

# Chapter 398

2013 EDITION

## Military Justice

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**MILITARY AFFAIRS; EMERGENCY SERVICES**

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**398.002 Definitions for this chapter and ORS 396.120, 396.145, 399.205 and 399.515.** As used in this chapter and ORS 396.120, 396.145, 399.205 and 399.515, unless the context requires otherwise, the following terms have the meanings given those terms in the Oregon Code of Military Justice:

- (1) "Commanding officer."
- (2) "Commissioned officer."
- (3) "Confining authority."
- (4) "Convening authority."
- (5) "Enlisted member."
- (6) "Judge advocate."
- (7) "Military court."
- (8) "Military judge."
- (9) "Officer."
- (10) "Record."
- (11) "State Judge Advocate."
- (12) "Superior commissioned officer." [1961 c.454 §78; 1975 c.719 §1; 1985 c.682 §14; 1989 c.361 §5; 2005 c.512 §5; 2013 c.81 §3]

**398.004 Persons subject to Oregon Code of Military Justice.** (1) The following persons who are not in federal service are subject to the Oregon Code of Military Justice as described in ORS 396.128:

- (a) Members of the organized militia.
- (b) All other persons lawfully ordered to duty in or with the organized militia, from the dates they are required by the terms of the order or other directive to obey the same.

(2) A person may not be tried or punished for any offense provided in the Oregon Code of Military Justice unless:

(a) The offense was committed while the person was in a duty status during a period of time in which the person was under lawful orders to be in a duty status; or

(b) The offense charged has a connection with the military status or assignment of the person. For purposes of this paragraph, the required connection with military status or assignment is conclusively established for offenses for which there is no equivalent offense in the general criminal laws of this state and for offenses involving wrongful use, possession, manufacture, distribution or introduction of a controlled substance described in Article 112a of the Oregon Code of Military Justice.

(3)(a) Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force.

(b) State military forces have primary jurisdiction of military offenses defined in Article 1(a)(18) of the Oregon Code of Military Justice when persons subject to the code are

in a duty status or are properly ordered to be in a duty status.

(c) Except as provided in paragraph (f) of this subsection, a civilian court has primary jurisdiction of an offense when:

(A) An act or omission violates both the Oregon Code of Military Justice and a state, federal or foreign criminal law; and

(B) A person subject to the code was neither in a duty status nor properly ordered to be in a duty status at the time of the act or omission.

(d) When a person is charged with an offense described in paragraph (c) of this subsection, a court-martial or nonjudicial punishment may be initiated only after a civilian court has declined to prosecute or has dismissed the charge, provided jeopardy has not attached.

(e) Jurisdiction over attempted crimes, conspiracy crimes, solicitation and accessory crimes must be determined by the underlying offense.

(f) State military forces have jurisdiction of any offense involving a person subject to the Oregon Code of Military Justice when the person is in a duty status, when the person is properly ordered to be in a duty status or when the sole offense is conduct that is prohibited by Article 112a of the Oregon Code of Military Justice. [1961 c.454 §79; 2013 c.81 §4]

**398.006 Jurisdiction to try certain personnel.** (1) Each person discharged from the organized militia who is later charged with having fraudulently obtained the discharge of the person is, subject to ORS 398.216, subject to trial by court-martial on that charge and is after apprehension subject to the Oregon Code of Military Justice while in the custody of the military for that trial. Upon conviction of that charge, the person is subject to trial by court-martial for all offenses under the Oregon Code of Military Justice committed before the fraudulent discharge.

