

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1820

By: Kannady

AS INTRODUCED

An Act relating to militia; amending 44 O.S. 2011, Section 212, which relates to action against an officer or enlisted person; creating civil immunity for acts of self-defense; amending 44 O.S. 2011, Sections 241, 242, 243, 244, 247, 248 and 250, which relate to the State Guard Act; updating citation; providing gender-neutral language; providing that Oklahoma State Guard members shall be considered part of the state military and subject to certain laws; providing Governor shall issue rules governing Oklahoma State Guard personnel in certain manner; removing certain applicability to Oklahoma State Guard; updating short title; amending 44 O.S. 2011, Sections 3200, 3201, 3202, 3203, 3205, 3206, 3211, 3213, 3221, 3232, 3233, 3234, 3235, 3241, 3242, 3243, 3244, 3246, 3247, 3248, 3249, 3251, 3252, 3253, 3255, 3261, 3263, 3264, 3266, 3268, 3269, 3274, 3276, 3277, 3278, 3280, 3292, 3295, 3298, 3302, 3303, 3304, 3306, 3310, 3313, 3314, 3318, 3319, 3320, 3321, 3331, 3336, 3337, 3338, 3339, 3340, 3341, 3343, 3344, 3345, 3346, 3347, 3348, 3350, 3353, 3355, 3357, 3359, 3360, 3361, 3366, 3369, 3376, 3377, 3378, 3379, 3380, 3389, 3390, 3391, 3393, 3394, 3395, 3396, 3397, 3399, 4001 and 4002, which relate to the Uniform State Code of Military Justice; updating short title; updating citations; defining terms; modifying definitions; modifying applicability of Uniform State Code of Military Justice; removing duty status requirements for trial and punishment; establishing certain jurisdiction; specifying military force components shall be inspected; deleting definitions; eliminating certain petty officer authority; clarifying language; eliminating lieutenant commander authority to impose certain punishments; modifying punishments; providing requirements for imposing nonjudicial punishments;

1 specifying the Adjutant General is the final
2 appellate authority for military nonjudicial
3 punishments; providing procedures for appeal;
4 specifying when pay forfeiture shall apply; providing
5 the state manual for courts-martial may prescribe
6 certain forms; eliminating certain court-martial
7 jurisdiction; providing the state manual may
8 prescribe limitations to adjudge punishments;
9 providing the state manual may prescribe limitations
10 to certain jurisdiction; providing the state manual
11 may prescribe regulations to employ court reporters;
12 providing the state manual may prescribe procedures
13 for trial; providing for gender-neutral language;
14 allowing digital video evidence; specifying number of
15 votes required to reconsider a finding; providing the
16 state manual may prescribe requirements for keeping
17 records of proceedings and trials; specifying
18 exemption shall apply to confidential information;
19 providing that the Court of Criminal Appeals shall
20 have exclusive appellate jurisdiction in certain
21 cases; specifying the state manual may prescribe
22 regulations concerning certain sentences; specifying
23 persons prohibited from being brought to trial;
24 eliminating procedures applicable to persons
incompetent to stand trial; providing presumption to
stand trial; requiring procedures for determining
mental competence be established in the state manual;
modifying unlawful acts subject to court-martial;
making certain sex-related actions unlawful;
authorizing defenses to be raised; defining terms;
making certain stalking actions unlawful; making
certain acts unlawful; making certain fraternization
actions unlawful; providing for gender-neutral
language; specifying an officer convicted of certain
offenses shall be punished by court-martial; updating
citations; eliminating authority for officers to
administer oaths; specifying certain boards may
convene subject to the state manual for courts-
martial regulations; requiring delegations of
authority to be in writing; mandating fines be
delivered to certain authorities; allowing funds be
provided to victims; providing jurisdiction shall not
be extended to certain sex offenses; requiring the
continuation of pending actions when certain parties
are not present; requiring military publications be
published as part of the Oklahoma Administrative
Code; providing effective period for military

1 publications; authorizing the Governor to approve a
2 state manual for courts-martial; amending 75 O.S.
3 2011, Sections 250.4, as amended by Section 12,
4 Chapter 430, O.S.L. 2014, 251, as amended by Section
5 1, Chapter 252, O.S.L. 2016, 255, 256 and 304 (75
6 O.S. Supp. 2016, Sections 250.4 and 251), which
7 relate to the Administrative Procedures Act;
8 exempting military publications; directing the
9 Secretary of State to provide for the publication of
10 military publications; authorizing military
11 publications be filed in electronic format; adding
12 military publications to list of publications in the
13 Oklahoma Register; requiring Secretary to publish
14 military publications in certain manner and time
15 frame; providing effective period for military
16 publications; providing effective date of military
17 publications; repealing 44 O.S. 2011, Section 3375,
18 which relates to adultery; providing for
19 codification; and providing an effective date.

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PART I. GENERAL PROVISIONS

SECTION 1. AMENDATORY 44 O.S. 2011, Section 212, is amended to read as follows:

Section 212. A. If a suit or proceeding shall be commenced in any court by any person against any officer or enlisted person of the military forces for any act done by such officer or enlisted person in his or her official capacity in the discharge of any duty under Sections 1 through 117, 208 through 235.2, or 241 through 250 of this title, or against any soldier acting under the authority or order of any such officer, or by virtue of any warrant issued by him

1 or her pursuant to law, it shall be the duty of the Attorney General
2 or Judge Advocate to defend such person.

3 The actual court costs of such a defense shall be a legal charge
4 against the state and shall be submitted to the Legislature for
5 payment. Before any suit or proceeding shall be filed or maintained
6 against any officer or soldier as herein provided, the plaintiff
7 shall be required to give security, to be approved by the court in a
8 sum not less than One Hundred Dollars (\$100.00), to secure the
9 costs. If the plaintiff fails to recover judgment such costs shall
10 be taxed and judgment rendered therefor against him or her and his
11 or her sureties.

12 B. Any officer or enlisted person of the military forces acting
13 in his or her official capacity in the discharge of any duty under
14 Sections 1 through 117, 208 through 235.2, or 241 through 250 of
15 this title, or against any soldier acting under the authority or
16 order of any such officer, or by virtue of any warrant issued by him
17 or her pursuant to law, shall be immune from personal liability for
18 any acts that include the use of deadly force for self-defense or to
19 defend another person from what the member reasonably believes is
20 the imminent use of unlawful deadly force.

21 SECTION 2. AMENDATORY 44 O.S. 2011, Section 241, is
22 amended to read as follows:

23 Section 241. The Governor, pursuant to the authority granted
24 the states by ~~the Act of Congress of October 21, 1940~~ 32 U.S.C.,

1 Section 109 or a successor provision, and under such regulations as
2 the Secretary of Defense may prescribe for discipline in training,
3 is hereby authorized to enlist, organize, maintain, equip and
4 discipline such military forces other than the National Guard as he
5 or she may deem necessary to defend the state. Such forces shall be
6 uniformed and subject to Sections 1 through 117, ~~192 through 195.8,~~
7 Sections 208 through 235.2 237, and ~~2101 through 3113~~ Sections 3200
8 through 4003 of this title ~~unless in conflict with such sections,~~
9 insofar as such sections do not conflict with Sections 241 through
10 250 of this title.

11 SECTION 3. AMENDATORY 44 O.S. 2011, Section 242, is
12 amended to read as follows:

13 Section 242. Such military forces shall be designated as the
14 "Oklahoma State Guard" and shall be composed of officers
15 commissioned or assigned, and such able-bodied ~~male~~ citizens of the
16 state as shall volunteer for service therein. They shall be
17 additional to and distinct from the National Guard ~~organized under~~
18 ~~existing law~~ of the State of Oklahoma, as defined in Title 32 of the
19 United States Code. They shall not be required to serve outside the
20 boundaries of ~~this state~~ the State of Oklahoma.

21 SECTION 4. AMENDATORY 44 O.S. 2011, Section 243, is
22 amended to read as follows:

23 Section 243. A. The Governor is hereby authorized to prescribe
24 rules and regulations governing the enlistment, organization,

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

16 B. Members of the Oklahoma State Guard shall be considered part
17 of state military forces as defined in Section 3201 of this title
18 and shall be subject to the Oklahoma Uniform Code of Military
19 Justice, Section 3200 et seq. of this title.

20 C. When prescribing the rules and regulations governing
21 enlistment, organization, administration, equipment, discipline and
22 discharge of the personnel of the Oklahoma State Guard, the Governor
23 shall issue such rules and regulations in the form of an executive
24 order which shall be published in the Oklahoma Administrative Code.

1 For purposes of the Administrative Procedures Act, the executive
2 order prescribing the rules and regulations governing enlistment,
3 organization, administration, equipment, discipline and discharge of
4 the personnel of the Oklahoma State Guard shall be considered a
5 military publication and shall be published and indexed as part of
6 the Oklahoma Administrative Code.

7 SECTION 5. AMENDATORY 44 O.S. 2011, Section 244, is
8 amended to read as follows:

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

15 SECTION 6. AMENDATORY 44 O.S. 2011, Section 247, is
16 amended to read as follows:

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

22 SECTION 7. AMENDATORY 44 O.S. 2011, Section 248, is
23 amended to read as follows:

24

1 Section 248. ~~(a) Whenever such forces or any part thereof~~
2 ~~shall be ordered out for active service the Articles of War of the~~
3 ~~United States applicable to members of the National Guard of this~~
4 ~~state in relation to courts-martial, their jurisdiction and the~~
5 ~~limits of punishment and the rules and regulations prescribed~~
6 ~~thereunder shall be in full force and effect with respect to "the~~
7 ~~Oklahoma State Guard."~~

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

15 SECTION 8. AMENDATORY 44 O.S. 2011, Section 250, is
16 amended to read as follows:

17 Section 250. This act may be cited as the Oklahoma State Guard
18 Act.

19 SECTION 9. AMENDATORY 44 O.S. 2011, Section 3200, is
20 amended to read as follows:

21 Section 3200. ~~This~~ Sections 3200 through 4002 of this title and
22 Sections 97 and 98 of this act shall be known and may be cited as
23 the "Oklahoma Uniform ~~State~~ Code of Military Justice".
24

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

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

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

9 2. "Adjutant General" means the chief administrative officer
10 appointed by the Governor to supervise and direct the Oklahoma
11 National Guard when it is not activated for federal duty under Title
12 10 of the United States Code;

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

18 4. "Apprehension" means the taking of a person into custody;

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

22 6. "Arrest in quarters" means moral restraint, as opposed to
23 physical restraint, limiting the liberty of an officer. The limits
24 of arrest in quarters are set by the authority imposing nonjudicial

1 punishment and may extend beyond the physical quarters of an
2 officer;

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

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

17 ~~3.~~ 9. "Classified information" means:

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

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

6 ~~4.~~ 10. "Code" means ~~this act~~ the Oklahoma Uniform Code of
7 Military Justice;

