

1 **SENATE FLOOR VERSION**

2 April 12, 2023

3 ENGROSSED HOUSE
4 BILL NO. 2382

By: Burns of the House

and

Gollihare of the Senate

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7
8 An Act relating to militia; amending 44 O.S. 2021,
9 Sections 21, 23, 24, 25, 26, 27, 45, 48, 49, Section
10 1, Chapter 74, O.S.L. 2022, 241, and 243 (44 O.S.
11 Supp. 2022, Section 233.10a), which relate to The
12 Oklahoma Military Code; clarifying personnel to staff
13 joint forces headquarters; providing for Adjutant
14 General to assign necessary persons to headquarters;
15 clarifying personnel in state military forces;
16 providing gender-neutral language; establishing term
17 limit for Adjutant General upon certain date;
18 authorizing removal for cause; modifying eligibility
19 criteria for Adjutant General; authorizing Governor
20 to waive certain eligibility requirements; directing
21 certain comparable rate of compensation for Adjutant
22 General; modifying authority of Adjutant General;
23 authorizing Adjutant General to establish rules
24 allowing the Military Department to accept donations
to create a certain scholarship program; permitting
delegation of oversight to a nonprofit public
charity; providing gender-neutral language; modifying
oath of office for National Guard officers; updating
language; directing Adjutant General to prescribe
policies and regulations for personnel compensation;
preempting Military Department personnel matters;
clarifying personnel discharge procedures by the
Governor as Commander in Chief; authorizing certain
personnel matters to be decided according to customs
and state and federal regulations; permitting
Department to purchase information technology;
exempting certain federal programs from Information
Services Division requirements; removing reference to
certain regulations prescribed by the Secretary of
Defense; striking requirement that personnel

1 procedures be in conformity with certain laws, rules,
2 and regulations; amending 44 O.S. 2021, Sections 815,
3 821, 875, 905, 912A, 928B, 934, and 937, which relate
4 to the Oklahoma Uniform Code of Military Justice;
5 providing exception for reduction in rank of certain
6 members; authorizing reduction as possible
7 nonjudicial punishment; prohibiting federal officials
8 from convening certain court-martial proceedings
9 without prior consent of the Governor; requiring
10 consent to be in writing and published by Governor;
11 authorizing Governor to reappoint certain dismissed
12 officers; providing for reappointment procedures;
13 directing Governor or Adjutant General to prescribe
14 certain regulations; prohibiting act of forgery;
15 prescribing punishment for forgery; prohibiting use
16 or ingestion of certain substances; prescribing
17 punishment for certain violent offenses or threats;
18 including certain specifically enumerated offenses;
19 modifying timing for explanation of Code; providing
20 for adoption of Manual for Courts-Martial; providing
21 for codification; and providing an effective date.

22
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. AMENDATORY 44 O.S. 2021, Section 21, is
amended to read as follows:

Section 21. The Military Department of the State of Oklahoma is
hereby established and shall be under the command and control of the
Governor as Commander in Chief, with the Adjutant General as the
executive and administrative head thereof. The Military Department
shall be constituted of the state military forces, as defined by
Section 801 of this title, and is hereby organized into a joint
headquarters which shall be identified as the joint forces
headquarters. The joint forces headquarters shall be jointly
staffed by ~~Army National Guard and Air National Guard~~ personnel of

1 the state military forces who, under the authority and direction of
2 the Adjutant General, shall support and assist the Adjutant General
3 in the exercise of command and control over state military forces
4 when not activated for federal duty under Title 10 of the United
5 States Code. There shall be assigned to the joint ~~force~~ forces
6 headquarters, officers, enlisted personnel, and civilian employees
7 as may be considered necessary by the Governor as Commander in Chief
8 and ~~as may be authorized by law and Army National Guard regulations~~
9 ~~and Air National Guard regulations~~ the Adjutant General.