(2) A person who has deserted from the organized militia may not be relieved from amenability to the jurisdiction of the Oregon Code of Military Justice by virtue of a separation from any later period of service. [1961 c.454 §80; 2013 c.81 §5]

**398.008** [1961 c.454 §81; 1975 c.719 §2; 2005 c.512 §6; repealed by 2013 c.81 §20]

**398.010 Territorial applicability of Oregon Code of Military Justice.** (1) The Oregon Code of Military Justice applies throughout this state and also applies to all persons otherwise subject to the code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner

and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while those units are serving outside the state with the same jurisdiction and powers as to persons subject to the Oregon Code of Military Justice as if the proceedings were held inside the state. Offenses committed outside the state may be tried and punished either inside or outside the state. [1961 c.454 §82; 2013 c.81 §6]

**398.012 Judge advocates; legal assistants.** (1) The Governor, on the recommendation of the Adjutant General, shall appoint an officer of the organized militia as State Judge Advocate. To be eligible for appointment as State Judge Advocate, an officer must:

(a) Be a member in good standing of the Oregon State Bar;

(b) Have been a member of the Oregon State Bar for at least five years; and

(c) Meet the qualifications for a judge advocate under the Uniform Code of Military Justice, 10 U.S.C. 801 et seq.

(2) The Adjutant General may appoint an officer of the organized militia as an Assistant State Judge Advocate. The Adjutant General may appoint as many Assistant State Judge Advocates as the Adjutant General deems necessary. To be eligible for appointment as an Assistant State Judge Advocate, an officer must:

(a) Be a member in good standing of the Oregon State Bar; and

(b) Meet the qualifications for a judge advocate under the Uniform Code of Military Justice, 10 U.S.C. 801 et seq.

(3)(a) The Adjutant General may appoint temporary Assistant State Judge Advocates who are officers of the organized militia. An individual appointed as a temporary Assistant State Judge Advocate has 12 months from the date of appointment to become a member in good standing of the Oregon State Bar and meet the qualifications for a judge advocate under the Uniform Code of Military Justice, 10 U.S.C. 801 et seq.

(b) The legal services performed by a temporary Assistant State Judge Advocate are limited to those legal services that may be performed by legal assistants consistent with ORS 9.160.

(c) A temporary Assistant State Judge Advocate who has met the requirements under this subsection is eligible for appointment as an Assistant State Judge Advocate.

(d) The Adjutant General may extend, for an additional 12 months, the time during

which a temporary Assistant State Judge Advocate must meet the qualifications described in paragraph (a) of this subsection.

(4) The Adjutant General may appoint State Judge Advocate Legal Assistants for a period not to exceed 12 months. An individual appointed as a State Judge Advocate Legal Assistant shall be an officer of the Oregon State Defense Force and shall be legally trained but is not required to be admitted to the practice of law by the Supreme Court of this state. The legal services performed by a State Judge Advocate Legal Assistant are limited to those legal services that may be performed by legal assistants consistent with ORS 9.160.

(5) The State Judge Advocate, the Senior Force Judge Advocate, as defined in the Oregon Code of Military Justice, or their assistants shall make frequent inspections in the field for supervision of the administration of military justice and general military legal matters.

(6)(a) Convening authorities shall at all times communicate directly with their judge advocate in matters relating to the administration of military justice and general military legal matters.

(b) The judge advocate of any command may communicate directly with the judge advocate of a superior or subordinate command, or with the State Judge Advocate or the Senior Force Judge Advocate, as defined in the Oregon Code of Military Justice.

(7) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel or investigating officer, or who has been a witness for either the prosecution or defense in any case, may not later act as judge advocate to any reviewing authority upon the same case.

(8) A judicial officer, as defined by ORS 1.210, is not prohibited, by reason of holding that office, from:

(a) Performing all acts necessary or incumbent to the authorized exercise of duties as a judge advocate or as a member of the Military Council.

(b) Being assigned as a judge advocate by the Adjutant General as appointed by the Governor as Commander in Chief under the Oregon Constitution. [1961 c.454 §83; 1975 c.719 §3; 1993 c.483 §1; 2005 c.512 §7; 2009 c.345 §1; 2013 c.81 §7]

**398.014 Presentment of Class A felony charges to civilian authority.** (1) A charge against a person subject to the Oregon Code of Military Justice for an offense that is classified as a Class A felony under the Oregon Criminal Code shall first be presented by the convening authority to a prosecuting

civilian authority with jurisdiction over the offense for possible prosecution.