8 ~~5.~~ 11. "Commanding officer" includes only commissioned officers
9 of the state military forces and shall include officers in charge
10 only when administering nonjudicial punishment under Section ~~17~~ 3221
11 of this ~~act~~ title. "Commander" has the same meaning as "commanding
12 officer" unless the context otherwise requires;

13 ~~6.~~ 12. "Component" means one of two constituent parts that make
14 up the state military forces, namely the army force responsible for
15 land-based warfare and the air force responsible for aerial warfare
16 and related support activities;

17 13. "Confidential information" means any information or
18 material so designated in Sections 24A.27 and 24A.28 of Title 51 of
19 the Oklahoma Statutes and not previously released by an appropriate
20 authority;

21 14. "Confinement" means the physical restraint of a person;

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

1 ~~7.~~ 16. "Day" means calendar day and is not synonymous with the
2 term "unit training assembly". Any punishment authorized by this
3 act which is measured in terms of days shall, when served in a
4 status other than annual field training, be construed to mean
5 succeeding duty days;

6 ~~8.~~ 17. "Duty status other than state active duty" means any
7 other type of duty not in federal service and not full-time duty in
8 the active service of the state, under an order issued by authority
9 of law and includes travel to and from such duty;

10 ~~9.~~ 18. "Enlisted member" means a person in an enlisted grade;

11 ~~10.~~ 19. "Fatigue duty" means general labor performed by members
12 of the state military forces when unarmed, including but not limited
13 to cleaning, digging, loading, organizing, etc.;

14 20. "Fine" means a type of punishment that makes a member
15 pecuniarily liable to the State of Oklahoma for the amounts
16 specified by nonjudicial punishment or adjudged by a court-martial.
17 A fine may be paid in cash by a member, collected by deduction from
18 the current pay of a member or collected by deduction on settlement
19 of the pay account of a member at discharge;

20 21. "Forfeiture" means a loss of monetary compensation provided
21 to members of the Oklahoma National Guard or Oklahoma State Guard
22 for performance of military duties as a result of nonjudicial
23 punishment or as adjudged by a court-martial. A forfeiture is
24 applicable to basic pay and allowances if total forfeitures of pay

1 and allowances are specifically adjudged by a general court-martial;
2 provided that forfeitures, other than total forfeitures, shall not
3 apply to special pay, other than hardship duty pay, or proficiency
4 or incentive pay;

5 22. "Grade" means a step or degree in a graduated scale of
6 office or military rank which is established and designated as a
7 grade by law or regulation;

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

- 11 a. certified or designated as a judge advocate in the
12 Judge Advocate General's Corps of the Army, Air Force,
13 Navy, or the Marine Corps or designated as a law
14 specialist as an officer of the Coast Guard, or a
15 reserve component of one of these, or
- 16 b. certified as a nonfederally recognized judge advocate,
17 under regulations ~~promulgated pursuant to this~~
18 ~~provision~~ in the state manual for courts-martial, by
19 the senior judge advocate of the commander of the
20 force component in the state military forces of which
21 the accused is a member, as competent to perform such
22 military justice duties required by this code. If
23 there is no such judge advocate available, then such
24 certification may be made by ~~such~~ the senior judge

1 advocate of the commander of ~~another~~ the other force
2 component in the state military forces as the
3 convening authority directs;

4 ~~11.~~ 24. "May" is used in a permissive sense. The phrase "no
5 person may" means that no person is required, authorized, or
6 permitted to do the act prescribed;

7 ~~12.~~ 25. "Military court" means a court-martial or a court of
8 inquiry;

9 ~~13.~~ 26. "Military judge" means an official of a general or
10 special court-martial detailed in accordance with Section ~~29~~ 3246 of
11 this ~~act~~ title;

12 ~~14.~~ The term "military 27. "Military offenses" means those
13 offenses prescribed under Sections ~~88~~ 3331 (Principals), ~~89~~ 3332
14 (Accessory after the fact), ~~91~~ 3334 (Attempts), ~~92~~ 3335
15 (Conspiracy), ~~93~~ 3336 (Solicitation), ~~94~~ 3337 (Fraudulent
16 enlistment, appointment, or separation), ~~95~~ 3338 (Unlawful
17 enlistment, appointment, or separation), ~~96~~ 3339 (Desertion), ~~97~~
18 3340 (Absence without leave), ~~98~~ 3341 (Missing movement), ~~99~~ 3342
19 (Contempt toward officials), ~~100~~ 3343 (Disrespect towards superior
20 commissioned officer), ~~101~~ 3344 (Assaulting or willfully disobeying
21 superior commissioned officer), ~~102~~ 3345 (Insubordinate conduct
22 toward warrant officer, or noncommissioned officer, ~~or petty~~
23 ~~officer~~), ~~103~~ 3346 (Failure to obey order or regulation), ~~104~~ 3347
24 (Cruelty and maltreatment), ~~105~~ 3348 (Mutiny or sedition), ~~106~~ 3349

1 (Resistance, flight, breach of arrest, and escape), ~~107~~ 3350
2 (Releasing prisoner without proper authority), ~~108~~ 3351 (Unlawful
3 detention), ~~109~~ 3352 (Noncompliance with procedural rules), ~~110~~ 3353
4 (Misbehavior before the enemy), ~~111~~ 3354 (Subordinate compelling
5 surrender), ~~112~~ 3355 (Improper use of countersign), ~~113~~ 3356
6 (Forcing a safeguard), ~~114~~ 3357 (Captured or abandoned property),
7 ~~115~~ 3358 (Aiding the enemy), ~~116~~ 3359 (Misconduct as prisoner), ~~117~~
8 3360 (Larceny and wrongful appropriation), ~~119~~ 3361 (Misuse of
9 public records), 3362 (False official statements), ~~120~~ 3363
10 (Military property - Loss, damage, destruction, or wrongful
11 disposition), ~~121~~ 3364 (Property other than military property -
12 Waste, spoilage, or destruction), ~~122~~ 3365 (Improper hazarding of
13 vessel), ~~124~~ 3366 (Conduct likely to produce death or grievous
14 bodily harm), 3367 (Drunk on duty), ~~125~~ 3368 (Wrongful use,
15 possession, etc., of controlled substances), ~~126~~ 3369 (Misbehavior
16 of sentinel), ~~127~~ 3370 (Dueling), ~~128~~ 3371 (Malingering), ~~129~~ 3372
17 (Riot or breach of peace), ~~130~~ 3373 (Provoking speeches or
18 gestures), ~~131~~ 3374 (Assault), ~~132~~ ~~(Adultery)~~, ~~146~~ 3376 (Misuse of
19 military or official pass, permit, discharge certificate, or
20 identification card), 3377 (Sexual assault, aggravated sexual
21 contact, or abusive sexual contact), 3378 (Stalking), 3379 (Other
22 sexual misconduct), 3380 (Fraternization), 3389 (Frauds against the
23 government), ~~147~~ 3390 (Conduct unbecoming an officer and a
24 gentleman), and ~~148~~ 3391 (General article) of this ~~code~~ title;

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

3 ~~16. The term "officer"~~ 28. "Military publication" means a
4 written publication of an administrative nature such as a
5 regulation, instruction, pamphlet, circular, permanent or general
6 order, bulletin, policy memorandum or blank form promulgated or
7 published by or under the authority of the Adjutant General. An
8 order or directive issued by the Adjutant General that is
9 operational in nature or issued in execution of a military mission
10 shall not be included within the meaning of military publication;

11 29. "National security" means the national defense and foreign
12 relations of the United States;

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

20 31. "Noncommissioned officer" means an enlisted member above
21 the pay grade of E-4;

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

1 33. "Officer" means a commissioned or warrant officer;

2 ~~17. The term "officer~~ 34. "Officer in charge" means a ~~member~~
3 ~~of the naval militia, the Navy, the Marine Corps, or the Coast Guard~~
4 commissioned or warrant officer designated as such by appropriate
5 authority;

6 ~~18. The term "record"~~ 35. "Pay" means monetary compensation
7 provided to members of the state military forces in exchange for
8 performance of military duties carried out pursuant to a lawful
9 order or otherwise under the authority of law, including basic pay,
10 special pay, proficiency pay and incentive pay. "Pay" shall not
11 mean allowances as defined in this section;

12 36. "Rank" means the order of precedence among members of the
13 state military forces;

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

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

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

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

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

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

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

22 ~~24. The term "superior~~

23 ~~38. "Restriction" means moral restraint, as opposed to physical~~
24 ~~restraint, limiting access to physical places or participation in~~

1 certain activities. In comparison to arrest in quarters,
2 "restriction" is a lesser punishment;

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

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

12 41. "Shall" is used in an imperative sense;

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

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

20 44. "State military forces" means the National Guard of the
21 State of Oklahoma, which includes an army component and an air force
22 component, as defined in Title 32, United States Code, and Section
23 41 of this title; the Oklahoma State Guard, organized pursuant to
24 Title 32, U.S.C., Section 109 and established pursuant to the State

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

9 45. "Superior commissioned officer" means a commissioned
10 officer superior in rank or command; and

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

13 46. "Supplies" means materiel, equipment, and stores of all
14 types possessed or lawfully controlled by state military forces; and

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

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

1 SECTION 11. AMENDATORY 44 O.S. 2011, Section 3202, is
2 amended to read as follows:

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

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

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

24

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

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

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

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

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

1 SECTION 13. AMENDATORY 44 O.S. 2011, Section 3205, is
2 amended to read as follows:

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

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

21 SECTION 14. AMENDATORY 44 O.S. 2011, Section 3206, is
22 amended to read as follows:

23 Section 3206. A. The senior force judge advocates in each of
24 the state's military ~~forces~~ force components or those judge

1 advocates' delegates shall make frequent inspections in the field in
2 supervision of the administration of military justice in that force
3 component.

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

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

14 PART II. APPREHENSION AND RESTRAINT

15 SECTION 15. AMENDATORY 44 O.S. 2011, Section 3211, is
16 amended to read as follows:

17 Section 3211. A. ~~Apprehension is the taking of a person into~~
18 ~~custody.~~

19 ~~B.~~ Any person authorized by this code or by Chapter 47 of Title
20 10, of the United States Code, or by regulations issued under
21 either, to apprehend persons subject to this code, any marshal of a
22 court-martial appointed pursuant to the provisions of this code, and
23 any peace officer or civil officer having authority to apprehend
24 offenders under the laws of the United States or of a state, may do

1 so upon probable cause that an offense has been committed and that
2 the person apprehended committed it.

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

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

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

17 SECTION 16. AMENDATORY 44 O.S. 2011, Section 3213, is
18 amended to read as follows:

19 Section 3213. A. ~~Arrest is the restraint of a person by an~~
20 ~~order, not imposed as a punishment for an offense, directing him to~~
21 ~~remain within certain specified limits. Confinement is the physical~~
22 ~~restraint of a person.~~

23 ~~B.~~ An enlisted member may be ordered into arrest or confinement
24 by any commissioned officer by an order, oral or written, delivered

1 in person or through other persons subject to this code. A
2 commanding officer may authorize warrant officers, ~~petty officers,~~
3 or noncommissioned officers to order enlisted members of the
4 commanding officer's command or subject to the commanding officer's
5 authority into arrest or confinement.