10 SECTION 2. AMENDATORY 44 O.S. 2021, Section 23, is
11 amended to read as follows:

12 Section 23. The Governor of the state shall be the Commander in
13 Chief of the Militia, and, as such, shall have supreme command of
14 the military forces of the state while in the service of the state
15 or until they are ordered ~~and accepted~~ into the actual service of
16 the United States within the meaning of Clauses 15 and 16 of Section
17 8 of Article I of the United States Constitution and Section 2 of
18 Article II of the United States Constitution. While in the service
19 of the ~~state~~ State of Oklahoma, ~~he~~ the Governor shall have power to
20 muster out any organization of the state military forces, discharge
21 enlisted ~~men~~ personnel, as provided herein, and perform such other
22 acts in keeping with the laws of the Commander in Chief, ~~subject to~~
23 ~~the laws of the United States and regulations prescribed by the~~
24 ~~President of the United States.~~ No armed military force from

1 another state or territory shall be permitted to enter the state
2 without ~~his~~ permission of the Governor, unless such military force
3 be a part of the United States, or is acting under the authority of
4 the United States. No independent military organization, except as
5 a corps of cadets at the educational institutions, shall be
6 permitted to bear arms without first securing permission of the
7 Commander in Chief.

8 SECTION 3. AMENDATORY 44 O.S. 2021, Section 24, is
9 amended to read as follows:

10 Section 24. A. The Adjutant General shall be appointed by the
11 Governor, by and with the advice and consent of the Senate, ~~and~~
12 ~~shall serve at the pleasure of the Governor.~~ Beginning January 1,
13 2027, the appointment of the Adjutant General shall be for a term of
14 five (5) years, requiring a new reappointment process for any
15 additional term. The Adjutant General may be removed for cause by
16 the Governor during the appointed term.

17 B. To be eligible to hold the office of Adjutant General of
18 this state, at the time of appointment the appointee:

19 1. Shall be a federally recognized and currently serving
20 officer of the Oklahoma National Guard ~~and of the National Guard of~~
21 ~~the United States for~~ who is not presently retired nor has ever
22 previously retired from the Oklahoma National Guard and with no less
23 than three (3) years of service in the Oklahoma National Guard;

24 2. Shall possess at least the rank of Colonel; and

1 3. If not already a general officer, shall be eligible for a
2 Certificate of Eligibility pursuant to federal law and applicable
3 regulations issued by the Chief of the National Guard Bureau.

4 C. If the Oklahoma National Guard is in active federal service
5 and no persons having the qualifications required in subsection B of
6 this section are available within the state, then the Governor may
7 appoint, subject to the advice and consent of the Senate, any
8 suitably qualified person who at any time in the preceding ten (10)
9 years would have been qualified, ~~as above, and who has served at~~
10 ~~least two (2) years in active federal service in the grade of~~
11 Colonel or higher pursuant to the requirements of subsection B of
12 this section.

13 SECTION 4. AMENDATORY 44 O.S. 2021, Section 25, is
14 amended to read as follows:

15 Section 25. A. The Adjutant General shall have the rank of
16 Major General and devote full time to the duties of the office.
17 Regardless of whether or not the Adjutant General has been
18 recognized federally at the rank of Major General at the time of
19 appointment by the Governor, the Adjutant General shall be
20 compensated at the same rate of pay and allowances afforded to a
21 Major General serving on federal Title 10 active duty with the same
22 time in grade.

23 B. The Governor may appoint Assistant Adjutants General for
24 Army and Assistant Adjutants General for Air to assist the Adjutant

1 General in the discharge and performance of his or her duties. When
2 appointing Assistant Adjutants General, the Governor shall take into
3 consideration the number of such positions contemplated or
4 recommended by the National Guard Bureau for manning the joint
5 forces headquarters of a state. Such Assistant Adjutants General
6 shall have the qualifications prescribed by law for the Adjutant
7 General and shall have the rank of Brigadier General. The Assistant
8 Adjutants General appointed by the Governor shall be considered
9 staff officers and not commanders except that, in the discretion of
10 the Adjutant General, specific command or supervisory authority may
11 be delegated by the Adjutant General to an Assistant Adjutant
12 General but such delegation shall be accomplished in writing and
13 shall be considered a military publication, as defined in Section
14 801 of this title (Article 1).

15 C. Other general officers assigned to billets within the state
16 military forces, including certain billets within the joint forces
17 headquarters, shall be considered staff officers and not commanders
18 except that, in the discretion of the Adjutant General, specific
19 command or supervisory authority may be delegated by the Adjutant
20 General to such general officers, but such delegation shall be
21 accomplished in writing and shall be considered a military
22 publication, as defined in Section 801 of this title (Article 1).

