

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3851

By: Kannady

COMMITTEE SUBSTITUTE

An Act relating to militia; amending Section 5, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2019, Section 801), which relates to definitions; defining term; amending Section 21, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2019, Section 815), which relates to commanding officer's nonjudicial punishment; providing for punishment mitigation; providing for military magistrate; providing qualifications; providing for appellate remand; providing duties of a military magistrate; providing for certain proceedings; providing for regulations for detailing of military judges and military magistrates; providing for promulgation of regulations; amending Section 53, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2019, Section 846), which relates to opportunity to obtain witnesses and other evidence in trial; modifying persons who may issue subpoenas; 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 applicability of parole system; amending Section 82, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2019, Section 867), which relates to review by the Oklahoma Court of Criminal Appeals; providing for applicability of certain laws; providing for codification; and declaring an emergency.

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

2 SECTION 1. AMENDATORY Section 5, Chapter 408, O.S.L.
3 2019 (44 O.S. Supp. 2019, Section 801), is amended to read as
4 follows:

5 Section 801. ARTICLE 1. Definitions.

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

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

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

20 3. "Administrative control (ADCON)" means the control or
21 exercise of authority over subordinate units and other organizations
22 or units with respect to administration and support, including
23 control of resources and equipment, personnel management, unit
24 logistics, individual and unit training, readiness, mobilization,

1 demobilization and other matters not included in the operational
2 missions of the subordinate units or other organizations or units.
3 Lawfully issued orders implementing administrative control may
4 incorporate references to the Oklahoma Uniform Code of Military
5 Justice (OUCMJ) for disciplinary purposes;

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

11 5. "Arrest in quarters" means moral restraint, as opposed to
12 physical restraint, limiting the liberty of an officer. The limits
13 of arrest in quarters are set by the authority imposing nonjudicial
14 punishment and may extend beyond the physical quarters of an
15 officer;

16 6. "Assistant Adjutant General" means an officer appointed by
17 the Adjutant General to assist the Adjutant General in the discharge
18 and performance of his or her duties. An Assistant Adjutant General
19 shall meet the qualifications prescribed by law for the Adjutant
20 General. At least one Assistant Adjutant General for the Army
21 National Guard and one Assistant Adjutant General for the Air
22 National Guard are customarily appointed to establish lines of
23 command and administration into each component of the state military
24

1 forces. Additional assistant adjutants general may be appointed
2 pursuant to law, custom or National Guard regulations;

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

8 8. "Classified information" means:

- 9 a. any information or material that has been determined
10 pursuant to federal law, by an Executive Order issued
11 by the President in execution of federal law, or a
12 lawfully promulgated federal regulation, to require
13 protection against unauthorized disclosure for reasons
14 of national security and that is so designated, and
15 b. any restricted data, as defined in Section 11(y) of
16 the Atomic Energy Act of 1954 (42 U.S.C., Section
17 2014(y));

18 9. "Code" means the Oklahoma Uniform Code of Military Justice
19 (OUCMJ);

20 10. "Command authority" means the authority that a commander
21 lawfully exercises over subordinates by virtue of rank or
22 assignment. Disciplinary authority under the OUCMJ is inherent to
23 command authority;

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

4 12. "Commanding officer" includes only commissioned officers of
5 the state military forces and shall include officers in charge only
6 when administering nonjudicial punishment under Section 815 (Article
7 15) of this title. "Commander" has the same meaning as "commanding
8 officer" unless the context otherwise requires;

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

13 14. "Confidential information" means any information or
14 material that shall be designated as confidential pursuant to
15 Section 24A.27 of Title 51 of the Oklahoma Statutes and any
16 information or material that may be kept confidential pursuant to
17 Section 24A.28 of Title 51 of the Oklahoma Statutes that has not
18 previously been released by an appropriate authority;

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

22 16. "Day" means calendar day and is not synonymous with the
23 term "unit training assembly". Any punishment authorized by this
24 act which is measured in terms of days shall, when served in a

1 status other than annual field training, be construed to mean
2 succeeding duty days;

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

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

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

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

14 21. "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 upon discharge;

20 22. "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 23. "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 24. "Installation commander" means a commissioned officer
9 responsible for the protection of assigned forces and assets,
10 lodging, dining and administrative reporting, regardless of the
11 command relations of the various types of forces present on the
12 installation. For purposes of this definition, an installation is
13 an Armed Forces Reserve Center, air base, armory, camp, post,
14 readiness center, office building, the joint forces headquarters or
15 other facility, location, structure or property so designated as an
16 "installation" by the Adjutant General;

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

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

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

4 28. "Military court" means a court-martial or a court of
5 inquiry;

