

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3851

By: Kannady

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5
6 AS INTRODUCED

7 An Act relating to militia; amending Section 5,
8 Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2019, Section
9 801), which relates to definitions; defining term;
10 amending Section 21, Chapter 408, O.S.L. 2019 (44
11 O.S. Supp. 2019, Section 815), which relates to
12 commanding officer's nonjudicial punishment;
13 providing for punishment mitigation; providing for
14 military magistrate; providing qualifications;
15 providing for appellate remand; providing duties of a
16 military magistrate; providing for certain
17 proceedings; providing for regulations for detailing
18 of military judges and military magistrates;
19 providing for promulgation of regulations; amending
20 Section 53, Chapter 408, O.S.L. 2019 (44 O.S. Supp.
21 2019, Section 846), which relates to opportunity to
22 obtain witnesses and other evidence in trial;
23 modifying persons who may issue subpoenas;
24 prohibiting a military magistrate from issuing
warrants; amending Section 55, Chapter 408, O.S.L.
2019 (44 O.S. Supp. 2019, Section 848), which relates
to contempt; providing for contempt findings by
military magistrates; providing for codification; and
providing an effective date.

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

SECTION 1. AMENDATORY Section 5, Chapter 408, O.S.L.
2019 (44 O.S. Supp. 2019, Section 801), is amended to read as
follows:

Section 801. ARTICLE 1. Definitions.

1 A. As used in the Oklahoma Uniform Code of Military Justice,
2 unless the context otherwise requires:

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

7 2. "Adjutant General" means the commander and most senior
8 military officer of the Oklahoma National Guard appointed by the
9 Governor with the advice and consent of the Senate. The Adjutant
10 General exercises command and control over the Oklahoma National
11 Guard when it is not activated for federal duty under Title 10 of
12 the United States Code. The Adjutant General serves as the
13 executive and administrative head of the Military Department of the
14 State of Oklahoma as provided for in Section 21 of this title;

15 3. "Administrative control (ADCON)" means the control or
16 exercise of authority over subordinate units and other organizations
17 or units with respect to administration and support, including
18 control of resources and equipment, personnel management, unit
19 logistics, individual and unit training, readiness, mobilization,
20 demobilization and other matters not included in the operational
21 missions of the subordinate units or other organizations or units.
22 Lawfully issued orders implementing administrative control may
23 incorporate references to the Oklahoma Uniform Code of Military
24 Justice (OUCMJ) for disciplinary purposes;

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

6 5. "Arrest in quarters" means moral restraint, as opposed to
7 physical restraint, limiting the liberty of an officer. The limits
8 of arrest in quarters are set by the authority imposing nonjudicial
9 punishment and may extend beyond the physical quarters of an
10 officer;

11 6. "Assistant Adjutant General" means an officer appointed by
12 the Adjutant General to assist the Adjutant General in the discharge
13 and performance of his or her duties. An Assistant Adjutant General
14 shall meet the qualifications prescribed by law for the Adjutant
15 General. At least one Assistant Adjutant General for the Army
16 National Guard and one Assistant Adjutant General for the Air
17 National Guard are customarily appointed to establish lines of
18 command and administration into each component of the state military
19 forces. Additional assistant adjutants general may be appointed
20 pursuant to law, custom or National Guard regulations;

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

3 8. "Classified information" means:

- 4 a. any information or material that has been determined
5 pursuant to federal law, by an Executive Order issued
6 by the President in execution of federal law, or a
7 lawfully promulgated federal regulation, to require
8 protection against unauthorized disclosure for reasons
9 of national security and that is so designated, and
10 b. any restricted data, as defined in Section 11(y) of
11 the Atomic Energy Act of 1954 (42 U.S.C., Section
12 2014(y));

13 9. "Code" means the Oklahoma Uniform Code of Military Justice
14 (OUCMJ);

15 10. "Command authority" means the authority that a commander
16 lawfully exercises over subordinates by virtue of rank or
17 assignment. Disciplinary authority under the OUCMJ is inherent to
18 command authority;

19 11. "Commander" means a designated commissioned officer vested
20 with command authority pursuant to law, regulation, assignment,
21 lawful order or custom;

22 12. "Commanding officer" includes only commissioned officers of
23 the state military forces and shall include officers in charge only
24 when administering nonjudicial punishment under Section 815 (Article

1 15) of this title. "Commander" has the same meaning as "commanding
2 officer" unless the context otherwise requires;

3 13. "Component" means one of two constituent parts that make up
4 the state military forces, namely the army force responsible for
5 land-based operations and the air force responsible for aerial
6 operations and related support activities;

