

An Act

ENROLLED HOUSE

BILL NO. 2508

By: Kannady and Steagall of the
House

and

Simpson of the Senate

An Act relating to state military forces; amending 44 O.S. 2011, Sections 24, 25, as amended by Section 153, Chapter 304, O.S.L. 2012 and 26, as last amended by Section 1, Chapter 142, O.S.L. 2020 (44 O.S. Supp. 2020, Sections 25 and 26), which relate to the Adjutant General; modifying eligibility criteria for Adjutant General; authorizing appointment of Assistant Adjutants General; requiring consideration of recommended staffing numbers in appointments; allowing delegation of specific command or supervisory authority; requiring delegation in writing; permitting delegation of authority to staff officers; authorizing temporary delegation of authority in writing; directing development of a chain of command organizational chart; prescribing contents of chart and frequency of updates; requiring development of a rating scheme for certain billets; amending 44 O.S. 2011, Section 72, which relates to state duty orders; modifying circumstances for Governor to order state active duty; amending 44 O.S. 2011, Section 208.1, as amended by Section 1, Chapter 70, O.S.L. 2017 (44 O.S. Supp. 2020, Section 208.1), which relates to federal law adoption; adopting certain federal law as state law applicable to state military forces; amending 44 O.S. 2011, Section 209, as last amended by Section 1, Chapter 80, O.S.L. 2017 (44 O.S. Supp. 2020, Section 209), which relates to leaves of absence; establishing a leave of absence for certain employees of the state or a political subdivision; specifying circumstances and rules

for the leave of absence; requiring employer to pay full regular pay for a set amount of time; prescribing payment of difference in pay for remaining time; establishing name for the type of leave category; amending 44 O.S. 2011, Section 212, as amended by Section 3, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 212), which relates to liability of military members; modifying personal liability for military forces acting in the line of duty; amending 44 O.S. 2011, Section 229, which relates to jurisdiction; modifying location where balance of imprisonment occurs; amending Sections 5, 6, 10, 21, 26, 29, 32, 53, 55, 66, 81, 82, 90 and 193, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Sections 801, 802, 806, 815, 820, 823, 826, 846, 848, 857, 866, 867, 874 and 937), which relate to the Oklahoma Uniform Code of Military Justice; updating terms; adding and deleting definitions; establishing subject matter jurisdiction for military offenses; directing designation of a State Judge Advocate; adding subsection headers; listing duties of judge advocates; providing for assignment of legal personnel; requiring State Judge Advocate to provide legal counsel; authorizing Governor or Adjutant General to delegate certain powers to a senior officer; allowing officer setting punishment to mitigate punishment at any time; specifying procedures and limitations for mitigation; permitting appeals for nonjudicial punishment; requiring certain designation to be in writing; providing for senior officer to oversee specified appeals; modifying who may convene special courts-martial; changing title from military judge to military trial judge for general and special courts-martial; excluding review by certain military trial judges; setting compensation for military trial judges; providing for military magistrates; specifying qualifications for military magistrates; barring certain persons from being military magistrates; permitting military magistrates to conduct appellate remands; setting duties for military magistrates; establishing compensation for military magistrates;

authorizing certain proceedings to be conducted prior to referral; establishing process and limitations of proceedings; promulgating regulations for military judges and magistrates conducting proceedings; prohibiting military magistrate from issuing certain warrants or court orders; modifying definition of judicial officer to include military magistrate; limiting dismissal approval powers only for the Adjutant General; providing for applicability of the parole system to certain persons confined by state military forces; barring certain persons from nomination to the Military Court of Appeals; excluding record review by certain members of the Military Court of Appeals; declaring inapplicability of certain criminal procedure in court-martial proceedings; providing for conflicting provisions of law; requiring either oral or written explanation of certain sections of the Oklahoma Uniform Code of Military Justice; modifying procedures for explanation; permitting electronic or online access of the Code; prohibiting certain public entities from disclosing information about an investigation; providing an exception; prescribing punishment upon conviction; amending 51 O.S. 2011, Section 6, as last amended by Section 17, Chapter 304, O.S.L. 2018 (51 O.S. Supp. 2020, Section 6), which relates to dual officeholding; providing exception for state employees serving as military trial judges or appellate military judges; requiring eligibility for military judicial leave; amending 51 O.S. 2011, Sections 152, as last amended by Section 1, Chapter 233, O.S.L. 2018 and 155, as last amended by Section 3, Chapter 273, O.S.L. 2016 (51 O.S. Supp. 2020, Sections 152 and 155), which relate to The Governmental Tort Claims Act; establishing certain members of the state military forces as state employees; defining terms; limiting liability for activities of state military forces on state active duty; amending 72 O.S. 2011, Section 48, as last amended by Section 2, Chapter 80, O.S.L. 2017 (72 O.S. Supp. 2020, Section 48), which relates to leaves of absence; modifying

leave of absence procedures; requiring payment of difference in full salary pay and military base pay; excluding untaxed military allowances and entitlements from computation; defining terms; amending 75 O.S. 2011, Section 251, as last amended by Section 215, Chapter 408, O.S.L. 2019 (75 O.S. Supp. 2020, Section 251), which relates to the Administrative Procedures Act; modifying date to commence publication of military publications; providing for codification; and declaring an emergency.

SUBJECT: State military forces

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

SECTION 1. AMENDATORY 44 O.S. 2011, Section 24, is amended to read as follows:

Section 24. A. The Adjutant General shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve ~~during~~ at the pleasure of the Governor. ~~No person shall~~

B. To be eligible to hold the office of ~~the~~ Adjutant General of this state, ~~unless,~~ at the time of appointment, ~~he or she is the~~ appointee:

1. Shall be a federally recognized officer of the Oklahoma National Guard of Oklahoma, and of the National Guard of the United States, ~~not below~~ for no less than three (3) years;

2. Shall possess at least the rank of Colonel, ~~and that the status as a federally recognized officer, both of the National Guard of Oklahoma and;~~ and

3. If not already a general officer, shall be eligible for a Certificate of Eligibility pursuant to federal law and applicable regulations issued by the Chief of the National Guard of the United States, ~~shall have existed for at least three (3) years prior to the time of such appointment; or unless, within two (2) years prior to the time of the appointment, he or she has been a federally recognized officer of the National Guard of Oklahoma, and of the National Guard of the United States, not below the rank of Colonel,~~

~~and that during military service he or she served for a period of three (3) years as a federally recognized officer, both of the National Guard of Oklahoma and of the National Guard of the United States; provided that if Bureau.~~

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

SECTION 2. AMENDATORY 44 O.S. 2011, Section 25, as amended by Section 153, Chapter 304, O.S.L. 2012 (44 O.S. Supp. 2020, Section 25), is amended to read as follows:

Section 25. A. The Adjutant General shall have the rank of Major General and devote full time to the duties of the office.

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

C. Other general officers assigned to billets within the state military forces, including certain billets within the joint forces headquarters, shall be considered staff officers and not commanders except that, in the discretion of the Adjutant General, specific command or supervisory authority may be delegated by the Adjutant General to such general officers but such delegation shall be

accomplished in writing and shall be considered a military publication, as defined in Section 801 of this title (Article 1).

D. The Adjutant General may ~~appoint an~~ employ a state employee ~~to~~ in the position of Executive Assistant and Programs Manager for the Military Department of the state. Said position shall be unclassified and exempt from the Oklahoma Personnel Act and the Merit Rules for Employment, except leave regulations.

SECTION 3. AMENDATORY 44 O.S. 2011, Section 26, as last amended by Section 1, Chapter 142, O.S.L. 2020 (44 O.S. Supp. 2020, Section 26), is amended to read as follows:

Section 26. A. The Adjutant General shall be in control of the Military Department of the State of Oklahoma, subordinate only to the Governor. Within the limitations and under the provisions of law, he or she shall supervise and direct the National Guard within the service of the state and when under state control in all of its organization, training and other activities; shall receive and give effect to the orders of the Governor; and shall perform such other military and defense duties, not otherwise assigned by law, as the Governor may prescribe.

B. The Adjutant General, when absent from the state, may temporarily delegate any authority vested under this title and any such duties as an agency appointing authority to an Assistant Adjutant General, other state officer or employee within the Military Department of the State of Oklahoma. Such temporary delegations of authority pursuant to this subsection shall be accomplished in writing. The Adjutant General ~~is authorized to~~ may ~~also promulgate rules to provide~~ regulations providing for the delegation of any such authority.

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

D. The organizational chart required in subsection C of this section shall be updated no less than annually and shall include all enlisted and officer billets assigned to joint forces headquarters and shall depict all existing command relationships established by

the Adjutant General within joint forces headquarters. The organizational chart required herein shall not be considered a military publication within the meaning of Section 801 of this title (Article 1).

E. In accordance with all relevant requirements of the United States Army, the United States Air Force or the National Guard Bureau, the Adjutant General shall develop, publish and maintain an enlisted and officer rating scheme for all enlisted and officer billets assigned to joint forces headquarters. The rating scheme required herein shall not be considered a military publication within the meaning of Section 801 of this title (Article 1).

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

SECTION 4. AMENDATORY 44 O.S. 2011, Section 72, is amended to read as follows:

Section 72. It shall be the duty of the Governor, and he or she is authorized and required, in case of war, invasion, insurrection, or breach of the peace or imminent danger thereof or any forcible obstructing of the execution of the laws or reasonable apprehension thereof, or an imminent or existing epidemic or pandemic, and at all other times he or she may deem necessary, to order on state active duty the National Guard or any part thereof. No member thereof who shall be ordered out for such state active duty shall be liable for civil prosecution for any act done by him or her in the discharge of his or her military duty on such occasion, and when the President of the United States shall make a call, order, or requisition for troops, the Governor shall first order into the service of the United States the organizations and arms of the service specified in said requisition occasions.

