

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 799

By: Simpson

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5
6 AS INTRODUCED

7 An Act relating to the Uniform State Code of Military
8 Justice; amending 44 O.S. 2011, Sections 3211, 3215,
9 3221, 3292, 3339, 3344, 3369, 3377, 3378, 3379 and
10 4002, which relate to apprehension, confinement,
11 nonjudicial punishment, limits of punishment;
12 desertion and other offenses; modifying location of
13 certain return; requiring certain confinement;
14 prohibiting certain fees or charges; authorizing
15 delegation by certain persons; decreasing maximum
16 amount of certain sentences; establishing certain
17 offenses; stating elements of certain offenses;
18 authorizing certain defenses; defining terms;
19 modifying certain jurisdiction; making language
20 gender neutral; repealing 44 O.S. 2011, Section 3391,
21 which relates to state military forces; and providing
22 an effective date.

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

24 SECTION 1. AMENDATORY 44 O.S. 2011, Section 3211, is
amended to read as follows:

Section 3211. A. Apprehension is the taking of a person into
custody.

B. Any person authorized by this code or by Chapter 47 of Title
10, United States Code, or by regulations issued under either, to

1 apprehend persons subject to this code, any marshal of a court-
2 martial appointed pursuant to the provisions of this code, and any
3 peace officer or civil officer having authority to apprehend
4 offenders under the laws of the United States or of a state, may do
5 so upon probable cause that an offense has been committed and that
6 the person apprehended committed it.

7 C. Commissioned officers, warrant officers, petty officers, and
8 noncommissioned officers have authority to quell quarrels, frays,
9 and disorders among persons subject to this code and to apprehend
10 persons subject to this code who take part therein.

11 D. If an offender is apprehended outside the state, the
12 offender's return to the ~~area~~ county of general court-martial
13 authority must be in accordance with normal extradition procedures
14 or by reciprocal agreement.

15 E. No person authorized by this article to apprehend persons
16 subject to this code or the place where such offender is confined,
17 restrained, held, or otherwise housed may require payment of any fee
18 or charge for so receiving, apprehending, confining, restraining,
19 holding, or otherwise housing a person except as otherwise provided
20 by law.

21 SECTION 2. AMENDATORY 44 O.S. 2011, Section 3215, is
22 amended to read as follows:
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1 Section 3215. A. If a person subject to this code is confined
2 before, during, or after trial, confinement shall be in a civilian
3 or military confinement facility.

4 B. The sheriff of any jail shall receive persons committed by
5 the process or mandate of a military court and confine them in the
6 manner prescribed by law. Except as otherwise required by law, no
7 fees or charges of any nature shall be demanded or required to be
8 paid by the state or any military court or member thereof or by the
9 person executing its process or mandate or by any public officer for
10 receiving, executing or returning such process or mandate or for any
11 service in connection therewith or for receiving or confining the
12 person in jail or custody thereunder. No person authorized to
13 receive prisoners pursuant to subsection A of this section may
14 refuse to receive or keep any prisoner committed to the person's
15 charge by a commissioned officer of the state military forces, when
16 the committing officer furnishes a statement, signed by such
17 officer, of the offense charged against the prisoner, unless
18 otherwise authorized by law.

19 C. Every person authorized to receive prisoners pursuant to
20 subsection A of this section to whose charge a prisoner is committed
21 shall, within twenty-four (24) hours after that commitment or as
22 soon as the person is relieved from guard, report to the commanding
23 officer of the prisoner the name of the prisoner, the offense
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1 charged against the prisoner, and the name of the person who ordered
2 or authorized the commitment.

3 SECTION 3. AMENDATORY 44 O.S. 2011, Section 3221, is
4 amended to read as follows:

5 Section 3221. A. Under such regulations as prescribed, any
6 commanding officer (and for purposes of this article, officers in
7 charge) may impose disciplinary punishments for minor offenses
8 without the intervention of a court-martial pursuant to this
9 article. The Governor, the Adjutant General, an officer exercising
10 general court-martial convening authority or an officer of a general
11 or flag rank in command may delegate the powers under this article
12 to a principal assistant who is a member of the state military
13 forces.

