represent the state in the review or appeal of cases specified in Section 76 of this act and before any federal court when requested to do so by the state Attorney General. Appellate government counsel must be a member in good standing of the bar of the highest court of the state to which the appeal is taken.

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

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

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

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

SECTION 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3314 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under Section 69 of this act, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings. A judgment as to the legality of the proceedings is final in such cases when review is completed by an appellate court prescribed in Section 76 of this act, and is deemed final by the law of the state where the judgment was had.

B. If the sentence of the court-martial extends to dismissal or a dishonorable or bad-conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn under Section 69 of this act, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may not be executed until review of the case by the senior force judge advocate and any action on that review under Section 72 of this act is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under Section 68 of this act when so approved under that article.

SECTION 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3315 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Before the vacation of the suspension of a special court-martial sentence, which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on an alleged violation of probation. The probationer shall be represented at the hearing by military counsel if the probationer so desires.

B. The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If the officer vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in this code.

C. The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3316 of Title 44, unless there is created a duplication in numbering, reads as follows:

At any time within two (2) years after approval by the convening authority of a court-martial sentence, the accused may petition the Adjutant General for a new trial on the grounds of newly discovered evidence or fraud on the court-martial.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3317 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence may remit or suspend any part or amount of the

unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the Governor.

B. The Governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3318 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Under such regulations as may be prescribed, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

B. If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Governor may substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of the accused's enlistment.

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

SECTION 85. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3319 of Title 44, unless there is created a duplication in numbering, reads as follows:

The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this code, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this code, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States and the several states, subject only to action upon a petition for a new trial as provided in Section 82 of this act and to action under Section 83 of this act.

SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3320 of Title 44, unless there is created a duplication in numbering, reads as follows:

Under regulations prescribed, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this article if the sentence, as approved under Section 68 of this act, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under Section 68 of this act or at any time after such date, and such leave may be continued until the date on which action under this article is completed or may be terminated at any earlier time.

SECTION 87. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3321 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Persons incompetent to stand trial.

1. In the case of a person determined under this code to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the state Attorney General.

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

3. a. When the director of a facility in which a person is hospitalized pursuant to paragraph 2 of this section determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the state Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.
- b. Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the person covered by the notification is no longer subject to this code. If the person is no longer subject to this code, the state Attorney General shall take any action within the authority of the state Attorney General that the state Attorney General considers appropriate regarding the person.
- c. The director of the facility may retain custody of the person for not more than thirty (30) days after transmitting the notifications required by subparagraph a of paragraph 3 of this subsection.

4. In the application of the state statute applicable to persons incompetent to stand trial to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the

person is no longer subject to this code at a time relevant to the application of such article to the person, the state trial court with felony jurisdiction in the county where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

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

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

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

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

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

- a. the general court-martial convening authority may commit the person to the custody of the state Attorney General, and
- b. the state's Attorney General shall take action in accordance with the state statute applicable to persons incompetent to stand trial.

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

C. General provisions.

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

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

D. Applicability.

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

2. If the status of a person as described in article 2 terminates while the person is, pursuant to this article, in the custody of the state Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this article establishing requirements and procedures regarding a person no longer subject to this code shall continue to apply to that person notwithstanding the change of status.

PART X. PUNITIVE ARTICLES

SECTION 88. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3331 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

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

2. Causes an act to be done which if directly performed by him would be punishable by this code,

is a principal.

SECTION 89. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3332 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts or assists the offender in order to hinder or prevent his or her apprehension, trial or punishment shall be punished as a court-martial may direct.

SECTION 90. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3333 of Title 44, unless there is created a duplication in numbering, reads as follows:

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

SECTION 91. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3334 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

B. Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

C. Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

SECTION 92. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3335 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

SECTION 93. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3336 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person subject to this code who solicits or advises another or others to desert in violation of Section 96 of this act or mutiny in violation of Section 105 of this act shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, the person shall be punished as a court-martial may direct.