(2) If the prosecuting civilian authority declines to prosecute or fails to respond within 90 days from presentation of the charge, the charge may then be prosecuted as provided in this chapter or the Oregon Code of Military Justice. [2005 c.512 §33; 2013 c.81 §8]

**398.052** [1961 c.454 §84; repealed by 2013 c.81 §20]

**398.054** [1961 c.454 §85; repealed by 2013 c.81 §20]

**398.056** [1961 c.454 §86; repealed by 2013 c.81 §20]

**398.058 Restraint of priority prisoners; notice of charges; speedy disposition; conditional release.** (1)(a) Except as provided in paragraph (b) of this subsection, any person subject to the Oregon Code of Military Justice charged with an offense under the code may be ordered, as a priority prisoner, into arrest or confinement, as circumstances may require.

(b) A person subject to the code charged only with a minor offense normally tried by a summary court-martial or subject to punishment under Article 15 of the code may not ordinarily be placed in confinement.

(2) When any person subject to the Oregon Code of Military Justice is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and to try the person or to dismiss the charges and release the person.

(3) When a person subject to the Oregon Code of Military Justice is placed in confinement prior to summary court-martial or disposition under Article 15 of the code, the person shall be conditionally released pending disposition of the charges.

(4) A person described in subsection (3) of this section may be reconfined if the person violates the conditional release. The person violates the conditional release if the person fails to attend drill periods, periods of active duty training, annual training, other periods determined by the confining authority or hearings related to the pending charges or other conditions imposed by the confining authority.

(5) As used in this section, "priority prisoner" means a person subject to the Oregon Code of Military Justice who:

(a) Has been ordered into confinement by a confining authority;

(b) Is received by a keeper, officer, warden or other person in charge of the county jail, penitentiary, prison or other facility in which the person has been ordered confined; and

(c) May be released only upon order of the confining authority. [1961 c.454 §87; 1975 c.719 §4; 2005 c.512 §8; 2013 c.81 §9]

**398.060 Place of confinement.** (1) Confinement other than in an authorized military confinement facility, whether before, during or after trial by a military court, shall be executed in county jails, penitentiaries or prisons designated by the Governor or by such persons as the Governor may authorize to act.

(2) If no designation is made under subsection (1) of this section, the person shall be confined in a county jail.

(3) Confinement under this section shall be without requirement of payment of any fee or charge for confining the person. [1961 c.454 §88; 2005 c.512 §9]