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

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

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

23 32. "Military magistrate" means a licensed attorney detailed or
24 appointed who conducts reviews or otherwise acts on prereferral

1 matters relating to the rights of victims under Section 806B,
2 subsection D of this title (Article 6B, subsection D), investigative
3 subpoenas under Section 830A, subsection A, paragraph 1,
4 subparagraph a of this title (Article 30A, subsection A, paragraph
5 1, subparagraph a) or who conducts appellate proceedings on behalf
6 of the Military Court of Appeals under paragraph 3, subsection J of
7 Section 866 of this title (Article 66, paragraph 3, subsection J);

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

1 with military recruit or trainee by person in position of special
2 trust), 894 (Article 94, Mutiny or sedition), 895 (Article 95,
3 Offenses by sentinel or lookout), 895A (Article 95A, Disrespect
4 toward sentinel or lookout), 896 (Article 96, Release of prisoner
5 without authority; drinking with prisoner), 897 (Article 97,
6 Unlawful detention), 898 (Article 98, Misconduct as prisoner), 899
7 (Article 99, Misbehavior before the enemy), 900 (Article 100,
8 Subordinate compelling surrender), 901 (Article 101, Improper use of
9 countersign), 902 (Article 102, Forcing a safeguard), 903B (Article
10 103B, Aiding the enemy), 903C (Article 103C, Unlawful disclosure of
11 confidential information), 904 (Article 104, Public records
12 offenses), 904A (Article 104A, Fraudulent enlistment, appointment,
13 or separation), 904B (Article 104B, Unlawful enlistment,
14 appointment, or separation), 905A (Article 105A, False or
15 unauthorized pass offenses), 906A (Article 106A, Wearing
16 unauthorized insignia, decoration, badge, ribbon, device, or lapel
17 button), 907 (Article 107, False official statements; false
18 swearing), 908 (Article 108, Military property-loss, damage,
19 destruction, or wrongful disposition), 908A (Article 108A, Captured
20 or abandoned property), 909 (Article 109, Property other than
21 military property-waste, spoilage, or destruction), 910 (Article
22 110, Improper hazarding of vessel or aircraft), 912 (Article 112,
23 Drunkenness and other incapacitation offenses), 912A (Article 112A,
24 Wrongful use, possession, etc., of controlled substances), 914

(Article 114, Endangerment offenses), 916 (Article 116, Riot or breach of peace), 917 (Article 117, Provoking speeches or gestures), 917A (Article 117A, Wrongful broadcast or distribution of intimate visual images), 920 (Article 120, Sexual assault generally), 920C (Article 120C, Other sexual misconduct), 920D (Article 120D, Fraternization), 921 (Article 121, Larceny and wrongful appropriation), 924 (Article 124, Frauds against the government), 928 (Article 128, Assault), 930 (Article 130, Stalking), 931 (Article 131, Perjury), 931A (Article 131A, Subornation of perjury), 931B (Article 131B, Obstructing justice), 931C (Article 131C, Misprision of serious offense), 931D (Article 131D, Wrongful refusal to testify), 931F (Article 131F, Noncompliance with procedural rules), 931G (Article 131G, Wrongful interference with adverse administrative proceeding), 932 (Article 132, Retaliation), 933 (Article 133, Conduct unbecoming an officer and a gentleman) and 934 (Article 134, General article) of this title;

~~33.~~ 34. "Military publication" means a written publication of an administrative nature such as a regulation, instruction, pamphlet, circular, permanent or general order, numbered adjutant general policy memorandum or blank form promulgated or published by or under the authority of the Adjutant General. An order or directive issued by the Adjutant General that is operational in nature or issued in execution of a military mission shall not be included within the meaning of military publication. Rules of

1 procedure published by the State Judge Advocate for the Military
2 Court of Appeals are included in the meaning of military
3 publication;

4 ~~34.~~ 35. "Month's pay" means the amount of basic pay that would
5 be paid to a member if that member were serving on active duty;

6 ~~35.~~ 36. "National security" means the national defense and
7 foreign relations of the United States;

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

15 ~~37.~~ 38. "Noncommissioned officer" means an enlisted member
16 above the pay grade of E-4 or an enlisted member in the army
17 component of state military forces holding the rank of corporal;

18 ~~38.~~ 39. "Nonjudicial punishment" means punishment imposed
19 administratively by a commander or officer in charge for minor
20 offenses in lieu of a court-martial;

21 ~~39.~~ 40. "Officer" means a commissioned or warrant officer;

22 ~~40.~~ 41. "Officer in charge" means a commissioned or warrant
23 officer designated as such by appropriate authority;