SECTION 5. AMENDATORY 44 O.S. 2011, Section 208.1, as amended by Section 1, Chapter 70, O.S.L. 2017 (44 O.S. Supp. 2020, Section 208.1), is amended to read as follows:

Section 208.1 ~~The following provisions of federal law, as amended,~~ Except where state law may provide additional or superior protections, the civil law protections established in the federal Servicemembers Civil Relief Act, 50 U.S.C., Section 3901 et seq., shall be adopted as state law and applied to members of the Oklahoma

~~National Guard state military forces when such members are ordered to state active duty or full-time National Guard Title 32 active duty under pursuant to Sections 501 through 507 of Title 32 of the United States Code.~~

~~1. The Servicemembers Civil Relief Act of 2003 (SCRA), codified at 50 U.S.C. App., Section 501 et seq., which updates, renames, and replaces the Soldiers' and Sailors' Civil Relief Act of 1940; and~~

~~2. The Uniformed Services Employment and Reemployment Rights Act (USERRA), Sections 4301 et seq. of Title 38 of the United States Code.~~

SECTION 6. AMENDATORY 44 O.S. 2011, Section 209, as last amended by Section 1, Chapter 80, O.S.L. 2017 (44 O.S. Supp. 2020, Section 209), is amended to read as follows:

Section 209. All officers and employees of the state or a political subdivision thereof who are ~~members of the Oklahoma National Guard or any reserve component of any branch of the United States military, shall, when ordered by proper authority to active or inactive service, be entitled to a leave of absence from civil employment for the period of active service, without loss of status or efficiency rating. During the first thirty (30) calendar days for employees of political subdivisions or the first thirty (30) regular scheduled work days for state employees, or not to exceed two hundred forty (240) hours, of the leave of absence in any federal fiscal year, the officers or employees shall receive their full regular pay from the employing state agency or political subdivision. During the remainder of the leave of absence in any federal fiscal year, the employing state agency or political subdivision may elect to pay them an amount equal to the difference between the officers' or employees' full regular pay from the employing state agency or political subdivision and their Oklahoma National Guard or United States military reserve component pay, except that state officers and employees shall receive the difference between their full regular pay and their Oklahoma National Guard or United States military reserve component pay when they are ordered by proper authority to active or inactive service retroactive to the date that the state officer or employee reported to active service on or after September 11, 2001, during the period that Operation Enduring Freedom is in effect, or any subsequent contingency operation declared by the Secretary of Defense. The durational limit of protected military service as provided for in this section shall not be less than that provided by federal law.~~

~~If it is necessary in the public interest to provide for the performance of the duties of their positions during such absence, the authority having power to fill a vacancy in the positions may appoint substitutes, to be known as acting incumbents, who shall qualify as required for the regular incumbents and shall receive the same pay, including benefits and pay adjustments, as fixed by law, if any, or otherwise such pay, including benefits and pay adjustments, as may be fixed by proper authority~~ not members of the state military forces shall be entitled to a leave of absence from their regular employment with the State of Oklahoma or a political subdivision thereof, without loss of status or efficiency rating, when detailed as a military trial judge pursuant to Section 826 of this title (Article 26) or when serving as an appellate military judge pursuant to Section 866 of this title (Article 66) when the Military Court of Appeals is convened. The rules of procedure prescribed by the State Judge Advocate pursuant to subsection L of Section 866 of this title (Article 66, subsection L) shall define what constitutes the Military Court of Appeals being "convened" for purposes of this section. During the first thirty (30) regularly scheduled work days, not to exceed two hundred forty (240) hours, of the leave of absence in any federal fiscal year, officers and employees of the State of Oklahoma or a political subdivision thereof detailed or serving as military trial judges or military appellate judges shall receive their full regular pay from the employing state agency or political subdivision. During the remainder of the leave of absence in any federal fiscal year, the employing state agency or political subdivision shall pay such officers and employees an amount equal to the difference between the full regular pay of the officers or employees from the employing state agency or political subdivision and the amount of compensation established for military trial judges in subsection H of Section 826 of this title (Article 26, subsection H) in the case of a military trial judge or the amount of compensation established for appellate military judges in subsection E of Section 866 of this title (Article 66, subsection E) in the case of a military appellate judge. Leave taken pursuant to this section shall be characterized as military judicial leave.

The Office of Management and Enterprise Services shall promulgate rules as necessary to implement the provisions of this section that relate to state employees.

SECTION 7. AMENDATORY 44 O.S. 2011, Section 212, as amended by Section 3, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 212), is amended to read as follows:

~~Section 212. A. If a suit or proceeding shall be commenced in any court by any person against any member of the military forces for any act done by the member in his or her official capacity in the discharge of any duty under Sections 1 through 117, 208 through 237, 241 through 250, or 800 through 946 of this title, or against any member of the state military forces as defined in Section 801 of this title acting under the authority or order of any such officer, or by virtue of any warrant issued by him or her pursuant to law, it shall be the duty of the Attorney General or Judge Advocate to defend such person.~~

~~The actual court costs of such a defense shall be a legal charge against the state and shall be submitted to the Legislature for payment. Before any suit or proceeding shall be filed or maintained against any member of state military forces as herein provided, the plaintiff shall be required to give security, to be approved by the court in a sum not less than One Hundred Dollars (\$100.00), to secure the costs. If the plaintiff fails to recover judgment such costs shall be taxed and judgment rendered therefor against him or her and his or her sureties.~~

~~B. Any officer or enlisted person of the state military forces acting in his or her official capacity in the discharge of any duty under Sections 1 through 117, 208 through 235.3, or 241 through 250 of this title, or any member of state military forces acting under the authority or order of any such officer, or by virtue of any warrant issued by him or her pursuant to law, the line of duty shall be immune from personal liability for any acts that include the use of deadly force in self-defense or in defense of another person from what the member reasonably believes is the imminent use of unlawful deadly force.~~

SECTION 8. AMENDATORY 44 O.S. 2011, Section 229, is amended to read as follows:

Section 229. The Governor is authorized to order the National Guard, or any part thereof, beyond the borders of the state, for the purpose of participating in any encampment, maneuvers or field instruction and for such other training or service as may be required or authorized under state or federal law. Whenever the National Guard, or any part thereof, is so ordered beyond the borders of the state, the members thereof shall remain subject to the military laws and regulations of the state, and the military courts of this state shall have jurisdiction over any offense which

is committed against the military laws or regulations of the state by any member of the National Guard while in service beyond the borders of the state, and the military courts of the state are authorized to function beyond the borders of this state, whenever the National Guard is ordered beyond the borders of the state. Provided, that any imprisonment imposed while a unit is out of the State of Oklahoma shall be served under the supervision of said unit. And, provided further, that if said period of imprisonment extends beyond the date of the return of said unit to the State of Oklahoma that the balance of such imprisonment shall be served in ~~the county jail of the county in which said unit is regularly stationed~~ accordance with Section 858 of this title (Article 58).

SECTION 9. AMENDATORY Section 5, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 801), is amended to read as follows:

Section 801. ARTICLE 1. Definitions.

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

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

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

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

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

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

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

6. "Assistant Adjutant General" means ~~an officer~~ a brigadier general appointed by the ~~Adjutant General~~ Governor to assist the Adjutant General in the discharge and performance of his or her duties. An Assistant Adjutant General is a staff officer who shall meet the qualifications prescribed by law for the Adjutant General. ~~At least one Assistant Adjutant General for the Army National Guard and one Assistant Adjutant General for the Air National Guard are customarily appointed to establish lines of command and administration into each component of the state military forces. Additional assistant adjutants general~~ Multiple Assistant Adjutants General may be appointed pursuant to law, custom or National Guard regulations;

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

8. "Classified information" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. "Major command" means the 45th Infantry Brigade Combat Team, the 45th Field Artillery Brigade, the 90th Troop Command, the 137th Special Operations Wing, the 138th Fighter Wing, the joint forces headquarters and any successor organizations to the major commands named herein. The Adjutant General, in his or her discretion, may designate other military units within the Oklahoma National Guard as major commands;

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

29. "Military appellate judge" means a judicial officer who is a member of the Military Court of Appeals and is nominated and appointed in accordance with Section 866 of this title (Article 66);

~~28.~~ 30. "Military court" means a court-martial or a court of inquiry;

~~29.~~ 31. "Military Court of Appeals" means the intermediate appellate court of record established in Section 866 of this title (Article 66) and charged with conducting an appellate review of questions of law arising from general and special courts-martial proceedings conducted by the state military forces and, when necessary in furtherance of its jurisdiction, reviewing all petitions for extraordinary relief properly brought before it;

~~30.~~ 32. "Military department" means the administrative agency established in Section 21 of this title charged with coordinating and supervising state military forces. The military department consists of a joint forces headquarters, an army component and an air force component under the command and control of the Adjutant General when not activated for federal duty under Title 10 of the United States Code;

~~31.~~ 33. "Military trial judge" means a judicial officer who presides over a general or special court-martial and is detailed or retained in accordance with Section 826 of this title (Article 26);

34. "Military magistrate" means a licensed attorney, detailed or retained, who conducts reviews or otherwise acts on prereferral matters relating to the rights of victims under subsection D of Section 806B of this title (Article 6B, subsection D), investigative subpoenas under subparagraph a of paragraph 1 of subsection A of Section 17 of this act (Article 30A, subsection A, paragraph 1, subparagraph a) or who conducts appellate proceedings on behalf of the Military Court of Appeals under paragraph 3 of subsection J of Section 866 of this title (Article 66, subsection J, paragraph 3);

~~32.~~ 35. "Military offenses" means those offenses designated as punitive articles under Sections 877 (Article 77, Principals), 878 (Article 78, Accessory after the fact), 879 (Article 79, Conviction of offense charged, lesser included offenses, and attempts), 880 (Article 80, Attempts), 881 (Article 81, Conspiracy), 882 (Article 82, Soliciting commission of offenses), 883 (Article 83, Malingering), 884 (Article 84, Breach of medical quarantine), 885 (Article 85, Desertion), 886 (Article 86, Absence without leave), 887 (Article 87, Missing movement; jumping from vessel), 887A (Article 87A, Resistance, flight, breach of arrest, and escape), 888 (Article 88, Contempt toward officials), 889 (Article 89, Disrespect toward superior commissioned officer; assault of superior commissioned officer), 890 (Article 90, Willfully disobeying superior commissioned officer), 891 (Article 91, Insubordinate conduct toward warrant officer, or noncommissioned officer), 892 (Article 92, Failure to obey order or regulation), 893 (Article 93, Cruelty and maltreatment), 893A (Article 93A, Prohibited activities with military recruit or trainee by person in position of special trust), 894 (Article 94, Mutiny or sedition), 895 (Article 95, Offenses by sentinel or lookout), 895A (Article 95A, Disrespect toward sentinel or lookout), 896 (Article 96, Release of prisoner without authority; drinking with prisoner), 897 (Article 97, Unlawful detention), 898 (Article 98, Misconduct as prisoner), 899 (Article 99, Misbehavior before the enemy), 900 (Article 100, Subordinate compelling surrender), 901 (Article 101, Improper use of countersign), 902 (Article 102, Forcing a safeguard), 903B (Article 103B, Aiding the enemy), 903C (Article 103C, Unlawful disclosure of confidential information), 904 (Article 104, Public records offenses), 904A (Article 104A, Fraudulent enlistment, appointment, or separation), 904B (Article 104B, Unlawful enlistment, appointment, or separation), 905A (Article 105A, False or

unauthorized pass offenses), 906A (Article 106A, Wearing unauthorized insignia, decoration, badge, ribbon, device, or lapel button), 907 (Article 107, False official statements; false swearing), 908 (Article 108, Military property-loss, damage, destruction, or wrongful disposition), 908A (Article 108A, Captured or abandoned property), 909 (Article 109, Property other than military property-waste, spoilage, or destruction), 910 (Article 110, Improper hazarding of vessel or aircraft), 912 (Article 112, Drunkenness and other incapacitation offenses), 912A (Article 112A, Wrongful use, possession, etc., of controlled substances), 914 (Article 114, Endangerment offenses), 916 (Article 116, Riot or breach of peace), 917 (Article 117, Provoking speeches or gestures), 917A (Article 117A, Wrongful broadcast or distribution of intimate visual images), 920 (Article 120, Sexual assault generally), 920C (Article 120C, Other sexual misconduct), 920D (Article 120D, Fraternization), 921 (Article 121, Larceny and wrongful appropriation), 924 (Article 124, Frauds against the government), 928 (Article 128, Assault), 930 (Article 130, Stalking), 931 (Article 131, Perjury), 931A (Article 131A, Subornation of perjury), 931B (Article 131B, Obstructing justice), 931C (Article 131C, Misprision of serious offense), 931D (Article 131D, Wrongful refusal to testify), 931F (Article 131F, Noncompliance with procedural rules), 931G (Article 131G, Wrongful interference with adverse administrative proceeding), 932 (Article 132, Retaliation), 933 (Article 133, Conduct unbecoming an officer and a gentleman) and 934 (Article 134, General article) of this title;