23 D. The Adjutant General may employ a state employee in the
24 position of Executive Assistant and Programs Manager for the

1 Military Department of the state. Said position shall be
2 unclassified and exempt from the Oklahoma Personnel Act and the
3 Merit Rules for Employment, except leave regulations.

4 SECTION 5. AMENDATORY 44 O.S. 2021, Section 26, is
5 amended to read as follows:

6 Section 26. A. The Adjutant General shall be in control of the
7 Military Department of the State of Oklahoma, subordinate only to
8 the Governor. Within the limitations and under the provisions of
9 law, he or she shall supervise and direct the Oklahoma National
10 Guard within the service of the state and when under state control
11 in all of its organization, training and other activities; shall
12 receive and give effect to the orders of the Governor; and shall
13 perform such other military and defense duties, not otherwise
14 assigned by law, as the Governor may prescribe. The Adjutant
15 General shall have the authority to arm members of the state
16 military forces on military installations and other places under the
17 control of the Military Department with weaponry as the Adjutant
18 General deems necessary to adequately provide for the security of
19 the facilities and their occupants.

20 B. The Adjutant General, when absent from the state, may
21 temporarily delegate any authority vested under this title and any
22 such duties as an agency appointing authority to an Assistant
23 Adjutant General, other state officer or employee within the
24 Military Department of the State of Oklahoma. Such temporary

1 delegations of authority pursuant to this subsection shall be
2 accomplished in writing. The Adjutant General may also promulgate
3 regulations providing for the delegation of any such authority.

4 C. The Adjutant General shall develop, publish and maintain an
5 organizational chart depicting the chain of command between the
6 Adjutant General and the major commands of the Oklahoma National
7 Guard. Besides the major commands defined in Section 801 of this
8 title (Article 1), the Adjutant General, in his or her discretion,
9 may designate other military units within the Oklahoma National
10 Guard as major commands.

11 D. The organizational chart required in subsection C of this
12 section shall be updated no less than annually and shall include all
13 enlisted and officer billets assigned to joint forces headquarters
14 and shall depict all existing command relationships established by
15 the Adjutant General within joint forces headquarters. The
16 organizational chart required herein shall not be considered a
17 military publication within the meaning of Section 801 of this title
18 (Article 1).

19 E. In accordance with all relevant requirements of the United
20 States Army, the United States Air Force or the National Guard
21 Bureau, the Adjutant General shall develop, publish and maintain an
22 enlisted and officer rating scheme for all enlisted and officer
23 billets assigned to joint forces headquarters. The rating scheme
24

1 required herein shall not be considered a military publication
2 within the meaning of Section 801 of this title (Article 1).

3 F. Pursuant to the rules established by the Adjutant General,
4 the Military Department of the State of Oklahoma is authorized to
5 expend appropriated and nonappropriated funds to enhance recruiting
6 and retention efforts for the Oklahoma National Guard.

7 G. The Adjutant General may establish rules allowing the
8 Military Department of the State of Oklahoma to accept donations and
9 bequests to create a scholarship program for the benefit of members
10 of the Oklahoma National Guard. The Adjutant General may delegate
11 oversight of scholarship program funds to a nonprofit public charity
12 for the purpose of creating and administering an endowment fund for
13 the scholarship program.

14 SECTION 6. AMENDATORY 44 O.S. 2021, Section 27, is
15 amended to read as follows:

16 Section 27. The Adjutant General and Assistant Adjutants
17 General shall be paid a sum equivalent to the pay of ~~his/her~~ his or
18 her federally recognized rank, exclusive of allowances. Other
19 officers and enlisted men and women and employees of the Department
20 shall be paid in amounts fixed by the Adjutant General and within
21 amounts appropriated for that purpose, according to the policies and
22 regulations prescribed by the Adjutant General. Military Department
23 personnel matters shall be preempted and governed by federal law and
24 managed by the Adjutant General.