14 B. Any commanding officer may impose upon enlisted members of
15 the officer's 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
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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 C. Any commanding officer of the grade of major or lieutenant
9 commander or above may impose upon enlisted members of the officer's
10 command:

11 1. Any punishment authorized in paragraphs 1, 2 and 3 of
12 subsection B of this section;

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

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

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

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

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1 6. 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 D. The Governor, the Adjutant General, an officer exercising
5 general court-martial convening authority, or an officer of a
6 general or flag rank in command may impose:

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

8 a. any punishment authorized in paragraphs 1, 2, 3 and 6
9 of subsection C of this section, and

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

12 2. Upon enlisted members of the officer's command: any
13 punishment authorized in subsection C of this section.

14 E. Whenever any of those punishments are combined to run
15 consecutively, the total length of the combined punishment cannot
16 exceed the authorized duration of the longest punishment in the
17 combination, and there must be an apportionment of punishments so
18 that no single punishment in the combination exceeds its authorized
19 length under this article.

20 F. Prior to the offer of nonjudicial punishment, the commanding
21 officer shall determine whether arrest in quarters or restriction
22 shall be considered as punishments. Should the commanding officer
23 determine that the punishment options may include arrest in quarters
24 or restriction, the accused shall be notified of the right to demand

1 trial by court-martial. Should the commanding officer determine
2 that the punishment options will not include arrest in quarters or
3 restriction, the accused shall be notified that there is no right to
4 trial by court-martial in lieu of nonjudicial punishment.

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

- 9 1. Mitigate reduction in grade to forfeiture of pay;
- 10 2. Mitigate arrest in quarters to restriction; or
- 11 3. Mitigate extra duties to restriction.

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

17 H. A person punished under this article who considers the
18 punishment unjust or disproportionate to the offense may, through
19 the proper channel, appeal to the Joint Chiefs of Staff within
20 fifteen (15) days after the punishment is either announced or sent
21 to the accused, as the commander may determine. The appeal shall be
22 promptly forwarded and decided, and the person may not be punished
23 until the appeal is decided. The Joint Chiefs of Staff may exercise
24 the same powers with respect to the punishment imposed as may be

1 exercised under subsection G of this section by the officer who
2 imposed the punishment. Before acting on an appeal from a
3 punishment, the Joint Chief of Staff may refer the case to a judge
4 advocate for consideration and advice.

5 I. The imposition and enforcement of disciplinary punishment
6 under this article for any act or omission is not a bar to trial by
7 court-martial or a civilian court of competent jurisdiction for a
8 serious crime or offense growing out of the same act or omission and
9 not properly punishable under this section; but the fact that a
10 disciplinary punishment has been enforced may be shown by the
11 accused upon trial and, when so shown, it shall be considered in
12 determining the measure of punishment to be adjudged in the event of
13 a finding of guilty.

14 J. Whenever a punishment of forfeiture of pay is imposed under
15 this article, the forfeiture may apply to pay accruing before, on,
16 or after the date that punishment is imposed.

17 K. Regulations may prescribe the form of records to be kept of
18 proceedings under this article and may prescribe that certain
19 categories of those proceedings shall be in writing.

20 SECTION 4. AMENDATORY 44 O.S. 2011, Section 3292, is
21 amended to read as follows:

22 Section 3292. A. The punishment which a court-martial may
23 direct for an offense may not exceed such limits as prescribed by
24 this code, but in no instance may a sentence exceed more than ~~ten~~

1 ~~(10) years~~ one (1) year for a military offense, nor shall a sentence
2 of death be adjudged. ~~A conviction by general court-martial of any~~
3 ~~military offense for which an accused may receive a sentence of~~
4 ~~confinement for more than one (1) year is a felony offense. Except~~
5 ~~for convictions by a summary court-martial, all other military~~
6 ~~offenses are misdemeanors. Any conviction by a summary court-~~
7 ~~martial is not a criminal conviction.~~

8 B. The limits of punishment for violations of the punitive
9 articles prescribed herein shall be the lesser of the sentences
10 prescribed by the manual for courts-martial of the United States in
11 effect on January 1, 2004, and the state manual for courts-martial,
12 but in no instance shall any punishment exceed that authorized by
13 this code.

14 SECTION 5. AMENDATORY 44 O.S. 2011, Section 3339, is
15 amended to read as follows:

16 Section 3339. A. Any member of the state military forces who:

17 1. Without authority goes or remains absent from his or her
18 unit, organization, or place of duty with intent to remain away
19 therefrom permanently;

20 2. Quits his unit, organization, or place of duty with intent
21 to avoid hazardous duty or to shirk important service; or

22 3. Without being regularly separated from one of the state
23 military forces enlists or accepts an appointment in the same or
24 another one of the state military forces, or in one of the armed

1 forces of the United States, without fully disclosing the fact that
2 he or she has not been regularly separated, or enters any foreign
3 armed service except when authorized by the United States,
4 is guilty of desertion.