~~33.~~ 36. "Military publication" means a written publication of an administrative nature such as a regulation, instruction, pamphlet, circular, permanent or general order, delegation of authority letter, numbered Adjutant General policy memorandum or blank form promulgated or published by or under the authority of the Adjutant General. An order or directive issued by the Adjutant General that is operational in nature or issued in execution of a military mission shall not be included within the meaning of military publication. Rules of procedure published by the State Judge Advocate for the Military Court of Appeals are included in the meaning of military publication. The organizational chart and rating scheme required in Section 26 of this title shall not be included in the meaning of military publication;

~~34.~~ 37. "Month's pay" means the amount of basic pay that would be paid to a member if that member were serving on active duty;

~~35.~~ 38. "National security" means the national defense and foreign relations of the United States;

~~36.~~ 39. "Nexus" means the appearance of a connection between a military or nonmilitary offense and the state military forces which brings discredit or dishonor to the state military forces due to representations of membership in the state military forces by a member. Such representations may be made directly or indirectly, including but not limited to publication on social media or other electronic communication platforms;

~~37.~~ 40. "Noncommissioned officer" means an enlisted member above the pay grade of E-4 or an enlisted member in the army component of state military forces holding the rank of corporal;

~~38.~~ 41. "Nonjudicial punishment" means punishment imposed administratively by a commander or officer in charge for minor offenses in lieu of a court-martial;

42. "Nonmilitary offense" means any criminal offense established in law that is not defined as a military offense in this section;

~~39.~~ 43. "Officer" means a commissioned or warrant officer;

~~40.~~ 44. "Officer in charge" means a commissioned or warrant officer designated as such by appropriate authority;

~~41.~~ 45. "Pay" means monetary compensation provided to members of the state military forces in exchange for performance of military duties carried out pursuant to a lawful order or otherwise under the authority of law, including basic pay, special pay, proficiency pay and incentive pay. "Pay" shall not mean allowances as defined in this section;

~~42.~~ 46. "Rank" means the order of precedence among members of the state military forces;

~~43.~~ 47. "Record", when used in connection with the proceedings of a court-martial, means:

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

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

~~44.~~ 48. "Regulation" means a written, administrative expression of executive authority issued by an executive branch officer which carries with it the force and effect of law due to inherent command authority or express delegation of authority by the legislative branch; regulations provided for in the Code are published and archived by the Secretary of State;

~~45.~~ 49. "Rehearing" means a new trial on the findings, on the sentence, or on both;

~~46.~~ 50. "Restriction" means moral restraint, as opposed to physical restraint, limiting access to physical places or participation in certain activities. In comparison to arrest in quarters, "restriction" is a lesser punishment;

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

~~48.~~ 51. "Senior force component judge advocate" means the judge advocate assigned as the chief legal advisor ~~to the Senior Assistant Adjutant General of~~ within the same component of the state military forces as the accused. Unless there is a conflict of interest, a senior force component judge advocate may also serve as legal counsel to the Adjutant General and may be designated as the State Judge Advocate. The customary duty station of a senior force component judge advocate is joint forces headquarters;

~~49.~~ 52. "Shall" is used in an imperative sense;

~~50.~~ 53. "State" means one of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam and the U.S. Virgin Islands;

~~51.~~ 54. "State active duty" means full-time duty in the state military forces under an order of the Governor or otherwise issued by authority of law, and paid by state funds, and includes travel to and from such duty. State active duty shall not mean military duty

performed by the state military forces pursuant to Title 32 of the United States Code;

~~52.~~ 55. "State Judge Advocate" means a member of the Oklahoma National Guard qualified as a judge advocate, as defined in this section, and who is designated in writing by the Adjutant General as the State Judge Advocate;

~~53.~~ 56. "State military forces" means the National Guard of the State of Oklahoma, which includes an army component and an air force component, as defined in Title 32, United States Code, and Section 41 of this title; the Oklahoma State Guard, organized pursuant to Section 109 of Title 32, United States Code, and established pursuant to the Oklahoma State Guard Act; and any other military force organized under the Constitution and laws of the State of Oklahoma when not in a status placing them under exclusive federal jurisdiction pursuant to Chapter 47 of Title 10, United States Code. Unless otherwise established by Oklahoma law, the unorganized militia, as provided for in Section 41 of this title, or any other state military force that does not meet this definition shall not be considered part of the "state military forces" under the Code;

~~54.~~ 57. "Superior commissioned officer" means a commissioned officer superior in rank or command;

~~55.~~ 58. "Supplies" means materiel, equipment and stores of all types possessed or lawfully controlled by state military forces; and

~~56.~~ 59. "Title 32 active duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the Oklahoma National Guard pursuant to Section 316, 502, 503, 504 or 505 of Title 32 of the United States Code for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

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

C. If a term is not defined in either subsection A of this section nor defined as provided in subsection B of this section, it shall receive the construction and usage customarily accorded by

reference to dictionaries of the English language in existence at the time of adoption of this act.

SECTION 10. AMENDATORY Section 6, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 802), is amended to read as follows:

Section 802. ARTICLE 2. Persons subject to the Oklahoma Uniform Code of Military Justice.

A. The Oklahoma Uniform Code of Military Justice applies to all members of the state military forces at all times who are not in active federal service, as defined by Title 10 of the United States Code.

B. Subject matter jurisdiction is established for military offenses if a member of the state military forces is in a duty status under Title 32 of the United States Code or on state active duty orders. Subject matter jurisdiction is also established for military and nonmilitary offenses if more likely than not, a nexus exists between an offense, ~~either military or nonmilitary,~~ and the state military forces, regardless of a member's duty status. Courts-martial shall have primary jurisdiction over military offenses as defined in the Code.

C. The civilian courts shall have primary jurisdiction over nonmilitary offenses when an act or omission violates both the Code and local criminal law. In such a case, a court-martial may be initiated only after the civilian authority has declined to prosecute or has dismissed the charge, provided jeopardy has not attached. When a member is not in a duty status under Title 32 of the United States Code or on state active duty orders, there shall be a rebuttable presumption that subject matter jurisdiction does not exist under the Code. The Governor or Adjutant General may promulgate additional regulations prescribing how a convening authority shall determine the existence of a nexus between a nonmilitary offense and state military forces.

D. Jurisdiction over attempted crimes, conspiracy crimes, solicitation and accessory crimes shall be determined by the underlying offense.

E. If a commander or officer in charge determines that a nexus exists between a nonmilitary offense and the state military forces, for purposes of administrative action, the commander or officer in

charge may impose nonjudicial punishment regardless of whether courts-martial jurisdiction is then possessed or later acquired by the state military forces.

SECTION 11. AMENDATORY Section 10, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 806), is amended to read as follows:

Section 806. ARTICLE 6. Judge advocates.

A. Designation of State Judge Advocate and senior force component judge advocate. The Adjutant General shall designate in writing a State Judge Advocate from among the judge advocates duly commissioned in the state military forces. Regardless of rank, the State Judge Advocate shall be considered the senior force component judge advocate in the force component of which he or she is a member. Unless such authority is delegated in accordance with subsection B or C of Section 25 of this title, the Adjutant General shall also designate in writing a senior force component judge advocate in the military force component of which the judge advocate designated as the State Judge Advocate is not a member.

B. Inspections. The senior force component judge advocates in each of the state's military force components or those judge advocates' delegates shall make frequent inspections in the field in supervision of the administration of military justice in that force component.

~~B.~~ C. Communication. Convening authorities shall at all times communicate directly with their judge advocates in matters relating to the administration of military justice. The judge advocate of any command is entitled to communicate directly with the judge advocate of a superior or subordinate command, or with the State Judge Advocate.

~~C.~~ D. Limitations due to prior capacity. No person who, with respect to a case, serves in a capacity specified in subsection ~~D~~ E of this section may later serve as a judge advocate to any reviewing or convening authority upon the same case.

~~D.~~ E. Conflicts of interest. The capacities referred to in subsection ~~E~~ D of this section are, with respect to the case involved, any of the following:

1. Preliminary hearing officer, court member, military trial judge, military magistrate, or appellate military judge; or

2. Counsel who have acted in the same case or appeared in any proceeding before a military trial judge, preliminary hearing officer, or appellate court.

F. Duties. The senior force component judge advocate of each force component within the state military forces shall oversee the following functions among the judge advocates and paralegals in their respective force components:

1. Recruitment and accession of new recruits;

2. Retention;

3. Education and training;

4. Career development and progression; and

5. Decoration.

G. Assignment of legal personnel. The senior force component judge advocate of each force component within the state military forces shall determine the place of duty and frequency of reassignment among the major commands in their respective force components for each judge advocate and paralegal.

H. Legal counsel. The State Judge Advocate shall provide legal counsel to the Adjutant General and, as requested, to the other senior leaders of the state military forces. The State Judge Advocate shall ensure that the Adjutant General receives legal counsel from the senior force component judge advocate of the force component of which the Adjutant General is not a member on matters relevant to that force component.

SECTION 12. AMENDATORY Section 21, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 815), is amended to read as follows:

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

A. Except as provided in subsection B of this section, any commanding officer and, for purposes of this section, any officer in

charge, may impose disciplinary punishments for minor offenses arising under the punitive articles of the Oklahoma Uniform Code of Military Justice without the intervention of a court-martial.

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

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

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

1. An admonition;
2. A reprimand;
3. The withholding of privileges for not more than six (6) months which need not be consecutive;
4. The forfeiture of pay of not more than seven (7) days' pay;
5. A fine of not more than seven (7) days' pay;
6. A reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;
7. Extra duties, including fatigue or other duties, for not more than fourteen (14) days, which need not be consecutive; and
8. Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) days, which need not be consecutive.

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

1. An admonition;

2. A reprimand;

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

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

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

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

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

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

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

1. Upon officers of the officer's command:

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

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

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

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

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

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

I. The right to demand trial by court-martial in lieu of nonjudicial punishment shall arise only when arrest in quarters or restriction will be considered as punishments. If the commanding officer determines that arrest in quarters or restriction will be considered as punishments, prior to the offer of nonjudicial punishment the accused shall be notified in writing of the right to demand trial by court-martial. Should the commanding officer determine that the punishment options will not include arrest in quarters or restriction, the accused shall be notified that there is no right to trial by court-martial in lieu of nonjudicial punishment. Upon notification by the commander or officer in charge of his or her intent to impose nonjudicial punishment that includes arrest in quarters or restriction, the accused shall be afforded a reasonable amount of time to confer with legal counsel and to prepare a response.

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

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

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

K. A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through his or her chain of command, appeal to ~~the Senior Assistant Adjutant General~~ a senior officer designated by the Adjutant General to adjudicate appeals arising from nonjudicial punishment. A senior officer so designated by the Adjutant General shall be a member of the same component of the state military forces as the accused. An appeal made pursuant to this subsection shall be lodged within fifteen (15) days after the punishment is announced to the accused. The officer exercising appellate authority may, at his or her discretion, extend the deadline for an appeal. The appeal shall be promptly forwarded and decided, and the member shall not be punished until the appeal is decided. The ~~Senior Assistant~~ senior officer designated by the Adjutant General as exercising appellate authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection I of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment, the ~~Senior Assistant Adjutant General~~ senior officer exercising appellate authority shall refer the case to a judge advocate for consideration and advice. When a senior officer is designated by the Adjutant General to adjudicate appeals arising from nonjudicial punishment, such designation shall be accomplished in writing and shall be considered a military publication, as defined in Section 801 of this title (Article 1).