1 SECTION 7. AMENDATORY 44 O.S. 2021, Section 45, is
2 amended to read as follows:

3 Section 45. Oath for National Guard Officers. Each
4 commissioned officer, before entering upon the duties of his or her
5 office, shall take and subscribe to the following oath, ~~or such~~
6 ~~other oath as may be required by National Guard Regulations:~~

7 "I, do solemnly swear that I will support and defend
8 the Constitution of the United States and the Constitution of the
9 State of Oklahoma against all enemies, foreign and domestic; that I
10 will bear true faith and allegiance to the same; that I will obey
11 the lawful orders of the President of the United States and the
12 Governor of the State of Oklahoma; that I make this obligation
13 freely, without any mental reservation or purpose of evasion, and
14 that I will well and faithfully discharge the duties of the office
15 of, in the National Guard of the United States and the State
16 of Oklahoma upon which I am about to enter, so help me God."

17 SECTION 8. AMENDATORY 44 O.S. 2021, Section 48, is
18 amended to read as follows:

19 Section 48. Enlisted ~~men~~ personnel discharged from service in
20 the Oklahoma National Guard ~~of this state~~ shall receive a discharge
21 in writing in such form and with such classification as is or shall
22 be prescribed by National Guard regulations, and in time of peace
23 discharges may be given prior to the expiration of terms of
24 enlistment in the following cases:

1 By sentence of a general court-martial; by direction of the
2 Governor on account of disability; on account of sentence of
3 imprisonment by a civil court whether suspended or not; on account
4 of a bona fide permanent change of residence to another state; and
5 for the purpose of enlisting in regular Army, Air Force, Navy, or
6 Marine Corps, and for such other causes as may be prescribed by
7 ~~National Guard regulations or~~ the Governor as Commander in Chief;
8 provided, that an enlisted ~~man~~ person who has not returned or
9 accounted for all of the public property for which he or she is
10 responsible, shall under no circumstances receive an honorable
11 discharge.

12 SECTION 9. AMENDATORY 44 O.S. 2021, Section 49, is
13 amended to read as follows:

14 Section 49. All matters relating to organization, commissioning
15 and discharging of officers, enlisting and discharge of enlisted ~~men~~
16 personnel, discipline, and government of the Oklahoma National
17 Guard, not otherwise provided in this code, ~~shall~~ may be decided ~~by~~
18 according to the customs, regulations, and usage of the United
19 States Army or the United States Air Force or National Guard
20 regulations.

21 SECTION 10. AMENDATORY Section 1, Chapter 74, O.S.L.
22 2022 (44 O.S. Supp. 2022, Section 233.10a), is amended to read as
23 follows:
24

1 Section 233.10a The Military Department of the State of
2 Oklahoma may purchase information technology including, but not
3 limited to, computer hardware or software, or any services related
4 to software development, software modifications, or any other
5 services related to the operation and maintenance of computer
6 hardware or software or both, independently and without prior
7 approval from the Office of Management and Enterprise Services
8 Information Services Division. All federal programs managed by the
9 Military Department of the State of Oklahoma shall be exempt from
10 any and all Information Services Division requirements.

11 SECTION 11. AMENDATORY 44 O.S. 2021, Section 241, is
12 amended to read as follows:

13 Section 241. The Governor, pursuant to the authority granted
14 the states by Section 109 of Title 32 of the United States Code or a
15 successor provision, ~~and under such regulations as the Secretary of~~
16 ~~Defense may prescribe for discipline in training,~~ is hereby
17 authorized to enlist, organize, maintain, equip and discipline such
18 military forces other than the Oklahoma National Guard as he or she
19 may deem necessary to defend the state. Such forces shall be
20 uniformed and subject to Sections 1 through 117, Sections 208
21 through 237, and Sections 800 through 946 of this title, insofar as
22 such sections do not conflict with Sections 241 through 250 of this
23 title.