7 14. "Confidential information" means any information or
8 material that shall be designated as confidential pursuant to
9 Section 24A.27 of Title 51 of the Oklahoma Statutes and any
10 information or material that may be kept confidential pursuant to
11 Section 24A.28 of Title 51 of the Oklahoma Statutes that has not
12 previously been released by an appropriate authority;

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

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

21 17. "Court of Criminal Appeals" means the Oklahoma Court of
22 Criminal Appeals, the highest court in the State of Oklahoma with
23 appellate jurisdiction in criminal cases. It is the court of last
24 resort for courts-martial conducted under the Code;

1 18. "Duty status" means duty in the state military forces under
2 an order issued by authority of law, and includes travel to and from
3 such duty;

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

5 20. "Fatigue duty" means general labor performed by members of
6 the state military forces when unarmed, including but not limited to
7 cleaning, digging, loading, organizing, etc.;

8 21. "Fine" means a type of punishment that makes a member
9 pecuniarily liable to the State of Oklahoma for the amounts
10 specified by nonjudicial punishment or adjudged by a court-martial.
11 A fine may be paid in cash by a member, collected by deduction from
12 the current pay of a member or collected by deduction on settlement
13 of the pay account of a member upon discharge;

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

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1 23. "Grade" means a step or degree in a graduated scale of
2 office or military rank which is established and designated as a
3 grade by law or regulation;

4 24. "Installation commander" means a commissioned officer
5 responsible for the protection of assigned forces and assets,
6 lodging, dining and administrative reporting, regardless of the
7 command relations of the various types of forces present on the
8 installation. For purposes of this definition, an installation is
9 an Armed Forces Reserve Center, air base, armory, camp, post,
10 readiness center, office building, the joint forces headquarters or
11 other facility, location, structure or property so designated as an
12 "installation" by the Adjutant General;

13 25. "Joint forces headquarters" means the joint headquarters
14 provided for and established in Section 21 of this title;

15 26. "Judge advocate" means a commissioned officer of the
16 organized state military forces who is a member in good standing of
17 the bar of the highest court of a state, and is certified or
18 designated as a judge advocate in the Judge Advocate General's Corps
19 of the Army or the Air Force, or a reserve component of the same;

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

23 28. "Military court" means a court-martial or a court of
24 inquiry;

1 29. "Military Court of Appeals" means the intermediate
2 appellate court of record established in Section 866 of this title
3 (Article 66) and charged with conducting an appellate review of
4 questions of law arising from general and special courts-martial
5 proceedings conducted by the state military forces and, when
6 necessary in furtherance of its jurisdiction, reviewing all
7 petitions for extraordinary relief properly brought before it;

8 30. "Military department" means the administrative agency
9 established in Section 21 of this title charged with coordinating
10 and supervising state military forces. The military department
11 consists of a joint forces headquarters, an army component and an
12 air force component under the command and control of the Adjutant
13 General when not activated for federal duty under Title 10 of the
14 United States Code;

15 31. "Military judge" means a judicial officer who presides over
16 a general or special court-martial and is detailed in accordance
17 with Section 826 of this title (Article 26);

18 32. "Military magistrate" means a licensed attorney detailed or
19 appointed who conducts reviews or otherwise acts on prereferral
20 matters relating to the rights of victims under Section 806B,
21 subsection D of this title (Article 6B, subsection D), investigative
22 subpoenas under Section 830A, subsection A, paragraph 1,
23 subparagraph a of this title (Article 30A, subsection A, paragraph
24 1, subparagraph a) or who conducts appellate proceedings on behalf

1 of the Military Court of Appeals under paragraph 3, subsection J of
2 Section 866 of this title (Article 66, paragraph 3, subsection J);

3 33. "Military offenses" means those offenses designated as
4 punitive articles under Sections 877 (Article 77, Principals), 878
5 (Article 78, Accessory after the fact), 879 (Article 79, Conviction
6 of offense charged, lesser included offenses, and attempts), 880
7 (Article 80, Attempts), 881 (Article 81, Conspiracy), 882 (Article
8 82, Soliciting commission of offenses), 883 (Article 83,
9 Malingering), 884 (Article 84, Breach of medical quarantine), 885
10 (Article 85, Desertion), 886 (Article 86, Absence without leave),
11 887 (Article 87, Missing movement; jumping from vessel), 887A
12 (Article 87A, Resistance, flight, breach of arrest, and escape), 888
13 (Article 88, Contempt toward officials), 889 (Article 89, Disrespect
14 toward superior commissioned officer; assault of superior
15 commissioned officer), 890 (Article 90, Willfully disobeying
16 superior commissioned officer), 891 (Article 91, Insubordinate
17 conduct toward warrant officer, or noncommissioned officer), 892
18 (Article 92, Failure to obey order or regulation), 893 (Article 93,
19 Cruelty and maltreatment), 893A (Article 93A, Prohibited activities
20 with military recruit or trainee by person in position of special
21 trust), 894 (Article 94, Mutiny or sedition), 895 (Article 95,
22 Offenses by sentinel or lookout), 895A (Article 95A, Disrespect
23 toward sentinel or lookout), 896 (Article 96, Release of prisoner
24 without authority; drinking with prisoner), 897 (Article 97,