~~K.~~ L. Except for nonjudicial punishment imposed by the Governor or the Adjutant General, the final appellate authority for nonjudicial punishment imposed within state military forces is the Adjutant General. A person punished under this section whose appeal was previously denied by a ~~Senior Assistant Adjutant General~~ senior officer designated to adjudicate appeals may, through his or her chain of command, lodge an additional appeal with the Adjutant General within five (5) days after the appeal is denied. In the event the officer imposing nonjudicial punishment is ~~the Senior Assistant Adjutant General~~ a senior officer who is also designated to adjudicate appeals arising from nonjudicial punishment, an appeal thereof shall be addressed directly to the Adjutant General. In the event the officer imposing nonjudicial punishment is the Adjutant General, an appeal thereof shall be addressed directly to the Governor. An appeal offered pursuant to this subsection shall be made only in writing. Neither the Governor nor the Adjutant General shall delegate his or her duties as an appellate authority under this subsection.

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

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

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

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

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

demonstrated by the accused upon trial and, when so demonstrated, it shall be considered in determining the measure of punishment to be adjudged in the event of a finding or verdict of guilty. Nonjudicial punishment shall not be imposed for an offense previously tried by a civilian court unless so authorized by regulations promulgated by the Adjutant General.

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

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

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

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

SECTION 13. AMENDATORY Section 26, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 820), is amended to read as follows:

Section 820. ARTICLE 20. Jurisdiction and appeals of summary courts-martial.

A. Subject to Section 817 of this title (Article 17), summary courts-martial have jurisdiction to try persons subject to the Oklahoma Uniform Code of Military Justice, except officers, cadets and officer candidates for any offense made punishable by the Code under such limitations as may be prescribed by regulation promulgated by the Governor or Adjutant General. No person with respect to whom summary courts-martial have jurisdiction shall be brought to trial before a summary court-martial if he or she objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as may be prescribed by regulation promulgated by the Governor or Adjutant General, adjudge any punishment not forbidden by the Code except dismissal, dishonorable or bad-conduct discharge, confinement for more than one (1) month, hard labor without confinement for more than forty-five (45) days, restriction to specified limits for more than two (2) months, or forfeiture of more than two-thirds (2/3) of one (1) month's pay.

B. A summary court-martial is a noncriminal forum. A finding of guilty at a summary court-martial does not constitute a criminal conviction.

C. Regular appeals. A person found guilty at a summary court-martial who considers the punishment unjust or disproportionate to the offense may appeal to a senior officer designated by the ~~Senior Assistant~~ Adjutant General to adjudicate appeals. A senior officer designated by the Adjutant General shall be an officer assigned to joint forces headquarters and shall be a member of the same component of the state military forces as the accused. An appeal made pursuant to this subsection shall be lodged within thirty (30) calendar days after the date the accused receives written notice from the convening authority that the convening authority has complied with the requirements of subsection B of Section 860C of this title (Article 860C, subsection B). Before acting on an appeal submitted pursuant to this subsection, the ~~Senior Assistant Adjutant General~~ senior officer exercising appellate authority shall refer the case to a judge advocate for consideration and advice. When a senior officer is designated by the Adjutant General to adjudicate appeals pursuant to this subsection, such designation shall be accomplished in writing and shall be considered a military publication, as defined in Section 801 of this title (Article 1).

D. Appeals in certain instances. Except for summary courts-martial convened by the Governor or the Adjutant General, the final appellate authority for summary courts-martial convened pursuant to this Code shall be the Adjutant General. A person found guilty at a summary court-martial whose appeal was previously denied by ~~the Senior Assistant Adjutant General~~ a senior officer designated to adjudicate appeals may lodge an additional appeal with the Adjutant General within fifteen (15) calendar days after the appeal is denied. In the event the officer who convened the summary court-martial is ~~the Senior Assistant Adjutant General~~ a senior officer who is also designated to adjudicate appeals, an appeal thereof shall be addressed directly to the Adjutant General. In the event the officer who convened the summary court-martial is the Adjutant General, an appeal thereof shall be addressed directly to the Governor. An appeal offered pursuant to this subsection shall be made only in writing. Neither the Governor nor the Adjutant General shall delegate his or her duties as an appellate authority under this subsection.

E. The Adjutant General may promulgate regulations prescribing the type and form of records to be kept of appellate proceedings undertaken pursuant to subsections C and D of this section.

SECTION 14. AMENDATORY Section 29, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 823), is amended to read as follows:

Section 823. ARTICLE 23. Who may convene special courts-martial.

A. Special courts-martial may be convened by:

1. Any person who may convene a general court-martial;

2. ~~The Senior Assistant Adjutant General of the same component of the state military forces as the accused;~~

3. ~~The officer designated as the army land component commander when the accused is a member of the army component of state military forces;~~

4. ~~The officer designated as the air component commander when the accused is a member of the air component of state military forces;~~

~~5.~~ The commanding officer of a brigade in the army component of state military forces;

~~6.~~ 3. The commanding officer of a wing in the air component of state military forces; or

~~7.~~ 4. Any other commanding officer designated by the Adjutant General.

B. If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by that superior authority.

SECTION 15. AMENDATORY Section 32, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 826), is amended to read as follows:

Section 826. ARTICLE 26. Military trial judge of a general or special court-martial.

A. A military trial judge shall be detailed to each general and special court-martial. The Adjutant General shall promulgate regulations prescribing the manner of selection, certification and detailing of military trial judges for such general and special courts-martial. The military trial judge shall preside over each open session of the court-martial to which he or she has been detailed.

B. A military trial judge shall be a member of the bar of the highest court of a state, or a member of the bar of a federal court.

C. A military trial judge shall be qualified, by reason of education, training, experience, and judicial temperament, for duty as a military trial judge and shall be one of the following:

1. A commissioned officer of the state military forces who is a member of the bar of the highest court of a state, or a member of the bar of a federal court, and who is certified to be qualified for such duty by the State Judge Advocate;

2. A retired commissioned officer of the state military forces who is a member of the bar of the highest court of a state, or a

member of the bar of a federal court, and who is certified to be qualified for such duty by the State Judge Advocate;

3. A judge advocate in any department of the Armed Forces of the United States serving on active duty within the meaning of Title 10 of the United States Code who is certified to be qualified for duty as a military trial judge by the Judge Advocate General of the armed force of which such military trial judge is a member;

4. A judge presently serving in any judicial district within the State of Oklahoma who possesses at least one (1) year of trial experience and who currently serves or previously served as a judge advocate in any department of the Armed Forces of the United States, to include reserve components of the same;

5. A retired judge or justice who served in any judicial capacity within the judicial department of the State of Oklahoma and who previously served as a judge advocate in any department of the Armed Forces of the United States, to include reserve components of the same;

6. A federal district court judge presently serving in any federal judicial district within the State of Oklahoma who possesses at least one (1) year of trial experience and who previously served as a judge advocate in any department of the Armed Forces of the United States, to include reserve components of the same; or

7. A retired federal district court judge or retired federal appellate court judge who previously served as a judge advocate in any department of the Armed Forces of the United States, to include reserve components of the same.

D. 1. In accordance with regulations prescribed under subsection A of this section, a military trial judge of a general or special court-martial shall be designated for detail by the senior force component judge advocate of the same force component as the accused.

2. Neither the convening authority nor any member of the staff of the convening authority shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military trial judge so detailed, which relates to the military trial judge's performance of duty as a military trial judge.

3. A commissioned officer of the state military forces who is certified to be qualified for duty as a military trial judge of a general court-martial:

- a. may perform such duties only when the officer is assigned and directly responsible to the senior force component judge advocate of the force component of which the military trial judge is a member, and
- b. may perform duties of a judicial or nonjudicial nature other than those relating to the officer's primary duty as a military trial judge of a general court-martial only when such duties are assigned to the officer by or with the approval of that senior force component judge advocate.

4. A commissioned officer of any department of the Armed Forces of the United States serving on active duty within the meaning of Title 10 of the United States Code who, pursuant to the Oklahoma Uniform Code of Military Justice and the regulations promulgated pursuant to subsection A of this section, is certified to be qualified for duty as a military trial judge of a general court-martial shall not be assigned other duties of a judicial or nonjudicial nature other than those relating to the officer's primary duty as a military trial judge of a general court-martial, except when such duties are assigned to the officer by or with the approval of the Judge Advocate General of the armed force of which the military trial judge is a member.

5. In accordance with regulations promulgated by the Adjutant General, assignments of military trial judges under this section who are members of the state military forces shall be for appropriate minimum periods, subject to such exceptions as may be authorized in the regulations.

6. No military trial judge shall be eligible to review the record of any trial if such military trial judge served as an Assistant Attorney General, district attorney, assistant district attorney or municipal prosecutor who determined or participated in the determination of whether to prosecute a nonmilitary offense when the act or omission in question could have violated both the Oklahoma Uniform Code of Military Justice and state or local criminal laws.

E. No person is eligible to act as military trial judge in a case if he or she is the accuser, a witness or has acted as preliminary hearing officer or a counsel in the same case.

F. The military trial judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he or she vote with the members of the court.

G. A military trial judge who is a commissioned officer in the state military forces may be detailed under subsection A of this section to a court-martial or a proceeding under subsection A of Section 830 of this title (Article 30, subsection A) that is convened in a different force component of the state military forces, when so permitted by the senior force component judge advocate of the force component of which the military trial judge is a member.

H. A military trial judge detailed pursuant to this section who is not a member of the Oklahoma National Guard shall receive compensation calculated on the basis of the current basic pay received by a member in active federal service at the grade of O-6 with twenty (20) years of time in service. The Adjutant General shall promulgate regulations establishing the method of calculating compensation for less than full-time service by a military trial judge retained pursuant to this section who is not a member of the Oklahoma National Guard. A military trial judge may be paid such actual and necessary expenses as may be provided for in regulations promulgated by the Adjutant General.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 826A of Title 44, unless there is created a duplication in numbering, reads as follows:

ARTICLE 26A. Military magistrates.

A. Qualifications. A military magistrate:

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

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

B. Limitations.

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

2. When performing the duties provided for in subsection C of Section 17 of this act (Article 30A, subsection C), no person shall be eligible to act as a military magistrate in a case where such person serves as an Assistant Attorney General, district attorney, assistant district attorney or municipal prosecutor who could determine or participate in the determination of whether to prosecute a nonmilitary offense when the act or omission in question could have violated both the Oklahoma Uniform Code of Military Justice and state or local criminal laws.

3. When performing the duties provided for in subsection C of this section, no person shall be eligible to act as a military magistrate in a case where such person served as an Assistant Attorney General, district attorney, assistant district attorney or municipal prosecutor who determined or participated in the determination of whether to prosecute a nonmilitary offense when the act or omission in question could have violated both the Oklahoma Uniform Code of Military Justice and state or local criminal laws.

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

5. A person shall not act as a military magistrate in any case that he or she is the accuser, a witness or has acted as counsel in the same case.

C. Appellate remand. A military magistrate may be detailed or retained pursuant to this section for purposes of conducting an appellate proceeding on behalf of the Military Court of Appeals ordered pursuant to paragraph 3 of subsection J of Section 866 of Title 44 of the Oklahoma Statutes (Article 66, subsection J, paragraph 3).

D. Duties. In accordance with regulations promulgated by the Adjutant General, in addition to duties when detailed under Section

17 of this act (Article 30A), a military magistrate, who is also a commissioned officer of the state military forces, may be assigned to perform other duties of a nonjudicial nature.