24

1 SECTION 12. AMENDATORY 44 O.S. 2021, Section 243, is
2 amended to read as follows:

3 Section 243. A. The Governor is hereby authorized to prescribe
4 rules and regulations governing the enlistment, organization,
5 administration, equipment, discipline and discharge of the personnel
6 of such military forces; to requisition from the Secretary of
7 Defense such arms and equipment as may be in the possession of and
8 can be spared by the Department of Defense and to extend thereto the
9 facilities of state armories, Armed Forces Reserve Centers,
10 readiness centers, logistics, aviation, and training facilities,
11 warehouses and their equipment and such other state premises and
12 property as may be available for the purpose of drill and
13 instruction. ~~Insofar as applicable the procedure for the~~
14 ~~enlistment, organization, pay, maintenance, equipment and~~
15 ~~disciplining of such forces shall be in conformity with the law and~~
16 ~~the rules and regulations governing and pertaining to the National~~
17 ~~Guard; provided, that the officers Officers and enlisted personnel~~
18 in the Oklahoma ~~State~~ National Guard shall not receive any
19 compensation or monetary allowances from the state except when
20 activated for state active duty, as defined in Section 801 of this
21 title, by order of the Governor.

22 B. Members of the Oklahoma ~~State~~ National Guard shall be
23 considered part of state military forces as defined in Section 801
24

1 of this title and shall be subject to the Oklahoma Uniform Code of
2 Military Justice.

3 C. When prescribing the rules and regulations governing
4 enlistment, organization, administration, equipment, discipline and
5 discharge of the personnel of the Oklahoma ~~State~~ National Guard, the
6 Governor shall issue such rules and regulations in the form of an
7 executive order or in a series of such orders. An executive order
8 or a series of such orders prescribing the rules and regulations
9 governing enlistment, organization, administration, equipment,
10 discipline and discharge of the personnel of the Oklahoma ~~State~~
11 National Guard shall also be published by the Adjutant General as a
12 military publication.

13 SECTION 13. AMENDATORY 44 O.S. 2021, Section 815, is
14 amended to read as follows:

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

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

22 B. Any superior commander may limit or withhold the exercise of
23 nonjudicial punishment authority by subordinate commanders,
24 including limiting authority over certain categories of military

1 personnel or offenses. Likewise, individual cases may be reserved
2 by a superior commander. A superior authority may limit or withhold
3 any power that a subordinate might otherwise exercise under this
4 section.

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

10 D. ~~Any~~ Except as provided in subsection S of this section, any
11 commanding officer may impose upon enlisted members of the officer's
12 command:

13 1. An admonition;

14 2. A reprimand;

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

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

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

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

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

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 Except as provided in subsection S of this section, any
5 commanding officer of the grade of major or above may impose upon
6 enlisted members of the officer's command:

7 1. An admonition;

8 2. A reprimand;

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

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

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

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

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

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

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

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

4 a. any punishment authorized in subsection E of this
5 section, except for the punishments provided in
6 paragraphs 6 and 7 of subsection E of this section,
7 and

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

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

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

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

23 H. Once the commander has determined that nonjudicial
24 punishment is appropriate, the commander shall provide reasonable

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

15 I. The right to demand trial by court-martial in lieu of
16 nonjudicial punishment shall arise only when arrest in quarters or
17 restriction will be considered as punishments. If the commanding
18 officer determines that arrest in quarters or restriction will be
19 considered as punishments, prior to the offer of nonjudicial
20 punishment the accused shall be notified in writing of the right to
21 demand trial by court-martial. Should the commanding officer
22 determine that the punishment options will not include arrest in
23 quarters or restriction, the accused shall be notified that there is
24 no right to trial by court-martial in lieu of nonjudicial

1 punishment. Upon notification by the commander or officer in charge
2 of his or her intent to impose nonjudicial punishment that includes
3 arrest in quarters or restriction, the accused shall be afforded a
4 reasonable amount of time to confer with legal counsel and to
5 prepare a response.

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

- 11 1. Reduction in grade to forfeiture of pay;
- 12 2. Arrest in quarters to restriction; or
- 13 3. Extra duties to restriction.