1 Unlawful detention), 898 (Article 98, Misconduct as prisoner), 899
2 (Article 99, Misbehavior before the enemy), 900 (Article 100,
3 Subordinate compelling surrender), 901 (Article 101, Improper use of
4 countersign), 902 (Article 102, Forcing a safeguard), 903B (Article
5 103B, Aiding the enemy), 903C (Article 103C, Unlawful disclosure of
6 confidential information), 904 (Article 104, Public records
7 offenses), 904A (Article 104A, Fraudulent enlistment, appointment,
8 or separation), 904B (Article 104B, Unlawful enlistment,
9 appointment, or separation), 905A (Article 105A, False or
10 unauthorized pass offenses), 906A (Article 106A, Wearing
11 unauthorized insignia, decoration, badge, ribbon, device, or lapel
12 button), 907 (Article 107, False official statements; false
13 swearing), 908 (Article 108, Military property-loss, damage,
14 destruction, or wrongful disposition), 908A (Article 108A, Captured
15 or abandoned property), 909 (Article 109, Property other than
16 military property-waste, spoilage, or destruction), 910 (Article
17 110, Improper hazarding of vessel or aircraft), 912 (Article 112,
18 Drunkenness and other incapacitation offenses), 912A (Article 112A,
19 Wrongful use, possession, etc., of controlled substances), 914
20 (Article 114, Endangerment offenses), 916 (Article 116, Riot or
21 breach of peace), 917 (Article 117, Provoking speeches or gestures),
22 917A (Article 117A, Wrongful broadcast or distribution of intimate
23 visual images), 920 (Article 120, Sexual assault generally), 920C
24 (Article 120C, Other sexual misconduct), 920D (Article 120D,

1 Fraternization), 921 (Article 121, Larceny and wrongful
2 appropriation), 924 (Article 124, Frauds against the government),
3 928 (Article 128, Assault), 930 (Article 130, Stalking), 931
4 (Article 131, Perjury), 931A (Article 131A, Subornation of perjury),
5 931B (Article 131B, Obstructing justice), 931C (Article 131C,
6 Misprision of serious offense), 931D (Article 131D, Wrongful refusal
7 to testify), 931F (Article 131F, Noncompliance with procedural
8 rules), 931G (Article 131G, Wrongful interference with adverse
9 administrative proceeding), 932 (Article 132, Retaliation), 933
10 (Article 133, Conduct unbecoming an officer and a gentleman) and 934
11 (Article 134, General article) of this title;

12 ~~33.~~ 34. "Military publication" means a written publication of
13 an administrative nature such as a regulation, instruction,
14 pamphlet, circular, permanent or general order, numbered adjutant
15 general policy memorandum or blank form promulgated or published by
16 or under the authority of the Adjutant General. An order or
17 directive issued by the Adjutant General that is operational in
18 nature or issued in execution of a military mission shall not be
19 included within the meaning of military publication. Rules of
20 procedure published by the State Judge Advocate for the Military
21 Court of Appeals are included in the meaning of military
22 publication;

23 ~~34.~~ 35. "Month's pay" means the amount of basic pay that would
24 be paid to a member if that member were serving on active duty;

1 ~~35.~~ 36. "National security" means the national defense and
2 foreign relations of the United States;

3 ~~36.~~ 37. "Nexus" means the appearance of a connection between a
4 nonmilitary offense and the state military forces which brings
5 discredit or dishonor to the state military forces due to
6 representations of membership in the state military forces by a
7 member. Such representations may be made directly or indirectly,
8 including but not limited to publication on social media or other
9 electronic communication platforms;

10 ~~37.~~ 38. "Noncommissioned officer" means an enlisted member
11 above the pay grade of E-4 or an enlisted member in the army
12 component of state military forces holding the rank of corporal;

13 ~~38.~~ 39. "Nonjudicial punishment" means punishment imposed
14 administratively by a commander or officer in charge for minor
15 offenses in lieu of a court-martial;

16 ~~39.~~ 40. "Officer" means a commissioned or warrant officer;