E. The compensation of a military magistrate retained pursuant to this section who is not a member of the Oklahoma National Guard shall be established pursuant to regulations promulgated by the Adjutant General. Such regulations may allow for payment of actual and necessary expenses.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 830A of Title 44, unless there is created a duplication in numbering, reads as follows:

ARTICLE 30A. Certain proceedings conducted before referral.

A. In general.

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

- a. prereferral investigative subpoenas,
- b. prereferral warrants or orders for electronic communications, and
- c. prereferral matters under subsection D of Section 806B of Title 44 of the Oklahoma Statutes (Article 6B, subsection D).

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

- a. include procedures for the review of such rulings that may be ordered under this section as the Adjutant General considers appropriate, and
- b. provide such limitations on the relief that may be ordered under this section as the Adjutant General considers appropriate.

3. If any matter in a proceeding under this section becomes a subject at issue with respect to charges that have been referred to

a general or special court-martial, the matter shall be transferred to the military trial judge detailed to the court-martial.

B. Detail of military trial judge. The Adjutant General shall promulgate regulations providing for the manner in which military trial judges are detailed to proceedings under subsection A of this section.

C. Detail or employment of military magistrate. The Adjutant General may promulgate regulations providing for the detailing or employment of military magistrates who, other than a proceeding described in subparagraph a of paragraph 1 of subsection A of this section, may preside over the proceedings provided for in subparagraphs b and c of paragraph 1 of subsection A of this section.

SECTION 18. AMENDATORY Section 53, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 846), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

D. Subpoena and other process for evidence.

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

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

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

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

d. as otherwise authorized under the Code.

2. Investigative subpoena. An investigative subpoena under subparagraph c of paragraph 1 of this subsection may be issued before referral of charges to a court-martial only if a general court-martial convening authority has authorized counsel for the government to issue such a subpoena, or a military trial judge issues such a subpoena pursuant to subsection A of Section 830 of this title (Article 30, subsection A), or a military magistrate issues such a subpoena pursuant to subparagraph a of paragraph 1 of subsection A of Section 17 of this act (Article 30A, subsection A, paragraph 1, subparagraph a).

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

contents of, and records concerning, wire or electronic communications.

E. Request for relief from subpoena or other process. If a person requests relief from a subpoena or other process under this section (article) on grounds that compliance is unreasonable or oppressive or is prohibited by law, a military trial judge detailed in accordance with Section 826 or subsection A of Section 830 of this title (Article 26 or Article 30, subsection A) shall review the request and shall:

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

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

SECTION 19. AMENDATORY Section 55, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 848), is amended to read as follows:

Section 848. ARTICLE 48. Contempt.

A. Authority to punish.

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

- a. uses any menacing word, sign, or gesture in the presence of the judicial officer during the proceeding,
- b. disturbs the proceeding by any riot or disorder, or
- c. willfully disobeys a lawful writ, process, order, rule, decree, or command issued with respect to the proceeding.

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

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

b. any military magistrate detailed or retained to conduct prereferral proceedings under subsection D of Section 806B of this title (Article 6B, subsection D) or subparagraph a of paragraph 1 of subsection A of Section 17 of this act (Article 30A, subsection A, paragraph 1, subparagraph a) or appellate proceedings under paragraph 3 of subsection J of Section 866 of this title (Article 66, subsection J, paragraph 3),

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

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

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

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

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

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

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

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

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

G. Review. A punishment under this section:

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

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

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

SECTION 20. AMENDATORY Section 66, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 857), is amended to read as follows:

Section 857. ARTICLE 57. Effective date of sentences.

A. Execution of sentences. A court-martial sentence shall be executed and take effect as follows:

1. Forfeiture and reduction. A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect. Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of:

- a. the date that is fourteen (14) days after the date on which the sentence is adjudged, or
- b. in the case of a summary court-martial, the date on which the sentence is approved by the convening authority;

2. Confinement. Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement;

3. Approval of dismissal. If, in the case of a commissioned officer, or cadet, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Adjutant General ~~or by the Senior Assistant Adjutant General of the same component as the accused if such authority is so delegated by the Adjutant General.~~ In such a case, the Adjutant General, ~~or Senior Assistant Adjutant General, as the case may be,~~ may commute, remit, or suspend the sentence, or any part of the sentence, as the Adjutant General ~~or Senior Assistant Adjutant General~~ sees fit. In time of war or national emergency he or she may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six (6) months thereafter;

4. Completion of appellate review. If a sentence extends to dismissal, or a dishonorable or bad-conduct discharge, that part of the sentence extending to dismissal or a dishonorable or bad-conduct discharge may be executed, in accordance with applicable regulations, after completion of appellate review and, with respect to dismissal, approval under paragraph 3 of this subsection, as appropriate; and

5. Other sentences. Except as otherwise provided in this subsection, a general or special court-martial sentence is effective upon entry of judgment and a summary court-martial sentence is effective when the convening authority acts on the sentence.

B. Deferral of sentences.

1. In general. On application by an accused, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer the effective date of a sentence of confinement, reduction, or forfeiture. The deferment shall terminate upon entry of judgment or, in the case of a summary court-martial, when the convening authority acts on the sentence. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

2. Deferral of certain persons sentenced to confinement. In any case in which a court-martial sentences a person referred to in

paragraph 3 of this subsection to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the state military forces by a state or foreign country referred to in that paragraph.

3. Covered persons. Paragraph 2 of this subsection applies to a person subject to this chapter who:

- a. while in the custody of a state or foreign country is temporarily returned by that state or foreign country to the state military forces for trial by court-martial, and
- b. after the court-martial, is returned to that state or foreign country under the authority of a mutual agreement or treaty, as the case may be.

4. State defined. In this subsection, the term "state" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

5. Deferral while review pending. In any case in which a court-martial sentences a person to confinement, but in which review of the case under subsection A of Section 867 of this title (Article 67, subsection A) is pending, the Adjutant General may defer further service of the sentence to confinement while that review is pending.

C. Appellate review.

1. Completion of appellate review. Appellate review is complete under this section when:

- a. a review under Section 865 of this title (Article 65) is completed, or
- b. a review under Section 866 of this title (Article 66) is completed by the Military Court of Appeals and:
 - (1) the time for the accused to file a Petition for Review by the Court of Criminal Appeals has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court,

- (2) such a petition is rejected by the Court of Criminal Appeals, or
- (3) review is completed in accordance with the judgment of the Court of Criminal Appeals.

2. Completion as final judgment of legality of proceedings. The completion of appellate review shall constitute a final judgment as to the legality of the proceedings.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858D of Title 44, unless there is created a duplication in numbering, reads as follows:

ARTICLE 58D. Parole.

The system of parole established pursuant to Section 10 of Article VI of the Oklahoma Constitution and Titles 22 and 57 of the Oklahoma Statutes shall be applicable to any person in any place of confinement under the control of the state military forces or in any penal or correctional institution used or under the control of the Oklahoma Department of Corrections when such person is in confinement as a result of a sentence adjudged by a court-martial conducted by the state military forces.

SECTION 22. AMENDATORY Section 81, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 866), is amended to read as follows:

Section 866. ARTICLE 66. Military Court of Appeals for state military forces.

A. Military Court of Appeals. There is hereby established a Military Court of Appeals for the state military forces of the State of Oklahoma. The Military Court of Appeals shall be a court of record and except as provided in Section 867 of this title (Article 67), the appellate jurisdiction of the Military Court of Appeals shall be exclusive in all courts-martial cases convened by state military forces regardless of whether a court-martial was conducted within or without the physical boundaries of the State of Oklahoma.

B. Composition and method of appointment. The Military Court of Appeals shall be composed of one panel of not less than three appellate military judges. At the time the Military Court of Appeals is initially constituted and each time thereafter when a

vacancy shall occur or is certain to occur on the Court, the State Judge Advocate shall choose and submit to the Governor at least one nominee for a vacant seat, certified by the State Judge Advocate as qualified, by reason of education, training, experience, and judicial temperament, for duty as an appellate military judge. Prior to submission of a nominee to the Governor, the nominee shall have previously notified the State Judge Advocate in writing that he or she will serve as an appellate military judge if appointed. The Governor shall appoint one nominee to fill the vacancy, but if the Governor fails to do so within sixty (60) days after the State Judge Advocate submits the nominee to the Governor or the Governor does not affirmatively reject in writing the nominee so submitted, the State Judge Advocate shall appoint one nominee, the appointment to be certified by the Secretary of State. No person so nominated and appointed by the Governor or by the State Judge Advocate shall take his or her seat on the Military Court of Appeals without first receiving the approbation of the Senate through advice and consent; provided that, in the case of any vacancy that occurs while the Legislature is not in regular session within the meaning of Section 26 of Article V of the Oklahoma Constitution, the Governor, or the State Judge Advocate as provided in this subsection, shall appoint a person who satisfies the requirements established in subsection C of this section to serve as an appellate military judge. If the interim nomination of the appellate military judge is not approved by the Senate during the first regular session following its submission, it shall be deemed rejected. No person shall be nominated to serve as a member of the Military Court of Appeals who is presently employed by the Oklahoma Military Department, either in a full-time or part-time capacity, nor shall any person employed as a federal technician, as defined in Title 32 of the United States Code, be nominated to serve as a member of the Military Court of Appeals.

C. Qualifications. An appellate military judge who is appointed to the Military Court of Appeals shall be a licensed practicing attorney or judge of a court of record, or both, in Oklahoma for one (1) year preceding his or her appointment and shall continue to be a duly licensed attorney while in office to be eligible to hold the office. No appellate military judge shall be appointed to the Military Court of Appeals who did not previously serve as a judge advocate in any department of the Armed Forces of the United States, to include reserve components of the same. The Military Court of Appeals shall include at least one appellate military judge who previously served in the United States Army or a reserve component of the same. The Military Court of Appeals shall

include at least one appellate military judge who previously served in the United States Air Force or a reserve component of the same.

D. Term of office and causes for removal or retirement. Each appellate military judge appointed pursuant to this section shall, unless removed for cause, serve out the term for which he or she is appointed. Appellate military judges appointed pursuant to this section shall serve for fixed terms of office of appropriate minimum periods which shall be prescribed by regulations promulgated by the Adjutant General. The appellate military judges of the Military Court of Appeals, exercising judicial power under the provisions of the Oklahoma Uniform Code of Military Justice, shall be subject to removal from office, or to compulsory retirement from office, by proceedings in the Court on the Judiciary, for:

1. Gross neglect of duty, corruption in office, habitual drunkenness, commission while in office of any offense involving moral turpitude, gross partiality in office, oppression in office, mental or physical disability preventing the proper performance of official duty or incompetence to perform the duties of the office; or

2. Other reasons arising from military customs and practices defined in regulations promulgated by the Adjutant General.

E. Compensation. Appellate military judges shall receive compensation calculated on the basis of the current basic pay received by a member in active federal service at the grade of O-6 with twenty (20) years of time in service. The Adjutant General shall promulgate regulations establishing the method of calculating compensation for less than full-time service by members of the Military Court of Appeals. Appellate military judges may be paid such actual and necessary expenses as may be provided for in regulations promulgated by the Adjutant General.

