

1 **SENATE FLOOR VERSION**

2 April 3, 2024

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 3712

6 By: Kannady of the House

7 and

8 Gollihare and Green of the
9 Senate

10 [militia - personnel - eligibility criteria -
11 Adjutant General - oath of office - compensation -
12 discharge procedures - regulations - fund -
13 expenditure - payments - reduction - court-martial
14 proceedings - reappointment procedures - forgery -
15 punishment - codification - effective date]

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

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

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

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

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

13 | Section 23. The Governor of the state shall be the Commander in
14 | Chief of the Militia, and, as such, shall have supreme command of
15 | the military forces of the state while in the service of the state
16 | or until they are ordered ~~and accepted~~ into the actual service of
17 | the United States within the meaning of Clauses 15 and 16 of Section
18 | 8 of Article I of the United States Constitution and Section 2 of
19 | Article II of the United States Constitution. While in the service
20 | of the ~~state~~ State of Oklahoma, ~~he~~ the Governor shall have power to
21 | muster out any organization of the state military forces, discharge
22 | enlisted ~~men~~ personnel, as provided herein, and perform such other
23 | acts in keeping with the laws of the Commander in Chief, ~~subject to~~
24 | ~~the laws of the United States and regulations prescribed by the~~

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

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

11 Section 24. A. The Adjutant General shall be appointed by the
12 Governor, by and with the advice and consent of the Senate, and
13 shall serve at the pleasure of the Governor.

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

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

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

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

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

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

12 Section 25. A. The Adjutant General shall have the rank of
13 Major General and devote full time to the duties of the office.
14 Regardless of whether or not the Adjutant General has been
15 recognized federally at the rank of Major General at the time of
16 appointment by the Governor, the Adjutant General shall be
17 compensated at the same rate of pay afforded to a Major General
18 serving on federal Title 10 active duty with the same time in
19 service. Upon retirement, the Adjutant General shall receive the
20 same retirement pay as a Major General serving on federal Title 10
21 active duty with the same time in service until federal benefits for
22 retirement become available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 H. The Adjutant General shall serve as the chief of all fire
15 protection units operating under the Oklahoma Military Department
16 and shall supervise and administer the fire protection units in
17 accordance with the rules and procedures prescribed by the Military
18 Department.

19 I. The Adjutant General shall serve as the chief of all police
20 units and officers appointed under the Oklahoma Military Department.
21 The Adjutant General may appoint police officers in accordance with
22 Section 230 of this title.

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

1 Section 27. The Adjutant General and Assistant Adjutants
2 General shall be paid a sum equivalent to the pay of ~~his/her~~ his or
3 her federally recognized rank, exclusive of allowances. Other
4 officers and enlisted men and women and employees of the Department
5 shall be paid in amounts fixed by the Adjutant General and within
6 amounts appropriated for that purpose, according to the policies and
7 regulations prescribed by the Adjutant General. Military Department
8 personnel matters shall be preempted and governed by federal law and
9 managed by the Adjutant General.

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

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

16 "I, do solemnly swear that I will support and defend
17 the Constitution of the United States and the Constitution of the
18 State of Oklahoma against all enemies, foreign and domestic; that I
19 will bear true faith and allegiance to the same; that I will obey
20 the lawful orders of the President of the United States and the
21 Governor of the State of Oklahoma; that I make this obligation
22 freely, without any mental reservation or purpose of evasion, and
23 that I will well and faithfully discharge the duties of the office
24

1 of, in the National Guard of the United States and the State
2 of Oklahoma upon which I am about to enter, so help me God."

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

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

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

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

24

1 Section 49. All matters relating to organization, commissioning
2 and discharging of officers, enlisting and discharge of enlisted ~~men~~
3 personnel, discipline, and government of the Oklahoma National
4 Guard, not otherwise provided in this code, ~~shall~~ may be decided ~~by~~
5 according to the customs, regulations, and usage of the United
6 States Army or the United States Air Force or National Guard
7 regulations.

8 SECTION 10. AMENDATORY Section 1, Chapter 74, O.S.L.
9 2022 (44 O.S. Supp. 2022, Section 233.10a), is amended to read as
10 follows:

11 Section 233.10a The Military Department of the State of
12 Oklahoma may purchase information technology including, but not
13 limited to, computer hardware or software, or any services related
14 to software development, software modifications, or any other
15 services related to the operation and maintenance of computer
16 hardware or software or both, independently and without prior
17 approval from the Office of Management and Enterprise Services
18 Information Services Division. All federal programs managed by the
19 Military Department of the State of Oklahoma shall be exempt from
20 any and all Information Services Division requirements.

