

BILL SUMMARY
1st Session of the 57th Legislature

Bill No.:	HB2362
Version:	Committee Substitute
Request Number:	8228
Author:	Rep. Kannady
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Impact:	Military Department: Budget Neutral

Research Analysis

HB2362, as committee substitute, repeals and replaces current military justice code and creates the Oklahoma Uniform Code, bringing Oklahoma statute in closer alignment with federal law. The measure also modifies current military justice code. In summary, HB2362 relates to:

1. The Military Department:
2. Code of Military Justice:
 - a. Repeal and replaces the Oklahoma Code of Military Justice.
 - b. This measure governs all members of state military forces not in active federal service and is the primary unit for establishes punitive measures that can be used in maintaining good order and discipline for the members. The bill also provides a legal structure and framework for enforcing those measures.
3. Employment Discrimination against enlisted members:
 - a. Expands discrimination protection to enlisted members of Civil Air Patrol and certain military judges.
4. Authorizing use of state military forces to protect assets vital to national security.
5. Oklahoma State Guard Act
 - a. Clarifies language and makes members of the Oklahoma State Guard part of the state military forces as defined in Oklahoma Code of Military Justice.
6. Crimes and Punishment
 - a. Clarifying/updating language of penal code (Title 21).
7. Administrative Procedure Act

Section-by-section (blank sections are reserved):

HB2362, as proposed committee substitute, repeals and replaces the current military justice code and creates the Oklahoma Uniform Code of Military Justice, bringing Oklahoma statute in closer alignment to federal statute.

Section 1: Authorizes the Adjutant General to request from district attorneys and police officers information relating to any National Guard member's court case.

Section 2: Clarifies provisions relating to the joint forces headquarters.

Section 3: Makes military members immune from liability for use of deadly force in defense when acting under official capacity.

PART I: GENERAL PROVISIONS

Section 4: Creates the Oklahoma Uniform Code of Military Justice.

Section 5: Definitions.

Section 6: Applicability of measure; includes all members of state military forces not in active federal service. Establishes jurisdiction between courts-martial and district courts.

Section 7: Establishes that the code may be applicable to those who fraudulently obtained discharge and those who deserted military forces.

Section 8:

Section 9: Establishes territorial applicability of act, in all times and all places, including outside the state.

Section 10: States responsibilities of judge advocates; excluding certain persons from becoming a judge advocate for the same case.

Section 11: Directs the Adjutant General to promulgate rules relating to the investigation and disposition of charges pertaining to a military judge's ability to perform his/her duties.

Section 12: Establishes rights of the victim. Includes protection from accused, right to notice of developments of case, right to participation in public hearing or proceeding, right to confer with counsel, right to receive restitution. If any of these rights has not been upheld, the victim will have the opportunity to make a petition for appeal.

PART II: APPREHENSION AND RESTRAINT

Section 13: Relates to procedures of apprehension.

Section 14: Relates to issuance of warrant of arrest. Requires that warrant include certain information and directed to all peace officers in state or federal government.

Section 15: Relates to arrests. Requires probable cause, establishes procedure of arrest for commissioned and non-commissioned officers.

Section 16: Relates to confinement. Establishes rights of arrested when confined pre-trial. Directs the Adjutant General to promulgate rules relating to referral for trial.

Section 17: Relates to place of confinement; place of confinement may include any property controlled by armed forces, county jail, or correctional facility operated by the Department of Corrections. Prohibits refusal of receiving defendant from any of the listed institutions. Establishes reporting requirements to defendant's commanding officer.

Section 18: Restrictions on confinement. No defendant under this act shall be confined with enemy inmates, foreign nationals under law of war, or individuals who are not members of the armed forces.

Section 19: Prohibits punishment pre-trial, except for minor punishment as a result of discipline infractions.

Section 20: Relates to the delivery of defendants to civil authorities.

PART III: NONJUDICIAL PUNISHMENT

Section 21: Allows for superior commanders, including the Adjutant General and Governor, to impose disciplinary punishments without courts-martial. Lists acceptable forms of disciplinary punishments and maximum time limits. States that defendants only possess a right to demand trial if confinement is considered punishment. Allows for defendants experiencing unjust punishment to petition for an appeal. States that offenses committed over 2 years prior to punishment are not liable.

PART IV: COURTS-MARTIAL JURISDICTION

Section 22: State the three forms of courts martial being: general, special, and summary. General courts-martial consist of a military judge alone, with provisions, or with 8 members. Special courts-martial consist of a military judge alone, with provisions, or with 4 members. Summary courts-martial consist of a commissioned officer.