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

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

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

18 PART III. NONJUDICIAL PUNISHMENT

19 SECTION 17. AMENDATORY 44 O.S. 2011, Section 3221, is
20 amended to read as follows:

21 Section 3221. A. ~~Under such regulations as prescribed~~ Pursuant
22 to this section, any commanding officer ~~(, and for purposes of this~~
23 ~~article section, officers~~ an officer in charge), as defined in
24 Section 3201 of this title, may impose disciplinary punishments for

1 minor offenses arising under the punitive sections of this code
2 without the intervention of a court-martial ~~pursuant to this~~
3 ~~article.~~ The

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

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

11 1. An admonition;

12 2. A reprimand;

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

15 4. The forfeiture of pay of not more than seven (7) days' pay;

16 5. A fine of not more than seven (7) days' pay;

17 6. A reduction to the next inferior pay grade, if the grade
18 from which demoted is within the promotion authority of the officer
19 imposing the reduction or any officer subordinate to the one who
20 imposes the reduction;

21 7. Extra duties, including fatigue or other duties, for not
22 more than fourteen (14) days, which need not be consecutive; and
23
24

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

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

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

9 2. A reprimand;

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

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

14 ~~3.~~ 5. A fine of not more than one (1) month's pay;

15 ~~4.~~ 6. A reduction to the lowest or any intermediate pay grade,
16 if the grade from which demoted is within the promotion authority of
17 the officer imposing the reduction or any officer subordinate to the
18 one who imposes the reduction, but an enlisted member in a pay grade
19 above E-4 ~~may~~ shall not be reduced more than two pay grades;

20 ~~5.~~ 7. Extra duties, including fatigue or other duties, for not
21 more than forty-five (45) days which need not be consecutive; and

22 ~~6.~~ 8. Restriction to certain specified limits, with or without
23 suspension from duty, for not more than sixty (60) days which need
24 not be consecutive.

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

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

6 a. except reduction in grade or extra duties, any
7 punishment authorized in ~~paragraphs 1, 2, 3 and 6~~ of
8 subsection ~~C~~ D of this section, and

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

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

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

18 ~~E.~~ F. Whenever any of those punishments are combined to run
19 consecutively, the total length of the combined punishment ~~cannot~~
20 shall not exceed the authorized duration of the longest punishment
21 included in the combination, and there ~~must~~ shall be an
22 apportionment of punishments so that no single punishment in the
23 combination exceeds its authorized length under this ~~article~~
24 section.

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

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

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

24

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

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

23 ~~I.~~ J. Except for nonjudicial punishment imposed by the Adjutant
24 General or the Governor, the final appellate authority for

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

12 K. Whenever nonjudicial punishment is imposed under this
13 section:

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

18 a. excuse the accused from attendance at scheduled unit
19 training assemblies, or

20 b. arrange for the accused to drill on alternate dates
21 and in alternate locations; or

22 2. If necessary to maintain good order and discipline within
23 the unit, the commander or officer in charge who imposed the
24 nonjudicial punishment may order the accused to drill on alternate

1 dates and in alternate locations. The order shall be reduced to
2 writing and shall become part of the record of nonjudicial
3 punishment.

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

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

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

22 SECTION 18. AMENDATORY 44 O.S. 2011, Section 3232, is
23 amended to read as follows:

24

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

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

7 SECTION 19. AMENDATORY 44 O.S. 2011, Section 3233, is
8 amended to read as follows:

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

15 SECTION 20. AMENDATORY 44 O.S. 2011, Section 3234, is
16 amended to read as follows:

17 Section 3234. Subject to Section ~~19~~ 3232 of this ~~act~~ title,
18 special courts-martial have jurisdiction to try persons subject to
19 this code for any offense made punishable by this code, and may,
20 under such limitations as ~~the Governor~~ may ~~prescribe~~ be prescribed
21 in the state manual for courts-martial, adjudge any punishment not
22 forbidden by this code except dishonorable discharge, dismissal,
23 confinement for more than one (1) year, forfeiture of pay exceeding
24

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

3 SECTION 21. AMENDATORY 44 O.S. 2011, Section 3235, is
4 amended to read as follows:

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

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

23 SECTION 22. AMENDATORY 44 O.S. 2011, Section 3241, is
24 amended to read as follows:

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

2 1. The Governor;

3 2. The Adjutant General;

4 3. The commanding officer of a force component of the state
5 military forces;

6 4. The commanding officer of a division or a separate brigade;
7 or

8 5. The commanding officer of a separate wing.

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

13 SECTION 23. AMENDATORY 44 O.S. 2011, Section 3242, is
14 amended to read as follows:

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

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

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

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

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

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

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

5 SECTION 24. AMENDATORY 44 O.S. 2011, Section 3243, is
6 amended to read as follows:

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

8 1. Any person who may convene a general or special court-
9 martial;

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

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

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

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

23 SECTION 25. AMENDATORY 44 O.S. 2011, Section 3244, is
24 amended to read as follows:

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

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

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

1 obtained. In this ~~article~~ section, "unit" means any regularly
2 organized body of the state military forces not larger than a
3 company, a squadron, ~~a division of the naval militia,~~ or a body
4 corresponding to one of them.

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

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

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

21 SECTION 26. AMENDATORY 44 O.S. 2011, Section 3246, is
22 amended to read as follows:

23 Section 3246. A. A military judge shall be detailed to each
24 general and special court-martial. The military judge shall preside

1 over each open session of the court-martial to which the military
2 judge has been detailed.

3 B. A military judge shall be:

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

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

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

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

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

24

1 efficiency of the military judge so detailed, which relates to
2 performance of duty as a military judge.

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

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

10 SECTION 27. AMENDATORY 44 O.S. 2011, Section 3247, is
11 amended to read as follows:

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

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

23

24

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

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

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

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

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

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

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

21 SECTION 28. AMENDATORY 44 O.S. 2011, Section 3248, is
22 amended to read as follows:

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

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

5 SECTION 29. AMENDATORY 44 O.S. 2011, Section 3249, is
6 amended to read as follows:

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

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

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

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

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

17 SECTION 30. AMENDATORY 44 O.S. 2011, Section 3251, is
18 amended to read as follows:

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

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

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

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

7 SECTION 31. AMENDATORY 44 O.S. 2011, Section 3252, is
8 amended to read as follows:

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

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

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

23 D. No statement obtained from any person in violation of this
24 ~~article~~ section or through the use of coercion, unlawful influence,

1 or unlawful inducement may be received in evidence against the
2 person in a trial by court-martial.

3 SECTION 32. AMENDATORY 44 O.S. 2011, Section 3253, is
4 amended to read as follows:

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

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

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

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

- 16 1. Is present at the investigation;
- 17 2. Is informed of the nature of each uncharged offense
18 investigated; and
- 19 3. Is afforded the opportunities for representation, cross-
20 examination, and presentation prescribed in subsection B of this
21 section.

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

1 SECTION 33. AMENDATORY 44 O.S. 2011, Section 3255, is
2 amended to read as follows:

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

9 1. The specification alleges an offense under this code;

10 2. The specification is warranted by the evidence indicated in
11 the report of investigation under Section ~~35~~ 3253 of this ~~act~~ title,
12 if there is such a report; and

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

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

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

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

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

24

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

6 SECTION 34. AMENDATORY 44 O.S. 2011, Section 3261, is
7 amended to read as follows:

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

16 SECTION 35. AMENDATORY 44 O.S. 2011, Section 3263, is
17 amended to read as follows:

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

22 B. 1. The accused has the right to be represented in defense
23 before a general or special court-martial or at an investigation
24

1 under Section ~~35~~ 3253 of this ~~act~~ title as provided in this
2 subsection.

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

5 3. The accused may be represented:

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

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

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

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

20 6. The accused is not entitled to be represented by more than
21 one military counsel. However, the person authorized under
22 regulations prescribed under Section ~~30~~ 3247 of this ~~act~~ title to
23 detail counsel, in that person's sole discretion:

24

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

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

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

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

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

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

21 SECTION 36. AMENDATORY 44 O.S. 2011, Section 3264, is
22 amended to read as follows:

23 Section 3264. A. At any time after the service of charges
24 which have been referred for trial to a court-martial composed of a

1 military judge and members, the military judge may, subject to
2 Section ~~38~~ 3256 of this ~~act~~ title, call the court into session
3 without the presence of the members for the purpose of:

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

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

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

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

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

20 B. When the members of a court-martial deliberate or vote, only
21 the members may be present. All other proceedings, including any
22 other consultation of the members of the court with counsel or the
23 military judge, shall be made a part of the record and shall be in
24

1 the presence of the accused, the defense counsel, the trial counsel,
2 and the military judge.

3 SECTION 37. AMENDATORY 44 O.S. 2011, Section 3266, is
4 amended to read as follows:

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

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

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

23 2. If exercise of a peremptory challenge reduces the court
24 below the minimum number of members required by Section ~~18~~ 3231 of

1 this ~~act~~ title, the parties shall, notwithstanding Section ~~32~~ 3249
2 of this ~~act~~ title, either exercise or waive any remaining peremptory
3 challenge, not previously waived, against the remaining members of
4 the court before additional members are detailed to the court.

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

10 SECTION 38. AMENDATORY 44 O.S. 2011, Section 3268, is
11 amended to read as follows:

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

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

22 C. Periods in which the accused was absent from territory in
23 which the state has the authority to apprehend him, or in the
24 custody of civil authorities, or in the hands of the enemy, shall be

1 excluded in computing the period of limitation prescribed in this
2 article section.

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

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

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

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

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

23 a. has expired, or
24

1 b. will expire within one hundred eighty (180) days after
2 the date of dismissal of the charges and
3 specifications,
4 trial and punishment under new charges and specifications are not
5 barred by the statute of limitations if the conditions specified in
6 paragraph 2 of this subsection are met.

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

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

13 b. allege the same acts or omissions that were alleged in
14 the dismissed charges or specifications or allege acts
15 or omissions that were included in the dismissed
16 charges or specifications.