17 ~~40.~~ 41. "Officer in charge" means a commissioned or warrant
18 officer designated as such by appropriate authority;

19 ~~41.~~ 42. "Pay" means monetary compensation provided to members
20 of the state military forces in exchange for performance of military
21 duties carried out pursuant to a lawful order or otherwise under the
22 authority of law, including basic pay, special pay, proficiency pay
23 and incentive pay. "Pay" shall not mean allowances as defined in
24 this section;

1 ~~42.~~ 43. "Rank" means the order of precedence among members of
2 the state military forces;

3 ~~43.~~ 44. "Record", when used in connection with the proceedings
4 of a court-martial, means:

5 a. an official written transcript, written summary, or
6 other writing relating to the proceedings, or

7 b. an official audiotape, videotape, digital image or
8 file, or similar material from which sound, or sound
9 and visual images, depicting the proceedings may be
10 reproduced;

11 ~~44.~~ 45. "Regulation" means a written, administrative expression
12 of executive authority issued by an executive branch officer which
13 carries with it the force and effect of law due to inherent command
14 authority or express delegation of authority by the legislative
15 branch; regulations provided for in the Code are published and
16 archived by the Secretary of State;

17 ~~45.~~ 46. "Rehearing" means a new trial on the findings, on the
18 sentence, or on both;

19 ~~46.~~ 47. "Restriction" means moral restraint, as opposed to
20 physical restraint, limiting access to physical places or
21 participation in certain activities. In comparison to arrest in
22 quarters, "restriction" is a lesser punishment;

23 ~~47.~~ 48. "Senior Assistant Adjutant General" means an Assistant
24 Adjutant General who either possesses the most time in grade or has

1 | been designated in writing by the Adjutant General as the Senior
2 | Assistant Adjutant General for his or her force component
3 | irrespective of time in grade;

4 | ~~48.~~ 49. "Senior force component judge advocate" means the judge
5 | advocate assigned as chief legal advisor to the Senior Assistant
6 | Adjutant General of the same component of the state military forces
7 | as the accused. Unless there is a conflict of interest, a senior
8 | force component judge advocate may also serve as legal counsel to
9 | the Adjutant General and may be designated as the State Judge
10 | Advocate. The customary duty station of a senior force component
11 | judge advocate is joint forces headquarters;

12 | ~~49.~~ 50. "Shall" is used in an imperative sense;

13 | ~~50.~~ 51. "State" means one of the several states, the District
14 | of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S.
15 | Virgin Islands;

16 | ~~51.~~ 52. "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 | ~~52.~~ 53. "State Judge Advocate" means a member of the Oklahoma
21 | National Guard qualified as a judge advocate, as defined in this
22 | section, and who is designated in writing by the Adjutant General as
23 | the State Judge Advocate;

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1 ~~53.~~ 54. "State military forces" means the National Guard of the
2 State of Oklahoma, which includes an army component and an air force
3 component, as defined in Title 32, United States Code, and Section
4 41 of this title; the Oklahoma State Guard, organized pursuant to
5 Section 109 of Title 32, United States Code, and established
6 pursuant to the Oklahoma State Guard Act; and any other military
7 force organized under the Constitution and laws of the State of
8 Oklahoma when not in a status placing them under exclusive federal
9 jurisdiction pursuant to Chapter 47 of Title 10, United States Code.
10 Unless otherwise established by Oklahoma law, the unorganized
11 militia, as provided for in Section 41 of this title, or any other
12 state military force that does not meet this definition shall not be
13 considered part of the "state military forces" under the Code;

14 ~~54.~~ 55. "Superior commissioned officer" means a commissioned
15 officer superior in rank or command;

16 ~~55.~~ 56. "Supplies" means materiel, equipment and stores of all
17 types possessed or lawfully controlled by state military forces; and

18 ~~56.~~ 57. "Title 32 active duty" means training or other duty,
19 other than inactive duty, performed by a member of the Army National
20 Guard of the United States or the Air National Guard of the United
21 States in the member's status as a member of the Oklahoma National
22 Guard pursuant to Section 316, 502, 503, 504 or 505 of Title 32 of
23 the United States Code for which the member is entitled to pay from
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1 the United States or for which the member has waived pay from the
2 United States.

3 B. Other terms not specifically defined herein shall be defined
4 by military rules or regulations and customs and usage of the
5 National Guard and the Armed Forces of the United States.

6 C. If a term is not defined in either subsection A of this
7 section nor defined as provided in subsection B of this section, it
8 shall receive the construction and usage customarily accorded by
9 reference to dictionaries of the English language in existence at
10 the time of adoption of this act.