Section 23: Establishes jurisdiction of courts-martial.

Section 24: Relates to jurisdiction of general courts-martial, being any person subject to code for any offense punishable by code.

Section 25: Relates to jurisdiction of special courts-martial, being restricted to offenses not punishable by dishonorable discharge, dismissal, confinement for over 1 year, forfeiture of pay exceeding $\frac{2}{3}$ pay per month, or forfeiture of pay for over 1 year.

Section 26: Relates to jurisdiction and appeals of summary courts-martial, being restricted to persons who are not officers, cadets, or officer candidates, and restricted to offenses not punishable by dishonorable or bad-conduct discharge, dismissal, confinement for over 1 month, hard labor for more than 45 days, restriction for more than 2 months, or forfeiture of more than $\frac{2}{3}$ 1 month's pay. States procedures for appeal from summary courts-martial decision.

Section 27:

PART V: COMPOSITION OF COURTS-MARTIAL

Section 28: Relates to convening authority of general courts-martial, stating the Governor, Adjutant General, designees, or superior court authority if the accuser is any aforementioned officer.

Section 29: Relates to convening authority of special courts-martial, stating convening authorities of general courts-martial, Senior Assistant Adjutant General, army land component commander, air component commander, or commanding officer of brigade/wing may convene a special court-martial.

Section 30: Relates to convening authority of summary courts-martial being the convening authorities of a general or special court-martial, commanding officer of a battalion (army), or commanding officer of a group (air).

Section 31: Relates to those serving on courts-martial. Eligible persons include commissioned officers of the same force of the accused, warrant officer of the same force of the accused, and enlisted member from same force of the accused. States restrictions on who can serve.

Section 32: Relates to military judge of general or special court-martial. Directs Adjutant General to promulgate rules for selection. Places qualifications on military judge. Prohibits any staff from reviewing military judge's performance in role. Prohibits military judge from certain actions.

Section 33:

Section 34: Relates to trial counsel and defense counsel, stating qualifications and restrictions.

Section 35: Relates to employment of reporters and interpreters, stating responsibilities.

Section 36: Relates to the court-martial members, stating responsibilities, restrictions of trial if insufficient number of members, and introduction of new members.

PART VI: PRETRIAL PROCEDURE

Section 37: Relates to charges and specifications.

Section 38: Prohibits compulsory self-incrimination.

Section 39: Requires preliminary hearing before referring to general court-martial. Allows for waiver of preliminary hearing. States purpose of preliminary hearing. States procedure of preliminary hearing, including hearing officer requirements, reporting requirements, and rights of both the accused and victim in the hearing.

Section 40: Relates to disposition guidance. States considerations of guidance.

Section 41: Relates to advice to convening authority before referral to trial. Requires judge advocate advice before referral in general courts-martial. States requirements of advice. Allows for disposition recommendation.

Section 42: Relates to serving of charges and commencement of trial. Relates to objections to trial of the accused. Allows for granting of continuances.

PART VII: TRIAL PROCEDURE

Section 43: States that most recent federal Rules for Courts-Martial will be procedure. Allows Adjutant General or Governor to promulgate additional rules.

Section 44: Prohibits unlawful influencing of action of court. Relates to reports of determining advancement of grade.

Section 45: Relates to duties of trial and defense counsel. Relates to procedure of defense counsel in case of conviction. Allows for assistant counsel to perform duties.

Section 46: Relates to court sessions. Allows for proceedings to convene without presence of members for certain purposes. Relates to deliberation of members. Relates to findings of other military precedents.

Section 47: Relates to continuances.

Section 48: Relates to challenges. Allows each accused and trial counsel one initial peremptory challenge.

Section 49: Relates to oaths.

Section 50: Relates to statute of limitations. Prohibits military offense liability if offense committed more than 3 years before receipt of sworn charges, and prohibits punishment if committed more than 2 years before punishment, however, DNA testing that implicates accused will remove restrictions. Relates to statute of limitations during wartime. Relates to defective or insufficient charges procedure.

Section 51: Relates to former jeopardy.

Section 52: Relates to pleas of the accused, including pleas of not guilty, guilty, and harmless error.

Section 53: Relates to obtaining witness and evidence in trials, including subpoenas, warrants, request for relief, and other evidence.

Section 54: Relates to the refusal to appear or testify, stating that persons refusing to appear or testify will be guilty of contempt. States fees and mileage to be paid to witnesses.