17 SECTION 39. AMENDATORY 44 O.S. 2011, Section 3269, is
18 amended to read as follows:

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

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

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

6 SECTION 40. AMENDATORY 44 O.S. 2011, Section 3274, is
7 amended to read as follows:

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

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

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

21 D. A duly authenticated deposition taken upon reasonable notice
22 to the other parties, so far as otherwise admissible under the rules
23 of evidence, may be read in evidence or, in the case of ~~audiotape~~
24 digital audio recordings, ~~videotape~~ digital video recordings,

1 digital ~~image~~ images or ~~file~~ files, or similar material, may be
2 played in evidence before any military court, if it appears:

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

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

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

11 SECTION 41. AMENDATORY 44 O.S. 2011, Section 3276, is
12 amended to read as follows:

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

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

21 C. Whenever lack of mental responsibility of the accused with
22 respect to an offense is properly at issue, the military judge shall
23 instruct the members of the court as to the defense of lack of
24

1 mental responsibility under this ~~article~~ section and charge them to
2 find the accused:

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

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

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

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

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

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

1 SECTION 42. AMENDATORY 44 O.S. 2011, Section 3277, is
2 amended to read as follows:

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

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

19 C. Before a vote is taken on the findings, the military judge
20 shall, in the presence of the accused and counsel, instruct the
21 members of the court as to the elements of the offense and charge
22 them:
23
24

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

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

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

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

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

21 SECTION 43. AMENDATORY 44 O.S. 2011, Section 3278, is
22 amended to read as follows:

23 Section 3278. A. No person may be convicted of an offense
24 except as provided in subsection B of Section 48 3270 of this act

1 title or by the concurrence of two-thirds (2/3) of the members
2 present at the time the vote is taken.

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

16 SECTION 44. AMENDATORY 44 O.S. 2011, Section 3280, is
17 amended to read as follows:

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

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

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

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

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

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

19 SECTION 45. AMENDATORY 44 O.S. 2011, Section 3292, is
20 amended to read as follows:

21 Section 3292. A. The punishment which a court-martial may
22 direct for an offense may not exceed such limits as prescribed by
23 this code, but in no instance may a sentence exceed more than ten
24 (10) years for a military offense, nor shall a sentence of death be

1 adjudged. A conviction by general court-martial of any military
2 offense for which an accused may receive a sentence of confinement
3 for more than one (1) year is a felony offense. Except for
4 convictions by a summary court-martial, all other military offenses
5 are misdemeanors. Any conviction by a summary court-martial is not
6 a criminal conviction.

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

13 SECTION 46. AMENDATORY 44 O.S. 2011, Section 3295, is
14 amended to read as follows:

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

1 court-martial jurisdiction over the command to which the accused is
2 currently assigned.

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

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

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

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

23 C. In any case in which a court-martial sentences an accused to
24 confinement and the sentence to confinement has been ordered

1 executed, but in which review of the case under Section ~~76~~ 3310 of
2 this ~~act~~ title is pending, the Adjutant General may defer further
3 service of the sentence to confinement while that review is pending.

4 SECTION 47. AMENDATORY 44 O.S. 2011, Section 3298, is
5 amended to read as follows:

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

17 2. A sentence covered by this ~~article~~ section is any sentence
18 that includes:

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

22 B. In a case involving an accused who has dependents, the
23 convening authority or other person acting under Section ~~68~~ 3302 of
24 this ~~act~~ title may waive any or all of the forfeitures of pay and

1 allowances required by subsection A of this section for a period not
2 to exceed six (6) months. Any amount of pay or allowances that,
3 except for a waiver under this subsection, would be forfeited shall
4 be paid, as the convening authority or other person taking action
5 directs, to the dependents of the accused.

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

13 SECTION 48. AMENDATORY 44 O.S. 2011, Section 3302, is
14 amended to read as follows:

15 Section 3302. A. The findings and sentence of a court-martial
16 shall be reported promptly to the convening authority after the
17 announcement of the sentence.

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

1 section. In a summary court-martial case, such a submission shall
2 be made within seven (7) days after the sentence is announced.

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

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

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

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

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

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

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

19 D. Before acting under this ~~article~~ section on any general or
20 special court-martial case in which there is a finding of guilt, the
21 convening authority or other person taking action under this ~~article~~
22 section shall obtain and consider the written recommendation of a
23 judge advocate. The convening authority or other person taking
24 action under this ~~article~~ section shall refer the record of trial to

1 the judge advocate, and the judge advocate shall use such record in
2 the preparation of the recommendation. The recommendation of the
3 judge advocate shall include such matters as may be prescribed by
4 regulation and shall be served on the accused, who may submit any
5 matter in response under subsection B of this section. Failure to
6 object in the response to the recommendation or to any matter
7 attached to the recommendation waives the right to object thereto.

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

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

17 a. reconsider a finding of not guilty of any
18 specification or a ruling which amounts to a finding
19 of not guilty,

20 b. reconsider a finding of not guilty of any charge,
21 unless there has been a finding of guilty under a
22 specification laid under that charge, which
23 sufficiently alleges a violation of some ~~article~~
24 section of this code, or

1 c. increase the severity of the sentence unless the
2 sentence prescribed for the offense is mandatory.

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

13 SECTION 49. AMENDATORY 44 O.S. 2011, Section 3303, is
14 amended to read as follows:

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

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

23 SECTION 50. AMENDATORY 44 O.S. 2011, Section 3304, is
24 amended to read as follows:

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

- 6 a. an order or ruling of the military judge which
7 terminates the proceedings with respect to a charge or
8 specification,
- 9 b. an order or ruling which excludes evidence that is
10 substantial proof of a fact material in the
11 proceeding,
- 12 c. an order or ruling which directs the disclosure of
13 classified or confidential information,
- 14 d. an order or ruling which imposes sanctions for
15 nondisclosure of classified or confidential
16 information,
- 17 e. a refusal of the military judge to issue a protective
18 order sought by the state to prevent the disclosure of
19 classified or confidential information, and
- 20 f. a refusal by the military judge to enforce an order
21 described in subparagraph e of this ~~section~~ paragraph
22 that has previously been issued by appropriate
23 authority.

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

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

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

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

21 SECTION 51. AMENDATORY 44 O.S. 2011, Section 3306, is
22 amended to read as follows:

23 Section 3306. A. Each general and special court-martial case
24 in which there has been a finding of guilty shall be reviewed by the

1 senior force component judge advocate, or a designee. The senior
2 force component judge advocate, or designee, may not review a case
3 under this subsection if that person has acted in the same case as
4 an accuser, investigating officer, member of the court, military
5 judge, or counsel or has otherwise acted on behalf of the
6 prosecution or defense. The senior force component judge advocate's
7 review shall be in writing and shall contain the following:

8 1. Conclusions as to whether:

9 a. the court had jurisdiction over the accused and the
10 offense,

11 b. the charge and specification stated an offense, and

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

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

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

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

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

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

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

6 C. 1. The Adjutant General may:

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

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

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

14 d. dismiss the charges.

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

18 3. If the opinion of the senior force component judge advocate,
19 or designee, in the senior force component judge advocate's review
20 under subsection A of this section is that corrective action is
21 required as a matter of law and if the Adjutant General does not
22 take action that is at least as favorable to the accused as that
23 recommended by the judge advocate, the record of trial and action
24

1 thereon shall be sent to the Governor for review and action as
2 deemed appropriate.

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

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

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

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

21 SECTION 52. AMENDATORY 44 O.S. 2011, Section 3310, is
22 amended to read as follows:

23 Section 3310. ~~Decisions of a court-martial are from a court~~
24 ~~with jurisdiction to issue felony convictions and appeals are to the~~

1 ~~court provided by the law of the state in which the court martial~~
2 ~~was held~~ The Oklahoma Court of Criminal Appeals shall have exclusive
3 appellate jurisdiction in all cases appealed from a court-martial
4 proceeding conducted pursuant to this code, whether such a
5 proceeding occurred within or without the geographical boundaries of
6 the State of Oklahoma. The appellate procedures to be followed
7 shall be those provided by law for the appeal of criminal cases
8 thereto.

9 SECTION 53. AMENDATORY 44 O.S. 2011, Section 3313, is
10 amended to read as follows:

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

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

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

24

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

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

7 SECTION 54. AMENDATORY 44 O.S. 2011, Section 3314, is
8 amended to read as follows:

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

20 B. If the sentence of the court-martial extends to dismissal or
21 a dishonorable or bad-conduct discharge and if the right of the
22 accused to appellate review is waived, or an appeal is withdrawn
23 under Section ~~69~~ 3303 of this ~~act~~ title, that part of the sentence
24 extending to dismissal or a dishonorable or bad-conduct discharge

1 may not be executed until review of the case by the senior force
2 component judge advocate and any action on that review under Section
3 ~~72~~ 3306 of this ~~act~~ title is completed. Any other part of a court-
4 martial sentence may be ordered executed by the convening authority
5 or other person acting on the case under Section ~~68~~ 3302 of this ~~act~~
6 title when so approved under that ~~article~~ section.

7 SECTION 55. AMENDATORY 44 O.S. 2011, Section 3318, is
8 amended to read as follows:

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

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

21 C. If a previously executed sentence of dismissal is not
22 imposed on a new trial, the Governor may substitute therefor a form
23 of discharge authorized for administrative issue, and the
24 commissioned officer dismissed by that sentence may be reappointed

1 by the Governor alone to such commissioned grade and with such rank
2 as in the opinion of the Governor that former officer would have
3 attained had he or she not been dismissed. The reappointment of
4 such a former officer shall be without regard to the existence of a
5 vacancy and shall affect the promotion status of other officers only
6 insofar as the Governor may direct. All time between the dismissal
7 and the reappointment shall be considered as actual service for all
8 purposes, including the right to pay and allowances.

9 SECTION 56. AMENDATORY 44 O.S. 2011, Section 3319, is
10 amended to read as follows:

11 Section 3319. The appellate review of records of trial provided
12 by this code, the proceedings, findings, and sentences of courts-
13 martial as approved, reviewed, or affirmed as required by this code,
14 and all dismissals and discharges carried into execution under
15 sentences by courts-martial following approval, review, or
16 affirmation as required by this code, are final and conclusive.
17 Orders publishing the proceedings of courts-martial and all action
18 taken pursuant to those proceedings are binding upon all
19 departments, courts, agencies, and officers of the United States and
20 the several states, subject only to action upon a petition for a new
21 trial as provided in Section ~~§2~~ 3316 of this ~~act~~ title and to action
22 under Section ~~§3~~ 3317 of this ~~act~~ title.