11 SECTION 2. AMENDATORY Section 21, Chapter 408, O.S.L.
12 2019 (44 O.S. Supp. 2019, Section 815), is amended to read as
13 follows:

14 Section 815. ARTICLE 15. Commanding officer's nonjudicial
15 punishment.

16 A. Except as provided in subsection B of this section, any
17 commanding officer and, for purposes of this section, any officer in
18 charge, may impose disciplinary punishments for minor offenses
19 arising under the punitive articles of the Oklahoma Uniform Code of
20 Military Justice without the intervention of a court-martial.

21 B. Any superior commander may limit or withhold the exercise of
22 nonjudicial punishment authority by subordinate commanders,
23 including limiting authority over certain categories of military
24 personnel or offenses. Likewise, individual cases may be reserved

1 by a superior commander. A superior authority may limit or withhold
2 any power that a subordinate might otherwise exercise under this
3 section.

4 C. Except as provided in subsection ~~¶~~ L of this section, the
5 Governor, the Adjutant General, or a general officer in command may
6 delegate the powers established under this section to a principal
7 assistant who is a member of the state military forces and is also a
8 member of the same force component as the accused.

9 D. Any commanding officer may impose upon enlisted members of
10 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
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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 E. Any commanding officer of the grade of major or above may
5 impose upon enlisted members of the officer's command:

6 1. An admonition;

7 2. A reprimand;

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

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

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

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

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

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

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1 F. The Governor, the Adjutant General, an officer exercising
2 general or special court-martial convening authority, or a general
3 officer in command may impose:

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

5 a. any punishment authorized in subsection E of this
6 section, except for the punishments provided in
7 paragraphs 6 and 7 of subsection E of this section,
8 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 E 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
16 regulations promulgated by the Adjutant General, such punishments
17 may be administered either orally or in writing.

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

1 H. Once the commander has determined that nonjudicial
2 punishment is appropriate, the commander shall provide reasonable
3 notice to the member of his or her intent to impose nonjudicial
4 punishment. At the time the commander provides notification as
5 required in this subsection, the member shall be entitled to examine
6 all statements and other evidence that the commander has examined
7 and intends to rely upon as the basis for punishment. The member
8 shall be provided a copy of the documentary evidence unless it is
9 privileged, classified, or otherwise restricted by law, regulation,
10 or instruction. At the time the commander provides notification as
11 required in this subsection, the commander shall also inform the
12 member as to the quantum of punishment potentially to be imposed.
13 While a member undergoing nonjudicial punishment is not entitled to
14 representation by a duly appointed defense counsel, the member may
15 seek legal advice from any judge advocate available for this
16 purpose.

17 I. The right to demand trial by court-martial in lieu of
18 nonjudicial punishment shall arise only when arrest in quarters or
19 restriction will be considered as punishments. If the commanding
20 officer determines that arrest in quarters or restriction will be
21 considered as punishments, prior to the offer of nonjudicial
22 punishment the accused shall be notified in writing of the right to
23 demand trial by court-martial. Should the commanding officer
24 determine that the punishment options will not include arrest in

1 quarters or restriction, the accused shall be notified that there is
2 no right to trial by court-martial in lieu of nonjudicial
3 punishment. Upon notification by the commander or officer in charge
4 of his or her intent to impose nonjudicial punishment that includes
5 arrest in quarters or restriction, the accused shall be afforded a
6 reasonable amount of time to confer with legal counsel and to
7 prepare a response.

8 J. The officer who imposes the punishment, or his or her
9 successor in command, may, at any time, suspend, set aside,
10 mitigate, or remit any part or amount of the punishment and restore
11 all rights, privileges, and property affected. The officer also
12 may:

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

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

21 K. A person punished under this section who considers the
22 punishment unjust or disproportionate to the offense may, through
23 his or her chain of command, appeal to the Senior Assistant Adjutant
24 General of the same component of the state military forces as the

1 accused within fifteen (15) days after the punishment is announced
2 to the accused. The officer exercising appellate authority may, at
3 his or her discretion, extend the deadline for an appeal. The
4 appeal shall be promptly forwarded and decided, and the member shall
5 not be punished until the appeal is decided. The Senior Assistant
6 Adjutant General exercising appellate authority may exercise the
7 same powers with respect to the punishment imposed as may be
8 exercised under subsection I of this section by the officer who
9 imposed the punishment. Before acting on an appeal from a
10 punishment, the Senior Assistant Adjutant General shall refer the
11 case to a judge advocate for consideration and advice.