1 ~~41.~~ 42. "Pay" means monetary compensation provided to members
2 of the state military forces in exchange for performance of military
3 duties carried out pursuant to a lawful order or otherwise under the
4 authority of law, including basic pay, special pay, proficiency pay
5 and incentive pay. "Pay" shall not mean allowances as defined in
6 this section;

7 ~~42.~~ 43. "Rank" means the order of precedence among members of
8 the state military forces;

9 ~~43.~~ 44. "Record", when used in connection with the proceedings
10 of a court-martial, means:

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

17 ~~44.~~ 45. "Regulation" means a written, administrative expression
18 of executive authority issued by an executive branch officer which
19 carries with it the force and effect of law due to inherent command
20 authority or express delegation of authority by the legislative
21 branch; regulations provided for in the Code are published and
22 archived by the Secretary of State;

23 ~~45.~~ 46. "Rehearing" means a new trial on the findings, on the
24 sentence, or on both;

1 ~~46.~~ 47. "Restriction" means moral restraint, as opposed to
2 physical restraint, limiting access to physical places or
3 participation in certain activities. In comparison to arrest in
4 quarters, "restriction" is a lesser punishment;

5 ~~47.~~ 48. "Senior Assistant Adjutant General" means an Assistant
6 Adjutant General who either possesses the most time in grade or has
7 been designated in writing by the Adjutant General as the Senior
8 Assistant Adjutant General for his or her force component
9 irrespective of time in grade;

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

18 ~~49.~~ 50. "Shall" is used in an imperative sense;

19 ~~50.~~ 51. "State" means one of the several states, the District
20 of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S.
21 Virgin Islands;

22 ~~51.~~ 52. "State active duty" means full-time duty in the state
23 military forces under an order of the Governor or otherwise issued
24

1 by authority of law, and paid by state funds, and includes travel to
2 and from such duty;

3 ~~52.~~ 53. "State Judge Advocate" means a member of the Oklahoma
4 National Guard qualified as a judge advocate, as defined in this
5 section, and who is designated in writing by the Adjutant General as
6 the State Judge Advocate;

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

20 ~~54.~~ 55. "Superior commissioned officer" means a commissioned
21 officer superior in rank or command;

22 ~~55.~~ 56. "Supplies" means materiel, equipment and stores of all
23 types possessed or lawfully controlled by state military forces; and
24

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

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

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

17 SECTION 2. AMENDATORY Section 21, Chapter 408, O.S.L.
18 2019 (44 O.S. Supp. 2019, Section 815), is amended to read as
19 follows:

20 Section 815. ARTICLE 15. Commanding officer's nonjudicial
21 punishment.

22 A. Except as provided in subsection B of this section, any
23 commanding officer and, for purposes of this section, any officer in
24 charge, may impose disciplinary punishments for minor offenses

1 arising under the punitive articles of the Oklahoma Uniform Code of
2 Military Justice without the intervention of a court-martial.

3 B. Any superior commander may limit or withhold the exercise of
4 nonjudicial punishment authority by subordinate commanders,
5 including limiting authority over certain categories of military
6 personnel or offenses. Likewise, individual cases may be reserved
7 by a superior commander. A superior authority may limit or withhold
8 any power that a subordinate might otherwise exercise under this
9 section.

10 C. Except as provided in subsection ~~K~~ L of this section, the
11 Governor, the Adjutant General, or a general officer in command may
12 delegate the powers established under this section to a principal
13 assistant who is a member of the state military forces and is also a
14 member of the same force component as the accused.

15 D. Any commanding officer may impose upon enlisted members of
16 the officer's command:

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

1 imposing the reduction or any officer subordinate to the one who
2 imposes the reduction;

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

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

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

10 1. An admonition;

11 2. A reprimand;

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

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

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

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

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

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

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

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

8 a. any punishment authorized in subsection E of this
9 section, except for the punishments provided in
10 paragraphs 6 and 7 of subsection E of this section,
11 and

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

14 2. Upon enlisted members of the officer's command, any
15 punishment authorized in subsection E of this section.

16 Admonitions or reprimands given as nonjudicial punishment to
17 commissioned officers and warrant officers shall be administered in
18 writing. In all other cases, unless otherwise prescribed by
19 regulations promulgated by the Adjutant General, such punishments
20 may be administered either orally or in writing.

21 G. Whenever any punishments are combined to run consecutively,
22 the total length of the combined punishment shall not exceed the
23 authorized duration of the longest punishment included in the
24 combination, and there shall be an apportionment of punishments so

1 that no single punishment in the combination exceeds its authorized
2 length under this section.