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

19 K. A person punished under this section who considers the
20 punishment unjust or disproportionate to the offense may, through
21 his or her chain of command, appeal to a senior officer designated
22 by the Adjutant General to adjudicate appeals arising from
23 nonjudicial punishment. A senior officer so designated by the
24 Adjutant General shall be a member of the same component of the

1 state military forces as the accused. An appeal made pursuant to
2 this subsection shall be lodged within fifteen (15) days after the
3 punishment is announced to the accused. The officer exercising
4 appellate authority may, at his or her discretion, extend the
5 deadline for an appeal. The appeal shall be promptly forwarded and
6 decided, and the member shall not be punished until the appeal is
7 decided. The senior officer designated by the Adjutant General as
8 exercising appellate authority may exercise the same powers with
9 respect to the punishment imposed as may be exercised under
10 subsection I of this section by the officer who imposed the
11 punishment. Before acting on an appeal from a punishment, the
12 senior officer exercising appellate authority shall refer the case
13 to a judge advocate for consideration and advice. When a senior
14 officer is designated by the Adjutant General to adjudicate appeals
15 arising from nonjudicial punishment, such designation shall be
16 accomplished in writing and shall be considered a military
17 publication, as defined in Section 801 of this title (Article 1).

18 L. Except for nonjudicial punishment imposed by the Governor or
19 the Adjutant General, the final appellate authority for nonjudicial
20 punishment imposed within state military forces is the Adjutant
21 General. A person punished under this section whose appeal was
22 previously denied by a senior officer designated to adjudicate
23 appeals may, through his or her chain of command, lodge an
24 additional appeal with the Adjutant General within five (5) days

1 after the appeal is denied. In the event the officer imposing
2 nonjudicial punishment is a senior officer who is also designated to
3 adjudicate appeals arising from nonjudicial punishment, an appeal
4 thereof shall be addressed directly to the Adjutant General. In the
5 event the officer imposing nonjudicial punishment is the Adjutant
6 General, an appeal thereof shall be addressed directly to the
7 Governor. An appeal offered pursuant to this subsection shall be
8 made only in writing. Neither the Governor nor the Adjutant General
9 shall delegate his or her duties as an appellate authority under
10 this subsection.

11 M. Whenever nonjudicial punishment is imposed under this
12 section:

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

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

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

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

1 writing and shall become part of the record of nonjudicial
2 punishment.

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

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

14 O. When nonjudicial punishment has been imposed for an offense,
15 punishment shall not again be imposed for the same offense under
16 this section. Once nonjudicial punishment has been imposed, it may
17 not be increased, upon appeal or otherwise. When a commander or
18 officer in charge determines that nonjudicial punishment is
19 appropriate for a particular member, all known offenses determined
20 to be appropriate for disposition by nonjudicial punishment and
21 ready to be considered at that time, including all offenses arising
22 from a single incident or course of conduct, shall be considered
23 together and shall not be made the basis for multiple punishments.
24 This subsection shall in no way restrict the right of a commander to

1 prefer court-martial charges for an offense previously punished
2 under the provisions of this section.

3 P. In accordance with subsection B of Section 843 of this title
4 (Article 43, subsection B), a person accused of an offense is not
5 liable to be punished under this section if the offense was
6 committed more than two (2) years before the imposition of
7 punishment. Periods in which the accused is absent without
8 authority shall be excluded in computing the period of limitation
9 prescribed in this section.

10 Q. Whenever a punishment of forfeiture of pay is imposed under
11 this section, the forfeiture shall not apply to pay accruing before
12 the date that punishment is imposed, but only pay accruing on or
13 after the date that punishment is imposed.

14 R. The Adjutant General may promulgate regulations prescribing
15 the type and form of records to be kept of proceedings conducted
16 pursuant to this section. The Adjutant General may promulgate any
17 other regulations necessary to carry out the provisions of this
18 section.

19 S. For purposes of this section, no member of the Oklahoma
20 National Guard of the rank of E-8 or E-9 shall be reduced in rank
21 pursuant to this section except when the reduction results from
22 nonjudicial punishment imposed by an officer of the Oklahoma
23 National Guard of the rank of brigadier general or by the Adjutant
24 General. When imposing nonjudicial punishment on enlisted persons

1 of the rank of E-7 or below, a commander or officer in charge who
2 possesses the rank of colonel may consider reduction in rank as a
3 possible punishment.

4 SECTION 14. AMENDATORY 44 O.S. 2021, Section 821, is
5 amended to read as follows:

6 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial
7 by federal officials.