12 ~~K.~~ L. Except for nonjudicial punishment imposed by the Governor
13 or the Adjutant General, the final appellate authority for
14 nonjudicial punishment imposed within state military forces is the
15 Adjutant General. A person punished under this section whose appeal
16 was previously denied by a Senior Assistant Adjutant General may
17 lodge an additional appeal with the Adjutant General within five (5)
18 days after the appeal is denied. In the event the officer imposing
19 nonjudicial punishment is the Senior Assistant Adjutant General, an
20 appeal thereof shall be addressed directly to the Adjutant General.
21 In the event the officer imposing nonjudicial punishment is the
22 Adjutant General, an appeal thereof shall be addressed directly to
23 the Governor. An appeal offered pursuant to this subsection shall
24 be made only in writing. Neither the Governor nor the Adjutant

1 General shall delegate his or her duties as an appellate authority
2 under this subsection.

3 ~~H.~~ M. Whenever nonjudicial punishment is imposed under this
4 section:

5 1. After adjudication and while the punishment is being carried
6 out or while the adjudged punishment is pending before the appellate
7 authority, the commander or officer in charge who imposed the
8 nonjudicial punishment, upon the request of the accused, may:

9 a. excuse the accused from attendance at scheduled unit
10 training assemblies, or

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

13 2. If necessary to maintain good order and discipline within
14 the unit, the commander or officer in charge who imposed the
15 nonjudicial punishment may order the accused to drill on alternate
16 dates and in alternate locations. The order shall be reduced to
17 writing and shall become part of the record of nonjudicial
18 punishment.

19 ~~M.~~ N. The imposition and enforcement of disciplinary punishment
20 under this section for any act or omission shall not be a bar to
21 trial by court-martial or a civilian court of competent jurisdiction
22 for a crime or offense arising out of the same act or omission; but
23 the fact that a disciplinary punishment has been enforced may be
24 demonstrated by the accused upon trial and, when so demonstrated, it

1 shall be considered in determining the measure of punishment to be
2 adjudged in the event of a finding or verdict of guilty.

3 Nonjudicial punishment shall not be imposed for an offense
4 previously tried by a civilian court unless so authorized by
5 regulations promulgated by the Adjutant General.

6 ~~N.~~ O. When nonjudicial punishment has been imposed for an
7 offense, punishment shall not again be imposed for the same offense
8 under this section. Once nonjudicial punishment has been imposed,
9 it may not be increased, upon appeal or otherwise. When a commander
10 or officer in charge determines that nonjudicial punishment is
11 appropriate for a particular member, all known offenses determined
12 to be appropriate for disposition by nonjudicial punishment and
13 ready to be considered at that time, including all offenses arising
14 from a single incident or course of conduct, shall be considered
15 together and shall not be made the basis for multiple punishments.
16 This subsection shall in no way restrict the right of a commander to
17 prefer court-martial charges for an offense previously punished
18 under the provisions of this section.

19 ~~O.~~ P. In accordance with subsection B of Section 843 of this
20 title (Article 43, subsection B), a person accused of an offense is
21 not liable to be punished under this section if the offense was
22 committed more than two (2) years before the imposition of
23 punishment. Periods in which the accused is absent without
24

1 authority shall be excluded in computing the period of limitation
2 prescribed in this section.

3 ~~P.~~ Q. Whenever a punishment of forfeiture of pay is imposed
4 under this section, the forfeiture shall not apply to pay accruing
5 before the date that punishment is imposed, but only pay accruing on
6 or after the date that punishment is imposed.

7 ~~Q.~~ R. The Adjutant General may promulgate regulations
8 prescribing the type and form of records to be kept of proceedings
9 conducted pursuant to this section. The Adjutant General may
10 promulgate any other regulations necessary to carry out the
11 provisions of this section.

12 SECTION 3. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 826A of Title 44, unless there
14 is created a duplication in numbering, reads as follows:

15 Section 826A. ARTICLE 26A. Military magistrates.

16 A. Qualifications. A military magistrate:

17 1. Shall be a member of the bar of a federal court or a member
18 of the bar of the highest court of a state and may be a commissioned
19 officer of the state military forces; and

20 2. Shall be certified to be qualified, by reason of education,
21 training, experience, and judicial temperament, for duty as a
22 military magistrate by the State Judge Advocate.

23 B. Appellate remand. A military magistrate may be detailed or
24 appointed pursuant to this section for purposes of conducting an

1 appellate proceeding on behalf of the Military Court of Appeals
2 ordered pursuant to paragraph 3, subsection J of Section 866 of this
3 title (Article 66, paragraph 3, subsection J).