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

19 I. The right to demand trial by court-martial in lieu of
20 nonjudicial punishment shall arise only when arrest in quarters or
21 restriction will be considered as punishments. If the commanding
22 officer determines that arrest in quarters or restriction will be
23 considered as punishments, prior to the offer of nonjudicial
24 punishment the accused shall be notified in writing of the right to

1 demand trial by court-martial. Should the commanding officer
2 determine that the punishment options will not include arrest in
3 quarters or restriction, the accused shall be notified that there is
4 no right to trial by court-martial in lieu of nonjudicial
5 punishment. Upon notification by the commander or officer in charge
6 of his or her intent to impose nonjudicial punishment that includes
7 arrest in quarters or restriction, the accused shall be afforded a
8 reasonable amount of time to confer with legal counsel and to
9 prepare a response.

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

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

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

23 K. A person punished under this section who considers the
24 punishment unjust or disproportionate to the offense may, through

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

14 ~~K.~~ L. Except for nonjudicial punishment imposed by the Governor
15 or the Adjutant General, the final appellate authority for
16 nonjudicial punishment imposed within state military forces is the
17 Adjutant General. A person punished under this section whose appeal
18 was previously denied by a Senior Assistant Adjutant General may
19 lodge an additional appeal with the Adjutant General within five (5)
20 days after the appeal is denied. In the event the officer imposing
21 nonjudicial punishment is the Senior Assistant Adjutant General, an
22 appeal thereof shall be addressed directly to the Adjutant General.
23 In the event the officer imposing nonjudicial punishment is the
24 Adjutant General, an appeal thereof shall be addressed directly to

1 the Governor. An appeal offered pursuant to this subsection shall
2 be made only in writing. Neither the Governor nor the Adjutant
3 General shall delegate his or her duties as an appellate authority
4 under this subsection.

5 ~~L.~~ M. Whenever nonjudicial punishment is imposed under this
6 section:

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

- 11 a. excuse the accused from attendance at scheduled unit
12 training assemblies, or
13 b. arrange for the accused to drill on alternate dates
14 and in alternate locations; or

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

21 ~~M.~~ N. The imposition and enforcement of disciplinary punishment
22 under this section for any act or omission shall not be a bar to
23 trial by court-martial or a civilian court of competent jurisdiction
24 for a crime or offense arising out of the same act or omission; but

1 the fact that a disciplinary punishment has been enforced may be
2 demonstrated by the accused upon trial and, when so demonstrated, it
3 shall be considered in determining the measure of punishment to be
4 adjudged in the event of a finding or verdict of guilty.

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

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

21 ~~O.~~ P. In accordance with subsection B of Section 843 of this
22 title (Article 43, subsection B), a person accused of an offense is
23 not liable to be punished under this section if the offense was
24 committed more than two (2) years before the imposition of

1 punishment. Periods in which the accused is absent without
2 authority shall be excluded in computing the period of limitation
3 prescribed in this section.

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

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

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

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

17 A. Qualifications. A military magistrate:

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

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

1 B. Appellate remand. A military magistrate may be detailed or
2 appointed pursuant to this section for purposes of conducting an
3 appellate proceeding on behalf of the Military Court of Appeals
4 ordered pursuant to paragraph 3, subsection J of Section 866 of this
5 title (Article 66, paragraph 3, subsection J).

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

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

15 Section 830A. ARTICLE 30A. Certain proceedings conducted
16 before referral.

17 A. In General.

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

- 22 a. prereferral investigative subpoenas,
- 23 b. prereferral warrants or orders for electronic
- 24 communications, and

1 c. prereferral matters under subsection D of Section 806B
2 of this title (Article 6B, subsection D).

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

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

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

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

15 B. Details of military judge.

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

19 C. Detail of military magistrate.

20 1. The Adjutant General may promulgate regulations providing
21 for the detailing or appointment of military magistrates who, other
22 than a proceeding described in subparagraph b of paragraph 1 of
23 subsection A of this section, may preside over the proceedings
24 provided for in paragraph 1 of subsection A of this 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-referral proceedings under Section 806B,
6 subsection D of this title (Article 6B, subsection D)
7 or Section 830A, subsection A, paragraph 1,
8 subparagraph a of this title (Article 30A, subsection
9 A, paragraph 1, subparagraph a) or appellate
10 proceedings under Section 866, subsection J, paragraph
11 3 of this title (Article 66, subsection J, paragraph
12 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
23
24

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. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 858D of Title 44, unless there
10 is created a duplication in numbering, reads as follows:

11 Section 858D. ARTICLE 58D. Parole

12 The system of parole established pursuant to Section 10 of
13 Article VI of the Oklahoma Constitution and Titles 22 and 57 of the
14 Oklahoma Statutes shall be applicable to any person in any place of
15 confinement under the control of the state military forces or in any
16 penal or correctional institution used or under the control of the
17 Oklahoma Department of Corrections.