23 SECTION 57. AMENDATORY 44 O.S. 2011, Section 3320, is
24 amended to read as follows:

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

12 SECTION 58. AMENDATORY 44 O.S. 2011, Section 3321, is
13 amended to read as follows:

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

15 ~~1. In the case of a person determined under this code to be No~~
16 ~~person accused of violating a punitive section under this code shall~~
17 ~~be brought to trial by a general or special court-martial if that~~
18 ~~person is presently suffering from a mental disease or defect~~
19 ~~rendering ~~the person~~ him or her mentally incompetent to the extent~~
20 ~~that ~~the person~~ he or she is unable to understand the nature of the~~
21 ~~proceedings against ~~that person~~ him or her or to conduct or~~
22 ~~cooperate intelligently in the defense of the case, ~~the general~~~~
23 ~~~~court-martial convening authority for that person shall commit the~~~~
24 ~~~~person to the custody of the state Attorney General.~~~~

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

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

21 ~~b. Upon receipt of a notification, the general court-~~
22 ~~martial convening authority shall promptly take~~
23 ~~custody of the person unless the person covered by the~~
24 ~~notification is no longer subject to this code. If~~

1 ~~the person is no longer subject to this code, the~~
2 ~~state Attorney General shall take any action within~~
3 ~~the authority of the state Attorney General that the~~
4 ~~state Attorney General considers appropriate regarding~~
5 ~~the person.~~

6 ~~e. The director of the facility may retain custody of the~~
7 ~~person for not more than thirty (30) days after~~
8 ~~transmitting the notifications required by~~
9 ~~subparagraph a of paragraph 3 of this subsection.~~

10 ~~4. In the application of the state statute applicable to~~
11 ~~persons incompetent to stand trial to a case under this subsection,~~
12 ~~references to the court that ordered the commitment of a person, and~~
13 ~~to the clerk of such court, shall be deemed to refer to the general~~
14 ~~court-martial convening authority for that person. However, if the~~
15 ~~person is no longer subject to this code at a time relevant to the~~
16 ~~application of such article to the person, the state trial court~~
17 ~~with felony jurisdiction in the county where the person is~~
18 ~~hospitalized or otherwise may be found shall be considered as the~~
19 ~~court that ordered the commitment of the person.~~

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

22 ~~1. If a person is found by a court-martial not guilty only by~~
23 ~~reason of lack of mental responsibility, the person shall be~~
24

1 ~~committed to a suitable facility until the person is eligible for~~
2 ~~release in accordance with this article.~~

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

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

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

13 ~~a. the general court martial convening authority may~~
14 ~~commit the person to the custody of the state Attorney~~
15 ~~General, and~~

16 ~~b. the state's Attorney General shall take action in~~
17 ~~accordance with the state statute applicable to~~
18 ~~persons incompetent to stand trial.~~

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

1 ~~C. General provisions.~~

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

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

11 ~~D. Applicability.~~

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

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

1 B. A person is presumed to have the capacity to stand trial
2 unless the contrary is established.

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

5 SECTION 59. AMENDATORY 44 O.S. 2011, Section 3331, is
6 amended to read as follows:

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

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

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

13 SECTION 60. AMENDATORY 44 O.S. 2011, Section 3336, is
14 amended to read as follows:

15 Section 3336. A. Any person subject to this code who solicits
16 or advises another or others to desert in violation of Section ~~96~~
17 3339 of this ~~act~~ title or mutiny in violation of Section ~~105~~ 3348 of
18 this ~~act~~ title shall, if the offense solicited or advised is
19 attempted or committed, be punished with the punishment provided for
20 the commission of the offense, but, if the offense solicited or
21 advised is not committed or attempted, the person shall be punished
22 as a court-martial may direct.

23 B. Any person subject to this code who solicits or advises
24 another or others to commit an act of misbehavior before the enemy

1 in violation of Section ~~440~~ 3353 of this ~~act~~ title or sedition in
2 violation of Section ~~405~~ 3348 of this ~~act~~ title shall, if the
3 offense solicited or advised is committed, be punished with the
4 punishment provided for the commission of the offense, but, if the
5 offense solicited or advised is not committed, the person shall be
6 punished as a court-martial may direct.

7 SECTION 61. AMENDATORY 44 O.S. 2011, Section 3337, is
8 amended to read as follows:

9 Section 3337. Any person who:

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

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

19 SECTION 62. AMENDATORY 44 O.S. 2011, Section 3338, is
20 amended to read as follows:

21 Section 3338. Any person subject to this code who effects an
22 enlistment or appointment in or a separation from the state military
23 forces of any person who is known to him or her to be ineligible for
24 that enlistment, appointment or separation because it is prohibited

1 by law, regulation or order shall be punished as a court-martial may
2 direct.

3 SECTION 63. AMENDATORY 44 O.S. 2011, Section 3339, is
4 amended to read as follows:

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

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

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

11 3. Without being regularly separated from one of the state
12 military forces enlists or accepts an appointment in the same or
13 another one of the state military forces, or in one of the armed
14 forces of the United States, without fully disclosing the fact that
15 he or she has not been regularly separated, or enters any foreign
16 armed service except when authorized by the United States,
17 is guilty of desertion.

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

23 C. Any person found guilty of desertion or attempt to desert
24 shall be punished, if the offense is committed in time of war, by

1 confinement of not more than ten (10) years or such other punishment
2 as a court-martial may direct, but if the desertion or attempt to
3 desert occurs at any other time, by such punishment as a court-
4 martial may direct.

5 SECTION 64. AMENDATORY 44 O.S. 2011, Section 3340, is
6 amended to read as follows:

7 Section 3340. Any person subject to this code who, without
8 authority:

9 1. Fails to go to his or her appointed place of duty at the
10 time prescribed;i

11 2. Goes from that place; or

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

16 SECTION 65. AMENDATORY 44 O.S. 2011, Section 3341, is
17 amended to read as follows:

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

22 SECTION 66. AMENDATORY 44 O.S. 2011, Section 3343, is
23 amended to read as follows:

24

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

4 SECTION 67. AMENDATORY 44 O.S. 2011, Section 3344, is
5 amended to read as follows:

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

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

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

16 SECTION 68. AMENDATORY 44 O.S. 2011, Section 3345, is
17 amended to read as follows:

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

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

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

24

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

6 SECTION 69. AMENDATORY 44 O.S. 2011, Section 3346, is
7 amended to read as follows:

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

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

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

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

16 SECTION 70. AMENDATORY 44 O.S. 2011, Section 3347, is
17 amended to read as follows:

18 Section 3347. Any person subject to this code who is guilty of
19 cruelty toward, or oppression or maltreatment of, any person subject
20 to his or her orders shall be punished as a court-martial may
21 direct.

22 SECTION 71. AMENDATORY 44 O.S. 2011, Section 3348, is
23 amended to read as follows:

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

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

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

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

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

18 SECTION 72. AMENDATORY 44 O.S. 2011, Section 3350, is
19 amended to read as follows:

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

1 SECTION 73. AMENDATORY 44 O.S. 2011, Section 3353, is
2 amended to read as follows:

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

5 1. Runs away;

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

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

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

13 5. Is guilty of cowardly conduct;

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

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

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

22 9. Does not afford all practicable relief and assistance to any
23 troops, combatants, vessels, or aircraft of the armed forces
24

1 belonging to the United States or their allies, to the state, or to
2 any other state, when engaged in battle,
3 shall be punished as a court-martial may direct.

4 SECTION 74. AMENDATORY 44 O.S. 2011, Section 3355, is
5 amended to read as follows:

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

13 SECTION 75. AMENDATORY 44 O.S. 2011, Section 3357, is
14 amended to read as follows:

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

20 B. Any person subject to this code who:

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

23 2. Buys, sells, trades, or in any way deals in or disposes of
24 taken, captured, or abandoned property, whereby he or she receives

1 or expects any profit, benefit, or advantage to himself or herself
2 or another directly or indirectly connected with himself or herself;
3 or

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

6 SECTION 76. AMENDATORY 44 O.S. 2011, Section 3359, is
7 amended to read as follows:

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

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

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

17 SECTION 77. AMENDATORY 44 O.S. 2011, Section 3360, is
18 amended to read as follows:

19 Section 3360. A. Any person subject to this code who
20 wrongfully takes, obtains, or withholds, by any means, from the
21 possession of the owner or of any other person any money, personal
22 property, or value of any kind:

23 1. With intent permanently to deprive or defraud another person
24 of the use and benefit of property or to appropriate it to his or

1 her own use or the use of any person other than the owner, steals
2 that property and is guilty of larceny; or

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

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

9 SECTION 78. AMENDATORY 44 O.S. 2011, Section 3361, is
10 amended to read as follows:

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

19 SECTION 79. AMENDATORY 44 O.S. 2011, Section 3366, is
20 amended to read as follows:

21 Section 3366. Any person subject to the Oklahoma Uniform State
22 Code of Military Justice who engages in wrongful and reckless or
23 wanton conduct likely to produce death or grievous bodily harm, and
24 whose conduct, under the circumstances, was to the prejudice of good

1 order and discipline in the armed forces or was of a nature to bring
2 discredit upon the armed forces, shall be punished as a court-
3 martial may direct.

4 SECTION 80. AMENDATORY 44 O.S. 2011, Section 3369, is
5 amended to read as follows:

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

13 SECTION 81. AMENDATORY 44 O.S. 2011, Section 3376, is
14 amended to read as follows:

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

17 1. Wrongfully makes, alters, counterfeits, or tampers with a
18 military or official pass, permit, discharge certificate, or
19 identification;

20 2. Wrongfully sells, gifts, lends or disposes of a military or
21 official pass, permit, discharge certificate, or identification
22 card; or
23
24

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

5 SECTION 82. AMENDATORY 44 O.S. 2011, Section 3377, is
6 amended to read as follows:

7 Section 3377. ~~RESERVED.~~ A. Any person subject to this code
8 who:

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

10 a. threatening or placing that other person in fear,

11 b. causing bodily harm to that other person,

12 c. making a fraudulent representation that the sexual act
13 serves a professional purpose, or

14 d. inducing a belief by any artifice, pretense or
15 concealment that the person is another person;

16 2. Commits a sexual act upon another person when the person
17 knows or reasonably should know that the other person is asleep,
18 unconscious or otherwise unaware that the sexual act is occurring;

19 or

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

22 a. impairment by any drug, intoxicant or other similar
23 substance, and that condition is known or reasonably
24 should be known by the person, or

1 b. a mental disease or defect, or physical disability,
2 and that condition is known or reasonably should be
3 known by the person,
4 is guilty of sexual assault and shall be punished as a court-martial
5 may direct.

6 B. Any person subject to this code who commits or causes sexual
7 contact upon or by another person if to do so would violate Section
8 1111 of Title 21 of the Oklahoma Statutes, had the sexual contact
9 been a sexual act as defined in subsection F of this section, is
10 guilty of aggravated sexual contact and shall be punished as a
11 court-martial may direct.

12 C. Any person subject to this code who commits or causes sexual
13 contact upon or by another person if to do so would violate
14 subsection A of this section, had the sexual contact been a sexual
15 act, is guilty of abusive sexual contact and shall be punished as a
16 court-martial may direct.

17 D. In a prosecution under this section, in proving that a
18 person made a threat it need not be proven that the person actually
19 intended to carry out the threat or had the ability to carry out the
20 threat.

21 E. An accused may raise any applicable defenses available under
22 this code or the rules for court-martial published in the state
23 manual for courts-martial or, in the event such a manual has not
24 been published, the latest edition of the federal manual for courts-

1 marital. Marriage is not a defense for any conduct in issue at any
2 prosecution under this section.

3 F. In this section the following terms shall be defined as
4 follows:

5 1. "Sexual act" means:

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

14 2. "Sexual contact" means:

- 15 a. touching, or causing another person to touch, either
16 directly or through the clothing, the genitalia, anus,
17 groin, breast, inner thigh or buttocks of any person,
18 with an intent to abuse, humiliate or degrade any
19 person, or
20 b. any touching, or causing another person to touch,
21 either directly or through the clothing, any body part
22 of any person, if done with an intent to arouse or
23 gratify the sexual desire of any person.