4 C. Duties. In accordance with regulations promulgated by the
5 Adjutant General, in addition to duties when detailed or appointed
6 under Section 830A of this title (Article 30A), a military
7 magistrate, who is also a commissioned officer of the state military
8 forces, may be assigned to perform other duties of a nonjudicial
9 nature.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 830A of Title 44, unless there
12 is created a duplication in numbering, reads as follows:

13 Section 830A. ARTICLE 30A. Certain proceedings conducted
14 before trial.

15 A. In General.

16 1. Proceedings may be conducted to review, or otherwise act on,
17 the following matters before referral of charges and specifications
18 to court-martial for trial in accordance with regulations
19 promulgated by the Adjutant General:

- 20 a. prereferral investigative subpoenas,
- 21 b. prereferral warrants or orders for electronic
22 communications, and
- 23 c. prereferral matters under subsection D of Section 806B
24 of title.

1 2. The regulations promulgated under subsection A of this
2 section shall:

3 a. include procedures for the review of such rulings that
4 may be ordered under this section as the Adjutant
5 General considers appropriate, and

6 b. provide such limitations on the relief that may be
7 ordered under this section as the Adjutant General
8 considers appropriate.

9 3. If any matter in a proceeding under this section becomes a
10 subject at issue with respect to charges that have been referred to
11 a general or special court-martial, the matter shall be transferred
12 to the military judge detailed to the court-martial.

13 B. Details of military judge.

14 The Adjutant General shall promulgate regulations providing for
15 the manner in which military judges are detailed to proceedings
16 under subsection A of this section.

17 C. Detail of military magistrate.

18 1. The Adjutant General may promulgate regulations providing
19 for the detailing or appointment of military magistrates who, other
20 than a proceeding described in subsection A of this section, may
21 preside over the proceedings provided for in subsection A of this
22 section.

1 2. Neither the State Judge Advocate nor a senior force
2 component judge advocate shall be detailed or appointed as a
3 military magistrate.

4 3. Neither the convening authority nor any member of the staff
5 of the convening authority shall prepare or review any report
6 concerning the effectiveness, fitness, or efficiency of a military
7 magistrate so detailed or appointed, which relates to the military
8 magistrate's performance of duty as a military magistrate.

9 4. No person is eligible to act as military magistrate in a
10 case if he or she is the accuser, a witness or has acted as counsel
11 in the same case.

12 SECTION 5. AMENDATORY Section 53, Chapter 408, O.S.L.
13 2019 (44 O.S. Supp. 2019, Section 846), is amended to read as
14 follows:

15 Section 846. ARTICLE 46. Opportunity to obtain witnesses and
16 other evidence in trials by court-martial.

17 A. Opportunity to obtain witnesses and other evidence. In a
18 case referred for trial by court-martial, the trial counsel, the
19 defense counsel, and the court-martial shall have equal opportunity
20 to obtain witnesses and other evidence in accordance with such
21 regulations as may be promulgated by the Adjutant General.

22 B. Subpoena and other process generally. Any subpoena or other
23 process issued under this section:

1 1. Shall be similar to that which courts of the State of
2 Oklahoma having criminal jurisdiction may issue pursuant to Title 22
3 of the Oklahoma Statutes;

4 2. Shall be executed in accordance with regulations promulgated
5 by the Adjutant General; and

6 3. Shall run to any part of the State of Oklahoma.

7 C. Subpoena and other process for witnesses. A subpoena or
8 other process may be issued to compel a witness to appear and
9 testify:

10 1. Before a court-martial or court of inquiry;

11 2. At a deposition under Section 849 of this title (Article
12 49); or

13 3. As otherwise authorized under the Oklahoma Uniform Code Of
14 Military Justice.

15 D. Subpoena and other process for evidence.

16 1. In general. A subpoena or other process may be issued to
17 compel the production of evidence:

18 a. for a court-martial or court of inquiry,

19 b. for a deposition under Section 849 of this title
20 (Article 49),

21 c. for an investigation of an offense under the Code, or

22 d. as otherwise authorized under the Code.

23 2. Investigative subpoena. An investigative subpoena under
24 subparagraph c of paragraph 1 of this subsection may be issued

1 before referral of charges to a court-martial only if a general
2 court-martial convening authority has authorized counsel for the
3 government to issue such a subpoena, ~~or~~ a military judge issues such
4 a subpoena pursuant to subsection A of Section 830 of this title
5 (Article 30, subsection A), or a military magistrate issues such a
6 subpoena pursuant to subsection A, paragraph 1, subparagraph a of
7 Section 830A of this title (Article 30A, subsection A, paragraph 1,
8 subparagraph a).