5 B. Any commissioned officer of the state military forces who,
6 after tender of ~~his~~ resignation and before notice of its acceptance,
7 quits his or her post or proper duties without leave and with intent
8 to remain away therefrom permanently is guilty of desertion.

9 C. Any person found guilty of desertion or attempt to desert
10 shall be punished, if the offense is committed in time of war, by
11 confinement of not more than ~~ten (10) years~~ one (1) year or such
12 other punishment as a court-martial may direct, but if the desertion
13 or attempt to desert occurs at any other time, by such punishment as
14 a court-martial may direct.

15 SECTION 6. AMENDATORY 44 O.S. 2011, Section 3344, is
16 amended to read as follows:

17 Section 3344. Any person subject to this code who:

18 1. Strikes his or her superior commissioned officer or draws or
19 lifts up any weapon or offers any violence against him or her while
20 he or she is in the execution of his or her office; or

21 2. Willfully disobeys a lawful command of his or her superior
22 commissioned officer,

23 shall be punished, if the offense is committed in time of war,
24 by confinement of not more than ~~ten (10) years~~ one (1) year or such

1 other punishment as a court-martial may direct, and if the offense
2 is committed at any other time, by such punishment as a court-
3 martial may direct.

4 SECTION 7. AMENDATORY 44 O.S. 2011, Section 3369, is
5 amended to read as follows:

6 Section 3369. Any sentinel or look-out who is found drunk or
7 sleeping upon his or her post or leaves it before being regularly
8 relieved, shall be punished, if the offense is committed in time of
9 war, by confinement of not more than ~~ten (10) years~~ one (1) year or
10 other punishment as a court-martial may direct, but if the offense
11 is committed at any other time, by such punishment as a court-
12 martial may direct.

13 SECTION 8. AMENDATORY 44 O.S. 2011, Section 3377, is
14 amended to read as follows:

15 Section 3377. ~~RESERVED.~~ Any person subject to this code who
16 commits a sexual act upon another person by:

- 17 1. Using unlawful force against that other person;
- 18 2. Using force causing or likely to cause death or grievous
19 bodily harm to any person;
- 20 3. Threatening or placing that other person in fear that any
21 person will be subjected to death, grievous bodily harm or
22 kidnapping;
- 23 4. First rendering that other person unconscious; or

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1 5. Administering to that other person by force of threat of
2 force or without the knowledge or consent of that person a drug,
3 intoxicant or other similar substance and thereby substantially
4 impairing the ability of that other person to appraise or control
5 conduct:

6 Shall, upon conviction, be guilty of rape and shall be punished
7 as a court-martial may direct.

8 SECTION 9. AMENDATORY 44 O.S. 2011, Section 3378, is
9 amended to read as follows:

10 Section 3378. ~~RESERVED.~~ A. Any person subject to this code
11 who:

12 1. Commits a sexual act upon another person by:

13 a. threatening or placing that other person in fear,

14 b. causing bodily harm to that other person,

15 c. making a fraudulent representation that the sexual act
16 serves a professional purpose, or

17 d. inducing a belief by any artifice, pretense or
18 concealment that the person is another person;

19 2. Commits a sexual act upon another person when the person

20 knows or reasonably should know that the other person is asleep,

21 unconscious or otherwise unaware that the sexual act is occurring;

22 or

23 3. Commits a sexual act upon another person when the other

24 person is incapable of consenting to the sexual act due to

1 impairment by any drug, intoxicant or other similar substance, and
2 that condition is known or reasonably should be known by the person:

3 Shall, upon conviction, be guilty of sexual assault and shall be
4 punished as a court-martial may direct.

5 B. Aggravated sexual contact occurs when any person subject to
6 this code who commits or causes sexual contact upon or by another
7 person, if to do so would violate Section 3378 of this title had the
8 sexual contact been a sexual act:

9 Shall, upon conviction, be guilty of aggravated sexual contact
10 and shall be punished as a court-martial may direct.

11 C. Abusive sexual contact occurs when any person subject to
12 this code who commits or causes sexual contact upon or by another
13 person, if to do so would violate subsection A of this section had
14 the sexual contact been a sexual act:

15 Shall, upon conviction, be guilty of abusive sexual contact and
16 shall be punished as a court-martial may direct.

17 D. In a prosecution under this section, in proving that a
18 person made a threat, it need not be proven that the person actually
19 intended to carry out the threat or had the ability to carry out the
20 threat.