**398.062** [1961 c.454 §89; 2005 c.512 §36; repealed by 2013 c.81 §20]

**398.064** [1961 c.454 §90; repealed by 1985 c.682 §53]

**398.065** [1985 c.682 §2; repealed by 2013 c.81 §20]

**398.066** [1961 c.454 §91; repealed by 2013 c.81 §20]

**398.068** [1985 c.682 §11; repealed by 2013 c.81 §20]

**398.082** [1961 c.454 §92; repealed by 1975 c.719 §5 (398.083 enacted in lieu of 398.082)]

**398.083** [1975 c.719 §6 (enacted in lieu of 398.082); 1985 c.682 §15; 2005 c.512 §10; repealed by 2013 c.81 §20]

**398.102** [1961 c.454 §93; 1975 c.719 §7; 1985 c.682 §16; repealed by 2013 c.81 §20]

**398.104** [1961 c.454 §94; 1975 c.719 §8; 2005 c.512 §11; repealed by 2013 c.81 §20]

**398.106** [1961 c.454 §95; 1975 c.719 §9; 1985 c.682 §17; 1999 c.157 §1; 2005 c.512 §12; repealed by 2013 c.81 §20]

**398.108** [1961 c.454 §96; 1975 c.719 §10; 1985 c.682 §18; 1999 c.157 §2; 2005 c.512 §13; repealed by 2013 c.81 §20]

**398.110** [1961 c.454 §97; 1975 c.719 §11; 1985 c.682 §19; 1999 c.157 §3; 2005 c.512 §14; repealed by 2013 c.81 §20]

**398.112** [1961 c.454 §98; 1999 c.157 §4; 2005 c.512 §15; repealed by 2013 c.81 §20]

**398.114** [1961 c.454 §99; 1985 c.682 §20; repealed by 2013 c.81 §20]

**398.116** [1961 c.454 §100; 2005 c.512 §37; repealed by 2013 c.81 §20]

**398.118 Commutations and pardons granted by Governor; remittance of forfeitures and fines.** Upon the conditions and with the restrictions and limitations as the Governor thinks proper, the Governor may grant commutations and pardons for all punishments imposed under the Oregon Code of Military Justice by a general court-martial or a special court-martial and may remit all forfeitures and fines that were imposed under the code. [2005 c.512 §17; 2013 c.81 §10]

**398.120 Application for commutation or pardon.** (1) When a person subject to the Oregon Code of Military Justice makes an application for commutation or pardon to the Governor, a copy of the application, signed by the applicant and stating fully the grounds of the application, shall be served by the applicant upon:

(a) The convening authority; and

(b) If the applicant is in confinement, the person in charge of the place of confinement.

(2) The applicant shall present to the Governor proof by affidavit of the service.

(3) Upon receiving a copy of the application for commutation or pardon, the convening authority shall provide to the Governor, as soon as practicable, the information and records relating to the case as the Governor may request and any other information and records relating to the case that the convening authority considers relevant to the issue of commutation or pardon.

(4) Following receipt by the Governor of an application for commutation or pardon, the Governor may not grant the application for at least 30 days. Upon the expiration of 180 days following receipt of an application, if the Governor has not granted the commutation or pardon applied for, the application shall lapse. Any further proceedings for commutation or pardon in the case shall be pursuant only to further application and service. [2005 c.512 §18; 2013 c.81 §11]

**398.126** [1961 c.454 §101; 2005 c.512 §19; repealed by 2013 c.81 §20]

**398.128** [1961 c.454 §102; repealed by 2013 c.81 §20]

**398.130** [1961 c.454 §103; 1985 c.682 §21; repealed by 2013 c.81 §20]

**398.132** [1961 c.454 §104; 1975 c.719 §12; 1985 c.682 §22; 2003 c.14 §171; 2005 c.512 §20; repealed by 2013 c.81 §20]

**398.134** [1961 c.454 §105; repealed by 1975 c.719 §13 (398.135 enacted in lieu of 398.134)]

**398.135** [1975 c.719 §14 (enacted in lieu of 398.134); 1985 c.682 §23; 1999 c.94 §1; 2005 c.512 §21; repealed by 2013 c.81 §20]