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

SECTION 94. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3337 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person who:

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

2. Procures his own separation from the state military forces by knowingly false representation or deliberate concealment as to his eligibility for that separation,

shall be punished as a court-martial may direct.

SECTION 95. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3338 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

SECTION 96. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3339 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any member of the state military forces who:

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

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

3. Without being regularly separated from one of the state military forces enlists or accepts an appointment in the same or another one of the state military forces, or in one of the armed forces of the United States, without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States,

is guilty of desertion.

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

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

desert occurs at any other time, by such punishment as a court-martial may direct.

SECTION 97. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3340 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who, without authority:

1. Fails to go to his appointed place of duty at the time prescribed,
2. Goes from that place; or
3. Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed,

shall be punished as a court-martial may direct.

SECTION 98. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3341 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

SECTION 99. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3342 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or Legislature of the state shall be punished as a court-martial may direct.

SECTION 100. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3343 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

SECTION 101. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3344 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

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

2. Willfully disobeys a lawful command of his superior commissioned officer,

shall be punished, if the offense is committed in time of war, by confinement of not more than ten (10) years or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment as a court-martial may direct.

SECTION 102. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3345 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any warrant officer or enlisted member who:

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

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

3. Treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer or petty officer, while that officer is in the execution of his office, shall be punished as a court-martial may direct.

SECTION 103. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3346 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

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

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

3. Is derelict in the performance of his duties,

shall be punished as a court-martial may direct.

SECTION 104. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3347 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

SECTION 105. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3348 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person subject to this code who:

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

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

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

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

SECTION 106. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3349 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

1. Resists apprehension;
2. Flees from apprehension;
3. Breaks arrest; or
4. Escapes from custody or confinement,

shall be punished as a court-martial may direct.

SECTION 107. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3350 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

SECTION 108. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3351 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who, except as provided by law or regulation, apprehends, arrests or confines any person shall be punished as a court-martial may direct.

SECTION 109. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3352 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

1. Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

2. Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused,

shall be punished as a court-martial may direct.

SECTION 110. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3353 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who before or in the presence of the enemy:

1. Runs away;

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

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

4. Casts away his arms or ammunition;

5. Is guilty of cowardly conduct;

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

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

8. Willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

9. Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle,

shall be punished as a court-martial may direct.

SECTION 111. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3354 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who compels or attempts to compel the commander of any of the state military forces of the state, or of any other state, place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

SECTION 112. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3355 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

SECTION 113. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3356 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

SECTION 114. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3357 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

B. Any person subject to this code who:

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

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

3. Engages in looting or pillaging,

shall be punished as a court-martial may direct.

SECTION 115. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3358 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

1. Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

2. Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly,

shall be punished as a court-martial may direct.

SECTION 116. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3359 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who, while in the hands of the enemy in time of war:

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

2. While in a position of authority over such persons maltreats them without justifiable cause,

shall be punished as a court-martial may direct.

SECTION 117. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3360 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or value of any kind:

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

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

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

SECTION 118. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3361 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 119. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3362 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document made in the line of duty, knowing it to be false, or makes any other false official statement made in the line of duty, knowing it to be false, shall be punished as a court-martial may direct.

SECTION 120. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3363 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who, without proper authority:

1. Sells or otherwise disposes of;
2. Willfully or through neglect damages, destroys or loses; or
3. Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of,

any military property of the United States or of any state, shall be punished as a court-martial may direct.

SECTION 121. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3364 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of any state shall be punished as a court-martial may direct.

SECTION 122. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3365 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or any state military forces shall suffer such punishment as a court-martial may direct.

B. Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or any state military forces shall be punished as a court-martial may direct.

SECTION 123. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3366 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 124. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3367 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code other than a sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

SECTION 125. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3368 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person subject to this code who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces of the United States or of any state military forces a substance described in subsection B of this section shall be punished as a court-martial may direct.