21 E. A person accused under the provisions of this section may
22 raise any applicable defense available under this Code or the Rules
23 for Court-Martial. Marriage is not a defense for any conduct in
24 issue in any prosecution under this section.

1 SECTION 10. AMENDATORY 44 O.S. 2011, Section 3379, is
2 amended to read as follows:

3 Section 3379. ~~RESERVED.~~ As used in Sections 3377 and 3378 of
4 this title:

5 1. "Sexual act" means:

6 a. contact between the penis and the vulva or anus or
7 mouth, and for purposes of this subparagraph, contact
8 involving the penis occurs upon penetration, however
9 slight, or

10 b. the penetration, however slight, of the vulva or anus
11 or mouth, of another by any part of the body or by any
12 object with an intent to abuse, humiliate, harass or
13 degrade any person or to arouse or gratify the sexual
14 desire of any person;

15 2. "Sexual contact" means:

16 a. touching or causing another person to touch, either
17 directly or through the clothing, the genitalia, anus,
18 groin, breast, inner thigh or buttocks of any person
19 with the intent to abuse, humiliate or degrade any
20 person, or

21 b. any touching or causing another person to touch,
22 either directly or through the clothing, any body part
23 of any person, if done with an intent to arouse or
24 gratify the sexual desire of any person.

1 For purposes of this paragraph, touching may be accomplished by
2 any part of the body;

3 3. "Bodily harm" means any offensive touching of another,
4 however slight, including any nonconsensual sexual act or
5 nonconsensual sexual contact;

6 4. "Grievous bodily harm" means serious bodily injury and
7 includes fractured or dislocated bones, deep cuts, torn members of
8 the body, serious damage to internal organs, and other severe bodily
9 injuries. It does not include minor injuries such as a black eye or
10 bloody nose;

11 5. "Force" means—

12 a. the use of a weapon,

13 b. the use of such physical strength or violence as is
14 sufficient to overcome, restrain or inure a person, or

15 c. inflicting physical harm sufficient to coerce or
16 compel submission by the victim;

17 6. "Unlawful force" means an act of force done without legal
18 justification or excuse;

19 7. "Threatening or placing that other person in fear" means a
20 communication or action that is of sufficient consequence to cause a
21 reasonable fear that noncompliance will result in the victim or
22 another person subjected to the wrongful action contemplated by the
23 communication or action; and

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1 8. "Consent" means a freely given agreement to the conduct at
2 issue by a competent person. An expression of lack of consent
3 through words or conduct means there is no consent. Lack of verbal
4 or physical resistance or submission resulting from the use of
5 force, threat of force or placing another person in fear does not
6 constitute consent. A current or previous dating or social or
7 sexual relationship by itself or the manner of dress of the person
8 involved with the accused in the conduct at issue shall not
9 constitute consent;

10 a. A sleeping, unconscious or incompetent person cannot
11 consent. A person cannot consent to force causing or
12 likely to cause death or grievous bodily harm or to
13 being rendered unconscious. A person cannot consent
14 while under threat or in fear or under the
15 circumstances described in subparagraph c or d of
16 paragraph 1 of subsection A of Section 3378 of this
17 title.

18 b. Lack of consent may be inferred based on the
19 circumstances of the offense. All the surrounding
20 circumstances are to be considered in determining
21 whether a person gave consent or whether a person did
22 not resist or ceased only because of another person's
23 actions.

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1 SECTION 11. AMENDATORY 44 O.S. 2011, Section 4002, is
2 amended to read as follows:

3 Section 4002. Though not specifically mentioned in this code,
4 all disorders and neglects to the prejudice of good order and
5 discipline in the state military forces, of which persons subject to
6 this code may be guilty, shall be taken cognizance of by a general,
7 special, or summary court-martial according to the nature and degree
8 of the offense and shall be punished at the discretion of that
9 court. However, cognizance may not be taken of, and jurisdiction
10 may not be extended to, the crimes of murder, manslaughter, ~~rape~~,
11 robbery, maiming, sodomy, arson, extortion, burglary, or
12 housebreaking, jurisdiction of which is reserved to civil courts.

13 SECTION 12. REPEALER 44 O.S. 2011, Section 3391, is
14 hereby repealed.

15 SECTION 13. This act shall become effective November 1, 2015.

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