**398.136** [1961 c.454 §106; 1975 c.719 §15; 1985 c.682 §24; 1999 c.94 §2; 2005 c.512 §22; repealed by 2013 c.81 §20]

**398.138** [1961 c.454 §107; 1985 c.682 §25; 1999 c.94 §3; repealed by 2013 c.81 §20]

**398.140** [1961 c.454 §108; 1975 c.719 §16; repealed by 2013 c.81 §20]

**398.162** [1961 c.454 §109; 1985 c.682 §26; repealed by 2013 c.81 §20]

**398.164** [1961 c.454 §110; repealed by 2013 c.81 §20]

**398.166** [1961 c.454 §111; 1985 c.682 §27; repealed by 2013 c.81 §20]

**398.168** [1961 c.454 §112; 1975 c.719 §17; repealed by 2013 c.81 §20]

**398.170** [1961 c.454 §113; 1985 c.682 §28; repealed by 2013 c.81 §20]

**398.172** [1961 c.454 §114; 1975 c.719 §18; repealed by 2013 c.81 §20]

**398.202** [1961 c.454 §115; repealed by 2013 c.81 §20]

**398.204** [1961 c.454 §116; 1975 c.719 §19; repealed by 2013 c.81 §20]

**398.206** [1961 c.454 §117; 1975 c.719 §20; 1985 c.682 §29; repealed by 2013 c.81 §20]

**398.208** [1961 c.454 §118; repealed by 1975 c.719 §21 (398.209 enacted in lieu of 398.208)]

**398.209** [1975 c.719 §22 (enacted in lieu of 398.208); 2005 c.512 §38; repealed by 2013 c.81 §20]

**398.210** [1961 c.454 §119; 1975 c.719 §23; repealed by 2013 c.81 §20]

**398.212** [1961 c.454 §120; 1975 c.719 §24; repealed by 2013 c.81 §20]

**398.214** [1961 c.454 §121; 1975 c.719 §25; repealed by 2013 c.81 §20]

**398.216 Statute of limitation.** (1) Except as otherwise provided in this section, a person subject to the Oregon Code of Military Justice who is charged with an offense is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command.

(2) A person charged with an offense is not liable to be punished under Article 15 of the Oregon Code of Military Justice if the offense was committed more than one year before any proceeding relating to the offense has been initiated.

(3) Periods of time in which the accused is absent without authority or is fleeing from justice must be excluded in computing the period of limitation prescribed in this section.

(4) Periods of time in which the accused is absent from territory in which the state has the authority to apprehend the accused, is in the custody of civil authorities or is in the hands of the enemy must be excluded in computing the period of limitation prescribed in this section.

(5) When the United States is at war or the President of the United States has declared a national emergency, the running of any statute of limitation applicable to an offense under the Oregon Code of Military Justice is suspended until two years after the termination of hostilities or national emergency as proclaimed by the President or by a joint resolution of Congress if the offense:

(a) Involved fraud or attempted fraud against the United States, any state or any state or federal agency, whether by conspiracy or not;

(b) Was committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States or of any state; or

(c) Was committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation or other termination or settlement of any contract, subcontract or purchase order that is connected with or related to the prosecution of war or with any disposition of termination inventory by a war contractor or governmental agency.

(6) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitation has expired or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitation if the new charges and specifications:

(a) Are received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(b) Allege the same acts or omissions that were alleged in the dismissed charges or specifications, or allege acts or omissions that were included in the dismissed charges or specifications. [1961 c.454 §122; 1985 c.682 §30; 2013 c.81 §12]

**398.218** [1961 c.454 §123; 1985 c.682 §31; 1999 c.157 §5; repealed by 2013 c.81 §20]

**398.220** [1961 c.454 §124; 1985 c.682 §32; repealed by 2013 c.81 §20]

**398.222** [1961 c.454 §125; 1975 c.719 §26; repealed by 2013 c.81 §20]

**398.224 Refusal to appear or testify.** (1)

Any person not subject to the Oregon Code of Military Justice commits a Class B misdemeanor if the person:

(a) Has been duly subpoenaed to appear as a witness before a court-martial, court of inquiry or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission or board;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the circuit court of the state in ORS 44.415 (2); and

(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce.

(2) The district attorney of the county in which the offense occurred, upon certification of the facts by the military court, court of inquiry or board, shall prosecute any person who commits the offense described in subsection (1) of this section. [1961 c.454 §126; 1985 c.682 §33; 1989 c.980 §13; 2005 c.512 §23; 2011 c.597 §189; 2013 c.81 §13]

**398.226 Contempt.** (1) A military court may punish for contempt any person who uses any menacing word, sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of \$100, or both.

(2) A military court shall have the contempt power possessed by a civilian court as provided under ORS 33.015 to 33.155.

(3) A person found in contempt under this section and ordered confined may be confined in a county jail upon written order of the military judge.

(4) A person ordered confined under this section may be delivered to the civilian authority by a military or civilian law enforcement authority.

(5) The county jail may not charge the Oregon Military Department or the state for the costs of a person's confinement under this section. [1961 c.454 §127; 2005 c.512 §24]

**398.228** [1961 c.454 §128; 1985 c.682 §34; repealed by 2013 c.81 §20]

**398.230** [1961 c.454 §129; repealed by 2013 c.81 §20]

**398.232** [1961 c.454 §130; 1975 c.719 §27; 1985 c.682 §35; repealed by 2013 c.81 §20]

**398.234 Number of votes required.** (1)

No person may be convicted of an offense, except by the concurrence of two-thirds of the members of a general or special court-martial present at the time the vote on the findings and on the sentence of a court-martial is taken.