9 3. Warrant or order for wire or electronic communications.
10 With respect to an investigation of an offense under the Code, a
11 military judge detailed in accordance with Section 826 or subsection
12 A of Section 830 of this title (Article 26 or Article 30, subsection
13 A) may issue warrants or court orders for the contents of, and
14 records concerning, wire or electronic communications in the same
15 manner as such warrants and orders may be issued by a district court
16 of the State of Oklahoma under the provisions of Title 22 of the
17 Oklahoma Statutes, subject to such limitations as may be prescribed
18 by regulations promulgated by the Adjutant General. No military
19 magistrate detailed or appointed under Section 830A of this title
20 (Article 30A) shall issue warrants or court orders for the contents
21 of, and records concerning, wire or electronic communications.

22 E. Request for relief from subpoena or other process. If a
23 person requests relief from a subpoena or other process under this
24 section (article) on grounds that compliance is unreasonable or

1 oppressive or is prohibited by law, a military judge detailed in
2 accordance with Section 826 or subsection A of Section 830 of this
3 title (Article 26 or Article 30, subsection A) shall review the
4 request and shall:

5 1. Order that the subpoena or other process be modified or
6 withdrawn, as appropriate; or

7 2. Order the person to comply with the subpoena or other
8 process.

9 SECTION 6. AMENDATORY Section 55, Chapter 408, O.S.L.
10 2019 (44 O.S. Supp. 2019, Section 848), is amended to read as
11 follows:

12 Section 848. ARTICLE 48. Contempt.

13 A. Authority to punish.

14 1. With respect to any proceeding under the Oklahoma Uniform
15 Code of Military Justice, a judicial officer specified in paragraph
16 2 of this subsection may punish for contempt any person who:

17 a. uses any menacing word, sign, or gesture in the
18 presence of the judicial officer during the
19 proceeding,

20 b. disturbs the proceeding by any riot or disorder, or

21 c. willfully disobeys a lawful writ, process, order,
22 rule, decree, or command issued with respect to the
23 proceeding.

24

1 2. A judicial officer referred to in paragraph 1 of this
2 subsection is ~~either~~ any of the following:

3 a. any military judge detailed to a court-martial,

4 b. any military magistrate detailed or appointed to

5 conduct pre-trial referral proceedings under Section

6 806B, subsection D of this title (Article 6B,

7 subsection D) or Section 830A, subsection A, paragraph

8 1, subparagraph a of this title (Article 30A,

9 subsection A, paragraph 1, subparagraph a) or

10 appellate proceedings under Section 866, subsection J,

11 paragraph 3 of this title (Article 66, subsection J,

12 paragraph 3),

13 c. the chief judge of the Military Court of Appeals, or

14 ~~e.~~ d. the president of a court of inquiry.

15 B. Opportunity to be heard and warning. A judicial officer, as
16 specified in paragraph 2 of subsection A of this section, may punish
17 a person cited for contempt after an opportunity to be heard has
18 been given. Censure shall be imposed by the judicial officer only
19 if:

20 1. It is clear from the identity of the offender and the
21 character of his or her acts that disruptive conduct is willfully
22 contemptuous; or

1 2. The conduct warranting the sanction is preceded by a clear
2 warning that the conduct is impermissible and that specified
3 sanctions may be imposed for its repetition.

4 C. Notification of contempt proceedings. The judicial officer,
5 as specified in paragraph 2 of subsection A of this section, as soon
6 as practicable after he or she is satisfied that courtroom
7 misconduct requires contempt proceedings, should inform the alleged
8 offender of his or her intention to institute said proceedings.

9 D. Notice and opportunity to provide evidence or testimony.
10 Before imposing any punishment for contempt, the judicial officer
11 shall give the offender notice of the charges and an opportunity to
12 adduce evidence or argument relevant to guilt or punishment.

13 E. Imposition of sanctions. The judicial officer before whom
14 the misconduct occurs may impose appropriate sanctions including
15 punishment for contempt.

16 F. Punishment. The punishment for contempt under subsection A
17 of this section shall not exceed the punishments provided in
18 subsection A of Section 566 of Title 21 of the Oklahoma Statutes.

19 G. Review. A punishment under this section:

20 1. If imposed by a military judge, may be reviewed by the
21 Military Court of Appeals in accordance with the uniform rules of
22 procedure for the Military Court of Appeals under subsection L of
23 Section 866 of this title (Article 66, subsection L);

24

1 2. If imposed by the chief judge of the Military Court of
2 Appeals, shall constitute a judgment of the court, subject to review
3 under the applicable provisions of Section 867 of this title
4 (Article 67); and

5 3. If imposed by a court of inquiry, shall be subject to review
6 by the convening authority in accordance with regulations
7 promulgated by the Adjutant General.

8 SECTION 7. This act shall become effective November 1, 2020.

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