8 In no case shall the President of the United States, the
9 Secretary of Defense, the Secretary of a military department, a
10 military officer serving on active duty within the meaning of Title
11 10 of the United States Code, or any other federal official convene
12 a court-martial proceeding pursuant to The Oklahoma Military Code
13 unless prior consent has been granted by the Governor. Such
14 consent, if granted by the Governor, shall be accomplished in
15 writing and shall be published by the Governor.

16 SECTION 15. AMENDATORY 44 O.S. 2021, Section 875, is
17 amended to read as follows:

18 Section 875. ARTICLE 75. Restoration.

19 A. Under such regulations as the Adjutant General may
20 promulgate, all rights, privileges, and property affected by an
21 executed part of a court-martial sentence which has been set aside
22 or disapproved, except an executed dismissal or discharge, shall be
23 restored unless a new trial or rehearing is ordered and such

24

1 executed part is included in a sentence imposed upon the new trial
2 or rehearing.

3 B. If a previously executed sentence of dishonorable or bad-
4 conduct discharge is not imposed on a new trial, the Adjutant
5 General shall substitute therefor a form of discharge authorized for
6 administrative issuance unless the accused is to serve out the
7 remainder of his or her enlistment.

8 C. If a previously executed sentence of dismissal is not
9 imposed on a new trial, the Adjutant General shall substitute
10 therefor a form of discharge authorized for administrative issue,
11 and the commissioned officer dismissed by that sentence may be
12 reappointed ~~pursuant to Sections 875 and 12203 of Title 10 of the~~
13 ~~United States Code and any applicable regulations prescribed~~
14 ~~thereunder by the President of the United States or the Secretary~~
15 concerned solely by the Governor to such commissioned grade and with
16 such rank as in the opinion of the Governor that former officer
17 would have attained had he or she not been dismissed. The
18 reappointment of such a former officer shall be without regard to
19 the existence of a vacancy and shall affect the promotion status of
20 other officers only insofar as the Governor may direct. All time
21 between the dismissal and the reappointment shall be considered as
22 actual service for all purposes, including the right to pay and
23 allowances.

24

1 D. The Governor or Adjutant General shall prescribe
2 regulations, with such limitations as the Governor or Adjutant
3 General considers appropriate, governing eligibility for pay and
4 allowances for the period after the date on which an executed part
5 of a court-martial sentence is set aside.

6 SECTION 16. AMENDATORY 44 O.S. 2021, Section 905, is
7 amended to read as follows:

8 Section 905. ~~RESERVED.~~ ARTICLE 105. Forgery.

9 Any person subject to the Oklahoma Uniform Code of Military
10 Justice who, with intent to defraud:

11 1. Falsely makes or alters any signature to, or any part of,
12 any writing which would, if genuine, apparently impose a legal
13 liability on another or change his or her legal right or liability
14 to his or her prejudice; or

15 2. Utters, offers, issues, or transfers such a writing, known
16 by him or her to be so made or altered,
17 is guilty of forgery and shall be punished as a court-martial may
18 direct.

19 SECTION 17. AMENDATORY 44 O.S. 2021, Section 912A, is
20 amended to read as follows:

21 Section 912A. **ARTICLE 112A. Wrongful use, possession, etc., of**
22 **controlled substances.**

23 A. Any person subject to the Oklahoma Uniform Code of Military
24 Justice who wrongfully uses, possesses, manufactures, distributes,

1 imports into the customs territory of the United States, exports
2 from the United States, or introduces into an installation, vessel,
3 vehicle, or aircraft used by or under the control of the Armed
4 Forces of the United States or of the state military forces a
5 substance described in subsection B of this section shall be
6 punished as a court-martial may direct.

7 B. The substances referred to in subsection A of this section
8 are the following:

9 1. Opium, heroin, cocaine, amphetamine, lysergic acid
10 diethylamide, methamphetamine, phencyclidine, barbituric acid, and
11 marijuana and any compound or derivative of any such substance;

12 2. Any substance not specified in paragraph 1 of this
13 subsection that is listed on a schedule of controlled substances
14 prescribed by the President for the purposes of the Uniform Code of
15 Military Justice, Title 10 of the United States Code, Section 801,
16 et seq.; and

17 3. Any other substance not specified in paragraph 1 of this
18 subsection or contained on a list prescribed by the President under
19 paragraph 2 of this subsection that is listed in schedules I through
20 V of article 202 of the Controlled Substances Act, Title 21 of the
21 United States Code, Section 812.