(2) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. However, a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. [1961 c.454 §131; 1985 c.682 §36; 2013 c.81 §14]

**398.236** [1961 c.454 §132; repealed by 2013 c.81 §20]

**398.238** [1961 c.454 §133; 1975 c.719 §28; 1985 c.682 §37; repealed by 2013 c.81 §20]

**398.252 Cruel and unusual punishments prohibited.** Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to the Oregon Code of Military Justice. The use of irons, single or double, except for the purpose of safe custody, is prohibited. [1961 c.454 §134; 2013 c.81 §15]

**398.254** [1961 c.454 §135; 1985 c.682 §38; repealed by 2013 c.81 §20]

**398.256** [1961 c.454 §136; 1985 c.682 §39; repealed by 2013 c.81 §20]  
**398.258** [1961 c.454 §137; 1975 c.719 §29; 1985 c.682 §40; 2005 c.512 §25; repealed by 2013 c.81 §20]  
**398.260** [1985 c.682 §13; repealed by 1999 c.157 §8]  
**398.272** [1961 c.454 §138; 1985 c.682 §41; repealed by 2013 c.81 §20]  
**398.274** [1961 c.454 §§139,140; repealed by 2013 c.81 §20]  
**398.276** [1961 c.454 §141; repealed by 2013 c.81 §20]  
**398.278** [1961 c.454 §142; repealed by 2013 c.81 §20]  
**398.280** [1961 c.454 §143; repealed by 2013 c.81 §20]  
**398.282** [1961 c.454 §144; 1985 c.682 §42; 2005 c.512 §39; repealed by 2013 c.81 §20]  
**398.284** [1961 c.454 §145; repealed by 2013 c.81 §20]  
**398.286** [1961 c.454 §146; 1985 c.682 §43; repealed by 2013 c.81 §20]  
**398.288** [1961 c.454 §147; 1985 c.682 §44; repealed by 2013 c.81 §20]  
**398.290** [1961 c.454 §148; 1985 c.682 §45; repealed by 2013 c.81 §20]  
**398.292** [1961 c.454 §149; repealed by 2013 c.81 §20]  
**398.294** [1961 c.454 §150; 1985 c.682 §46; repealed by 2013 c.81 §20]  
**398.296** [1961 c.454 §151; repealed by 2013 c.81 §20]  
**398.302** [1961 c.454 §152; 1975 c.719 §30; 1999 c.157 §6; 2005 c.512 §26; repealed by 2013 c.81 §20]  
**398.304** [1961 c.454 §153; repealed by 2013 c.81 §20]  
**398.306** [1961 c.454 §154; repealed by 2013 c.81 §20]  
**398.308** [1961 c.454 §155; repealed by 2013 c.81 §20]  
**398.310** [1961 c.454 §156; repealed by 2013 c.81 §20]  
**398.312** [1961 c.454 §157; repealed by 2013 c.81 §20]  
**398.314** [1961 c.454 §158; repealed by 2013 c.81 §20]  
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**398.318** [1961 c.454 §160; repealed by 2013 c.81 §20]  
**398.320** [1961 c.454 §161; repealed by 2013 c.81 §20]  
**398.322** [1961 c.454 §162; repealed by 2013 c.81 §20]  
**398.324** [1961 c.454 §163; repealed by 2013 c.81 §20]  
**398.326** [1961 c.454 §164; 1985 c.682 §47; repealed by 2013 c.81 §20]  
**398.328** [1961 c.454 §165; repealed by 2013 c.81 §20]  
**398.330** [1961 c.454 §166; repealed by 2013 c.81 §20]  
**398.332** [1961 c.454 §167; repealed by 2013 c.81 §20]  
**398.334** [1961 c.454 §168; repealed by 2013 c.81 §20]  
**398.336** [1961 c.454 §169; repealed by 2013 c.81 §20]  
**398.338** [1961 c.454 §170; repealed by 2013 c.81 §20]  
**398.340** [1961 c.454 §171; 1985 c.682 §48; repealed by 2013 c.81 §20]  
**398.342** [1961 c.454 §172; repealed by 2013 c.81 §20]  
**398.344** [1961 c.454 §173; repealed by 2013 c.81 §20]  
**398.346** [1961 c.454 §174; repealed by 2013 c.81 §20]  
**398.348** [1961 c.454 §175; repealed by 2013 c.81 §20]  
**398.350** [1961 c.454 §176; repealed by 2013 c.81 §20]  
**398.352** [1961 c.454 §177; repealed by 2013 c.81 §20]  
**398.354** [1961 c.454 §178; repealed by 2013 c.81 §20]  
**398.356** [1961 c.454 §179; repealed by 2013 c.81 §20]  
**398.358** [1961 c.454 §180; repealed by 2013 c.81 §20]  
**398.360** [1961 c.454 §181; repealed by 2013 c.81 §20]  
**398.362** [1961 c.454 §182; repealed by 2013 c.81 §20]  
**398.366** [1961 c.454 §183; repealed by 2013 c.81 §20]  
**398.368** [1961 c.454 §184; repealed by 2013 c.81 §20]