F. Review.

1. Appeals by accused. The Military Court of Appeals shall have jurisdiction over a timely appeal from the judgment of a court-martial, entered into the record under Section 860C of this title (Article 60C), as follows:

- a. on appeal by the accused in a case in which the sentence extends to confinement for more than six (6)

months and the case is not subject to automatic review under paragraph 3 of this subsection,

- b. on appeal by the accused in a case in which the government previously filed an appeal under Section 862 of this title (Article 62),
- c. on appeal by the accused in a case that the State Judge Advocate has sent to the Military Court of Appeals for review of the sentence under subsection C of Section 856 of this title (Article 56, subsection C),
- d. in a case in which the accused filed an application for review with the Court under subparagraph b of paragraph 1 of subsection D of Section 869 of this title (Article 69, subsection D, paragraph 1, subparagraph b) and the application has been granted by the Court.

2. Review of certain sentences. The Military Court of Appeals shall have jurisdiction over all cases that the State Judge Advocate orders sent to the Court for review under subsection C of Section 856 of this title (Article 56, subsection C).

3. Automatic review. The Military Court of Appeals shall have jurisdiction over a court-martial in which the judgment entered into the record under Section 860C of this title (Article 60C) includes a sentence of dismissal of a commissioned officer, cadet, dishonorable discharge or bad-conduct discharge, or confinement for two (2) years or more.

G. Timeliness. An appeal under paragraph 1 of subsection F of this section is timely if it is filed as follows:

1. In the case of an appeal by the accused under subparagraph a or b of paragraph 1 of subsection F of this section, if filed before the later of:

- a. the end of the ninety-day period beginning on the date the accused is provided notice of appellate rights under subsection C of Section 865 of this title (Article 65, subsection C), or

- b. the date set by the Military Court of Appeals by rule or order; and

2. In the case of an appeal by the accused under paragraph 1 of subsection C of Section 865 of this title (Article 65, subsection C, paragraph 1), if filed before the later of:

- a. the end of the ninety-day period beginning on the date the accused is notified that the application for review has been granted by letter placed in the United States mail for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his or her official service record, or
- b. the date set by the Military Court of Appeals by rule or order.

H. Duties.

1. Cases appealed by accused. In any case before the Military Court of Appeals under subsection F of this section, the Court may act only with respect to the findings and sentence as entered into the record under Section 860C of this title (Article 60C). The Court may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct on the basis of applicable law.

2. Error or excessive delay. In any case before the Military Court of Appeals under subsection F of this section, the Court may provide appropriate relief if the accused demonstrates error or excessive delay in the processing of the court-martial after the judgment was entered into the record under Section 860C of this title (Article 60C).

I. Consideration of appeal of sentence by the State of Oklahoma.

1. In general. In considering a sentence on appeal or review as provided in subsection C of Section 856 of this title (Article 56, subsection C), the Military Court of Appeals may consider:

- a. whether the sentence violates the law, and

- b. whether the sentence is plainly unreasonable.

2. Record on appeal or review. In an appeal or review under this subsection or subsection C of Section 856 of this title (Article 56, subsection C), the record on appeal or review shall consist of:

- a. any portion of the record in the case that is designated as pertinent by either of the parties,
- b. the information submitted during the sentencing proceeding, and
- c. any information required by regulations promulgated by the Adjutant General or by rule or order of the Military Court of Appeals.

J. Limits of authority.

1. Set aside of findings.

- a. In general. If the Military Court of Appeals sets aside the findings, the Court:
 - (1) may affirm any lesser included offense, and
 - (2) may, except when prohibited by Section 844 of this title (Article 44), order a rehearing.
- b. Dismissal when no rehearing ordered. If the Military Court of Appeals sets aside the findings and does not order a rehearing, the Court shall order that the charges be dismissed.
- c. Dismissal when rehearing impracticable. If the Military Court of Appeals orders a rehearing on a charge and the convening authority finds a rehearing impracticable, the convening authority may dismiss the charge.

2. Set aside of sentence. If the Military Court of Appeals sets aside the sentence, the Court may:

- a. modify the sentence to a lesser sentence, or

b. order a rehearing.

3. Additional proceedings. If the Military Court of Appeals determines that additional proceedings are warranted, the Court may order a hearing as may be necessary to address a substantial issue, subject to such limitations as the Court may direct and under such regulations as the Adjutant General may prescribe.

K. Action in accordance with decisions of courts. The State Judge Advocate shall, unless there is to be further action by the Governor, the Adjutant General, or the Oklahoma Court of Criminal Appeals, instruct the appropriate authority to take action in accordance with the decision of the Military Court of Appeals.

L. Rules of procedure and designation of chief judge. The State Judge Advocate shall prescribe uniform rules of procedure for the Military Court of Appeals which shall be published as a military publication and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the office of the State Judge Advocate and by the Military Court of Appeals. The State Judge Advocate shall designate as chief judge one of the appellate military judges of the Military Court of Appeals.

M. Prohibition on evaluation of other members of courts. No member of the Military Court of Appeals shall be required, or on his or her own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the Military Court of Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained as a member of the state military forces.

N. Ineligibility of members of courts to review records of cases involving certain prior member service. No member of the Military Court of Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military trial judge, trial or defense counsel, or reviewing officer of such trial. No member of the Military Court of Appeals shall be eligible to review the record of any trial if such member served as an Assistant Attorney General, district attorney, assistant district attorney or municipal

prosecutor who determined or participated in the determination of whether to prosecute a nonmilitary offense when the act or omission in question could have violated both the Oklahoma Uniform Code of Military Justice and state or local criminal laws.

SECTION 23. AMENDATORY Section 82, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 867), is amended to read as follows:

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

A. Powers as court of last resort. The Oklahoma Court of Criminal Appeals shall be the court of last resort for all general and special courts-martial convened by the state military forces. In reviewing petitions or appeals granted pursuant to this section, the Oklahoma Court of Criminal Appeals shall have and shall exercise all powers granted to the Court under the Oklahoma Statutes and the Oklahoma Constitution. The provisions of Title 22 of the Oklahoma Statutes establishing criminal procedure in the district courts of the state shall not apply to court-martial proceedings convened pursuant to this Code. Where provisions of Title 22 of the Oklahoma Statutes establishing appellate procedures in the Oklahoma Court of Criminal Appeals conflict with any appellate provisions within this Code, the conflicting provisions in Title 22 of the Oklahoma Statutes shall not apply to appellate proceedings arising from court-martial proceedings convened pursuant to this Code.

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

C. Appeals arising from guilty plea. All appeals taken from any conviction on a plea of guilty shall first be decided by the Military Court of Appeals. In the event the conviction arising from a plea of guilty is upheld by the Court of Military Appeals, an appeal may be taken by petition for writ of certiorari to the Oklahoma Court of Criminal Appeals, as provided in subsection D of

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

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

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

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

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

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

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

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

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

SECTION 24. AMENDATORY Section 90, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 874), is amended to read as follows:

Section 874. ARTICLE 74. Remission and suspension.

A. The Adjutant General ~~and, when designated by him or her, a Senior Assistant Adjutant General,~~ the State Judge Advocate, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the Governor.

B. The Adjutant General may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

SECTION 25. AMENDATORY Section 193, Chapter 408, O.S.L. 2019 (44 O.S. Supp. 2020, Section 937), is amended to read as follows:

Section 937. ARTICLE 137. Articles to be explained.

A. 1. The sections of the Oklahoma Uniform Code of Military Justice specified in paragraph 3 of this subsection shall be carefully explained, either orally or in writing, to each officer and enlisted member at the time of, or within thirty (30) one hundred twenty (120) days after, the officer's or enlisted member's initial entrance into a duty status with the state military forces.

2. Such articles shall be explained again:

- a. after the enlisted member has completed basic or recruit training, and
- b. at the time when the enlisted member reenlists.

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

B. The text of the Code and of the regulations prescribed ~~under such~~ pursuant to the Code shall be made available to ~~a~~ an officer or enlisted member of the state military forces, upon request ~~by the member,~~ for the officer's or enlisted member's personal examination.

Electronic or online availability of the Code and of the regulations prescribed pursuant to the Code shall constitute availability for purposes of personal examination by officers or enlisted members of the state military forces.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 465 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any law enforcement agency or public safety entity, including, but not limited to, the Oklahoma State Bureau of Investigation, Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, Department of Public Safety and Oklahoma Military Department, conducting a criminal investigation shall be prohibited from disclosing information about the investigation unless the disclosure is necessary to gather information and evidence related to the investigation. Disclosures authorized by the Oklahoma Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, shall not be prohibited under this section.

B. Any person who violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor.

SECTION 27. AMENDATORY 51 O.S. 2011, Section 6, as last amended by Section 17, Chapter 304, O.S.L. 2018 (51 O.S. Supp. 2020, Section 6), is amended to read as follows:

Section 6. A. Except as may be otherwise provided, no person holding an office under the laws of the state and no deputy of any officer so holding any office shall, during the person's term of office, hold any other office or be the deputy of any officer holding any office, under the laws of the state. The provisions of this section shall not apply to:

1. Notaries public;
2. Members of the State Textbook Committee;
3. County free fair board members;

4. Municipal and county law enforcement officers serving in positions as law enforcement officers of both such governmental entities upon such terms and conditions as are mutually approved by resolutions adopted by the board of county commissioners and governing body of the municipality employing such officers;

5. Any person holding a county or municipal office or position, or membership on any public trust authority, who is a member of a board or commission that relates to federal, state, county or municipal government and is created by the United States government, the State of Oklahoma or a political subdivision of the state, except where the duties of the offices or positions conflict;

6. Any elected municipal officers and school board members who are appointed to a state board, commission, or similar entity if there is no compensation for such services other than reimbursement for necessary travel expenses pursuant to the provisions of the State Travel Reimbursement Act;

7. Any trustee of a public trust, who is appointed as a trustee of a different public trust or any trustee of the Tulsa County Public Facilities Authority who may also be employed by the Department of Transportation;

8. Law enforcement officers employed by municipal or county law enforcement departments or agencies, other than those law enforcement officers elected or appointed as sheriff, chief of police or some similar position in which they are the head of a county or municipal law enforcement agency, who are elected to local boards of education; provided, the provisions of this paragraph shall not prohibit any law enforcement officer employed by a municipality having a population of ten thousand (10,000) or fewer people from serving as a member of a local board of education;

9. Any member of the Oklahoma Highway Patrol Division of the Department of Public Safety who is elected to a local board of education;

10. Any employee of the Oklahoma State Bureau of Investigation who is elected to a local board of education;

11. Any District Supervisor, Assistant District Supervisor, Team Supervisor, Parole Officer 1 or Parole Officer 2 of the Department of Corrections who is elected or appointed to a city council;

12. Any trustee or director of a rural electric cooperative, or port authority who is appointed or elected to a state, county or municipal board, commission or similar entity;

13. County employees who are elected as members of town or city councils;

14. Municipal, county, state or tribal law enforcement or peace officers operating under cross-deputization agreements with an Indian tribe or branch of the federal government;

15. Municipal or county law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by resolution adopted by the governing body of the municipality or county and the governing board of the institution of higher education;

16. State law enforcement or peace officers serving in positions as campus police officers or campus public safety officers pursuant to the provisions of the Oklahoma Campus Security Act, upon such terms and conditions as are mutually approved by written agreement between the Commissioner of Public Safety and the governing board of the institution of higher education;

17. Municipal, county and state law enforcement officers serving in positions as part-time or seasonal rangers or peace officers under the Oklahoma Tourism and Recreation Department or the Grand River Dam Authority;

