

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 289

By: Simpson

AS INTRODUCED

An Act relating to the Oklahoma Uniform Code of Military Justice; amending Sections 5, 21, 53, 55 and 82, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Sections 801, 815, 846, 848 and 867), which relate to definitions, nonjudicial punishment, and trial and posttrial procedure; defining term; establishing requirements for mitigation of punishments; establishing qualifications for military magistrates; authorizing appointment of military magistrate for appellate remand; clarifying duties of a military magistrate; authorizing certain proceedings prior to referral of charges; requiring promulgation of certain regulations by Adjutant General; modifying authority to issue certain subpoenas or warrants; authorizing military magistrate to punish for contempt; clarifying applicability of parole system; providing for applicability of certain criminal procedure statutes; providing for codification; and declaring an emergency.

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. 2020, Section 801), is amended to read as follows:

1       Section 801. ARTICLE 1. Definitions. A. As used in the  
2 Oklahoma Uniform Code of Military Justice, unless the context  
3 otherwise requires:

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

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

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

1 incorporate references to the Oklahoma Uniform Code of Military  
2 Justice (OUCMJ) for disciplinary purposes;

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

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

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

23 7. "Cadet" or "officer candidate" means a person who is  
24 enrolled in or attending a state military academy, a regional

1 training institute, or any other formal education program for the  
2 purpose of becoming a commissioned officer in the state military  
3 forces;

4 8. "Classified information" means:

5 a. any information or material that has been determined  
6 pursuant to federal law, by an Executive Order issued  
7 by the President in execution of federal law, or a  
8 lawfully promulgated federal regulation, to require  
9 protection against unauthorized disclosure for reasons  
10 of national security and that is so designated, and

11 b. any restricted data, as defined in Section 11(y) of  
12 the Atomic Energy Act of 1954 (42 U.S.C., Section  
13 2014(y));

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

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

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

23 12. "Commanding officer" includes only commissioned officers of  
24 the state military forces and shall include officers in charge only

1 when administering nonjudicial punishment under Section 815 (Article  
2 15) of this title. "Commander" has the same meaning as "commanding  
3 officer" unless the context otherwise requires;

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

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

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

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

22 17. "Court of Criminal Appeals" means the Oklahoma Court of  
23 Criminal Appeals, the highest court in the State of Oklahoma with  
24

1 appellate jurisdiction in criminal cases. It is the court of last  
2 resort for courts-martial conducted under the Code;

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

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

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

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

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

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 subsection D of  
21 Section 806B of this title (Article 6B, subsection D), investigative  
22 subpoenas under subparagraph a of paragraph 1 of subsection A of  
23 Section 4 of this act or who conducts appellate proceedings on  
24 behalf of the Military Court of Appeals under paragraph 3 of



1 subsection J of Section 866 of this title (Article 66, paragraph 3,  
2 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;

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  
24

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. 2020, 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 ~~K~~ 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  
23  
24  
25

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.

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  
25

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

- 13 1. Reduction in grade to forfeiture of pay;
- 14 2. Arrest in quarters to restriction; or
- 15 3. 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 ~~L.~~ 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 826.1 of Title 44, unless there  
14 is created a duplication in numbering, reads as follows:

15 Section 826.1. ARTICLE 26A. Military magistrates.

16 A. Qualifications. A military magistrate shall be:

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

20 2. Certified to be qualified, by reason of education, training,  
21 experience and judicial temperament, for duty as a military  
22 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 of subsection J of Section 866 of  
3 Title 44 of the Oklahoma Statutes (Article 66, paragraph 3,  
4 subsection J).

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

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
- 24
- 25

1           c.    prereferral matters under subsection D of Section 806B  
2                   of Title 44 of the Oklahoma Statutes (Article 6B,  
3                   subsection D).

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

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

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

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

16          B.   Details of military judge.

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

20          C.   Detail of military magistrate.

21          1.   The Adjutant General may promulgate regulations providing  
22 for the detailing or appointment of military magistrates who, other  
23 than a proceeding described in subparagraph b of paragraph 1 of  
24

1 subsection A of this section, may preside over the proceedings  
2 provided for in paragraph 1 of subsection A of this section.

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

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

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

14 SECTION 5. AMENDATORY Section 53, Chapter 408, O.S.L.  
15 2019 (44 O.S. Supp. 2020, Section 846), is amended to read as  
16 follows:

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

19 A. Opportunity to obtain witnesses and other evidence. In a  
20 case referred for trial by court-martial, the trial counsel, the  
21 defense counsel, and the court-martial shall have equal opportunity  
22 to obtain witnesses and other evidence in accordance with such  
23 regulations as may be promulgated by the Adjutant General.  
24

1 B. Subpoena and other process generally. Any subpoena or other  
2 process issued under this section:

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

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

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

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

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

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

15 3. As otherwise authorized under the Oklahoma Uniform Code ~~of~~  
16 of Military Justice.