18 SECTION 8. AMENDATORY Section 82, Chapter 408, O.S.L.
19 2019 (44 O.S. Supp. 2019, Section 867), is amended to read as
20 follows:

21 Section 867. ARTICLE 67. Review by the Oklahoma Court of
22 Criminal Appeals.

23 A. Powers as court of last resort. The Oklahoma Court of
24 Criminal Appeals shall be the court of last resort for all general

1 and special courts-martial convened by the state military forces.
2 In reviewing petitions or appeals granted pursuant to this section,
3 the Oklahoma Court of Criminal Appeals shall have and shall exercise
4 all powers granted to the Court under the Oklahoma Statutes and the
5 Oklahoma Constitution. The provisions of Title 22 of the Oklahoma
6 Statutes establishing criminal procedure in the district courts of
7 the State of Oklahoma shall not apply to courts-martial proceedings
8 convened pursuant to this Code. Where provisions of Title 22 of the
9 Oklahoma Statutes establishing appellate procedure in the Oklahoma
10 Court of Criminal Appeals conflict with any appellate provisions
11 within this Code, the conflicting provisions in Title 22 of the
12 Oklahoma Statutes shall not apply to appellate proceedings arising
13 from courts-martial proceedings convened pursuant to this Code.

14 B. Petition for Review. Except as provided in subsection C of
15 this section for appeals arising from a guilty plea, a decision of
16 the Military Court of Appeals may be reviewed by the Oklahoma Court
17 of Criminal Appeals upon the filing of an appeal in the form of a
18 Petition for Review if a majority of judges on the Oklahoma Court of
19 Criminal Appeals directs that such Petition for Review shall be
20 granted. Decisions of the Military Court of Appeals shall be final
21 unless a Petition for Review is granted by the Oklahoma Court of
22 Criminal Appeals or a writ of certiorari is granted pursuant to
23 subsection C of this section.
24

1 C. Appeals arising from guilty plea. All appeals taken from
2 any conviction on a plea of guilty shall first be decided by the
3 Military Court of Appeals. In the event the conviction arising from
4 a plea of guilty is upheld by the Court of Military Appeals, an
5 appeal may be taken by petition for writ of certiorari to the
6 Oklahoma Court of Criminal Appeals, as provided in subsection D of
7 this section; provided, such petition must be filed within ninety
8 (90) days from the date of said conviction. The Oklahoma Court of
9 Criminal Appeals may take jurisdiction of any case for the purpose
10 of correcting the appeal records when the same do not disclose
11 judgment and sentence; such jurisdiction shall be for the sole
12 purpose of correcting such defect or defects.

13 D. Procedures established by court rules. The procedures for
14 filing a Petition for Review or appeal made pursuant to subsection B
15 or C of this section shall be as provided in the Rules of the Court
16 of Criminal Appeals; and the Oklahoma Court of Criminal Appeals
17 shall provide by court rules, which shall have the force of statute:

18 1. The procedure to be followed by the courts-martial in the
19 preparation and authentication of transcripts and records in cases
20 appealed under the Oklahoma Uniform Code of Military Justice;

21 2. The procedure to be followed by the Court of Military
22 Appeals in the preparation of the record in cases brought up on
23 appeal to the Oklahoma Court of Criminal Appeals under the Code;

1 3. The procedure to be followed for the completion and
2 submission of the Petition for Review or such other appeals lodged
3 pursuant to the Code; and

4 4. The procedure to be followed for filing a petition for and
5 the issuance of a writ of certiorari.

6 E. Scope of review on certiorari. The scope of review to be
7 afforded on certiorari shall be prescribed by the Oklahoma Court of
8 Criminal Appeals.

9 F. Additional proceedings. If the Oklahoma Court of Criminal
10 Appeals determines that additional proceedings are warranted, the
11 Oklahoma Court of Criminal Appeals may order a hearing, rehearing or
12 other proceedings in accordance with the Rules of the Court of
13 Criminal Appeals.

14 G. Action in accordance with decisions of the Oklahoma Court of
15 Criminal Appeals. The State Judge Advocate shall instruct the
16 appropriate authority to take action in accordance with the decision
17 of the Oklahoma Court of Criminal Appeals.

18 SECTION 9. It being immediately necessary for the preservation
19 of the public peace, health or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

22
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