18. Members of the University Hospitals Authority;

19. Any person holding a state or county office or position who is a reserve force deputy sheriff, or a reserve special agent with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or a reserve municipal police officer;

20. Any person holding a state office or position who serves as a special assistant district attorney without compensation;

21. Any elected or appointed member of a local school board who is a member of a municipal planning commission;

22. Any elected or appointed member of a local school board who is a member or an officer of a volunteer fire department;

23. Directors or officers of a rural water district and chiefs of municipal fire departments or rural fire districts who are

appointed or elected to an unsalaried office in a state, county, municipal, school, or technology center school board, commission, or similar entity, except where the duties of the office would create a conflict of interest;

24. Any person who is a dispatcher or confinement officer at a municipal or county jail who is a noncompensated reserve municipal police officer or a reserve deputy sheriff;

25. Any person who is an assistant district attorney serving as a municipal judge or prosecutor;

26. Any park ranger under the Oklahoma Tourism and Recreation Department or any game warden or reserve game warden employed by the Department of Wildlife Conservation who is elected or appointed to a local board of education or to a municipal governing body, board, commission or similar entity;

27. Members of the Oklahoma State University Medical Center Authority, the Oklahoma State University Medical Trust or the State Board of Osteopathic Examiners;

28. Any member of the state Legislature or any state officer who serves on the board of trustees of the Oklahoma School for the Visual and Performing Arts; ~~and~~

29. Members of the Council on Judicial Complaints; and

30. Any person who is a state employee but not a member of the state military forces, including district attorneys, assistant district attorneys, district court judges, associate district court judges and special judges, when detailed as a military trial judge pursuant to Section 826 of Title 44 of the Oklahoma Statutes or when serving as an appellate military judge pursuant to Section 866 of Title 44 of the Oklahoma Statutes when the Military Court of Appeals is convened. The rules of procedure prescribed by the State Judge Advocate pursuant to subsection L of Section 866 of Title 44 of the Oklahoma Statutes shall define what constitutes the Military Court of Appeals being "convened" for purposes of this paragraph.

The provisions of this section shall not prohibit any person holding an office under the laws of the state or any deputy of any officer so holding any office from serving upon the board of Oklahoma Futures or upon the board of directors of the Oklahoma Center for the Advancement of Science and Technology. The

provisions of this section shall not prohibit a member of the board of directors of the Oklahoma Center for the Advancement of Science and Technology from serving upon the board of Oklahoma Futures.

B. ~~Any~~ Except as provided in subsection C of this section, salaries, emoluments or benefits that would otherwise be paid by the agency or political subdivision to a loaned employee or officer shall instead be paid to the regular employer of such employee. The loaned employee shall in turn be paid regular salary and benefits the same as if continuing regular employment with the permanent employer.

C. Any person excepted pursuant to paragraph 30 of subsection A of this section, when retained as a military trial judge or when serving as a military appellate judge when the Military Court of Appeals is convened, shall be entitled to military judicial leave in accordance with Section 209 of Title 44 of the Oklahoma Statutes.

SECTION 28. AMENDATORY 51 O.S. 2011, Section 152, as last amended by Section 1, Chapter 233, O.S.L. 2018 (51 O.S. Supp. 2020, Section 152), is amended to read as follows:

Section 152. As used in The Governmental Tort Claims Act:

1. "Action" means a proceeding in a court of competent jurisdiction by which one party brings a suit against another;

2. "Agency" means any board, commission, committee, department or other instrumentality or entity designated to act in behalf of the state or a political subdivision;

3. "Charitable health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or the practice of a profession and who provides care to a medically indigent person, as defined in paragraph 9 of this section, with no expectation of or acceptance of compensation of any kind;

4. "Claim" means any written demand presented by a claimant or the claimant's authorized representative in accordance with this act to recover money from the state or political subdivision as compensation for an act or omission of a political subdivision or the state or an employee;

5. "Claimant" means the person or the person's authorized representative who files notice of a claim in accordance with The Governmental Tort Claims Act. Only the following persons and no others may be claimants:

- a. any person holding an interest in real or personal property which suffers a loss, provided that the claim of the person shall be aggregated with claims of all other persons holding an interest in the property and the claims of all other persons which are derivative of the loss, and that multiple claimants shall be considered a single claimant,
- b. the individual actually involved in the accident or occurrence who suffers a loss, provided that the individual shall aggregate in the claim the losses of all other persons which are derivative of the loss, or
- c. in the case of death, an administrator, special administrator or a personal representative who shall aggregate in the claim all losses of all persons which are derivative of the death;

6. "Community health care provider" means:

- a. a health care provider who volunteers services at a community health center that has been deemed by the U.S. Department of Health and Human Services as a federally qualified health center as defined by 42 U.S.C., Section 1396d(1)(2)(B),
- b. a health provider who provides services to an organization that has been deemed a federally qualified look-alike community health center, and
- c. a health care provider who provides services to a community health center that has made application to the U.S. Department of Health and Human Services for approval and deeming as a federally qualified look-alike community health center in compliance with federal application guidance, and has received comments from the U.S. Department of Health and Human Services as to the status of such application with the established intent of resubmitting a modified application, or, if denied, a new application, no

later than six (6) months from the date of the official notification from the U.S. Department of Health and Human Services requiring resubmission of a new application;

7. "Employee" means any person who is authorized to act in behalf of a political subdivision or the state whether that person is acting on a permanent or temporary basis, with or without being compensated or on a full-time or part-time basis.

a. Employee also includes:

- (1) all elected or appointed officers, members of governing bodies and other persons designated to act for an agency or political subdivision, but the term does not mean a person or other legal entity while acting in the capacity of an independent contractor or an employee of an independent contractor,
- (2) from September 1, 1991, through June 30, 1996, licensed physicians, licensed osteopathic physicians and certified nurse-midwives providing prenatal, delivery or infant care services to State Department of Health clients pursuant to a contract entered into with the State Department of Health in accordance with paragraph 3 of subsection B of Section 1-106 of Title 63 of the Oklahoma Statutes but only insofar as services authorized by and in conformity with the terms of the contract and the requirements of Section 1-233 of Title 63 of the Oklahoma Statutes, and
- (3) any volunteer, full-time or part-time firefighter when performing duties for a fire department provided for in subparagraph j of paragraph 11 of this section.

b. For the purpose of The Governmental Tort Claims Act, the following are employees of this state, regardless of the place in this state where duties as employees are performed:

- (1) physicians acting in an administrative capacity,

- (2) resident physicians and resident interns participating in a graduate medical education program of the University of Oklahoma Health Sciences Center, the College of Osteopathic Medicine of Oklahoma State University, or the Department of Mental Health and Substance Abuse Services,
- (3) faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University, while engaged in teaching duties,
- (4) physicians who practice medicine or act in an administrative capacity as an employee of an agency of the State of Oklahoma,
- (5) physicians who provide medical care to inmates pursuant to a contract with the Department of Corrections,
- (6) any person who is licensed to practice medicine pursuant to Title 59 of the Oklahoma Statutes, who is under an administrative professional services contract with the Oklahoma Health Care Authority under the auspices of the Oklahoma Health Care Authority Chief Medical Officer, and who is limited to performing administrative duties such as professional guidance for medical reviews, reimbursement rates, service utilization, health care delivery and benefit design for the Oklahoma Health Care Authority, only while acting within the scope of such contract,
- (7) licensed medical professionals under contract with city, county, or state entities who provide medical care to inmates or detainees in the custody or control of law enforcement agencies,
- (8) licensed mental health professionals as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes, who are conducting initial examinations of individuals for the purpose of determining whether an individual meets the

criteria for emergency detention as part of a contract with the Department of Mental Health and Substance Abuse Services, and

- (9) licensed mental health professionals as defined in Sections 1-103 and 5-502 of Title 43A of the Oklahoma Statutes, who are providing mental health or substance abuse treatment services under a professional services contract with the Department of Mental Health and Substance Abuse Services and are providing such treatment services at a state-operated facility.

Physician faculty members and staff of the University of Oklahoma Health Sciences Center and the College of Osteopathic Medicine of Oklahoma State University not acting in an administrative capacity or engaged in teaching duties are not employees or agents of the state.

- c. Except as provided in subparagraph b of this paragraph, in no event shall the state be held liable for the tortious conduct of any physician, resident physician or intern while practicing medicine or providing medical treatment to patients.
- d. For purposes of The Governmental Tort Claims Act, members of the state military forces on state active duty orders or on Title 32 active duty orders are employees of this state, regardless of the place, within or outside this state, where their duties as employees are performed;

8. "Loss" means death or injury to the body or rights of a person or damage to real or personal property or rights therein;

9. "Medically indigent" means a person requiring medically necessary hospital or other health care services for the person or the dependents of the person who has no public or private third-party coverage, and whose personal resources are insufficient to provide for needed health care;

10. "Municipality" means any incorporated city or town, and all institutions, agencies or instrumentalities of a municipality;

11. "Political subdivision" means:

- a. a municipality,
- b. a school district, including, but not limited to, a technology center school district established pursuant to Section 4410, 4411, 4420 or 4420.1 of Title 70 of the Oklahoma Statutes,
- c. a county,
- d. a public trust where the sole beneficiary or beneficiaries are a city, town, school district or county. For purposes of The Governmental Tort Claims Act, a public trust shall include:
 - (1) a municipal hospital created pursuant to Sections 30-101 through 30-109 of Title 11 of the Oklahoma Statutes, a county hospital created pursuant to Sections 781 through 796 of Title 19 of the Oklahoma Statutes, or is created pursuant to a joint agreement between such governing authorities, that is operated for the public benefit by a public trust created pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes and managed by a governing board appointed or elected by the municipality, county, or both, who exercises control of the hospital, subject to the approval of the governing body of the municipality, county, or both,
 - (2) a public trust created pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes after January 1, 2009, the primary purpose of which is to own, manage, or operate a public acute care hospital in this state that serves as a teaching hospital for a medical residency program provided by a college of osteopathic medicine and provides care to indigent persons, and
 - (3) a corporation in which all of the capital stock is owned, or a limited liability company in which

all of the member interest is owned, by a public trust,

- e. for the purposes of The Governmental Tort Claims Act only, a housing authority created pursuant to the provisions of the Oklahoma Housing Authority Act,
- f. for the purposes of The Governmental Tort Claims Act only, corporations organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents,
- g. for the purposes of The Governmental Tort Claims Act only, districts formed pursuant to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act,
- h. for the purposes of The Governmental Tort Claims Act only, master conservancy districts formed pursuant to the Conservancy Act of Oklahoma,
- i. for the purposes of The Governmental Tort Claims Act only, a fire protection district created pursuant to the provisions of Section 901.1 et seq. of Title 19 of the Oklahoma Statutes,
- j. for the purposes of The Governmental Tort Claims Act only, a benevolent or charitable corporate volunteer or full-time fire department for an unincorporated area created pursuant to the provisions of Section 592 et seq. of Title 18 of the Oklahoma Statutes,
- k. for purposes of The Governmental Tort Claims Act only, an Emergency Services Provider rendering services within the boundaries of a Supplemental Emergency Services District pursuant to an existing contract between the Emergency Services Provider and the State Department of Health. Provided, however, that the acquisition of commercial liability insurance covering the activities of such Emergency Services Provider performed within the State of Oklahoma shall not operate as a waiver of any of the limitations, immunities or defenses provided for political

subdivisions pursuant to the terms of The Governmental Tort Claims Act,

- l. for purposes of The Governmental Tort Claims Act only, a conservation district created pursuant to the provisions of the Conservation District Act,
- m. for purposes of The Governmental Tort Claims Act, districts formed pursuant to the Oklahoma Irrigation District Act,
- n. for purposes of The Governmental Tort Claims Act only, any community action agency established pursuant to Sections 5035 through 5040 of Title 74 of the Oklahoma Statutes,
- o. for purposes of The Governmental Tort Claims Act only, any organization that is designated as a youth services agency, pursuant to Section 2-7-306 of Title 10A of the Oklahoma Statutes,
- p. for purposes of The Governmental Tort Claims Act only, any judge presiding over a drug court, as defined by Section 471.1 of Title 22 of the Oklahoma Statutes,
- q. for purposes of The Governmental Tort Claims Act only, any child-placing agency licensed by this state to place children in foster family homes, and
- r. a circuit engineering district created pursuant to Section 687.1 of Title 69 of the Oklahoma Statutes,

and all their institutions, instrumentalities or agencies;