B. The substances referred to in subsection A of this section are the following:

1. Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance;

2. Any substance not specified in paragraph 1 of this subsection that is listed on a schedule of controlled substances prescribed by the President for the purposes of the Uniform Code of Military Justice of the armed forces of the United States, 10 United States Code, Section 801, et seq.; and

3. Any other substance not specified in paragraph 1 of this subsection or contained on a list prescribed by the President under paragraph 2 of this subsection that is listed in schedules I through V of article 202 of the Controlled Substances Act, 21 United States Code, Section 812.

SECTION 126. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3369 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

SECTION 127. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3370 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

SECTION 128. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3371 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who for the purpose of avoiding work, duty, or service:

1. Feigns illness, physical disablement, mental lapse, or derangement; or

2. Intentionally inflicts self-injury,

shall be punished as a court-martial may direct.

SECTION 129. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3372 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

SECTION 130. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3373 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

SECTION 131. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3374 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

B. Any person subject to this code who:

1. Commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

2. Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon,

is guilty of aggravated assault and shall be punished as a court-martial may direct.

SECTION 132. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3375 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code who:

1. Commits an act of sexual intercourse with another person;
and
2. At the time of intercourse the person subject to this code was married to someone else; and
3. Under the circumstances, the conduct of the person subject to this code was to the prejudice of good order and discipline in the state militia or was of a nature to bring discredit upon the state militia.

SECTION 133. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3376 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 134. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3377 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 135. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3378 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 136. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3379 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 137. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3380 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 138. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3381 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 139. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3382 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 140. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3383 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 141. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3384 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 142. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3385 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 143. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3386 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 144. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3387 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 145. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3388 of Title 44, unless there is created a duplication in numbering, reads as follows:

RESERVED.

SECTION 146. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3389 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person subject to this code:

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

- a. makes any claim against the United States, the state, or any officer thereof, or
- b. presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state, or any officer thereof;

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

- a. makes or uses any writing or other paper knowing it to contain any false or fraudulent statements,
- b. makes any oath, affirmation or certification to any fact or to any writing or other paper knowing the oath, affirmation or certification to be false, or

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

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

4. Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the state military forces, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state,

shall, upon conviction, be punished as a court-martial may direct.

SECTION 147. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3390 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

SECTION 148. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3391 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

military court must be determined in accordance with Section 3 of this act.

PART XI. MISCELLANEOUS PROVISIONS

SECTION 149. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3392 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Courts of inquiry to investigate any matter of concern to the state military forces may be convened by any person authorized to convene a general court-martial, whether or not the persons involved have requested such an inquiry.

B. A court of inquiry consists of three or more commissioned officers. For each court of inquiry, the convening authority shall also appoint counsel for the court.

C. Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

D. Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

E. The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

F. Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

G. Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

H. Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the

president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

SECTION 150. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3393 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. The following persons may administer oaths for the purposes of military administration, including military justice:

1. All judge advocates;
2. All summary courts-martial;
3. All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
4. All commanding officers of the naval militia; or
5. All other persons designated by regulations of the armed forces of the United States or by statute.

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

1. The president, military judge, and trial counsel for all general and special courts-martial;
2. The president and the counsel for the court of any court of inquiry;
3. All officers designated to take a deposition;
4. All persons detailed to conduct an investigation;
5. All recruiting officers; or
6. All other persons designated by regulations of the armed forces of the United States or by statute.

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

SECTION 151. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3394 of Title 44, unless there is created a duplication in numbering, reads as follows:

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

2. Such articles shall be explained again:

- a. after the member has completed basic or recruit training, and
- b. at the time when the member reenlists.

3. This subsection applies with respect to Sections 3, 4, 9-17, 27, 30, 34, 40, 41, 59, 88-148, and 151-153 of this act.

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

SECTION 152. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3395 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any member of the state military forces who believes himself wronged by a commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and shall,

as soon as possible, send to the Adjutant General a true statement of that complaint, with the proceedings had thereon.