22 C. It shall be unlawful for any member of the state military
23 forces to knowingly use or ingest marijuana or any substances or

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1 products derived from marijuana including, but not limited to, hemp,
2 tetrahydrocannabinol, and cannabidiol.

3 SECTION 18. AMENDATORY 44 O.S. 2021, Section 928B, is
4 amended to read as follows:

5 Section 928B. ~~RESERVED.~~

6 Any person subject to the Oklahoma Uniform Code of Military
7 Justice who:

8 1. Commits a violent offense against a spouse, an intimate
9 partner, or an immediate family member of that person;

10 2. With intent to threaten or intimidate a spouse, an intimate
11 partner, or an immediate family member of that person, commits an
12 offense under this chapter against any person or property, including
13 an animal;

14 3. With intent to threaten or intimidate a spouse, an intimate
15 partner, or an immediate family member of that person, violates a
16 protection order;

17 4. With intent to commit a violent offense against a spouse,
18 an intimate partner, or an immediate family member of that person,
19 violates a protection order; or

20 5. Assaults a spouse, an intimate partner, or an immediate
21 family member of that person by strangling or suffocating,
22 shall be punished as a court-martial may direct.

23 SECTION 19. AMENDATORY 44 O.S. 2021, Section 934, is
24 amended to read as follows:

1 Section 934. ARTICLE 134. General article.

2 Though not specifically mentioned in the Oklahoma Uniform Code
3 of Military Justice, all disorders and neglects to the prejudice of
4 good order and discipline in the state military forces, all conduct
5 of a nature to bring discredit upon the state military forces, and
6 crimes and offenses not capital, of which persons subject to the
7 Code may be guilty, shall be taken cognizance of by a general,
8 special, or summary court-martial, according to the nature and
9 degree of the offense, and shall be punished at the discretion of
10 that court. However, where a crime constitutes an offense that
11 violates both the Code and the criminal laws of the State of
12 Oklahoma, jurisdiction over the offense shall be determined in
13 accordance with Section 802 of this title (Article 2). This section
14 shall encompass all specifically enumerated offenses included in
15 Section 934 of Title 10 of the United States Code, including all
16 amendments thereto adopted from time to time, except when such
17 provisions are contrary to or inconsistent with the Code.

18 SECTION 20. AMENDATORY 44 O.S. 2021, Section 937, is
19 amended to read as follows:

20 Section 937. ARTICLE 137. Articles to be explained.

21 A. 1. The sections of the Oklahoma Uniform Code of Military
22 Justice specified in paragraph 3 of this subsection shall be
23 carefully explained, either orally or in writing, to each officer
24 and enlisted member at the time of, or within one hundred twenty

1 (120) days after, the officer's or enlisted member's initial
2 entrance into a duty status with the state military forces.

3 2. Such articles shall be explained again:

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

6 b. ~~at the time when the enlisted member reenlists~~ within
7 ninety (90) days of each re-enlistment.

8 3. This subsection applies with respect to Sections 802, 803,
9 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this
10 title (Articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-
11 139).

12 B. The text of the Code and of the regulations prescribed
13 pursuant to the Code shall be made available to an officer or
14 enlisted member of the state military forces, upon request, for the
15 officer's or enlisted member's personal examination. Electronic or
16 online availability of the Code and of the regulations prescribed
17 pursuant to the Code shall constitute availability for purposes of
18 personal examination by officers or enlisted members of the state
19 military forces.

20 SECTION 21. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 940C of Title 44, unless there
22 is created a duplication in numbering, reads as follows:

23 ARTICLE 140C. Manual for Courts-Martial.
24

1 Manual for Courts-Martial, United States, including all
2 amendments thereto adopted from time to time, except when such rules
3 are contrary to or inconsistent with the Oklahoma Uniform Code of
4 Military Justice, shall be adopted as the Oklahoma State Manual for
5 Courts-Martial.

6 SECTION 22. This act shall become effective November 1, 2023.

7 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS
8 April 12, 2023 - DO PASS

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