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

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

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

9 5. "Force" means:

10 a. the use of a weapon,

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

13 or

14 c. inflicting physical harm sufficient to coerce or
15 compel submission by the victim;

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

18 7. "Threatening or placing that other person in fear" means a
19 communication or action that is of sufficient consequence to cause a
20 reasonable fear that noncompliance will result in the victim or
21 another person being subjected to the wrongful action contemplated
22 by the communication or action; and

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

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

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

10 c. The manner of dress of the person involved with the
11 accused in the conduct at issue does not constitute
12 consent.

13 d. A sleeping, unconscious, or incompetent person cannot
14 consent.

15 e. A person cannot consent to force causing or likely to
16 cause death or grievous bodily harm or to being
17 rendered unconscious.

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

22 g. Lack of consent may be inferred based on the
23 circumstances of the offense.

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

5 SECTION 83. AMENDATORY 44 O.S. 2011, Section 3378, is
6 amended to read as follows:

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

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

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

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

21 B. In this section the following terms shall be defined as
22 follows:

23 1. "Course of conduct" means:
24

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

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

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

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

15 SECTION 84. AMENDATORY 44 O.S. 2011, Section 3379, is
16 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 SECTION 85. AMENDATORY 44 O.S. 2011, Section 3380, is
18 amended to read as follows:

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

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

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

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

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

12 SECTION 86. AMENDATORY 44 O.S. 2011, Section 3389, is
13 amended to read as follows:

14 Section 3389. Any person subject to this code:

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

16 a. makes any claim against the United States, the state,
17 or any officer thereof, or

18 b. presents to any person in the civil or military
19 service thereof, for approval or payment, any claim
20 against the United States, the state, or any officer
21 thereof;

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

- 1 a. makes or uses any writing or other paper knowing it to
2 contain any false or fraudulent statements,
3 b. makes any oath, affirmation or certification to any
4 fact or to any writing or other paper knowing the
5 oath, affirmation or certification to be false, or
6 c. forges or counterfeits any signature upon any writing
7 or other paper, or uses any such signature knowing it
8 to be forged or counterfeited;

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

15 4. Who, being authorized to make or deliver any paper
16 certifying the receipt of any property of the United States or the
17 state, furnished or intended for the armed forces of the United
18 States or the state military forces, makes or delivers to any person
19 such writing without having full knowledge of the truth of the
20 statements therein contained and with intent to defraud the United
21 States or the state,
22 shall, upon conviction, be punished as a court-martial may direct.

23 SECTION 87. AMENDATORY 44 O.S. 2011, Section 3390, is
24 amended to read as follows:

1 Section 3390. Any commissioned officer, cadet, or officer
2 candidate ~~or midshipman~~ who is convicted of conduct unbecoming an
3 officer and a gentleman shall be punished as a court-martial may
4 direct.

5 SECTION 88. AMENDATORY 44 O.S. 2011, Section 3391, is
6 amended to read as follows:

7 Section 3391. Though not specifically mentioned in this code,
8 all disorders and neglects to the prejudice of good order and
9 discipline in the state military forces and all conduct of a nature
10 to bring discredit upon the state military forces shall be taken
11 cognizance of by a court-martial and punished at the discretion of a
12 military court. However, where a crime constitutes an offense that
13 violates both this code and the criminal laws of the state where the
14 offense occurs or criminal laws of the United States, jurisdiction
15 of the military court must be determined in accordance with Section
16 ~~3~~ 3202 of this ~~act~~ title.

17 SECTION 89. AMENDATORY 44 O.S. 2011, Section 3393, is
18 amended to read as follows:

19 Section 3393. A. The following persons may administer oaths
20 for the purposes of military administration, including military
21 justice:

- 22 1. All judge advocates;
- 23 2. All summary courts-martial;

24

1 3. All adjutants, assistant adjutants, acting adjutants, and
2 personnel adjutants; or

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

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

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

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

10 2. The president and the counsel for the court of any court of
11 inquiry;

12 3. All officers designated to take a deposition;

13 4. All persons detailed to conduct an investigation;

14 5. All recruiting officers; or

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

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

20 SECTION 90. AMENDATORY 44 O.S. 2011, Section 3394, is
21 amended to read as follows:

22 Section 3394. A. 1. The ~~articles~~ sections of this ~~code~~ title
23 specified in paragraph 3 of this ~~section~~ subsection shall be
24 carefully explained to each enlisted member at the time of, or

1 within thirty (30) days after, the member's initial entrance into a
2 duty status with the state military forces.

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

4 a. after the member has completed basic or recruit
5 training, and

6 b. at the time when the member reenlists.

7 3. This subsection applies with respect to Sections ~~3, 4, 9-17,~~
8 ~~27, 30, 34, 40, 41, 59, 88-148, and 151-153~~ 3202, 3203, 3211, 3213
9 through 3218, 3244, 3247, 3252, 3262, 3263, 3291, 3331 through 3380,
10 3389 through 3391 and 3394 through 3396 of this ~~act~~ title.

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

15 SECTION 91. AMENDATORY 44 O.S. 2011, Section 3395, is
16 amended to read as follows:

17 Section 3395. Any member of the state military forces who
18 believes himself or herself wronged by a commanding officer, and
19 who, upon due application to that commanding officer, is refused
20 redress, may complain to any superior commissioned officer, who
21 shall forward the complaint to the officer exercising general court-
22 martial jurisdiction over the officer against whom it is made. The
23 officer exercising general court-martial jurisdiction shall examine
24 into the complaint and take proper measures for redressing the wrong

1 complained of; and shall, as soon as possible, send to the Adjutant
2 General a true statement of that complaint, with the proceedings had
3 thereon.

4 SECTION 92. AMENDATORY 44 O.S. 2011, Section 3396, is
5 amended to read as follows:

6 Section 3396. A. Whenever complaint is made to any commanding
7 officer that willful damage has been done to the property of any
8 person or that the person's property has been wrongfully taken by
9 members of the state military forces, that person may, under such
10 regulations prescribed in the state manual for courts-martial,
11 convene a board to investigate the complaint. The board shall
12 consist of from one to three commissioned officers and, for the
13 purpose of that investigation, it has power to summon witnesses and
14 examine them upon oath, to receive depositions or other documentary
15 evidence, and to assess the damages sustained against the
16 responsible parties. The assessment of damages made by the board is
17 subject to the approval of the commanding officer, and in the amount
18 approved by that officer shall be charged against the pay of the
19 offenders. The order of the commanding officer directing charges
20 herein authorized is conclusive on any disbursing officer for
21 payment to the injured parties of the damages so assessed and
22 approved.

23 B. If the offenders cannot be ascertained, but the organization
24 or detachment to which they belong is known, charges totaling the

1 amount of damages assessed and approved may be made in such
2 proportion as may be considered just upon the individual members
3 thereof who are shown to have been present at the scene at the time
4 the damages complained of were inflicted, as determined by the
5 approved findings of the board.

6 SECTION 93. AMENDATORY 44 O.S. 2011, Section 3397, is
7 amended to read as follows:

8 Section 3397. The Governor may delegate any authority vested in
9 the Governor under this code, and provide for the subdelegation of
10 any such authority, except the ~~power~~ powers given the Governor by
11 Section 24 3241 and subsection K of Section 3221 of this act title.
12 Any delegations of authority carried out pursuant to this section
13 shall be effectuated in writing.

14 SECTION 94. AMENDATORY 44 O.S. 2011, Section 3399, is
15 amended to read as follows:

16 Section 3399. A. Fines imposed by a military court or through
17 imposition of nonjudicial punishment ~~may~~ shall be paid to the ~~state~~
18 State of Oklahoma and delivered to the ~~court~~ convening authority or
19 his or her designee or in the case of nonjudicial punishment, the
20 imposing officer, or to a person executing their process. Fines may
21 be collected in the following manner:

- 22 1. By cash or money order;
- 23 2. By retention of any pay or allowances due or to become due
24 the person fined from any state or the United States; or

1 3. By garnishment or levy, together with costs, on the wages,
2 goods, and chattels of a person delinquent in paying a fine, as
3 provided by law.

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

8 SECTION 95. AMENDATORY 44 O.S. 2011, Section 4001, is
9 amended to read as follows:

10 Section 4001. Any person acting under the provisions of this
11 code, whether as a member of the military or as a civilian, shall be
12 immune from personal liability for any of the acts or omissions
13 which he or she did or failed to do as part of his or her duties
14 under this code.

15 SECTION 96. AMENDATORY 44 O.S. 2011, Section 4002, is
16 amended to read as follows:

17 Section 4002. Though not specifically mentioned in this code,
18 all disorders and neglects to the prejudice of good order and
19 discipline in the state military forces, of which persons subject to
20 this code may be guilty, shall be taken cognizance of by a general,
21 special, or summary court-martial according to the nature and degree
22 of the offense and shall be punished at the discretion of that
23 court. However, cognizance may not be taken of, and jurisdiction
24 ~~may~~ shall not be extended to, the crimes of murder, manslaughter,

1 rape, rape and sexual assault of a child, robbery, maiming, sodomy,
2 arson, extortion, burglary, or housebreaking, jurisdiction of which
3 is reserved to civil courts.

4 SECTION 97. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 4003 of Title 44, unless there
6 is created a duplication in numbering, reads as follows:

7 A. It shall be the duty of any justice, judge, judicial
8 referee, corporation commissioner, administrative law judge or
9 hearing officer presiding over any civil, criminal or administrative
10 proceeding in this state to continue any trial, hearing or other
11 action pending before the court or an administrative forum when a
12 party to the pending action or the primary counsel representing a
13 party to the pending action is not present at the time the case or
14 matter in question is reached on the docket or schedule by reason of
15 participation in:

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

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

20 3. Service in other reserve components of the Armed Forces of
21 the United States, as defined in Title 10 of the United States Code;
22 or

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

1 B. The trial, hearing or other pending action may proceed if
2 the party, without the presence of his or her primary counsel, or
3 the primary counsel, without the presence of the party, declares
4 that the case or matter in question is nevertheless ready to proceed
5 at the scheduled time.

6 C. If the primary counsel of a party to the pending action is
7 not present due to military service pursuant to subsection A of this
8 section, the party so affected shall declare under oath that he or
9 she cannot properly proceed with the trial, hearing or other action
10 pending before the court or administrative forum without the
11 presence of the primary counsel.

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

17 E. Continuances granted pursuant to this section shall remain
18 in effect no longer than ninety (90) calendar days. The justice,
19 judge, judicial referee, corporation commissioner, administrative
20 law judge or hearing officer may, at his or her discretion, continue
21 the proceeding in question in order to carry out the administration
22 of justice. The protections provided to service members in this
23 section shall be available in addition to any protections afforded
24

1 to service members under Section 208.1 of Title 44 of the Oklahoma
2 Statutes.