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

23 Section 241. The Governor, pursuant to the authority granted
24 the states by Section 109 of Title 32 of the United States Code or a

1 | ~~successor provision, and under such regulations as the Secretary of~~
2 | ~~Defense may prescribe for discipline in training,~~ is hereby
3 | authorized to enlist, organize, maintain, equip and discipline such
4 | military forces other than the Oklahoma National Guard as he or she
5 | may deem necessary to defend the state. Such forces shall be
6 | uniformed and subject to Sections 1 through 117, Sections 208
7 | through 237, and Sections 800 through 946 of this title, insofar as
8 | such sections do not conflict with Sections 241 through 250 of this
9 | title.

10 | SECTION 12. AMENDATORY 44 O.S. 2021, Section 243, is
11 | amended to read as follows:

12 | Section 243. A. The Governor is hereby authorized to prescribe
13 | rules and regulations governing the enlistment, organization,
14 | administration, equipment, discipline and discharge of the personnel
15 | of such military forces; to requisition from the Secretary of
16 | Defense such arms and equipment as may be in the possession of and
17 | can be spared by the Department of Defense and to extend thereto the
18 | facilities of state armories, Armed Forces Reserve Centers,
19 | readiness centers, logistics, aviation, and training facilities,
20 | warehouses and their equipment and such other state premises and
21 | property as may be available for the purpose of drill and
22 | instruction. ~~Insofar as applicable the procedure for the~~
23 | ~~enlistment, organization, pay, maintenance, equipment and~~
24 | ~~disciplining of such forces shall be in conformity with the law and~~

1 ~~the rules and regulations governing and pertaining to the National~~
2 ~~Guard; provided, that the officers and enlisted personnel in the~~
3 ~~Oklahoma State Guard shall not receive any compensation or monetary~~
4 ~~allowances from the state except when activated for state active~~
5 ~~duty, as defined in Section 801 of this title, by order of the~~
6 ~~Governor.~~

7 B. Members of the Oklahoma State National Guard shall be
8 considered part of state military forces as defined in Section 801
9 of this title and shall be subject to the Oklahoma Uniform Code of
10 Military Justice.

11 C. When prescribing the rules and regulations governing
12 enlistment, organization, administration, equipment, discipline and
13 discharge of the personnel of the Oklahoma State National Guard, the
14 Governor shall issue such rules and regulations in the form of an
15 executive order or in a series of such orders. An executive order
16 or a series of such orders prescribing the rules and regulations
17 governing enlistment, organization, administration, equipment,
18 discipline and discharge of the personnel of the Oklahoma State
19 National Guard shall also be published by the Adjutant General as a
20 military publication.

21 SECTION 13. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 271 of Title 44, unless there is
23 created a duplication in numbering, reads as follows:

24

1 There is hereby created in the State Treasury a revolving fund
2 for the Oklahoma Military Department to be designated the "Oklahoma
3 National Guard Supplemental Retirement Pay Revolving Fund". The
4 fund shall be a continuing fund, not subject to fiscal year
5 limitations, and shall consist of all monies received by the
6 Oklahoma Military Department from funds provided by law. All monies
7 accruing to the credit of said fund are hereby appropriated and may
8 be budgeted and expended by the Oklahoma Military Department for the
9 purpose of implementing the provisions of Section 3 of this act.
10 Expenditures from said fund shall be made upon warrants issued by
11 the State Treasurer against claims filed as prescribed by law with
12 the Director of the Office of Management and Enterprise Services for
13 approval and payment.

14 SECTION 14. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 272 of Title 44, unless there is
16 created a duplication in numbering, reads as follows:

17 A. The provisions of this section shall not be operative and no
18 payments shall be made from the Oklahoma National Guard Supplemental
19 Retirement Pay Revolving Fund until November 1, 2026.

20 B. The provisions of this section shall only be applicable to a
21 member of the Oklahoma National Guard who has accrued enough service
22 credit prior to the effective date of this act in order to retire
23 from the system maintained by the Defense Finance Accounting
24 Service, or its successor in interest, for the benefit of members of

1 state National Guards, but who has not attained the required age
2 prior to the effective date of this act in order to be paid the full
3 amount of such benefit. No member of the National Guard shall be
4 eligible to receive a payment pursuant to the provisions of this
5 section unless the member has completed twenty-five (25) years of
6 military service and who retires as a member of the Oklahoma
7 National Guard.

8 C. The provisions of this section shall not be applicable to
9 any person who retires with an active duty military pension.