Section 55: Relates to contempt. States authority to punish for contempt in cases of threats, disobeying lawful writ or order. Gives opportunity for hearing in case of contempt. States notice requirements of contempt proceedings. States punishment for contempt to be maximum fine of \$500 or imprisonment not to exceed 6 months.

Section 56: Relates to depositions. Allows convening authorities to order depositions and parties to request. Relates to counsel representation with respect to deposition and admissibility of evidence.

Section 57: Relates to sworn testimony, including use as evidence by any party, by defense, and in courts of inquiry.

Section 58: Relates to defense of mental disease or defect. Establishes burden of proof. Requires finding options to include not guilty by reason of lack of mental responsibility. States requirements for establishing lack of mental responsibility.

Section 59: Relates to voting and rulings. Requires that member vote be secret. States that military judge will rule on all arising questions during proceeding.

Section 60: Relates to votes required for conviction, sentencing, and other matters. Requires a majority vote. Requires that member-imposed sentencing be determined by 3/4ths majority vote.

Section 61: Relates to findings and sentencing. Relates to sentencing procedures by military judge or by members (general or special), or court-martial (summary).

Section 62: Relates to plea agreements. Places limitations on plea agreements.

Section 63: Relates to record of trial, requiring that each case have a separate record per proceeding, and certified by a court-reporter. States contents of record. Requires copy to be sent to accused and victim.

PART VIII: SENTENCES

Section 64: Prohibits cruel and unusual punishments. Lists prohibited punishments.

Section 65: Relates to sentencing. Requires punishments not exceed maximums. States considerations of sentence imposition. States procedure of sentencing by military judge and members. Allows for appeal of sentence.

Section 66: Relates to the effective date of sentences. Specifies effective date for forfeiture and reduction, confinement, dismissal, completion of appellate review, and other sentences. Allows for deferral of sentences according to judicial discretion. States procedure of appellate review

Section 67: Relates to execution of confinement. Prohibits hard labor without confinement to be ordered by a court-martial.

Section 68: Relates to sentencing involving a reduction in enlisted grade.

Section 69: Relates to sentencing involving forfeiture of pay and allowances during confinement. States sentencing of confinement in which this section qualifies. Allows for waiver in case of dependents. Allows for reimbursement in certain cases.

Section 70: Relates for enforcement of fines or adjudication of pecuniary liability.

PART IX: POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Section 71: Relates to error of law. States that finding or sentence may not be held incorrect on ground of error of law. Directs Attorney General to enforce collection.

Section 72: Relates to post-trial processing for general and special courts-martial. Provides procedure for recording statement of trial results. Relates to post-trial motions.

Section 73: Limits authority of convening authority to act on sentence. May suspend sentence with recommendation of military judge. States considerations when suspending or altering sentences. Requires written explanation of modified sentence.

Section 74: Relates to post-trial processing for summary courts-martial, and certain special and general courts-martial. States allowable actions of convening authority. States limitations on rehearings. States considerations when acting under this section.

Section 75: Relates to entry of judgment. States contents of judgment, providing judgment to parties, and stating procedures for judgment entry for summary courts-martial.

Section 76: Relates to waiver of right to appeal and withdrawal of appeal.

Section 77: Relates to appeal by the State of Oklahoma. States cases in which State may appeal. Directs appellate government counsel to prosecute appeal. States forwarding requirements.

Section 78: Relates to rehearings. Places restrictions on reharings and new sentences.

Section 79: Relates to the reviewing of finding of guilty in summary courts-martial. States that findings of guilty must be reviewed by judge advocate. Specifies content and recording of review. Directs Adjutant General to promulgate regulations related to section.

Section 80: Relates to transmittal and review of records. States automatic review for certain cases. Provides notice of right to appeal to accused, unless waived. States convening authority, scope, and remedy (with and without rehearing) for review.

Section 81: Establishes Military Court of Appeals for State Military Forces. Establishes composition and appointment by Governor. Lists qualifications for appointment. States term of office and causes for removal or retirement. States compensation of members. States jurisdiction of court to include appeals by the accused, review of certain sentences, and automatic reviews. Places timelines on reviews. Lists duties of court. Prohibits court from certain actions.

Section 82: Relates to reviews by the Oklahoma Court of Criminal Appeals. States that this court shall be the court of last resort. Requires filing and granting of Petition for Review.

Section 83:

Section 84:

Section 85: Relates to review by the State Judge Advocate. States timeline for submitting application for review, scope of review. Allows for Military Court of Appeals to review actions taken by the State Judge Advocate in certain cases.

Section 86: Relates to appellate counsel for the State Judge Advocate to represent the State before the Military Court of Appeals or the Court of Criminal Appeals.