17 D. Subpoena and other process for evidence.

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

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

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

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

24 d. as otherwise authorized under the Code.  
25

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

10        3. Warrant or order for wire or electronic communications.  
11 With respect to an investigation of an offense under the Code, a  
12 military judge detailed in accordance with Section 826 or subsection  
13 A of Section 830 of this title (Article 26 or Article 30, subsection  
14 A) may issue warrants or court orders for the contents of, and  
15 records concerning, wire or electronic communications in the same  
16 manner as such warrants and orders may be issued by a district court  
17 of the State of Oklahoma under the provisions of Title 22 of the  
18 Oklahoma Statutes, subject to such limitations as may be prescribed  
19 by regulations promulgated by the Adjutant General. No military  
20 magistrate detailed or appointed under Section 4 of this act shall  
21 issue warrants or court orders for the contents of, and records  
22 concerning, wire or electronic communications.

23        E. Request for relief from subpoena or other process. If a  
24 person requests relief from a subpoena or other process under this

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

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

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

10 SECTION 6. AMENDATORY Section 55, Chapter 408, O.S.L.  
11 2019 (44 O.S. Supp. 2020, Section 848), is amended to read as  
12 follows:

13 Section 848. ARTICLE 48. Contempt. 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.

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 prereferral proceedings under subsection D of  
6 Section 806B of this title (Article 6B, subsection D)  
7 or subparagraph a of paragraph 1 of subsection A of  
8 Section 4 of this act or appellate proceedings under  
9 paragraph 3 of subsection J of Section 866 of this  
10 title (Article 66, subsection J, paragraph 3),

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

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

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

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

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



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

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

10 E. Imposition of sanctions. The judicial officer before whom  
11 the misconduct occurs may impose appropriate sanctions including  
12 punishment for contempt.

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

16 G. Review. A punishment under this section:

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

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

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

4        SECTION 7.        NEW LAW        A new section of law to be codified  
5 in the Oklahoma Statutes as Section 858D of Title 44, unless there  
6 is created a duplication in numbering, reads as follows:

7        Section 858D.    ARTICLE 58D.    Parole.

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

14        SECTION 8.        AMENDATORY        Section 82, Chapter 408, O.S.L.  
15 2019 (44 O.S. Supp. 2020, Section 867), is amended to read as  
16 follows:

17        Section 867.    ARTICLE 67.    Review by the Oklahoma Court of  
18 Criminal Appeals.

19        A. Powers as court of last resort. The Oklahoma Court of  
20 Criminal Appeals shall be the court of last resort for all general  
21 and special courts-martial convened by the state military forces.  
22 In reviewing petitions or appeals granted pursuant to this section,  
23 the Oklahoma Court of Criminal Appeals shall have and shall exercise  
24 all powers granted to the Court under the Oklahoma Statutes and the

1 Oklahoma Constitution. The provisions of Title 22 of the Oklahoma  
2 Statutes establishing criminal procedure in the district courts of  
3 this state shall not apply to courts-martial proceedings convened  
4 pursuant to this Code. If provisions of Title 22 of the Oklahoma  
5 Statutes establishing appellate procedure in the Oklahoma Court of  
6 Criminal Appeals conflict with any appellate provisions within this  
7 Code, the conflicting provisions in Title 22 of the Oklahoma  
8 Statutes shall not apply to appellate proceedings arising from  
9 courts-martial proceedings convened pursuant to this Code.

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

20 C. Appeals arising from guilty plea. All appeals taken from  
21 any conviction on a plea of guilty shall first be decided by the  
22 Military Court of Appeals. In the event the conviction arising from  
23 a plea of guilty is upheld by the Court of Military Appeals, an  
24 appeal may be taken by petition for writ of certiorari to the

1 Oklahoma Court of Criminal Appeals, as provided in subsection D of  
2 this section; provided, such petition must be filed within ninety  
3 (90) days from the date of ~~said~~ the conviction. The Oklahoma Court  
4 of Criminal Appeals may take jurisdiction of any case for the  
5 purpose of correcting the appeal records when the same do not  
6 disclose judgment and sentence; such jurisdiction shall be for the  
7 sole purpose of correcting such defect or defects.

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

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

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

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

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

1 E. Scope of review on certiorari. The scope of review to be  
2 afforded on certiorari shall be prescribed by the Oklahoma Court of  
3 Criminal Appeals.

4 F. Additional proceedings. If the Oklahoma Court of Criminal  
5 Appeals determines that additional proceedings are warranted, the  
6 Oklahoma Court of Criminal Appeals may order a hearing, rehearing or  
7 other proceedings in accordance with the Rules of the Court of  
8 Criminal Appeals.

9 G. Action in accordance with decisions of the Oklahoma Court of  
10 Criminal Appeals. The State Judge Advocate shall instruct the  
11 appropriate authority to take action in accordance with the decision  
12 of the Oklahoma Court of Criminal Appeals.

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

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