10 D. The amount of the payment shall be determined as follows:

11 1. Determine the average basic pay for the member using the
12 same formula to compute average basic pay for purposes of the active
13 duty military retirement system based on the member's total years of
14 service;

15 2. If the members of the active duty military retirement system
16 were eligible for a cost-of-living adjustment for the year for which
17 the computation of the payment amount authorized by this section is
18 to be made, the cost-of-living adjustment amount in an annualized
19 form shall be added to the result of the computation in paragraph 1
20 of this subsection;

21 3. Multiply the result of the computation in paragraph 1 and,
22 if applicable, paragraph 2 of this subsection by fifty percent
23 (50%);

24

1 4. The resulting amount shall be paid to the National Guard
2 member in twelve equal monthly amounts with allowance as required
3 for rounding.

4 E. Any benefit payable to an eligible member of the Oklahoma
5 National Guard shall only be payable during the member's lifetime
6 and no benefit authorized pursuant to the provisions of this act
7 shall be payable to a survivor other than amounts paid to a member
8 prior to member's death which are payable to another person pursuant
9 to the provisions of a joint tenancy bank account with a right of
10 survivorship naming a person or persons as beneficiary, a bank
11 account with a transfer on death or payable on death feature, an
12 express trust, including but not limited to a trust created by the
13 payee member during his or her lifetime, a will or the statute of
14 intestate succession for distribution of the assets of a person who
15 does not otherwise provide for the disposition of their assets after
16 death.

17 F. The payment otherwise authorized pursuant to the provisions
18 of this act may only be made to a person who has become eligible to
19 receive retirement benefits from the retirement system under the
20 supervision of the Defense Finance Accounting Finance Service, or
21 its successor in interest, as of the date the first payment pursuant
22 to this act is authorized.

23 G. The payments authorized by this section shall be paid to the
24 eligible member until the member begins to receive federal

1 retirement benefits from the Defense Finance Account Services, or
2 its successor interest, but shall not be paid for any period of time
3 after such time period.

4 H. In the event the funds required for full payment to all
5 eligible members pursuant to the provisions of this section is not
6 sufficient, the payments to the eligible members shall be prorated
7 by dividing the total number of eligible members by the total amount
8 of available funds. The resulting quotient shall be multiplied by
9 the payment amount otherwise due to the eligible member and the
10 result of that computation shall be the reduced dollar amount paid
11 to each member for the applicable period. For any period of time
12 during which payments are prorated pursuant to this subsection, the
13 next increment of available funds shall be used to make payments to
14 the eligible members whose payment amounts were prorated to
15 compensate for the reduction made in the prior payment period.

16 SECTION 15. AMENDATORY 44 O.S. 2021, Section 815, is
17 amended to read as follows:

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

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

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

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

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

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

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

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

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

8 E. Any Except as provided in subsection S of this section, any
9 commanding officer of the grade of major or above may impose upon
10 enlisted members of the officer's command:

11 1. An admonition;

12 2. A reprimand;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 L. Except for nonjudicial punishment imposed by the Governor or
23 the Adjutant General, the final appellate authority for nonjudicial
24 punishment imposed within state military forces is the Adjutant

1 General. A person punished under this section whose appeal was
2 previously denied by a senior officer designated to adjudicate
3 appeals may, through his or her chain of command, lodge an
4 additional appeal with the Adjutant General within five (5) days
5 after the appeal is denied. In the event the officer imposing
6 nonjudicial punishment is a senior officer who is also designated to
7 adjudicate appeals arising from nonjudicial punishment, an appeal
8 thereof shall be addressed directly to the Adjutant General. In the
9 event the officer imposing nonjudicial punishment is the Adjutant
10 General, an appeal thereof shall be addressed directly to the
11 Governor. An appeal offered pursuant to this subsection shall be
12 made only in writing. Neither the Governor nor the Adjutant General
13 shall delegate his or her duties as an appellate authority under
14 this subsection.

15 M. Whenever nonjudicial punishment is imposed under this
16 section:

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

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

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

7 N. The imposition and enforcement of disciplinary punishment
8 under this section for any act or omission shall not be a bar to
9 trial by court-martial or a civilian court of competent jurisdiction
10 for a crime or offense arising out of the same act or omission; but
11 the fact that a disciplinary punishment has been enforced may be
12 demonstrated by the accused upon trial and, when so demonstrated, it
13 shall be considered in determining the measure of punishment to be
14 adjudged in the event of a finding or verdict of guilty.
15 Nonjudicial punishment shall not be imposed for an offense
16 previously tried by a civilian court unless so authorized by
17 regulations promulgated by the Adjutant General.