**398.370** [1961 c.454 §185; repealed by 2013 c.81 §20]  
**398.372** [1961 c.454 §186; 1975 c.719 §31; 1979 c.744 §18; 1985 c.682 §49; repealed by 2013 c.81 §20]  
**398.374** [1961 c.454 §187; 1985 c.682 §50; repealed by 2013 c.81 §20]  
**398.375** [1985 c.682 §4; repealed by 2013 c.81 §20]  
**398.376** [1961 c.454 §188; repealed by 1975 c.719 §34]  
**398.378** [1961 c.454 §189; repealed by 2013 c.81 §20]  
**398.380** [1961 c.454 §190; repealed by 2013 c.81 §20]  
**398.382** [1961 c.454 §191; repealed by 1975 c.719 §34]  
**398.384** [1961 c.454 §194; 1975 c.719 §32; 1985 c.682 §51; repealed by 2013 c.81 §20]  
**398.386** [1961 c.454 §192; repealed by 2013 c.81 §20]  
**398.388** [1961 c.454 §193; repealed by 2013 c.81 §20]  
**398.390** [1961 c.454 §195; repealed by 1975 c.719 §34]  
**398.391** [1985 c.682 §3; repealed by 2013 c.81 §20]  
**398.392** [1961 c.454 §196; 1971 c.743 §363; repealed by 1975 c.719 §34]  
**398.393** [1985 c.682 §5; repealed by 2013 c.81 §20]  
**398.394** [1985 c.682 §6; repealed by 2013 c.81 §20]  
**398.395** [1985 c.682 §7; repealed by 2013 c.81 §20]  
**398.397** [1985 c.682 §8; repealed by 2013 c.81 §20]  
**398.399** [1985 c.682 §9; repealed by 2013 c.81 §20]  
**398.400** [1985 c.682 §10; 1999 c.157 §7; repealed by 2013 c.81 §20]  
**398.402** [1961 c.454 §197; 1989 c.360 §10; repealed by 2013 c.81 §20]  
**398.404** [1961 c.454 §201; repealed by 2013 c.81 §20]

**398.406 Execution of process and sentence.** In the organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state. Where no provision is made for executing those processes and sentences, the process or sentence shall be executed by a United States Marshal or deputy marshal, who shall make a return to the military officer issuing the process or the court imposing the sentence, pursuant to section 333 of title 32, United States Code. [1961 c.454 §202]

**398.408 Process of military courts.** (1) Military courts may issue all process necessary to carry into effect the powers vested in those courts. Such courts may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when the courts are sitting within the state and the witnesses, books and records sought are also so located.

(2) Such process may be issued by summary courts-martial, provost courts or the president or military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed in the Oregon Code of Military Justice.