SECTION 153. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3396 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the state military forces, that person may, under such regulations prescribed, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by that officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for payment to the injured parties of the damages so assessed and approved.

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

SECTION 154. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3397 of Title 44, unless there is created a duplication in numbering, reads as follows:

The Governor may delegate any authority vested in the Governor under this code, and provide for the subdelegation of any such authority, except the power given the Governor by Section 24 of this act.

SECTION 155. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3398 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. The fees and authorized travel expenses of all witnesses, experts, victims, court reporters, and interpreters, fees for the service of process, the costs of collection, apprehension, detention and confinement, and all other necessary expenses of prosecution and the administration of military justice, not otherwise payable by any other source, shall be paid out of the Military Justice Fund.

B. For the foregoing purposes, there is created in the State Treasury a fund to be designated the Military Justice Fund that shall be administered by the Adjutant General, from which expenses of military justice shall be paid in the amounts and manner as prescribed by law. The Legislature may appropriate and have deposited in the Military Justice Fund such funds as it deems necessary to carry out the purposes of this code.

SECTION 156. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3399 of Title 44, unless there is created a duplication in numbering, reads as follows:

A. Fines imposed by a military court or through imposition of nonjudicial punishment may be paid to the state and delivered to the court or imposing officer, or to a person executing their process. Fines may be collected in the following manner:

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

B. Any sum so received or retained shall be deposited in the Military Justice Fund or to whomever the court so directs.

SECTION 157. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4000 of Title 44, unless there is created a duplication in numbering, reads as follows:

This code shall be so construed as to effectuate its general purpose to make it uniform, so far as practical, with the Uniform Code of Military Justice, Chapter 47 of Title 10, United States Code.

SECTION 158. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4001 of Title 44, unless there is created a duplication in numbering, reads as follows:

Any person acting under the provisions of this code, whether as a member of the military or as a civilian, shall be immune from personal liability for any of the acts or omissions which he did or failed to do as part of his duties under this code.

SECTION 159. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4002 of Title 44, unless there is created a duplication in numbering, reads as follows:

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial according to the nature and degree of the offense and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

SECTION 160. AMENDATORY 44 O.S. 2001, Section 218, is amended to read as follows:

Section 218. The Adjutant General, with the approval of the Governor, is authorized to accept or purchase, for and in the name of the State of Oklahoma, acting as trustee for the Oklahoma National Guard, title to parcels of real estate on which an armory or armories have been or may be constructed.

SECTION 161. AMENDATORY 44 O.S. 2001, Section 233.5, is amended to read as follows:

Section 233.5 The governing body of any school district, town, city, county or any other political subdivision of state government is hereby authorized to convey to this state title or other adequate property interest to acceptable and suitable real estate under its control and proper jurisdiction as sites for the construction, erection and completion of armory buildings under this act, and any individual and any corporation is authorized to convey by deed to this state, any of his, her or its lands, situated in the state for such purpose and use; provided, each such conveyance shall be subject to acceptance by the Adjutant General, on behalf of the state, and provided further that the Adjutant General shall not accept any such deed unless the approval of the Governor of the acceptance be endorsed thereon, attested by the Secretary of State. ~~No state funds shall be paid or obligated for any such deed or other conveyance.~~ After such deed or other conveyance has been delivered and accepted, the Adjutant General shall be authorized to expend funds appropriated to the Military Department of the state for the maintenance, repair and improvement of the armory buildings and appurtenances erected on such lands.

SECTION 162. REPEALER 44 O.S. 2001, Sections 2101 through 3113, are hereby repealed.

SECTION 163. Sections 1 through 159 and Section 162 of this act shall become effective November 1, 2007.

SECTION 164. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 24th day of April, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of April, 2007.

Presiding Officer of the House
of Representatives