18 O. When nonjudicial punishment has been imposed for an offense,
19 punishment shall not again be imposed for the same offense under
20 this section. Once nonjudicial punishment has been imposed, it may
21 not be increased, upon appeal or otherwise. When a commander or
22 officer in charge determines that nonjudicial punishment is
23 appropriate for a particular member, all known offenses determined
24 to be appropriate for disposition by nonjudicial punishment and

1 ready to be considered at that time, including all offenses arising
2 from a single incident or course of conduct, shall be considered
3 together and shall not be made the basis for multiple punishments.
4 This subsection shall in no way restrict the right of a commander to
5 prefer court-martial charges for an offense previously punished
6 under the provisions of this section.

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

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

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

23 S. For purposes of this section, no member of the Oklahoma
24 National Guard of the rank of E-8 or E-9 shall be reduced in rank

1 pursuant to this section except when the reduction results from
2 nonjudicial punishment imposed by an officer of the Oklahoma
3 National Guard of the rank of brigadier general or by the Adjutant
4 General. When imposing nonjudicial punishment on enlisted persons
5 of the rank of E-7 or below, a commander or officer in charge who
6 possesses the rank of colonel may consider reduction in rank as a
7 possible punishment.

8 SECTION 16. AMENDATORY 44 O.S. 2021, Section 821, is
9 amended to read as follows:

10 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial
11 by federal officials.

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

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

22 Section 875. ARTICLE 75. Restoration.

23 A. Under such regulations as the Adjutant General may
24 promulgate, all rights, privileges, and property affected by an

1 executed part of a court-martial sentence which has been set aside
2 or disapproved, except an executed dismissal or discharge, shall be
3 restored unless a new trial or rehearing is ordered and such
4 executed part is included in a sentence imposed upon the new trial
5 or rehearing.

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

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

1 actual service for all purposes, including the right to pay and
2 allowances.

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

8 SECTION 18. AMENDATORY 44 O.S. 2021, Section 905, is
9 amended to read as follows:

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

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

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

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

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

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

24

1 A. Any person subject to the Oklahoma Uniform Code of Military
2 Justice who wrongfully uses, possesses, manufactures, distributes,
3 imports into the customs territory of the United States, exports
4 from the United States, or introduces into an installation, vessel,
5 vehicle, or aircraft used by or under the control of the Armed
6 Forces of the United States or of the state military forces a
7 substance described in subsection B of this section shall be
8 punished as a court-martial may direct.

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

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

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

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

24

1 C. It shall be unlawful for any member of the state military
2 forces to knowingly use or ingest marijuana or any substances or
3 products derived from marijuana including, but not limited to, hemp,
4 tetrahydrocannabinol, and cannabidiol.

5 SECTION 20. AMENDATORY 44 O.S. 2021, Section 928B, is
6 amended to read as follows:

7 Section 928B. ~~RESERVED.~~ Any person subject to the Oklahoma
8 Uniform Code of Military Justice who:

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

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

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

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

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

1 SECTION 21. AMENDATORY 44 O.S. 2021, Section 934, is
2 amended to read as follows:

3 Section 934. ARTICLE 134. General article.

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

20 SECTION 22. AMENDATORY 44 O.S. 2021, Section 937, is
21 amended to read as follows:

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

23 A. 1. The sections of the Oklahoma Uniform Code of Military
24 Justice specified in paragraph 3 of this subsection shall be

1 carefully explained, either orally or in writing, to each officer
2 and enlisted member at the time of, or within one hundred twenty
3 (120) days after, the officer's or enlisted member's initial
4 entrance into a duty status with the state military forces.

5 2. Such articles shall be explained again:

6 a. after the enlisted member has completed basic or
7 recruit training, and

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

10 3. This subsection applies with respect to Sections 802, 803,
11 807-815, 825, 827, 831, 837, 838, 855, 877-934, and 937-939 of this
12 title (Articles 2, 3, 7-15, 25, 27, 31, 37, 38, 55, 77-134, and 137-
13 139).

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

22 SECTION 23. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 940C of Title 44, unless there
24 is created a duplication in numbering, reads as follows:

1 ARTICLE 140C. Manual for Courts-Martial.

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

7 SECTION 24. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 238 of Title 44, unless there is
9 created a duplication in numbering, reads as follows:

10 The co-located readiness and joint operating center facilities
11 constructed by the Military Department or on behalf of the Military
12 Department shall be named the "Benjamin T. Walkingstick National
13 Guard Complex".

14 SECTION 25. This act shall become effective November 1, 2024.

15 COMMITTEE REPORT BY: COMMITTEE ON VETERANS AND MILITARY AFFAIRS
16 April 3, 2024 - DO PASS AS AMENDED
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