(3) All officers to whom such process may be so directed shall execute the documents and make return of their acts thereunder

according to the requirements of those documents. Except as otherwise specifically provided in the Oregon Code of Military Justice, no such officer may demand or require payment of any fee or charge for receiving, executing or returning such a process or for any service in connection therewith. [1961 c.454 §203; 1975 c.719 §33; 1981 c.178 §13; 2013 c.81 §16]

**398.410** [1961 c.454 §204; 1963 c.169 §7; repealed by 2013 c.81 §20]

**398.412 Immunity for action of military courts.** No action or proceeding may be prosecuted against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process of a military court. [1961 c.454 §205; 1981 c.178 §14]

**398.414 Presumption of jurisdiction.** The jurisdiction of the military courts and boards established by this chapter and the Oregon Code of Military Justice shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding. [1961 c.454 §206; 2013 c.81 §17]

**398.416 Delegation of authority by Governor.** The Governor may delegate any authority vested in the Governor under this chapter, and may provide for the subdelegation of any such authority, except with respect to the power given the Governor by ORS 398.118. [1961 c.454 §207; 1985 c.682 §52; 2005 c.512 §40; 2013 c.81 §18]

**398.418 Payment of expenses.** The Adjutant General shall have authority to pay all expenses incurred in the administration of state military justice from any fund appropriated to the Oregon Military Department. [1985 c.682 §12; 1989 c.360 §11]

**398.420 Armed Forces Court of Appeals for Oregon.** (1) There is established within the Oregon Military Department the Armed Forces Court of Appeals for Oregon.

(2) The court shall have exclusive jurisdiction over appeals properly brought under this chapter, the Oregon Code of Military Justice and ORS chapters 396 and 399.

(3) The Adjutant General shall appoint three persons who shall serve as judges on the court. The persons appointed shall serve without compensation.

(4) One person shall be Chief Judge and two persons shall be Associate Judges. The Chief Judge shall be selected by the three judges. The selection shall be subject to the approval of the Adjutant General.

(5)(a) Appointments shall be for a term of six years, except that the initial appoint-

ments of the judges shall be for the following terms:

(A) One judge shall serve a two-year term.

(B) One judge shall serve a four-year term.

(C) One judge shall serve a six-year term.

(b) The term of office of any successor judges shall be six years, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which the judge's predecessor was appointed shall be appointed only for the unexpired term of the predecessor.

(c) Any person appointed to a full or partial term on the court, unless otherwise disqualified, shall be eligible for reappointment.

(6) A person is eligible for appointment to the court if the person:

(a) Is a member of the Oregon State Bar and admitted to practice before the highest court of this state;

(b) Is a former commissioned officer of the Armed Forces of the United States or the reserve components, or is a former or current member of the Oregon State Defense Force; and

(c) Has at least:

(A) Five years' experience as an officer in the Judge Advocate General's Corps; or

(B) Fifteen years' experience in the Judge Advocate Branch of the Oregon State Defense Force.

(7) Judges of the court may be removed by the Adjutant General, upon notice and hearing, for neglect of duty or malfeasance in office or for mental or physical disability, but for no other cause.

(8) If a judge of the court is temporarily unable to perform the judge's duties due to mental or physical disability, the Adjutant General may designate another person eligible for appointment to the court to fill the office for the period of disability.

(9) The Oregon Military Department shall be responsible for reimbursement and funding of all usual travel and per diem expenses of the judges.

(10) The Adjutant General shall issue regulations to govern appellate procedure before the court. The regulations shall be substantially similar to the provisions for post-trial procedure and review of courts-martial under the Uniform Code of Military Justice, 10 U.S.C. 801 et seq.

(11) A party aggrieved by a decision of the Armed Forces Court of Appeals for Oregon may petition the Supreme Court of this

state for review within 35 days after the date of the decision, in the manner provided by rules of the Supreme Court.

(12) As used in this section, “component” includes the Army National

Guard, the Air National Guard and the Oregon State Defense Force. [2005 c.512 §29; 2009 c.345 §2; 2013 c.81 §19]