3 SECTION 98. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4004 of Title 44, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Military publications promulgated or published by or under
7 the authority of the Adjutant General shall be provided to the
8 Secretary of State to be published and indexed as part of the
9 "Oklahoma Administrative Code". In the event state or federal law
10 restricts access to a military publication, the requirements of this
11 subsection shall not be applicable. All military publications
12 promulgated or published by a previous Adjutant General shall remain
13 in effect following appointment of the next Adjutant General by the
14 Governor until otherwise modified or rescinded in writing by the
15 newly appointed Adjutant General.

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

24

1 SECTION 99. AMENDATORY 75 O.S. 2011, Section 250.4, as
2 amended by Section 12, Chapter 430, O.S.L. 2014 (75 O.S. Supp. 2016,
3 Section 250.4) is amended to read as follows:

4 Section 250.4 A. 1. Except as is otherwise specifically
5 provided in this subsection, each agency is required to comply with
6 Article I of the Administrative Procedures Act.

7 2. The Corporation Commission shall be required to comply with
8 the provisions of Article I of the Administrative Procedures Act
9 except for subsections A, B, C and E of Section 303 of this title
10 and Section 306 of this title. To the extent of any conflict or
11 inconsistency with Article I of the Administrative Procedures Act,
12 pursuant to Section 35 of Article IX of the Oklahoma Constitution,
13 it is expressly declared that Article I of the Administrative
14 Procedures Act is an amendment to and alteration of Sections 18
15 through 34 of Article IX of the Oklahoma Constitution.

16 3. The Oklahoma Military Department shall be exempt from the
17 provisions of Article I of the Administrative Procedures Act to the
18 extent it exercises its responsibility for military affairs.
19 Military publications, as defined in Section 3201 of Title 44 of the
20 Oklahoma Statutes, shall be exempt from the provisions of Article I
21 and Article II of the Administrative Procedures Act, except as
22 provided in Section 251 of this title.

23 4. The Oklahoma Ordnance Works Authority, the Northeast
24 Oklahoma Public Facilities Authority, the Oklahoma Office of

1 Homeland Security and the Board of Trustees of the Oklahoma College
2 Savings Plan shall be exempt from Article I of the Administrative
3 Procedures Act.

4 5. The Transportation Commission and the Department of
5 Transportation shall be exempt from Article I of the Administrative
6 Procedures Act to the extent they exercise their authority in
7 adopting standard specifications, special provisions, plans, design
8 standards, testing procedures, federally imposed requirements and
9 generally recognized standards, project planning and programming,
10 and the operation and control of the State Highway System.

11 6. The Oklahoma State Regents for Higher Education shall be
12 exempt from Article I of the Administrative Procedures Act with
13 respect to:

- 14 a. prescribing standards of higher education,
- 15 b. prescribing functions and courses of study in each
16 institution to conform to the standards,
- 17 c. granting of degrees and other forms of academic
18 recognition for completion of the prescribed courses,
- 19 d. allocation of state-appropriated funds, and
- 20 e. fees within the limits prescribed by the Legislature.

21 7. Institutional governing boards within The Oklahoma State
22 System of Higher Education shall be exempt from Article I of the
23 Administrative Procedures Act.

24

1 modifications from the federal rules and regulations,
2 the Commissioner shall fully comply with Article I of
3 the Administrative Procedures Act.

4 9. The Council on Judicial Complaints shall be exempt from
5 Section 306 of Article I of the Administrative Procedures Act, with
6 respect to review of the validity or applicability of a rule by an
7 action for declaratory judgment, or any other relief based upon the
8 validity or applicability of a rule, in the district court or by an
9 appellate court. A party aggrieved by the validity or applicability
10 of a rule made by the Council on Judicial Complaints may petition
11 the Court on the Judiciary to review the rules and issue opinions
12 based upon them.

13 10. The Department of Corrections, State Board of Corrections,
14 county sheriffs and managers of city jails shall be exempt from
15 Article I of the Administrative Procedures Act with respect to:

- 16 a. prescribing internal management procedures for the
17 management of the state prisons, county jails and city
18 jails and for the management, supervision and control
19 of all incarcerated prisoners, and
- 20 b. prescribing internal management procedures for the
21 management of the probation and parole unit of the
22 Department of Corrections and for the supervision of
23 probationers and parolees.

1 11. The State Board of Education shall be exempt from Article I
2 of the Administrative Procedures Act with respect to prescribing
3 subject matter standards as provided for in Section 11-103.6a of
4 Title 70 of the Oklahoma Statutes.

5 B. As specified, the following agencies or classes of agency
6 activities are not required to comply with the provisions of Article
7 II of the Administrative Procedures Act:

- 8 1. The Oklahoma Tax Commission;
- 9 2. The Commission for Human Services;
- 10 3. The Oklahoma Ordnance Works Authority;
- 11 4. The Corporation Commission;
- 12 5. The Pardon and Parole Board;
- 13 6. The Midwestern Oklahoma Development Authority;
- 14 7. The Grand River Dam Authority;
- 15 8. The Northeast Oklahoma Public Facilities Authority;
- 16 9. The Council on Judicial Complaints;
- 17 10. The Board of Trustees of the Oklahoma College Savings Plan;
- 18 11. The supervisory or administrative agency of any penal,
19 mental, medical or eleemosynary institution, only with respect to
20 the institutional supervision, custody, control, care or treatment
21 of inmates, prisoners or patients therein; provided, that the
22 provisions of Article II shall apply to and govern all
23 administrative actions of the Oklahoma Alcohol Prevention, Training,
24 Treatment and Rehabilitation Authority;

1 12. The Board of Regents or employees of any university,
2 college, or other institution of higher learning;

3 13. The Oklahoma Horse Racing Commission, its employees or
4 agents only with respect to hearing and notice requirements on the
5 following classes of violations which are an imminent peril to the
6 public health, safety and welfare:

- 7 a. any rule regarding the running of a race,
- 8 b. any violation of medication laws and rules,
- 9 c. any suspension or revocation of an occupation license
10 by any racing jurisdiction recognized by the
11 Commission,
- 12 d. any assault or other destructive acts within
13 Commission-licensed premises,
- 14 e. any violation of prohibited devices, laws and rules,
15 or
- 16 f. any filing of false information;

17 14. The Commissioner of Public Safety only with respect to
18 driver license hearings and hearings conducted pursuant to the
19 provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

20 15. The Administrator of the Department of Securities only with
21 respect to hearings conducted pursuant to provisions of the Oklahoma
22 Take-over Disclosure Act of 1985;

23 16. Hearings conducted by a public agency pursuant to Section
24 962 of Title 47 of the Oklahoma Statutes;

1 17. The Oklahoma Military Department;

2 18. The University Hospitals Authority, including all hospitals
3 or other institutions operated by the University Hospitals
4 Authority;

5 19. The Oklahoma Health Care Authority Board and the
6 Administrator of the Oklahoma Health Care Authority; and

7 20. The Oklahoma Office of Homeland Security.

8 SECTION 100. AMENDATORY 75 O.S. 2011, Section 251, as
9 amended by Section 1, Chapter 252, O.S.L. 2016 (75 O.S. Supp. 2016,
10 Section 251), is amended to read as follows:

11 Section 251. A. 1. Upon the request of the Secretary, each
12 agency shall furnish to the Office a complete set of its permanent
13 rules in such form as is required by the Secretary or as otherwise
14 provided by law.

15 2. The Secretary shall promulgate rules to ensure the effective
16 administration of the provisions of Article I of the Administrative
17 Procedures Act. The rules shall include, but are not limited to,
18 rules prescribing paper size, numbering system, and the format of
19 documents required to be filed pursuant to the provisions of the
20 Administrative Procedures Act or such other requirements as deemed
21 necessary by the Secretary to implement the provisions of the
22 Administrative Procedures Act.

23 B. 1. Each agency shall file the number of copies specified by
24 the Secretary of all new rules, and all amendments, revisions or

1 revocations of existing rules attested to by the agency, pursuant to
2 the provisions of Section 254 of this title, with the Office within
3 thirty (30) calendar days after they become finally adopted.

4 2. An agency filing rules pursuant to the provisions of this
5 subsection:

6 a. shall prepare the rules in plain language which can be
7 easily understood,

8 b. shall not unnecessarily repeat statutory language.

9 Whenever it is necessary to refer to statutory
10 language in order to effectively convey the meaning of
11 a rule interpreting that language, the reference shall
12 clearly indicate the portion of the language which is
13 statutory and the portion which is the agency's
14 amplification or interpretation of that language,

15 c. shall indicate whether a rule is new, amends an
16 existing permanent rule or repeals an existing
17 permanent rule. If a rule amends an existing rule,
18 the rule shall indicate the language to be deleted
19 typed with a line through the language and language to
20 be inserted typed with the new language underscored,

21 d. shall state if the rule supersedes an existing
22 emergency rule,

23 e. shall include a reference to any rule requiring a new
24 or revised form in a note to the rule. The Secretary

1 shall insert that reference in "The Oklahoma Register"
2 as a notation to the affected rule,

3 f. shall prepare, in plain language, a statement of the
4 gist of the rule and an analysis of new or amended
5 rules. The analysis shall include but not be limited
6 to a reference to any statute that the rule

7 interprets, any related statute or any related rule,

8 g. may include with its rules, brief notes,
9 illustrations, findings of facts, and references to
10 digests of Supreme Court cases, other court decisions,
11 or Attorney General's opinions, and other explanatory
12 material. Such material may be included if the
13 material is labeled or set forth in a manner which
14 clearly distinguishes it from the rules,

15 h. shall include other information, in such form and in
16 such manner as is required by the Secretary, and

17 i. may change the format of existing rules without any
18 rulemaking action by the agency in order to comply
19 with the standard provisions established by the
20 Secretary for "Code" and "The Oklahoma Register"
21 publication so long as there is no substantive change
22 to the rule.

23 C. The Secretary is authorized to determine a numbering system
24 and other standardized format for documents to be filed and may

1 refuse to accept for publication any document that does not
2 substantially conform to the promulgated rules of the Secretary.

3 D. In order to avoid unnecessary expense, an agency may use the
4 published standards established by organizations and technical
5 societies of recognized national standing, other state agencies, or
6 federal agencies by incorporating the standards or rules in its
7 rules or regulations by reference to the specific issue or issues of
8 publications in which the standards are published, without
9 reproducing the standards in full. The standards shall be readily
10 available to the public for examination at the administrative
11 offices of the agency. In addition, a copy of such standards shall
12 be kept and maintained by the agency pursuant to the provisions of
13 the Preservation of Essential Records Act.

14 E. The Secretary shall provide for the publication of all
15 Executive Orders received pursuant to the provisions of Section 664
16 of Title 74 of the Oklahoma Statutes.

17 F. The Secretary may authorize or require the filing of rules
18 or Executive Orders by or through electronic data or machine
19 readable equipment in such form and manner as is required by the
20 Secretary.

21 G. The Secretary shall provide for the publication of all
22 military publications received pursuant to the provisions of Section
23 98 of this act.