Section 87:

Section 88: Relates to vacation of suspension of a special court-martial sentence. Requires a hearing to be held.

Section 89: Relates to petition for a new trial. States timeline for petitioning for new trial.

Section 90: Relates to remission and suspension. Allows Adjutant General, State Judge Advocate, or commanding officer to remit or suspend any amount of unexecuted sentence. May be substituted with discharge.

Section 91: Relates to restoration of rights and privileges.

Section 92: States that all findings, sentences, dismissals, and discharges by the courts-martial are final and conclusive.

Section 93: Relates to required leave pending review of court-martial convictions.

Section 94: Exempts those accused suffering mental illness from trial if mentally incompetent.

PART X: PUNITIVE ARTICLES

Section 95: Relates to principals. Establishes those who commit offense under code shall be principal.

Sections 96-190: Lists offenses eligible for punishment by court-martial. Notably, includes sexual assault and sexual misconduct.

PART XI: MISCELLANEOUS PROVISIONS

Section 191: Relates to courts of inquiry. Allows courts of inquiry to investigate any matter of concern to state military forces. States composition of courts of inquiry. States persons subject to courts of inquiry. States responsibilities and authorities of courts of inquiry.

Section 192: Relates to the authority to administer oaths, includes judge advocates, summary courts-martial, adjutants, commanding officers, staff judge advocates, judges of Military Court of Appeals, and designees. Allows for certain persons to administer oaths if in performance of duties.

Section 193: Relates to articles to be explained to enlisted members, to be explained within 30 days of initial entrance and made available to members upon request.

Section 194: Relates to complaints of wrongs. Allows officer to examine complaints and take proper measures.

Section 195: Relates to redress of injuries to property. Allows commanding officer to examine complaint, along with board. Authorizes board to summon witnesses, receive evidence, and assess damage. Board assessment subject to commanding officer approval.

Section 196: Relates to authority of Governor to delegate any authority given in this code, with certain exceptions.

Section 197: Relates to precedence of regulations. States that regulations promulgated by Governor will take precedence over existing regulations in conflict.

Section 198: Relates to publication of administrative code. States that code shall be provided to Secretary of State by Adjutant General, unless prohibited by federal law.

Section 199: Relates to payment and collection of fines. Allows for certain forms of fine payment. States that any collection be deposited into the Military Justice Fund, except for required restitution.

Section 200: Relates to uniformity of interpretation. States the purpose of the military code to be uniform, as much as possible, to the federal military code.

Section 201: Provides immunity from personal liability if person is performing duties as part of this code.

Section 202: Relates to jurisdiction not extended to certain crimes. Includes murder, manslaughter, rape, sexual assault of a child, child endangerment, injury of an unborn child, kidnapping, domestic violence, arson, robbery, maiming, extortion, burglary, parole violation, or housebreaking, which is reserved for civil courts.

Section 203: Relates to continuances for military service. Requires continuation of trial when party not present for certain reasons, including active duty and service.

END OF NEW LAW RELATING TO MILITARY CODE AMENDMENTS TO CURRENT CODE

Section 204: Includes members of Civil Air Patrol and judges of Military Court of Appeals from being protected from discrimination.

Section 205: Authorizes state military forces to protect national security assets.

Sections 206-207: Cleanup language.

Section 208: Authorizes Governor to promulgate rules and regulations related to Armed Forces Reserve Centers, readiness centers, logistics, aviation, training facilities, and warehouses. Such regulations shall be issued in form of executive order and included in Administrative Code. States that members of the Oklahoma State Guard shall be considered part of state military forces.

Sections 209-210: Cleanup language.

Section 211:

Sections 212-213: Cleanup language.

Section 214: Exempts military publications from Administrative Procedures Act.

Section 215: Allows Secretary to provide for publication of military publications. Secretary shall determine standardized format for military document filing.

Section 216: Includes military publications in “The Oklahoma Register” publication.

Section 217: Includes military publications as documents for which Secretary will provide codification and indexing in Administrative Code.

Section 218: Recodification.

Section 219: Repeals current Oklahoma military justice code.

Prepared By: House Research Staff

Fiscal Analysis

HB 2362 in its current form replaces portions of the Oklahoma Military Code with the Uniform Code of Military Justice. Officials from the Military Department communicate that the change will result in implementation of different processes; however, the change is not expected to result in any material increase or decrease in budgetary resource consumption within the Department. For this reason HB 2362 is expected to be budget neutral to the Military Department, and have no direct fiscal impact on the state budget or revenues.

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Other Considerations

None.