12. "Scope of employment" means performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud;

13. "State" means the State of Oklahoma or any office, department, agency, authority, commission, board, institution, hospital, college, university, public trust created pursuant to

Title 60 of the Oklahoma Statutes of which the State of Oklahoma is the beneficiary, or other instrumentality thereof; ~~and~~

14. "State active duty" shall be defined in accordance with Section 801 of Title 44 of the Oklahoma Statutes;

15. "State military forces" shall be defined in accordance with Section 801 of Title 44 of the Oklahoma Statutes;

16. "Title 32 active duty" shall be defined in accordance with Section 801 of Title 44 of the Oklahoma Statutes; and

17. "Tort" means a legal wrong, independent of contract, involving violation of a duty imposed by general law, statute, the Constitution of the State of Oklahoma, or otherwise, resulting in a loss to any person, association or corporation as the proximate result of an act or omission of a political subdivision or the state or an employee acting within the scope of employment.

SECTION 29. AMENDATORY 51 O.S. 2011, Section 155, as last amended by Section 3, Chapter 273, O.S.L. 2016 (51 O.S. Supp. 2020, Section 155), is amended to read as follows:

Section 155. The state or a political subdivision shall not be liable if a loss or claim results from:

1. Legislative functions;

2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful criminal felony conviction resulting in imprisonment provided for in Section 154 of this title;

3. Execution or enforcement of the lawful orders of any court;

4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;

5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;

6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;

7. Any claim based on the theory of attractive nuisance;

8. Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision;

9. Entry upon any property where that entry is expressly or implied authorized by law;

10. Natural conditions of property of the state or political subdivision;

11. Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law;

12. Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;

13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;

14. Any loss to any person covered by any workers' compensation act or any employer's liability act;

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence, condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice.

Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

16. Any claim which is limited or barred by any other law;

17. Misrepresentation, if unintentional;

18. An act or omission of an independent contractor or consultant or his or her employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;

19. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee;

20. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision;

21. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school district served by that local board of education before or after normal school hours or on weekends;

22. Use of indoor or outdoor school property and facilities made available for public recreation before or after normal school hours or on weekends or school vacations, except those claims resulting from willful and wanton acts of negligence. For purposes of this paragraph:

- a. "public" includes, but is not limited to, students during nonschool hours and school staff when not working as employees of the school, and
- b. "recreation" means any indoor or outdoor physical activity, either organized or unorganized, undertaken for exercise, relaxation, diversion, sport or pleasure, and that is not otherwise covered by paragraph 20 or 21 of this section;

23. Any court-ordered, Department of Corrections or county approved work release program; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

24. The activities of ~~the National Guard, the militia or other military organization administered by the Military Department of the~~ state military forces when on state active duty pursuant to the lawful orders of competent authority or on Title 32 active duty orders÷

- ~~a. in an effort to quell a riot,~~
- ~~b. in response to a natural disaster or military attack,~~
~~or~~
- ~~c. if participating in a military mentor program ordered by the court;~~

25. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

26. Provision, equipping, operation or maintenance of any juvenile detention facility, or injuries resulting from the escape of a juvenile detainee, or injuries by a juvenile detainee to any other juvenile detainee;

27. Any claim or action based on the theory of manufacturer's products liability or breach of warranty, either expressed or implied;

28. Any claim or action based on the theory of indemnification or subrogation;

29. Any claim based upon an act or omission of an employee in the placement of children;

30. Acts or omissions done in conformance with then current recognized standards;

31. Maintenance of the state highway system or any portion thereof unless the claimant presents evidence which establishes either that the state failed to warn of the unsafe condition or that the loss would not have occurred but for a negligent affirmative act of the state;

32. Any confirmation of the existence or nonexistence of any effective financing statement on file in the Office of the Secretary of State made in good faith by an employee of the Office of the Secretary of State as required by the provisions of Section 1-9-320.6 of Title 12A of the Oklahoma Statutes;

33. Any court-ordered community sentence;

34. Remedial action and any subsequent related maintenance of property pursuant to and in compliance with an authorized environmental remediation program, order, or requirement of a federal or state environmental agency;

35. The use of necessary and reasonable force by a school district employee to control and discipline a student during the time the student is in attendance or in transit to and from the school, or any other function authorized by the school district;

36. Actions taken in good faith by a school district employee for the out-of-school suspension of a student pursuant to applicable Oklahoma Statutes; or

37. Use of a public facility opened to the general public during an emergency.

SECTION 30. AMENDATORY 72 O.S. 2011, Section 48, as last amended by Section 2, Chapter 80, O.S.L. 2017 (72 O.S. Supp. 2020, Section 48), is amended to read as follows:

Section 48. A. All officers and employees of the state or a political subdivision thereof who are members, either officers or enlisted, of the ~~National Guard~~ state military forces or any branch of the United States Military or its reserve components, shall, when ordered by the proper authority to active or inactive duty or service, including state active duty, be entitled to a leave of absence from such civilian employment for the period of such service

without loss of status or seniority. During the first thirty (30) ~~calendar days for employees of political subdivisions or the first thirty (30)~~ regularly scheduled work days for state officers and employees of the State of Oklahoma or a political subdivision thereof, or not to exceed two hundred forty (240) hours, of such leave of absence in any federal fiscal year, the officers or employees shall receive their full regular pay from the employing state agency or political subdivision. During the remainder of such leave of absence in any federal fiscal year, the employing state agency or political subdivision ~~may elect to~~ shall pay the officer or employee an amount equal to the difference between ~~their~~ his or her full regular pay from the employing state agency or political subdivision and ~~their~~ his or her military base pay, ~~except that state officers and employees shall receive the difference between their full regular pay and their Reserve Components pay when they are ordered by proper authority to active or inactive service retroactive to the date that the officer or employee reported to active service on or after September 11, 2001, during the period that Operation Enduring Freedom is in effect, or any subsequent contingency operation declared by the Secretary of Defense.~~ Military allowances and entitlements not subject to federal taxation shall not be included in the computation of the difference between the full regular pay of the officers or employees from the employing state agency or political subdivision and their Oklahoma National Guard or United States military reserve component military base pay. The durational limit of protected military service as provided for in this section shall not be less than that provided by federal law. If it is necessary in the public interest to provide for the performance of the duties of their positions during such absence, the authority having power to fill a vacancy in the positions may appoint substitutes, to be known as acting incumbents, who shall qualify as required for the regular incumbents and shall receive the same pay, including benefits and pay adjustments as fixed by law, if any, or otherwise such pay, including benefits and pay adjustments, as may be fixed by proper authority.

B. The Office of Management and Enterprise Services shall promulgate rules as necessary to implement the provisions of this section that relate to state employees.

C. As used in this section, "state active duty" and "state military forces" shall be defined in accordance with Section 801 of Title 44 of the Oklahoma Statutes.

SECTION 31. AMENDATORY 75 O.S. 2011, Section 251, as last amended by Section 215, Chapter 408, O.S.L. 2019 (75 O.S. Supp. 2020, Section 251), is amended to read as follows:

Section 251. A. 1. Upon the request of the Secretary, each agency shall furnish to the Office a complete set of its permanent rules in such form as is required by the Secretary or as otherwise provided by law.

2. The Secretary shall promulgate rules to ensure the effective administration of the provisions of Article I of the Administrative Procedures Act. The rules shall include, but are not limited to, rules prescribing paper size, numbering system, and the format of documents required to be filed pursuant to the provisions of the Administrative Procedures Act or such other requirements as deemed necessary by the Secretary to implement the provisions of the Administrative Procedures Act.

B. 1. Each agency shall file the number of copies specified by the Secretary of all new rules, and all amendments, revisions or revocations of existing rules attested to by the agency, pursuant to the provisions of Section 254 of this title, with the Office within thirty (30) calendar days after they become finally adopted.

2. An agency filing rules pursuant to the provisions of this subsection:

- a. shall prepare the rules in plain language which can be easily understood,
- b. shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a rule interpreting that language, the reference shall clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification or interpretation of that language,
- c. shall indicate whether a rule is new, amends an existing permanent rule or repeals an existing permanent rule. If a rule amends an existing rule, the rule shall indicate the language to be deleted typed with a line through the language and language to be inserted typed with the new language underscored,

- d. shall state if the rule supersedes an existing emergency rule,
- e. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Secretary shall insert that reference in "The Oklahoma Register" as a notation to the affected rule,
- f. shall prepare, in plain language, a statement of the gist of the rule and an analysis of new or amended rules. The analysis shall include but not be limited to a reference to any statute that the rule interprets, any related statute or any related rule,
- g. may include with its rules, brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material. Such material may be included if the material is labeled or set forth in a manner which clearly distinguishes it from the rules,
- h. shall include other information, in such form and in such manner as is required by the Secretary, and
- i. may change the format of existing rules without any rulemaking action by the agency in order to comply with the standard provisions established by the Secretary for "Code" and "The Oklahoma Register" publication so long as there is no substantive change to the rule.

C. The Secretary is authorized to determine a numbering system and other standardized format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

D. In order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The standards shall be readily available to the public for examination at the administrative

offices of the agency. In addition, a copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.

E. The Secretary shall provide for the publication of all Executive Orders received pursuant to the provisions of Section 664 of Title 74 of the Oklahoma Statutes.

F. The Secretary may authorize or require the filing of rules or Executive Orders by or through electronic data or machine readable equipment in such form and manner as is required by the Secretary.

G. In consultation with the Adjutant General, the Secretary shall establish a method for the publication and archiving of all military publications received by the Secretary of State from the Adjutant General pursuant to the Oklahoma Uniform Code of Military Justice and the Oklahoma State Guard Act. Military publications shall be defined in accordance with Section 801 of Title 44 of the Oklahoma Statutes. The Secretary may also authorize or require the filing of military publications by or through electronic means in such form and manner as is required by the Secretary. This subsection shall only apply to military publications promulgated after October 1, 2019.

H. On or before October 1, ~~2021~~ 2022, the Secretary shall commence publication of all military publications provided by the Adjutant General. On a biennial basis thereafter, the Secretary shall cause the military publications received in the course of the previous two (2) years to be published in a printed and bound format suitable for physical archiving in sufficient numbers to satisfy the requirements of the "Publications Clearinghouse" established in Section 3-113.3 of Title 65 of the Oklahoma Statutes.

SECTION 32. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 11th day of March, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 7th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____

Approved by the Governor of the State of Oklahoma this _____
day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____
day of _____, 20_____, at _____ o'clock _____ M.
By: _____