24

1 H. In consultation with the Adjutant General, the Secretary is
2 authorized to determine a numbering system and other standardized
3 format for military documents to be filed and may authorize or
4 require the filing of military publications by or through electronic
5 data or machine-readable equipment in such form and manner as is
6 required by the Secretary.

7 SECTION 101. AMENDATORY 75 O.S. 2011, Section 255, is
8 amended to read as follows:

9 Section 255. A. 1. The Secretary is hereby authorized,
10 directed, and empowered to publish "The Oklahoma Register" not less
11 than monthly for the publication of new rules, any amendment,
12 revision or revocation of an existing rule, emergency rules, any
13 notices of such rulemaking process, military publications and
14 Executive Orders as are required by law to be published in "The
15 Oklahoma Register". Said rules or amendments, revisions, or
16 revocations of existing rules shall be published in the first issue
17 of "The Oklahoma Register" published pursuant to Sections 251, 253,
18 256, 303, 303.1, 303.2 and 308 of this title after the date of
19 acceptance by the Secretary.

20 2. The Secretary shall cause a copy of each publication of "The
21 Oklahoma Register" to be sent to those county clerks who request it,
22 to members of the Legislature upon request, and to such other
23 agencies, libraries, and officials as the Secretary may select. The
24

1 Secretary may charge recipients of the publication a cost sufficient
2 to defray the cost of publication and mailing.

3 3. The Secretary shall cause a copy of all rules, all new
4 rules, and all amendments, revisions, or revocations of existing
5 rules to be on file and available for public examination in the
6 Office during normal office hours.

7 4. The Secretary shall promulgate rules to systematize the
8 designations of rules. To establish said system or to preserve
9 uniformity of designations, the Secretary may require the agency to
10 change the title or numbering of any rule or any amendment,
11 revision, or revocation thereof.

12 B. The Secretary is authorized to provide for the publication
13 of rules in summary form when the rules are of such length that
14 publication of the full text would be too costly. The summary shall
15 be prepared by the agency submitting the rules and shall state where
16 the full text of the rule may be obtained.

17 C. The notice required pursuant to the provisions of Section
18 303 of this title shall be published in "The Oklahoma Register"
19 prior to the adoption of a new rule, or amendment, revision or
20 revocation of any existing rule. The notice shall include the
21 information required by Section 303 of this title.

22 SECTION 102. AMENDATORY 75 O.S. 2011, Section 256, is
23 amended to read as follows:

24

1 Section 256. A. 1. The Secretary shall provide for the
2 codification, compilation, indexing and publication of agency rules,
3 military publications, as defined by Section 3201 of Title 44 of the
4 Oklahoma State Statutes and Executive Orders in a publication which
5 shall be known as the "Oklahoma Administrative Code" in the
6 following manner:

7 a. On or before January 1, 1992, the Secretary shall
8 compile Executive Orders which are effective pursuant
9 to paragraph 3 of subsection B of this section, and
10 agency rules which have been submitted pursuant to the
11 agency schedule of compliance and have been accepted
12 as properly codified, as set forth in this section,
13 and rules promulgated by the Secretary. Such
14 compilation shall be maintained by the Office of
15 Administrative Rules and shall be updated by agencies,
16 in a manner prescribed by the Secretary, to reflect
17 subsequent permanent rulemaking. Prior to publication
18 of the first "Code", as set forth in subparagraph b of
19 this paragraph, the compilation shall constitute the
20 official permanent rules of the state. Effective
21 January 1, 1992, any permanent rule not included in
22 such compilation shall be void and of no effect.

23 b. On or before December 1, 1992, the Secretary shall
24 have indexed and published the "Oklahoma

1 Administrative Code". To effectuate this provision,
2 the Secretary may contract for the publishing and
3 indexing, or both of the "Oklahoma Administrative
4 Code". Any permanent rule not published in the "Code"
5 shall be void and of no effect. A finally adopted
6 rule filed and published in "The Oklahoma Register"
7 may be valid until publication of the next succeeding
8 "Code" or "Code" supplement following the date of its
9 final adoption. Provided, a permanent rule which is
10 finally adopted after the closing date for publication
11 in a "Code" or "Code" supplement as announced by the
12 Secretary may be valid until publication of the next
13 succeeding "Code" or "Code" supplement. A permanent
14 rule which is published in "The Oklahoma Register"
15 after the closing date for publication in the first
16 "Code", as announced by the Secretary, shall be void
17 and of no effect upon publication of the next
18 succeeding "Code" or "Code" supplement, if not
19 published in the "Code" or "Code" supplement.

20 c. On or before January 1, 2018, the Secretary shall
21 compile, index and publish in the "Oklahoma
22 Administrative Code" the military publications
23 provided by the Adjutant General pursuant to Section
24 98 of this act.

1 2. Compilations or revisions of the "Code" or any part thereof
2 shall be supplemented or revised annually. The "Code" shall be
3 organized by state agency and shall be arranged, indexed and printed
4 in a manner to permit separate publications of portions thereof
5 relating to individual agencies.

6 3. Annual supplements to the "Code" shall be cumulative.
7 Emergency rules shall not be published in the "Code" or in any
8 supplements thereto.

9 4. The "Code" and the supplements shall include a general
10 subject index and an agency index of all rules, military
11 publications and Executive Orders contained therein. "The Oklahoma
12 Register" shall also include a sections-affected index of the
13 "Code". The "Code" and supplements shall contain such notes, cross
14 references and explanatory materials as required by the Secretary.

15 5. The Secretary in preparing such rules for publication in the
16 "Code" or supplements shall omit all material shown in canceled
17 type. The Secretary shall not prepare any rule for publication in
18 the "Code" which amends or revises a rule unless the rule so
19 amending or revising conforms to the provisions of the
20 Administrative Procedures Act.

21 6. The Secretary is authorized to determine a numbering system
22 and other standardized format for documents to be filed and may
23 refuse to accept for publication any document that does not
24 substantially conform to the promulgated rules of the Secretary.

1 B. 1. Rules submitted and accepted for publication in the
2 "Code" by August 15 of each year shall be published in the next
3 succeeding "Code" or supplement thereto.

4 2. As soon as possible after August 15 of each year, the
5 Secretary shall assemble all rules and Executive Orders, except
6 emergency rules, promulgated after the publication of the preceding
7 "Code" or "Code" supplement in accordance with the provisions of the
8 Administrative Procedures Act for publication in the "Oklahoma
9 Administrative Code". The "Code" or supplements thereto should be
10 published as soon as possible after August 30 of each year.

11 3. Executive Orders of previous gubernatorial administrations
12 shall terminate ninety (90) calendar days following the inauguration
13 of the next Governor unless otherwise terminated or continued during
14 that time by Executive Order. Copies of all Executive Orders shall
15 be published and indexed in the "Oklahoma Administrative Code". All
16 Executive Orders placing agencies or employees under the State Merit
17 System of Personnel Administration shall remain in effect unless
18 otherwise modified by action of the Legislature.

19 4. Military publications promulgated or published by a previous
20 Adjutant General shall remain in effect following appointment of the
21 next Adjutant General by the Governor until otherwise modified or
22 rescinded in writing by the newly appointed Adjutant General.
23 Copies of all military publications, as defined in Section 3201 of
24

1 Title 44 of the Oklahoma Statutes, shall be published and indexed in
2 the "Oklahoma Administrative Code".

3 C. The Secretary is hereby authorized and empowered to publish
4 or to contract to publish the "Oklahoma Administrative Code", and to
5 publish or contract to publish such annual cumulative supplements so
6 as to keep the "Code" current. All such agreements shall provide
7 that the publisher shall make such publications in such form and
8 arrangement as shall be approved by the Secretary. The Secretary
9 may publish or authorize the publication of the "Code" in part.

10 D. The Secretary is authorized to correct spelling errors in
11 rules submitted for publication in the "Code" or any such
12 supplements or in "The Oklahoma Register". Any other errors in
13 rules submitted for publication in the "Code" may be noted in
14 editorial notes provided by the Secretary.

15 E. The Secretary shall make copies of the "Code" generally
16 available at a cost sufficient to defray the cost of publication and
17 mailing. Except as otherwise provided by Section 257.1 of this
18 title, the Secretary is authorized to sell or otherwise distribute
19 the "Code" and its supplements.

20 F. 1. The codification system, derivations, cross references,
21 notes of decisions, source notes, authority notes, numerical lists,
22 and codification guides, other than the actual text of rules,
23 indexes, tables and other aids relevant to the publication of the
24 "Oklahoma Administrative Code" and "The Oklahoma Register" shall be

1 the property of the state and may be reproduced only with the
2 written consent of the Secretary. The information which appears on
3 the same page with the text of a rule may be reproduced incidentally
4 with the reproduction of the rule, if the reproduction is for the
5 private use of the individual and not for resale. No person shall
6 attempt to copyright or publish the "Oklahoma Administrative Code"
7 or "The Oklahoma Register", in printed or electronic media, without
8 expressed written consent of the Secretary of State. The Secretary
9 shall notify the Speaker of the House of Representatives and the
10 President Pro Tempore of the Senate of any requests to copyright or
11 publish the "Oklahoma Administrative Code" or "The Oklahoma
12 Register", prior to consent by the Secretary.

13 2. The Secretary may provide for the electronic access to the
14 "Oklahoma Administrative Code" and "The Oklahoma Register" by:
15 a. subscription, or
16 b. an exclusive or a nonexclusive contract for public and
17 private access.

18 3. Publications of rules by agencies are not official
19 publications.

20 4. The sale or resale of the "Oklahoma Administrative Code" or
21 any part thereof by the Secretary of State shall be exempt from any
22 requirement mandating acquisition of a resale number and payment of
23 sales tax.

24

1 SECTION 103. AMENDATORY 75 O.S. 2011, Section 304, is
2 amended to read as follows:

3 Section 304. A. Each agency shall file copies of each rule
4 finally adopted by it with the Secretary, as required by Section 251
5 of this title.

6 B. 1. Each rule finally adopted is effective ten (10) calendar
7 days after publication in "The Oklahoma Register" pursuant to
8 Section 255 of this title unless a later date is required by statute
9 or specified in the rule, the agency rule report, or "The Oklahoma
10 Register", the later date is the effective date. A rule shall only
11 be applied prospectively from its effective date.

12 2. a. Subject to applicable constitutional or statutory
13 provisions, an emergency rule becomes effective
14 immediately or at a stated date after certification by
15 the Governor. An emergency rule shall only be applied
16 prospectively from its effective date.

17 b. The agency shall take appropriate measures to make
18 emergency rules known to the persons who may be
19 affected by them.

20 C. Executive Orders signed by the Governor shall become
21 effective upon the date specified therein or immediately upon
22 issuance.

23
24

1 D. Military publications signed by the Adjutant General or his
2 or her designee shall become effective upon the date specified
3 therein or immediately upon issuance.

4 SECTION 104. REPEALER 44 O.S. 2011, Section 3375, is
5 hereby repealed.

6 SECTION 105. This act shall become effective November 1, 2017.

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8 56-1-5018 AMM 01/18/17

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